

REASON PAPERS

A Journal of Interdisciplinary Normative Studies

Vol. 37, No. 1

Spring 2015

Symposium: Christine Vitrano's *The Nature and Value of Happiness*

Human Happiness and Virtue: Are They Related and, If So, How?

—John Kleinig

Happiness, Pleasure, and Satisfaction

—Christopher Rice

Response to My Critics

—Christine Vitrano

Symposium: Emergencies

Consent-Based Permission to Kill People and Break Their Things

—Stephen Kershnar

Catastrophic Events versus Infectious Disease Outbreak: Distinct Challenges for Emergency Planning

—Thomas May et al.

Discussion Notes

Happiness or Life, or Both: Reply to Ole Martin Moen

—David Kelley

Reply to Danny Frederick's "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*"

—Mark D. Friedman

Reply to Mark Friedman

—Danny Frederick

Articles

Fetuses Are Like Rapists: A Judith-Jarvis-Thomson-Inspired Argument on Abortion

—Stephen Kershnar

The Scope of Attorney Confidentiality

—Clifton Perry

Portraits of Egoism in Classic Cinema II: Negative Portrayals

—Gary James Jason

Don't Be an Ass: Rational Choice and Its Limits

—Marc Champagne

Review Essay

Review Essay: Philip Booth's . . . *and the Pursuit of Happiness: Wellbeing and the Role of Government*

—Gary James Jason

Book Reviews

Robert Audi's *Moral Perception*

—Danny Frederick

Paul Blackledge's *Marxism and Ethics*

—Dan Swain

Gerhard Böwering et al.'s *The Princeton Encyclopedia of Islamic Political Thought*

—Adam Walker

Afterwords

The Symbolic Clash of *Whiplash*

—Robert Begley

In Search of Student Radicalism: YAL, SFL, and the GOP

—Brandon Christensen

Editors-in-Chief

Carrie-Ann Biondi, Philosophy, *Marymount Manhattan College*
Irfan Khawaja, Philosophy, *Felician College*

Editorial Assistant

Kate Herrick, *Alameda, California*

Editors Emeriti

Tibor R. Machan (1974-2000), Business Ethics, *Chapman University*
Aeon J. Skoble (2001-2010), Philosophy, *Bridgewater State University*

Editorial Board

Neera K. Badhwar, Philosophy, *University of Oklahoma (Emeritus)*;
Economics, *George Mason University*
Jordon Barkalow, Political Science, *Bridgewater State University*
Walter E. Block, Economics, *Loyola University, New Orleans*
Peter Boettke, Economics, *George Mason University*
Donald Boudreaux, Economics, *George Mason University*
Nicholas Capaldi, Business Ethics, *Loyola University, New Orleans*
Andrew I. Cohen, Philosophy, *Georgia State University*
Douglas J. Den Uyl, VP for Educational Programs, *Liberty Fund, Inc.*
Randall Dipert, Philosophy, *State University of New York at Buffalo*
Susanna Fessler, East Asian Studies, *State University of New York at Albany*
John Hasnas, Law, *Georgetown University School of Law*
Stephen Hicks, Philosophy, *Rockford College*
R. Kevin Hill, Philosophy, *Portland State University*
William T. Irwin, Philosophy, *King's College (Wilkes-Barre, Pennsylvania)*
Kelly Dean Jolley, Philosophy, *Auburn University*
Stephen Kershnar, Philosophy, *State University of New York at Fredonia*
N. Stephan Kinsella, Director, *Center for the Study of Innovative Freedom*
Israel M. Kirzner, Economics, *New York University*
Shawn E. Klein, Philosophy, *Rockford College*
Roderick T. Long, Philosophy, *Auburn University*
Eric Mack, Philosophy, *Tulane University*
Fred D. Miller, Jr., Philosophy, *Bowling Green State University (Emeritus)*
Jennifer Mogg, Philosophy, *Bridgewater State University*
James Otteson, Philosophy, *Wake Forest University*
Ralph Raico, History, *State University of New York at Buffalo (Emeritus)*
Douglas Rasmussen, Philosophy, *St. John's University (Queens, NY)*
Lynn Scarlett, Senior Environmental Policy Analyst, *Resources for the Future*
David Schmidtz, Philosophy, *University of Arizona*
James Stacey Taylor, Philosophy, *The College of New Jersey*
Hendrik Van den Berg, Economics, *University of Nebraska at Lincoln*
Lawrence H. White, Economics, *George Mason University*
Edward Younkins, Business, *Wheeling Jesuit University*
Matthew Zwolinski, Philosophy, *University of San Diego*

REASON PAPERS

Vol. 37.1 – Spring 2015

Editorial —Carrie-Ann Biondi and Irfan Khawaja 6

Symposium: Christine Vitrano’s *The Nature and Value of Happiness*

Human Happiness and Virtue: Are They Related and, If So, How?
—John Kleinig 9
Happiness, Pleasure, and Satisfaction —Christopher Rice 20
Response to My Critics —Christine Vitrano 26

Symposium: Emergencies

Consent-Based Permission to Kill People and Break Their Things
—Stephen Kershner 34
Catastrophic Events versus Infectious Disease Outbreak: Distinct Challenges
for Emergency Planning —Thomas May et al. 54

Discussion Notes

Happiness or Life, or Both: Reply to Ole Martin Moen
—David Kelley 65
Reply to Danny Frederick’s “Review Essay: Mark D. Friedman’s *Nozick’s
Libertarian Project: An Elaboration and Defense*” —Mark D. Friedman 80
Reply to Mark Friedman —Danny Frederick 85

Articles

Fetuses Are Like Rapists: A Judith-Jarvis-Thomson-Inspired Argument on
Abortion —Stephen Kershner 88
The Scope of Attorney Confidentiality —Clifton Perry 110
Portraits of Egoism in Classic Cinema II: Negative Portrayals
—Gary James Jason 119
Don’t Be an Ass: Rational Choice and Its Limits —Marc Champagne 137

Review Essay

Review Essay: Philip Booth's . . . *and the Pursuit of Happiness: Wellbeing and the Role of Government* —Gary James Jason 148

Book Reviews

Robert Audi's *Moral Perception* —Danny Frederick 164
Paul Blackledge's *Marxism and Ethics* —Dan Swain 170
Gerhard Böwering et al.'s *The Princeton Encyclopedia of Islamic Political Thought* —Adam Walker 176

Afterwords

The Symbolic Clash of *Whiplash* —Robert Begley 179
In Search of Student Radicalism: YAL, SFL, and the GOP —Brandon Christensen 182

Editorial

In a stroke of careful planning and good fortune, arguably two of the ingredients needed for human flourishing, several of the contributions to this issue of *Reason Papers* address the vital topic of happiness. One set of articles comprises a symposium on Christine Vitrano's *The Nature and Value of Happiness*.¹ Touring through and assessing various conceptions of happiness in the history of philosophy, Vitrano defends one that captures the way we use the term now without reducing it to hedonism. Ultimately, she argues that happiness must involve finding satisfaction in one's life circumstances. John Kleinig and Christopher Rice challenge Vitrano's thesis from different directions, with Kleinig taking a eudaimonist angle and Rice a hedonist one.

In a previous issue of *Reason Papers*, Ole Martin Moen examines Ayn Rand's Objectivist view that man's life is the ultimate value.² He concludes that Rand's view can be interpreted as a version of hedonism: (1) since happiness is the purpose of man's life, then (2) happiness must be our ultimate value and (3) one would always be happier by choosing a life that has greater overall pleasure than pain. The current issue sees a Discussion Note response by David Kelley, one of those whom Moen critiques.

Gary Jason reviews an anthology edited by Philip Booth, . . . *and the Pursuit of Happiness: Wellbeing and the Role of Government*. Booth has gathered together original essays by social scientists who are interested in providing empirical studies of happiness as a contrast to the more traditional humanistic approach taken by philosophers. The essays range over how to measure happiness, the size of government, and whether happiness is best secured via governmental or market mechanisms.

Contributors to our second symposium, on emergencies, recognize that in order "to secure . . . rights"—including the right to pursue happiness—"governments are instituted among men."³ To that end, those authors take up thorny issues of security in emergency contexts. Stephen Kershnar examines whether consent can ever justify the killing and destruction of property that occur during war. Thomas May and his colleagues bring an interdisciplinary

¹ The symposium on *The Nature and Value of Happiness* was originally an Author-Meets-Critics session at Felician College (Lodi, NJ) sponsored by the Felician Ethics Institute (November 16, 2013), and organized by Joseph Biehl and Irfan Khawaja. Thanks to Christine Vitrano, John Kleinig, and Chris Rice for permission to publish their work in *Reason Papers*.

² Ole Martin Moen, "Is Life the Ultimate Value? A Reassessment of Ayn Rand's Ethics," *Reason Papers* 34, no. 2 (October 2012), pp. 84-116.

³ U.S. Declaration of Independence.

focus to the question of how best to handle challenges posed during catastrophic disease outbreaks, such as the SARS outbreak of 2002-2003 and the Ebola outbreak of 2014.

Any exploration of securing the conditions needed to pursue happiness places at the forefront the perennially contested ideas of rights and freedom. Some of our authors take up the more theoretical side of this debate, while others tackle specific contextual applications. The theoretical side revisits past discussion at *Reason Papers* on the work of Robert Nozick and Karl Marx. Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*, which aims to rehabilitate Nozick's libertarianism, was reviewed in our previous issue by Danny Frederick.⁴ Friedman and Frederick continue their exchange over Nozick's grounding for libertarian rights in the Discussion Notes section of this issue. On the other side of the political spectrum, Dan Swain offers a largely sympathetic review of Paul Blackledge's *Marxism and Ethics*.

How to apply any particular understandings of rights and freedom is just as difficult as wrestling with how to define them. Two of our authors, Stephen Kershner and Clifton Perry, offer arguments in defense of abortion rights and a right to attorney-client confidentiality, respectively.

In the previous issue, we ran a book review of Tom Palmer's edited collection *After the Welfare State* by then-undergraduate student Matt Faherty.⁵ As we said there, "[Faherty's] review here is the first of a series of undergraduate articles and reviews we'd like to run discussing SFL's [Students for Liberty'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."⁶ Brandon Christensen has taken up our invitation. He offers here his reflections on undergraduate activism for the cause of liberty—this time, for the organization Young Americans for Liberty.

Continuing our practice of including contributions about art and culture, we have two film reviews that engage the issues of egoism and achievement. Robert Begley reviews the 2014 film *Whiplash*, which dramatizes the tension between a young drummer hungry for achievement and his mentor who will do anything to push his charge to the furthest limits of his endurance. Begley highlights the film's exploration of what is involved in the quest for greatness, including the role played by what can be called hero worship. Gary Jason offers the second of a three-part series on the depiction

⁴ Danny Frederick, "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*," *Reason Papers* 36, no. 1 (July 2014), pp. 132-42.

⁵ Matt Faherty, "Tom Palmer's (ed.) *After the Welfare State*," *Reason Papers* 36, no. 1 (July 2014), pp. 208-10.

⁶ Irfan Khawaja and Carrie-Ann Biondi, "Editorial," *Reason Papers* 36, no. 1 (July 2014), p. 14.

of egoists and egoism in classic films. Contrasting with the first, more positive, piece in his series, Jason here analyzes negative portrayals of egoism in cinema.

Other pieces in this issue reflect a range of broadly normative issues. Danny Frederick reviews Robert Audi's *Moral Perception*, which takes us into issues of epistemic justification. Marc Champagne's article re-visits and finds wanting attempts made by rational-choice theory to resolve the famous "Buridan's ass" problem of how to choose between two equally good options. And Adam Walker reviews Gerhard Böwering et al.'s *The Princeton Encyclopedia of Islamic Political Thought*, which examines the wide sweep of the relationship between religious ethics, law, and politics in the Islamic tradition.

Carrie-Ann Biondi
Marymount Manhattan College
New York, NY

Irfan Khawaja
Felician College
Lodi, NJ

www.reasonpapers.com

Symposium:
Christine Vitrano's *The Nature and Value of Happiness*

Human Happiness and Virtue: Are they Related and, If So, How?

John Kleinig
CUNY Graduate Center and John Jay College of Criminal
Justice
Centre for Applied Philosophy and Public Ethics, CSU

When invited to comment on Christine Vitrano's book,¹ I indicated that I would be happy to do so, but that the proposed date was inconvenient. Happily, the date was changed.

As I hope my opening sentences indicate, I do not think that there is a univocal concept of happiness, even though I believe that different concepts (or, better, conceptions²) of happiness are linked in certain ways.³ So, one of my underlying contentions is that Vitrano offers us one account of happiness—maybe a widely distributed, even populist, account—but not the only account, and not even the only widely understood account of happiness.⁴ Let me put it in another, and somewhat more provocative way: if it is

¹ Christine Vitrano, *The Nature and Value of Happiness* (Boulder, CO: Westview, 2013).

² I have in mind the distinction emphasized by Ronald Dworkin and John Rawls; see "Concepts and Conceptions," available online at: <http://legaltheorylexicon.blogspot.com.au/2004/03/legal-theory-lexicon-028-concepts-and.html>.

³ Vitrano disputes that these are evidence of multivocity (pp. 110 ff.), though I challenge that a bit later.

⁴ Not that this is a simple matter of numbers—though sometimes Vitrano speaks (incorrectly, I believe) as though only philosophers would hold the views she criticizes.

arguable that what Vitrano proposes has become *a* or even *the* prevalent concept of happiness—and one that (conceptually) *should* be given precedence over other widely available or widely appealed to accounts of happiness—then I believe that it has become degraded in certain important ways. To the extent that this is so, happiness will have become a little like friendship, a concept that, along with Facebook friends—but even much earlier, as Aristotle recognizes—has acquired a diversity of understandings, some of which are richer and better worth articulating *and promoting* than others. To the extent that we see happiness as an end of human life—as I think many of us, and not just philosophers, still do—then we need a richer conception of happiness than the one that Vitrano offers us, a richer one in which, as with most human endeavors, *the means as well as the end* will play a significant role. Just as Dale Carnegie’s *How to Win Friends and Influence People* (1936) gives us the wrong view about friendship and its cultivation, so happiness as mere life satisfaction gives us the wrong picture of happiness. I am not saying that Vitrano’s account is incoherent but inappropriate. In other words, when people say, “I want you to be happy,”⁵ they don’t deny the importance of life satisfaction, but they have in mind something more than mere life satisfaction.

So let my primary argument be not that Vitrano has failed to provide an account of happiness, but that the account of happiness she has provided is unlikely to satisfy those of us who think that happiness is not just something that can be replicated on a Nozickian experience machine,⁶ but an achievement⁷—what Aristotle spoke of as *eudaimonia* or well-being or life lived well.⁸ That some of us may now wish to evacuate what Aristotle characterized as *eudaimonia* of some of its trappings does not show very

⁵ I’m thinking of this as a comment on another’s life and not on another’s purchase.

⁶ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 42-45.

⁷ It’s not my view that happiness is something that we need to seek directly; it may well be something that we achieve as the result of accomplishing other goals.

⁸ Two points here: there is a question about whether what Aristotle speaks of as *eudaimonia* is best translated as “happiness” (possibly not). Nevertheless, I think it counts against Vitrano’s sense that she has captured the contemporary essence of happiness that the influential promoters of what is called the Happiness Project (Martin Seligman and Jonathan Haidt, for example), think of happiness as “living well” (itself a pretty Aristotelian conception). See, e.g., Jonathan Haidt, *The Happiness Hypothesis* (New York: Basic Books, 2006); Martin Seligman, *Authentic Happiness* (New York: Free Press, 2002); and esp. Gretchen Rubin, *The Happiness Project* (New York: HarperCollins, 2009).

much beyond what is shown by the fashionability of Facebook friends.⁹ What we want to know about happiness is not only what it is but how it is to be achieved. Indeed, it is quite likely that our evaluation of it as an end will be in part a function of how it is to be achieved. Given her account of happiness, it does not surprise me that Vitrano is unmoved by Robert Nozick's experience-machine critique, but that, I think, is a symptom of her failure rather than an achievement of her account.

As something of an aside, though not irrelevant to my contentions, I doubt whether Vitrano has in fact offered us a single account of happiness. Near the end of the book she considers and resists the possibility of multivocity, but in the end, despite herself, she provides two related but nevertheless differing accounts of happiness. In order to accommodate certain objections she offers an even more accommodating account of happiness as a state of satisfaction in a human subject (p. 110) before switching back to happiness as a state of satisfaction with one's life (p. 113)—satisfactions that have quite different ranges and that may sometimes conflict.¹⁰ There are other instances as well when I think she overextends her account (e.g., p. 64) in pursuit of what I think is probably the futile search for a single all-encompassing account. As wide as Vitrano's Procrustean bed is, it will not do for all that she wants to accommodate.

My own general view is (1) that the search for a single account is wrongheaded and futile, but that that is no problem in itself; (2) that the search for such an account leads Vitrano to develop an excessively thin one; and (3) that if we make our focus happiness as "an end of life"¹¹ (not necessarily the only end or even the most important end), then we must provide more than she does.

To make good on these claims—at least in outline—I want first to make some very general remarks on conceptualization, relating some of those remarks to the conceptualization of happiness, and then to offer some reasons why, if our interest is in human happiness, we are likely to connect it very closely with living virtuously and why, therefore, Fred the Immoralist does not really provide a good counterexample to classical claims to link happiness with virtue.¹²

⁹ See Dean Cocking and Steve Mathews, "Unreal Friends," *Ethics and Information Technology* 2 (2000), pp. 223–31; Christine Rosen, "Virtual Friendship and the New Narcissism," *The New Atlantis* (Summer 2007), pp. 15–31.

¹⁰ I may be happy with certain proposals you make while being desperately unhappy overall.

¹¹ The sort of thing that makes The Happiness Project influential.

¹² Fred the Immoralist is the subject of a brief, provocative article by Steven M. Cahn, "The Happy Immoralist," *Journal of Social Philosophy* 35, no. 1 (2004), p. 1. At best Fred provides a counterexample to certain ways of stating that connection.

So, then, let me begin with a few general and slightly gnostic remarks about conceptualization.¹³ *First*, I don't want to deny that concepts change over time, or that meanings may become obsolete, or that what may have started off as a relatively univocal concept couldn't have multiplied into a variously characterizable one, or even that philosophers may sometimes live in little conceptual worlds of their own. There is a historical dimension to conceptualization, and Vitrano's interest in providing a contemporary understanding of happiness does not require that it conform to some ancient conception. So, it's altogether possible that there are different concepts/conceptions of happiness out there, that some are more prevalent than others, and even that philosophers have lost touch with the world in which they live. What I don't think is disputed is that we—human beings—still take happiness pretty seriously as an end of life. True, there are certain ways of thinking about it—of happiness as pleasurable contentment, for example—that we might not consider of great importance or something to be strongly desired. Nevertheless, I think we (and I mean a sizable number of human beings) consider happiness to be in some sense an important human end and an accomplishment or achievement. We may differ in our appreciation of what it consists in and how to achieve it. But we (a broad we) want it like we want health—it is considered an important human good.

Second, I think that conceptual branching is very common in the case of complex concepts. Each element within such concepts can develop in directions that lead to distinctions among different users of that concept. If, for example, you take a concept such as loyalty, you may find that some people use it in a way that emphasizes the perseverance with which it is associated (to the point of absoluteness or blind commitment); others use it in a way that emphasizes the cost associated with it (to the point of self-sacrifice); others emphasize its associational dimensions (to the point of mutuality or of denying its applicability to principles); others will focus on its conservatism (to the point of using it to affirm a status quo); and so on. Happiness is susceptible to the same conceptual branching, and I think that Vitrano's several lead-up chapters do not establish that there is (now?) a single notion of happiness so much as that there are several dimensions to happiness and that her book is largely an explication of and emphasis on one of these—happiness as a subjective experience.¹⁴ Perhaps Vitrano could accept this but then argue for the priority of one of these accounts. But I think priority is more than a matter of numbers or ubiquity. The question is not: Is this how most twenty-

¹³ They are gnostic because they really require a lot more spelling out than I can provide in this space.

¹⁴ We might, I believe, do much the same with pleasure—one of the classic options that Vitrano considers. The pleasure I receive from having an itchy back scratched is conceptually distinct from the pleasure I receive from learning my child's exam results.

first century people understand the concept? Instead, it is: *To do the work we want of it, how do we best understand it?*

Third, and relatedly, I think it is very rare to find a social concept such as happiness (in contradistinction to a technical or scientific concept) that can be characterized in terms of necessary and sufficient conditions. What we will usually find is that what is *necessarily* related to a concept will under-characterize it, and that its adequate characterization will involve reference to a range of other conditions, only some of which will need to be present for its *sufficient* characterization.¹⁵ Insofar as Vitrano seeks to provide a set of necessary and sufficient conditions, she is likely to come up with an account that is too spare. Beyond what Vitrano provides as necessary (and sufficient) conditions for happiness, there will usually be included such things as endurance or lastingness, well-groundedness or rationality, and a richness or depth that takes it beyond mere satisfaction. What tends to happen here is that different people—as well as different writers—focus on one or more of these additional features, leading to somewhat different though related conceptions of happiness. The important thing is that we recognize that different accounts are available and consider their respective merits rather than reducing them to a lowest common denominator—if, indeed, such is available. I think that Vitrano has argued for a lowest common denominator (though, as I indicated above, I am not even sure that her account of happiness as life satisfaction has succeeded in providing that).

And *fourth*, I think we need to consider the challenge offered in and by W. B. Gallie's account of "essentially contested concepts"—a description that tends to encompass almost all social concepts and especially those to which we give some importance.¹⁶ This of course is connected to the previous point and leads us to consider the merits of various extensions that give particular conceptions their distinctiveness. When the ancient Solon says, "Call no man happy until he is dead," he works with an account of happiness that focuses on endurance—on ending life well, and thus recognizes the ways in which happiness may be a function of luck as well as virtue. This is not to deny virtue a role in happiness, but only its sufficiency, and assumes (much more controversially) that happiness is not something that can come and go. The point is this: even as an end of life, there is no one way of construing happiness, and what we value may lead us to construe it one way rather than

¹⁵ See Michael Scriven, "The Logic of Criteria," *Journal of Philosophy* 56 (1959), pp. 857-68.

¹⁶ W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1955-56), pp. 167-98 (also in W. B. Gallie, *Essentially Contested Concepts and the Historical Understanding* [London: Chatto and Windus, 1964], chap. 8). For a review of some of the subsequent literature, see David Collier, Fernando Daniel Hidalgo, and Andra Olivia Maciuceanu, "Essentially Contested Concepts: Debates and Applications," *Journal of Political Ideologies* 11, no. 3 (2006), pp. 211-46.

another. Most of us don't take Solon's route, but we can understand why he does, and the fact that he takes the route he does forces us to consider how important to our understanding of human happiness we wish endurance (and a particular kind of endurance) to be.

Let me move on, then, to offer some more substantive reasons why we should go beyond Vitrano's account to something that is thicker.

One reason is to be found in the breadth of Vitrano's account—that is, with how little important work it does besides referring to an immediate state of overall contentment (or life satisfaction, as she refers to it). I say “a state of overall contentment” rather than “life satisfaction” because the latter tends to conflate her view with one in which judgments of happiness are *appraisals* (which I think they are). Vitrano wishes to characterize happiness as a feeling or emotion rather than an appraisal (p. 106). Leaving aside what I think is a conflation of feeling with emotion,¹⁷ what Vitrano's account allows is—as she herself says at one point—the characterization of one's baby as a happy one (p. 64), and, I might also suggest, a happy puppy, both of which almost certainly *express*, even if they do not, because of a lack of conceptual development, *report* their happiness (in her sense). Although I do not wish to deny such appellations, or the same to those who are on alcohol, drugs, or mentally defective (the happy Down-syndrome child), some of us would see such uses as casual (like “friending” in Facebook) and perhaps prefer other terminology such as merry, high, contented, fun-loving, or . . . : we have a rich vocabulary to refer to such states of enjoyment or satisfaction, and don't need to resort to the time-honored and I believe weightier language of happiness. That friendship has been cheapened by Facebook is no reason not to decry such cheapening any more than the cheapening of happiness by reference to the soma-induced state of *Brave New World* is a reason not to decry its cheapening.¹⁸

As broad as Vitrano's conception of happiness is, it doesn't really encompass every contemporary appeal to it, as a check of the *Oxford English Dictionary* will show. And consider the following locutions—one from a modern translation of the New Testament beatitudes: “Happy are those who

¹⁷ There is a cognitive dimension to the emotions that is not essential to feelings. I grant, though, that there is a longstanding debate about whether the emotions can be reduced to feelings.

¹⁸ Let me just say here that, contrary to Vitrano's statements about not being able to be mistaken about one's state of happiness, the examples she provides of the manipulation of one's statements about one's happiness do go to show that one can be mistaken or at least misled about how it is with one's life. Even if these are generally short-lived assertions about happiness, they show either the thinness of assertions about one's happiness, or, more likely, how there is more substance to assertions of happiness than what can be evoked through manipulative experiments. After all, what experimenters do is not much more than introduce control into the contingencies that must often affect judgments of happiness in her sense.

are sad, for they will be comforted . . .”; in older translations the word used was “blessed.” The point is simply to remind us of the diverse conceptions of happiness that are—and are still—available to us.

A second—and my primary—reason for not being satisfied with Vitrano’s account is that we generally have a specific interest in happiness—happiness as an *end* and, in particular, *human* happiness, not the happiness of whatever it may be attributed to. And when I say *human* happiness I have in mind human *qua* human, and not the happiness of campers or customers, and probably not the happiness of mental defectives or babies or the inebriated.¹⁹ This is central to John Stuart Mill’s understanding of happiness (which Vitrano criticizes). In *On Liberty* (1859), where Mill makes much of our human powers of individuality and of the nobility that attaches to self-chosen human endeavor, he makes it clear that although he hews to the utilitarian doctrine that he was later to develop at length in his essay *Utilitarianism* (1861/1863), it is “utilitarianism in the widest sense” as applying to “man as a progressive being.”²⁰ In so doing, he is alluding to his departures from Jeremy Bentham and what he sees as Bentham’s merely quantitatively differentiated conception of happiness, and the possibility that it allows for piggish pleasures to count equally with more refined ones—and also for the pleasures of pushpin to count for the same as the pleasures of poetry.²¹

We may of course wish to take issue with Mill’s qualitative assessments of pleasures or sources of happiness, seeing them as class- or culture-based,²² but what he is trying to do is, I think, very important. He attempts to give an account of happiness that is *appropriate to the kinds of beings that humans are*. It is human happiness—its nature, value, and sources—that concerns the moralists, not just any life satisfaction or contentment. That humans *can* settle for less is not the point. The point is to promote a happiness that we can acknowledge as an appropriate end for the kinds of beings we are, and although that may be open to a wide range of possibilities (and endless disagreement), it is not contentless. It has an

¹⁹ My point is not that we can’t call them happy, but that when we are thinking of happiness as a human end we have in mind something more specific—human *qua* human.

²⁰ John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett, 1978), chap. 1.

²¹ See John Stuart Mill, “Bentham” (1838), in *Utilitarianism and Other Essays*, ed. Alan Ryan (New York: Penguin Books, 1987), pp. 132-76; cf. Jeremy Bentham, *The Rationale of Reward* (London: John and H. L. Hunt, 1825).

²² Vitrano takes issue with Mill, though what she finds unacceptable about Mill’s account is that it introduces an “objective” element into what she takes to be a “subjective” phenomenon. It is precisely that objective element, no matter the difficulties of specifying it, that unacceptably thins out her account.

objective dimension, and I think that is what the ancients were getting at in linking happiness with virtue. For it is virtue that is not only distinctive of humans but, by virtue of its *social orientation*, is also the glue for human flourishing.

The point I think is this: We who reflect on human happiness—its nature *and* value (not just its nature)—are not only centers of feeling or sources of activity, but also appraisers of our lives, and those appraisals are not separate from our conception of what we are. That's why we are interested in the *sources* of our happiness and not simply our experience, why we think that certain activities are likely, given what we are, to yield more satisfying and enduring kinds of human happiness than others, and why certain sources of happiness are more appropriate to the kinds of beings we are than others.

It is not without significance that Vitrano dedicates her book to “Julian and Gabriel who have made me happier than I ever could have imagined.” There are some sources of *human* satisfaction that we recognize as special and which we seek to preserve in various ways (albeit, sometimes, at unfortunate cost). Even in a liberal society, where we might wish to interfere with families far more than we do for the sake of the well-being of their younger members, we nevertheless (for the most part) resist interfering with them, lest we disrupt *one of the great sources of human happiness (a happiness that is greater than we ever could have imagined)*. The point is not that happiness is to be found only in marriage or children or that family life cannot sometimes be dysfunctional, but that familial relations offer opportunities for happiness that are not otherwise available to us, *because of the humans we are*.

And so we might argue for other things. The underlying point is in fact a broader one, relating to the fact that, as humans, we are social beings and the main sources of our satisfactions are achieved through our varied relations with others. It is these relations that are ordinarily sustained through the cultivation of virtue and the virtues.

Mill's somewhat unsatisfactory test of what makes for the higher pleasures of human life and hence for human happiness—the judgment of those who have experienced whatever pleasures are being compared—at least gestures in the direction of what can be considered happiness for those who are aware of the possibilities inherent in their humanity. What the issue becomes, then, is not: What is happiness?, but: What is the nature and value of human happiness?, where a fair bit of work is being done by the adjective as well as the noun. Indeed, it is the adjective that provides a good deal of input into the content of the noun.

Now, that does not leave us in any very easy place. It does not leave us in any very easy place because what it is to be human is an issue over which we have been conflicted ever since we started reflecting on ourselves and our condition. It is, nevertheless, a question we cannot dodge, and I do not believe it satisfactory to try to dodge it by thinning our conception of happiness.

Suppose that a partner and I produce a child which we then proceed to treat simply as a pet. We do not teach it a language or send it to school or do any of the normal things we do for our children. We keep it in a large cage, feed it as it needs to be fed, and otherwise care for its basic physical and other needs. The child grows up to be a contented pet. It does not tell us that it is happy, but it expresses its feelings and we do what we need to do to keep it contented. Is it happy? We can believe so, at least in Vitrano's sense of happy, and yet we may wish to resist the view that it is happy as a *human being*, for it has not been enabled to engage and find satisfaction in the usual, or even unusual, sources of human happiness.

The distinctiveness of human experience can be brought out via Vitrano's reference to James Griffin's reaction to Nozick's experience machine. Whereas Nozick focuses on the importance of engagement, Griffin indicates his own penchant for the person who "prefers the bitter truth to comfortable delusion."²³ The point that Griffin is making goes back to Aldous Huxley's *Brave New World*, in which we are presented with a choice between the carefully crafted "human clones," who may ingest *soma* whenever a cloud arises in their consciousness, and "John the Savage," who has missed out on the great cloning experiment. John experiences the full range of human emotions—ups and downs—and the reader is left with a choice between two options, that of the soma-calmed clones and the *Sturm und Drang* of John. It is Huxley's graphic contention that John's life is to be preferred, because it is a genuinely *human* life, even though it is not contented in the way experienced by the soma-taking clones. On Huxley's view, it is better to be an unhappy John than a happy clone, which is Huxley's twenty-first century version of Mill's claim that it is better to be Socrates dissatisfied than a pig satisfied. It's not simply that Vitrano's kind of happiness is passive, but that it is evacuated of the distinctive features that make us human. I think that helps us to understand why she has no great problem with Nozick's experience machine.

One of the reasons I was invited to comment on Vitrano's book is that she critiques my response to Steven Cahn's brief sketch of "The Happy Immoralist" (pp. 124-25).²⁴ I think I've now provided enough background to indicate why I disagree with Cahn and why Vitrano's response does not persuade me.

Let me first note that although I cast some doubts on the quality of Fred's happiness, I did not categorically deny that Fred the immoralist could be called happy. I did, nevertheless, express some doubts about the character of his happiness. As Vitrano notes, I say explicitly that "at one important level Fred's happiness is chimerical," and I do contrast his happiness with

²³ Cited in Vitrano, *The Nature and Value of Happiness*, pp. 140-41.

²⁴ Commenting on John Kleinig, "Happiness and Virtue," *Journal of Social Philosophy* 35, no. 1 (Spring 2004), p. 2.

what I refer to as “real happiness.”²⁵ I was attempting in a very brief space to make two claims about Fred, as follows.

First, I wanted to argue that Fred’s happiness was likely to be extremely fragile, for the general reason that some means to happiness are likely to make it more perilous than others. And that is so, even if we build luck into our calculations. In other words, the path that Fred has taken to achieve the kind of happiness he affirms is a treacherous one and likely to unravel at any time. The odds of being found out are pretty high. Moreover, I suggested that because of Fred’s desire for a “reputation for probity,” there is something chimerical about his happiness, since the appearance of a good reputation depends on his ability to maintain a lie, a lie that is likely to be difficult to maintain in the face of his treachery and dishonesty. But there is something more to it than that, although I did not state this. The currently satisfied desire for a reputation for probity is for perpetuity; it is not extinguished by death; it constitutes part of what one considers to be one’s legacy. It would not do for Fred to say: “I care only for a good reputation while I am alive—I don’t give a damn about what they will think of me after I’m gone.” Unless Fred changes his mind about the importance of a reputation for probity, Fred will go to his death wishing to maintain that reputation.

Second, there is something else about Fred’s happiness that makes it chimerical, something that makes it less than “real happiness.” Fred is a human being, and though human happiness may be achieved in many different ways, it has some distinctive qualities *qua* human happiness, qualities that emerge from our character as social beings and from the way in which we engage with the social world. This I take it is one of the considerations that informs Jeffrie Murphy’s pity for Fred.²⁶ Fred sells himself short. Like Mill’s pig, he has a cheap understanding of what makes for a satisfying human life. He gets a certain kind of satisfaction, to be sure, and we can call it happiness if we wish, but just as—I suspect—Vitrano would not wish Fred’s type of life satisfaction for herself or wish to recommend it to others, we should think it sad that this is the way Fred wants his life to be. This is no life for a *human being*. Would Vitrano, in indicating to her children the different ways in which they might have happy lives, include Fred’s example among them?

I suspect not. But what if she replies, as I think she would: a happy life is not everything. It is also important that one has a moral life, and Fred’s life is not a recommendable option because it is not a moral life. There is more to life than happiness. That is true. Some human ends may be more important than happiness. To simplify a little: Should Vitrano set before her children only those ways of being happy that are also moral? And if so, why? Is it not that one of the conditions of a happy life fit for humans is that it also hews to

²⁵ Ibid.

²⁶ Jeffrie G. Murphy, “The Unhappy Immoralist,” *Journal of Social Philosophy* 35, no. 1 (Spring, 2004), pp. 11-13.

certain moral constraints? And if that is so, how different is that from what is being claimed by those who wish to connect human happiness with virtue?

To the extent, then, that we see happiness as a human end, something that we wish for ourselves; to the extent that we see a genuinely human happiness as bound up with, even if not exhausted by, social relations (families, friends, and so forth); to the extent that we see virtue or morality as a condition of those relations (at least insofar as they are stable); then we will see a strong connection between the end of happiness and virtue as a means. This is not to confuse happiness and virtue, that is, to reduce one to the other, but it is nevertheless to recognize why moralists, ancient and modern, have sought to make the latter integral to the former, and why Fred is not only an outlier (to the extent that we want to call what he has “happiness”), but also something of an anomaly. To see happiness and virtue as closely connected is not to be confused with an unwillingness to tolerate moral difference. We might think that so long as their judgments of life satisfactoriness cohere with their own moral values, humans can be genuinely happy. This is not the case with Fred. He knows that he is a moral wretch, but thinks it an acceptable trade-off for what he has: fame, wealth, and (currently) a reputation for probity. That is the problem and why we are unlikely to see the kind of happiness, or life satisfaction, that Fred experiences as appropriate to what we are as human beings. The point, as Mill recognizes it, even though it involves “compromising” his utilitarianism, is that there is a normative component to characterizing something as human.

Happiness, Pleasure, and Satisfaction

Christopher Rice
Lynn University

In *The Nature and Value of Happiness*, Christine Vitrano defines happiness as a mental state in which people feel satisfaction about how their lives are going (pp. 103-10).¹ As she notes, many competing theories of happiness are either broader or narrower than this. Some theories would permit cases that Vitrano does not count as part of happiness, and so are broader than her view. Others include additional necessary conditions for happiness that rule out cases Vitrano would count as happiness, and so are narrower than her view.

In my comments, I want to challenge Vitrano's account from the perspective of the broader theories. While I do not endorse hedonism as a complete theory of happiness, I will discuss a few cases of pleasure and satisfaction that seem to count as happiness but fall outside the bounds of Vitrano's definition. These are cases where people seem to be happy but are not feeling satisfaction in how their lives are going.

First, though, I want to mention two helpful methodological strategies that Vitrano uses in her book. The first is the distinction she draws between *happiness* and *well-being* (pp. 66-67). As Vitrano notes, there may be more to a good and fulfilling life than just happiness. This makes sense to me. The term "well-being" is often used to refer to whatever benefits a person or is in a person's self-interest. I believe that there are objective elements of well-being, such as meaningful knowledge and loving relationships, that are good for people even aside from their effects on happiness. The main point, though, is that this is not the focus of Vitrano's book. As she explains, the debate about well-being is distinct from the debate about happiness. Even if certain objective goods are worth pursuing for their own sake in life, this does not mean that they are needed for happiness. Since happiness seems to be at least one of the things worth pursuing in life, it is worth setting aside other debates and getting straight on what this involves, as Vitrano seeks to do in her book.

The other strategy I want to mention is Vitrano's appeal to people's everyday use of the word "happiness" as a constraint on our philosophical theories (pp. 2-3). I agree that this is a good strategy. For one thing, it helps to

¹ Christine Vitrano, *The Nature and Value of Happiness* (Boulder, CO: Westview Press, 2013).

keep philosophers' use of the term close to people's everyday usage, so as to avoid miscommunication. Second, as Vitrano notes, it affirms that everyday people and society as a whole possess important insights about happiness on which philosophers can draw. This does not mean that everyday views are beyond question or that there are not some non-standard uses of the word "happiness." Still, insofar as everyday people spend a lot of time talking about and pursuing happiness, it is reasonable to assume that they are at least in the ballpark of some real value. Like Vitrano, I will operate on this assumption and draw on people's everyday use of the word "happiness" in some of my arguments.

I will now turn to consider some possible cases of happiness that fall outside of Vitrano's definition and so challenge her theory. In doing this, I will raise the question of whether she should broaden her account of happiness to include these cases.

In her discussion of hedonism, Vitrano notes that some instances of pleasure should not count as cases of happiness. For example, she describes a person who is on a diet but craving a high-calorie piece of cake and who may be filled with guilt, anxiety, and frustration if he or she eats the cake (pp. 25-26). In this case, I agree that the pleasant taste of the cake is not enough to count as happiness. Here, I agree that we should not even count this pleasant taste as a small piece of happiness that is outweighed by the unhappiness of the person's other feelings. Rather, small pleasures such as eating cake, chewing gum, hearing good news, or feeling sunshine are not enough to count as happiness at all if the person enjoying them is not sufficiently attentive to them or if, as in Vitrano's case, the person is weighed down by other negative feelings.

Vitrano explains her assessment of the dieting case by stating that "happiness appears to involve a more global attitude one has toward her life, an attitude that takes into consideration how one's immediate experiences fit into her life as a whole" (p. 26). However, I am not sure that this is correct. That is because *some* immediate experiences of pleasure do seem to be enough to constitute happiness, even if they do not involve a more global attitude toward one's life.

I am thinking, in particular, of cases where a pleasant experience fills the better part of a person's consciousness for a period of time. One example is a child opening birthday presents. There is typically an overflow of positive affect in this case, and many people would describe this as happiness. For example, many parents would say that they love seeing the happiness on their children's faces when they open birthday presents or think about which presents their children will be the happiest to receive.

There are cases where adults experience similar kinds of pleasure and call this happiness, too. For example, people may say that some of their happiest moments have been on the golf course, or at the movies, or at home playing with their children. These kinds of pleasant experiences are different from the way people feel when they reflect on their lives as a whole and are probably not the only kind of happiness. Still, they strike me as cases of

happiness. Part of their appeal seems to lie in the way these activities provide an escape from the concerns of everyday life and involve pleasant feelings that fill the better part of a person's consciousness, at least for a time.

Vitrano might respond by suggesting that her definition of happiness is actually satisfied in these cases, at least indirectly. She defines happiness as a mental state in which people feel good about how their lives are going, so she might suggest that people who are enjoying a round of golf or opening birthday presents will tend to view their lives as a whole more positively. As she says, "happiness is a mental state that is often influenced by one's experience of pleasure and pain and one's positive and negative attitudes" (p. 31). In this way, the pleasures I have described could at least count as important means to happiness.

Still, I do not think this is the best way to explain the cases I have described. I agree that a pleasant and relaxing afternoon can leave people feeling better about their finances, their relationships, and the other aspects of their lives. However, this does not seem to be the only way in which these pleasant experiences contribute to happiness. In addition to these feelings of life satisfaction, the specific feelings of delight, excitement, and relaxation that people feel in activities like golfing or opening birthday presents also seem to be a part of happiness. At least, this is how I would interpret these cases.

The example of children may be especially relevant. Children who are five or six do not think much about how their lives as a whole are going, but most people think that these children are still capable of happiness. In fact, some people think that children at this age are much happier than teenagers and adults precisely because they do not think much about their lives as a whole. This also suggests that there is some kind of happiness that does not require feelings of satisfaction about how one's life is going.

I do not endorse hedonism as a full theory of happiness. I believe that some minor pleasures do not involve happiness and that some cases of happiness do not involve the overflowing sense of pleasure that I have just described. However, I have identified some cases in which people seem to be happy on account of pleasure, even though they hold no attitudes at all toward their lives or these attitudes are not central to their experience. These examples put pressure on Vitrano's account of happiness from the perspective of greater broadness.

I can note that the core examples that Vitrano describes of life satisfaction also strike me as cases of happiness. People seem to be happy when they are satisfied with their present circumstances, optimistic about the future, and enjoying other forms of positive affect that accompany this (pp. 103-10). As a further point, though, I would like to consider some cases in which people take satisfaction in things other than their own lives. Vitrano describes her view as a life satisfaction theory and seems to require that people take satisfaction in the way that their lives are going in order to count as happy (pp. 103-10). But I wonder if we could broaden this view to include other kinds of satisfaction, where people feel good about the way others' lives

are going or about states of the world that they care about. These might be additional cases in which feelings of satisfaction can constitute happiness.

One case that comes to mind is the feelings that parents often have about their children's lives. If a child begins failing classes at school or is diagnosed with a serious illness, the child's parents may experience unhappiness. On the other hand, if the child's grades improve or the disease is cured, the parents are likely to feel an upsurge of happiness. Here, though, they seem to be taking satisfaction primarily in how their child's life is going, not in how things are going in their own lives. They are happy *that their child is doing well in school* or *that their child is healthy again*. Still, many people would classify these as paradigm cases of happiness.

Someone might suggest that the parents in these cases are really feeling satisfaction or dissatisfaction with some aspect of their own lives and that their happiness is still connected to their life satisfaction. If their child is failing classes, for example, parents may feel that their goal of being good parents is being frustrated, or worry about the inconveniences this will mean for them. More abstractly, they may be unhappy that their lives now include the unpleasant experience of watching their child fail classes. However, these do not seem to be the main sources of their unhappiness or the main objects of their concern. Rather, what these parents seem to be focused on, first and foremost, is how their child's life is going. It is their feelings of satisfaction or dissatisfaction with this that primarily constitute their happiness or unhappiness in these cases.

In addition to the well-being of children and other loved ones, people can take satisfaction or dissatisfaction in other states of affairs, as long as they have an emotional investment in them. For example, a passionate supporter of President Obama may have felt great happiness when he was reelected in 2012. Or a long-time fan of the Boston Red Sox may have been overjoyed when the Red Sox won the World Series in 2004 after an eighty-six year championship drought. In these cases, the people in question felt emotions of relief, joy, and contentment that a certain event occurred. These emotions filled their consciousness and affected the rest of their feelings, at least for a time. Significantly, some supporters of President Obama—or the Red Sox—may have been more concerned about the outcome of the election or the playoffs than about their own well-being, at least for a few critical days. Still, the satisfaction these people felt seems to count as happiness. For example, it is natural to ask whether a person was happy about Obama's reelection or to talk about the happiness that could be seen on people's faces in Boston on the day after the World Series victory.

Vitrano discusses some similar cases in her discussion of attitudinal hedonism. She states that there are some distant events that please people but have no effect on their happiness. She notes, for example, that people might be pleased about the impeachment of a corrupt politician or the selection of Brazil to host the 2014 World Cup but that these feelings may have no effect on people's happiness (p. 29). I agree that this can be true in some cases. It does seem, for example, that some events are just too small or emotionally

distant from a person to affect his or her happiness. This is similar to the case of minor pleasures, such as chewing gum, which may have no effect on a person's happiness. Still, it seems to me that feelings of satisfaction are enough to constitute happiness if they fill the better part of a person's consciousness for a time. This could be true even if this satisfaction is taken in something other than how a person's own life is going.

Vitrano explains her stance on the example of people who are satisfied by the impeachment of a corrupt politician, or the decision to hold the World Cup in Brazil. In this context, she notes that "a person can have a positive attitude toward many things that are not important, valuable, or significant enough to affect her happiness" (p. 29). I agree that positive experiences must have a certain kind of significance in order to count as part of happiness, but I think I disagree with Vitrano about how this significance should be construed. Her strategy, I think, is to focus on *the object of a person's satisfaction* and use this to separate cases of happiness from other cases. In particular, she requires that a person take satisfaction in some aspect of his or her own life in order to count as happy.

In contrast, I am drawn to use *the quality and structure of the feelings a person experiences* to separate cases of happiness from other cases. In particular, I am inclined to use the word happiness for cases where positive feelings such as pleasure, excitement, joy, relief, and contentment fill a significant part of a person's consciousness for a period of time. This would include cases where these feelings are the result of pleasant activities or of satisfaction about a person's own life or some other event. In some ways, the view I am suggesting is similar to that of Daniel Haybron, who relates at least a significant part of happiness to moods, and talks about different kinds of positive affect that can form part of happiness, such as joy, engagement, and attunement.²

There are some similarities between the view I am suggesting and Vitrano's own account. In light of this, I am not sure whether she would consider my comments to fit with the general spirit of her account or to be a more serious departure from it. One similarity is that on both views—whether happiness requires life satisfaction or can involve satisfaction from some other sources—happiness is an internal mental state and we can expect people to be good judges of their own happiness (p. 107). In neither case does it require a special kind of knowledge or virtue (pp. 33-69, 83-101, and 113-16).

Furthermore, as on Vitrano's view, the kind of happiness I have described would ordinarily affect a person's whole psychology when it is present, be perceptible to others, and endure for at least a moderate period of time (pp. 27-28). People look and feel happy when they are enjoying a relaxing round of golf or have just received good news about their kids or an emotionally meaningful sports victory. They smile, walk with confidence, and

² Daniel Haybron, *The Pursuit of Unhappiness: The Elusive Psychology of Well-Being* (New York: Oxford University Press, 2008).

are less likely to be rude or short-tempered toward others. Furthermore, this happiness typically fades away over a period of days or hours, not in a few seconds, in the way that a minor pleasure such as chewing gum can abruptly end.

Finally, the kind of happiness I have described can be pursued using some of the same recommendations from the Stoic tradition that Vitrano presents. She notes that people who are dissatisfied with their lives can either work harder to achieve their goals or adjust their expectations to better fit their circumstances (pp. 132-34). The same could be said of many of the cases of happiness I have described. A person who finds happiness on the golf course can either find time to golf or learn to take pleasure in other activities, such as tennis or card games. Similarly, parents who are unhappy with their child's grades in school can either take steps to help their child or become less emotionally invested in this aspect of their child's life.

Overall, Vitrano's book provides an engaging survey of several theories of happiness, as well as a strong defense of her own view. While I have suggested a possible revision to this view, I also appreciate the arguments she has presented for it and the other ways in which her book helps to clarify and advance our current understanding of happiness.

Response to My Critics

Christine Vitrano
Brooklyn College, CUNY

1. Introduction

I would like to begin by thanking both of my commentators: first, for taking the time to read my book; second and more importantly, for providing such thoughtful comments and criticism. Given the different challenges each raises, I'll offer a separate reply to each.¹

2. Reply to Christopher Rice

Chris Rice begins with my claim that happiness involves a more global attitude that we have toward our lives, an attitude that takes into consideration how our immediate experiences fit into our lives as a whole. He suggests that this account is too narrow, because it cannot account for certain immediate experiences of pleasure that are enough to "constitute happiness, even if they do not involve a more global attitude toward one's life."²

First let me explain what I mean by *global attitude*, because I do agree that some instances of pleasure contribute to happiness. On my view, one is happy when one is in a state of satisfaction with one's life, meaning that one has a favorable impression of how one's life is going and views it positively. One objection I raise against hedonism is that it cannot make sense of instances of pleasure that are (in and of themselves) enjoyable experiences, yet fail to make one happy, because they violate a person's ideals or conflict with her values.

I see happiness as a more nuanced concept than is reflected in hedonism, which typically equates happiness with the summation of a person's pleasant experiences minus her experiences of pain. In contrast, I believe that a person's happiness also reflects the importance or significance of these episodes, such that some pleasant experiences may fail to contribute to happiness (and some pains may not detract from it). The global attitude involved in happiness will reflect a person's goals, values, and ideals, which

¹ Christine Vitrano, *The Nature and Value of Happiness* (Boulder, CO: Westview, 2013).

² Christopher Rice, "Happiness, Pleasure, and Satisfaction," *Reason Papers* 37, no. 1 (Spring 2015), pp. 20-25, quotation at p. 21.

then determine how particular episodes of pleasure or pain affect her happiness.

The diet case is a trivial illustration of this problem with hedonism, but there are also more realistic examples, such as cases of marital infidelity. For example, suppose you value your relationship with your spouse, whom you respect and admire. But while you are away at a conference, you are tempted to have an extramarital affair with a colleague you find attractive. Given the chemistry you both share, it is likely the affair will be quite pleasurable. But the ramifications of this indulgence, as in the chocolate cake example, will probably cause you intense regret, resulting in dissatisfaction and unhappiness.

Now I'd like to return to Rice's examples of pleasant experiences that fill the better part of a person's consciousness, such as a child opening birthday presents or parents who enjoy watching their child open presents.³ Rice offers additional examples of happiness that he suggests do not involve a global attitude toward one's life, such as the pleasure one takes in golfing, going to the movies, or playing with one's children. I agree with Rice in describing these as cases of happiness, but I believe that the life-satisfaction view can accommodate all of them.

Starting with the child opening her presents, I believe that the happiness of children can be explained in the same way as for adults. That is, happiness is a state of satisfaction with one's life, but given that the lives of children are so much shorter than those of adults, and their cognitive capacity to understand the future is limited, their satisfaction will be mainly a function of their present experiences. Young children aren't in a position to think about their lives as a whole or plan for the future. They also don't have that many past experiences to draw upon. So for children, happiness will largely be a function of the satisfaction they experience in the present moment. Perhaps the very recent past and the soon-to-be future might play a small role, but in general, the child is happy opening her presents, because opening presents is a satisfying, positive experience for her.

I would explain the happiness of parents watching their child open presents differently, however. Insofar as I love my child, his happiness is going to be very important to me; it will probably be one of my biggest priorities. So when my child is happy, I am happy as well. But my satisfaction is a function of my values and what's important to me, namely, my child's happiness. Of course, things get more complicated when the child gets older and his happiness no longer arises from simple things like opening presents, but instead arises from sources his parents find morally objectionable. In this case, the child's happiness might not make his parents very happy, but that is because it violates their own values or what they view as important.

I believe that the same reasoning applies to the other cases Rice mentions. He says, "these kinds of pleasant experiences are different from the

³ Ibid.

way people feel when they reflect on their lives as a whole.”⁴ But Rice may be misunderstanding what I mean by life satisfaction. Being happy just *is* having a positive, global attitude toward one’s life. But that attitude is formed in virtue of *all* of the satisfying episodes one experiences, including small, trivial pleasures and enjoyments. Surely, if someone never did anything she enjoyed, it would be very unlikely (perhaps even impossible) for her to say, “But I’m completely satisfied with my life.”

Although happiness is often directly affected by the presence or absence of important goods, such as health, success at one’s career, and the well-being of our loved ones, satisfaction is also affected by things that are less important, such as having time to pursue one’s hobbies or being able to relax, as one might on a golf course or while watching a movie. Thus, my view can accommodate the idea that doing things we enjoy can contribute to happiness.

I view playing with one’s children differently, however, because I don’t see this as a mindless escape (akin to going to the movies or golfing), but instead as something that is important to one as a parent. For example, there are days when I am exhausted from teaching, and the last thing I want to do when I finally get home is read *Llama Llama Red Pajama* for the thousandth time to my children. But I know that reading to them is important (as we are told by “the experts”) and my sons look forward to hearing these stories at bedtime. So I read to them, even when I’d rather not, and I do feel satisfied afterward, because I’ve lived up to my parental obligations and I’ve made my sons happy, both of which are important to me.

I’d like to move to Rice’s suggestion about broadening the life-satisfaction view to “include some other kinds of satisfaction, where people feel good about the way others’ lives are going or about states of the world that they care about.”⁵ I am comfortable with this suggestion, for I do not endorse a narrow conception of the life-satisfaction view, which would imply that only things directly connected with one’s own life affect happiness.

Rather, I believe satisfaction or dissatisfaction with many things outside one’s own life will have an impact on a person’s happiness, and perhaps the most obvious cases involve the well-being of people one cares about. Thus, my satisfaction with my life will encompass everything (and everyone) that is important to me. I may not become unhappy when I read about tragic events in the newspaper, because they are too far away or do not involve anyone I know. But insofar as an event does affect a person’s emotions, it is likely to have an impact on her happiness.

Incidentally, I fully agree with Rice’s observation about the connection between the happiness of parents and their children. When our first son was born, my husband and I quickly realized that if Julian was not happy,

⁴ Ibid.

⁵ Ibid., pp. 22-23.

the whole family was unhappy. I suspect the reason that children have such a powerful effect on us is simply because we love them so much (and so much more than everything else). So when they are suffering, as a parent, one suffers along with them. Their happiness and well-being are so important, that everything else, including other things you value, simply pale in comparison.

In the end, I agree with much of what Rice says about happiness, including the idea that there are many sources of satisfaction not directly connected with our own lives. From the people we love to the causes we care about, when something is important to us, it will affect our overall life satisfaction, which is to say, our happiness.

3. Reply to John Kleinig

The first issue raised by John Kleinig that I would like to address is his reference to Facebook's impact on friendship. Kleinig begins with the provocative claim that the life-satisfaction view degrades happiness in the same way that Facebook "cheapens" friendship.⁶ Kleinig objects to Facebook friendships, because they enable one to have thousands of "friends" simply by clicking a button, and he believes that this dilutes the idea of friendship. Similarly, by removing the objective constraints on happiness, including its connection with virtue, the life-satisfaction view degrades happiness by enabling one to achieve it by doing whatever one finds satisfying, including taking the right combination of pills.

Although it's possible to have thousands friendships with perfect strangers, just as it's possible to medicate yourself into a satisfied stupor, most of us choose other means of attaining both friendships and happiness. Even Aristotle recognized that there were different kinds of friendships,⁷ and he viewed perfect friendships based on virtue as the most durable and best. The value of perfect friendships is not "diluted" by the existence of friendships based on utility or pleasure. So why should Facebook friendships present a unique problem? Similarly, the life-satisfaction view leaves open myriad possibilities for attaining happiness; however, that does not mean we must view all of these means as equally preferable.

Kleinig views happiness as "an important human end and an accomplishment or achievement," which implies that one has lived her life well, and he draws a comparison with another important good: health.⁸ I agree that happiness is an important good, but on my view, it is merely one good among many others, and these goods can (and often do) come into direct

⁶ John Kleinig, "Human Happiness and Virtue: Are They Related and, If So, How?" *Reason Papers* 37, no. 1 (Spring 2015), pp. 9-19, quotation at p. 10.

⁷ Aristotle, *Nicomachean Ethics*, trans. David Ross (Oxford: Oxford University Press, 1998), Bk. VIII.

⁸ Kleinig, "Human Happiness and Virtue," p. 12.

conflict with each other. I do not wish to deny that, for some people, happiness will arise through the pursuit of morally and intellectually virtuous activities; however, I do not believe that must be the case for everyone.

Here, I believe that the comparison with health is instructive. What must one do to be healthy? The obvious answers include seeing a physician, eating healthy food, exercising regularly, and getting enough sleep. But what else should one do? And how much of a person's lifestyle should be compromised in the pursuit of this important human good? Many physicians will suggest eating less meat, and some advocate giving it up altogether. So, should we all become vegetarians? As a vegetarian, I am comfortable with this, but I suspect that many people, even those who care about their health, would find it unreasonable.

Now, someone might argue that if one *really* cares about her health, she would change her lifestyle dramatically. No more eating out at restaurants, where the food has too much fat and salt; and no more desserts, which have too much sugar and little nutritional value. I wonder how many people would be willing to sacrifice so much pleasure and enjoyment, even for as important a good as health.

The same reasoning applies to happiness: it too is an important human good, but its pursuit must be balanced against all of the other things we also value. Very often, our commitments come into direct conflict with each other, and we are forced to compromise. For example, one may face the challenge of balancing a career against meeting the obligations of family life. There is no easy way to make this compromise work; sometimes you sacrifice time with your kids; other times, you ignore your obligations at work.

But just as I cannot tell you how much pleasure you ought to give up in the pursuit of health, I cannot tell you what you ought to do in order to achieve satisfaction with your life. I believe that our individual values and commitments put a constraint on our happiness by limiting the means we are willing to take in order to achieve satisfaction. Insofar as I value being a good parent, I will be willing to sacrifice other things I care about in order to realize this good. But I don't believe we can tell people how they ought to achieve this balance.

I am also unconvinced by the suggestion that happiness *must* be connected with achievement and accomplishment, for that omits some very important sources of happiness, such as pleasant surprises, lucky breaks, and simple good fortune. These are not things we anticipate, and more importantly, they are not earned, but they do make us happy nonetheless.

Julia Annas also argues for the connection between happiness and achievement, and rejects what she calls "smiley faced happiness," because it equates being happy with simply feeling good about one's life. She agrees with Kleinig that happiness should be seen as an accomplishment, earned over the course of one's life.⁹

⁹ Julia Annas, "Happiness and Achievement," in *Happiness: Classic and Contemporary Readings in Philosophy*, ed. Steven M. Cahn and Christine Vitrano

Annas discusses an informal experiment performed by one of her colleagues, who asked his undergraduate business students, "What are the components of a happy life?" Her colleague reports that his students listed material goods, such as money, cars, and a large home. The students were then told that a rich relative had died, leaving them everything on their list. Now, they are asked whether they are happy, and Annas reports that the students overwhelmingly said, "No." Annas interprets this response as evidence for the connection between happiness and achievement.

I agree that how we achieve satisfaction matters, but that actually helps further to explain why equating happiness with satisfaction does not degrade the concept, for it shows that not all means of attaining happiness are equally preferable. The results suggest that, for many people, happiness will be connected with precisely those ideals espoused by Aristotle and Kleinig. That is, in seeking happiness (or satisfaction with their lives), many people *will not* turn to pharmaceutical options; nor will they blindly pursue wealth in order to amass huge amounts of material goods. But whatever means one takes to achieve satisfaction, they will reflect that person's values and what is important to her.

Next, I'd like to focus on the question of whether happiness allows for conceptual branching. In a footnote,¹⁰ Kleinig draws a parallel with pleasure, suggesting that the pleasure I receive from having an itchy back scratched is conceptually distinct from the pleasure I receive from learning my child's exam results. I'm not sure I agree with his analysis. The pleasure one receives from both must have *something* in common in virtue of which we call both pleasures; otherwise, we wouldn't classify both *as* pleasures. Clearly, they feel different, but they must have something in common.

Without wading too far into the vast literature on pleasure, the dominant view (which I believe originates with Henry Sidgwick,¹¹ but has since been adopted by many others¹²) is that we refer to both experiences as pleasures, because both are states that we enjoy (for themselves) and wish to prolong. Although the states may feel different from each other, they are all counted as pleasures because of the attitude we take toward them.

I believe that happiness is similar, for it is a state of satisfaction, but there are many different sources that contribute to our satisfaction, and they

(New York: Oxford University Press, 2008), pp. 238-45.

¹⁰ Kleinig, "Human Happiness and Virtue," p. 12 n. 14.

¹¹ Henry Sidgwick, *The Methods of Ethics* (Indianapolis, IN: Hackett Publishing Company, 1981), chap. IV.

¹² Richard Brandt, *Ethical Theory: The Problems of Normative and Critical Ethics* (Englewood Cliffs, NJ: Prentice Hall, 1959). See also Fred Feldman, "On the Intrinsic Value of Pleasure," *Ethics* 107 (1993), pp. 448-66, who refers to Sidgwick's view of pleasure as the dominant one within the literature (p. 452).

may not all feel the same. For instance, the satisfaction I experience after running six miles feels different from the satisfaction I experience when I am notified that an article I wrote is being published. Both contribute positively to how I view my life, though perhaps not equally.

I prefer to associate satisfaction more with feelings, rather than with judgments or appraisals, because I believe that the feelings matter most (as opposed to what is “actually” happening in reality). This is another problem with adopting the objective view of happiness so admired by Kleinig. Objectivists (like Aristotle) identify happiness with living up to certain standards, such as the achievement of moral and intellectual virtue. But if the subject fails to feel positively about her accomplishments, if she is unable to appreciate what she has achieved, I believe she will be unhappy. She may be a successful scholar, a good friend, and a devoted parent, but if the positive feelings are absent (for whatever reason), these accomplishments simply will not matter.

Kleinig suggests that we need to go beyond the life-satisfaction view of happiness to “something thicker,” in part because this account allows for the characterization of one’s baby or puppy as happy. He prefers to describe their states of enjoyment using other vocabulary, reserving the time-honored and weightier language of happiness for other cases.¹³ But that makes me wonder: What other cases does he have in mind? Clearly, animals, children, and the mentally challenged all fail to meet Aristotle’s requirements for happiness. But on this view, who *does* qualify as happy? I suspect that most teenagers’ satisfaction would also be insufficient, as would the satisfaction of many college students, because they lack a clear vision of what they wish to achieve, of what kind of people they will become, and of what is important to them.

Yet, if we exclude babies and children, teenagers and most young adults, who is worthy of happiness? Are we to reserve the term for the middle aged and elderly? Must we limit this concept only to people who can prove their worth by pointing to their virtuous accomplishments? Which accomplishments should count, and how many should one obtain in order to be deemed happy? And who’s going to make this final judgment? I see no benefit in restricting our usage of happiness in this way, especially when it so clearly deviates from the way ordinary people use the word. On this view, most people would never qualify as happy, and the word would be rendered useless.

This brings me to the final issue I wish to discuss, which is the case of Fred, our happy (or perhaps not-so-happy) immoralist. Kleinig questions Fred’s happiness, which he describes as “extremely fragile,”¹⁴ and his concern

¹³ Kleinig, “Human Happiness and Virtue,” p. 14.

¹⁴ *Ibid.*, p. 18.

was echoed by many philosophers responding to Steven Cahn,¹⁵ who first posed the fictitious story of Fred. I am not persuaded by these doubts for precisely the reason offered by Cahn: in cases of truly successful immoralists, such as the perfectly unjust man described in Plato's *Republic*, what bothers us most is the injustice of their happiness. Cahn suggests that it is really *we* who are unhappy at the thought of a thriving immoralist; but our unhappiness is due precisely to the fact that the immoralist *is* happy, and that he attains this important good.

The reason I would not recommend Fred's life to my children is because I find it morally objectionable, not because I believe Fred is not really happy. Fred's happiness is actually part of the reason I find his life so reprehensible, for he endorses values that enable him to be satisfied with such an awful life.

I believe that people are happy under an extremely broad, really diverse range of circumstances. Given my moral values, I would not be happy under many of them, but my values are irrelevant to the question of other people's happiness. The life-satisfaction view implies that one can be happy as long as she is satisfied, and that satisfaction will reflect her values and what is important to her. We can still criticize the choices of others, but this discussion takes place at the level of our values, and here, happiness is merely one value among many others.

¹⁵ Steven M. Cahn, "The Happy Immoralist," *Journal of Social Philosophy* 35 (2004), p.1.

Symposium: Emergencies

Consent-Based Permission to Kill People and Break Their Things

Stephen Kershnar
SUNY, Fredonia

1. Introduction

In wartime, members of the military kill people and break their things. In the case of a just war, it intuitively seems that this is morally permissible. At issue is what justifies the killing and destruction. In this article, I discuss the view that the justification is consent-based.

The idea that members of opposing militaries may kill each other and break other people's things because the two sides have consented to combat in accord with certain rules parallels the way in which boxers may hit each other because they have consented to combat within certain rules.¹ The consent authorizes members of the militaries to be killed in the sense of its not being wrong and not warranting punishment or compensation because members have consented to obey the laws of their country and the laws of their country include international treaties concerning when and how countries may go to war. This is true whether the members consented by voluntarily joining the military or by having consented to be led by a government that has a draft or that allows a draft to be enacted.

The notion that wartime killing and destruction can be justified by consent initially struck me as ridiculous and offensive, but closer inspection has led me to think that the argument is plausible even if it is ultimately incorrect. I explore it here for that reason.

The issue matters because its main rival, forfeiture theory, is subject to a number of serious objections.² The forfeiture theory asserts that an

¹ This idea can be seen in Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 37; and Thomas Hurka, "Liability and Just Cause," *Journal of Political Philosophy* 21, no. 2 (2007), pp. 199-218.

² A forfeiture theory of just war killing can be seen in David Rodin, *War & Self-Defense* (New York: Oxford University Press, 2002), pp. 70-77. People who assert that a criminal forfeits some of his moral rights include Stephen Kershnar, "The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing," *Philosophia* 29 (2002), pp. 57-88; A. John Simmons, "Locke and the Right to Punish," in *Punishment*, ed. A.

individual engaging in an unjust attack forfeits his right against defensive violence and this is what makes defensive violence permissible. Applied to war, members of a nation's military who cooperatively engage in an unjust war collectively forfeit their rights, thereby making wartime defensive violence permissible.

Consider objections to forfeiture theory. First, there are issues regarding how rights can be forfeited when what justifies them (for example, the right-holder's autonomy or interest) is still present. Consider a simple case of using lethal force in self-defense against a villainous attacker. The objection is that because the attacker retains whatever property grounds his right to body, property, or life (for instance, autonomy), he retains his rights to these things and thus may not be killed in virtue of having given up these rights.

Second, forfeiture has to explain a lot. Specifically, it has to explain why military violence is limited by requirements, including depending on the account, necessity, imminence, proportionality, and discrimination.³ This is a lot of explanatory work.

Third, there are discrimination issues. It intuitively seems that many civilians, such as legislators who intentionally cause the military to unjustly attack others, are unjust threats and thus forfeit their rights. Yet they are often considered inappropriate targets. If intention to contribute to an unjust attack is not necessary for forfeiture, then it is unclear why military support staff (for example, truckers, cooks, and construction workers) forfeit rights against attack, whereas non-military support workers (for example, farmers) do not.

Fourth, forfeiture theory asserts that forfeiture occurs following an attempted attack, rather than a completed one, but it is unclear why an attempt by itself is an injustice at all, let alone one that warrants lethal violence. By itself, an attempt need not trespass on another's body or property. If any of these problems are fatal, then we need another account of permissible wartime killing.

John Simmons et al. (Princeton, NJ: Princeton University Press, 1995), pp. 238-52; Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), pp. 365-66; Vinit Haksar, "Excuses and Voluntary Conduct," *Ethics* 96 (1986), pp. 317-29; Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982); Alan Goldman, "The Paradox of Punishment," *Philosophy and Public Affairs* 9 (1979), pp. 30-46; Roger Pilon, "Criminal Remedies: Restitution, Punishment, or Both?" *Ethics* 88 (1978), pp. 348-57. These theories differ with regard to whether rights-forfeiture is a fundamental feature of rights or explained by a more fundamental principle.

³ Forfeiture provides a unified account of these constraints, perhaps as primitive features of how forfeiture works. For a discussion of these constraints independent of forfeiture, see Brian Orend, *The Morality of War* (Orchard Park, NY: Broadview, 2006), chap. 4.

Fifth, there are puzzle cases that forfeiture has trouble handling, such as the issue of what happens to the rights of two people who simultaneously launch unprovoked attacks against the other.

Another rival theory, threshold deontology, asserts that consequentialist reasons can justify wartime killing and destruction. A consequentialist override occurs when action is justified because it brings about very good results and the value of these results trumps a non-consequentialist side-constraint. Even if this is correct, the results must be very good for it to override stringent side-constraints against killing and destruction. Given that standard trolley and surgeon's harvest cases indicate that a net saving of five lives is not weighty enough to do so and that many wartime killings do not generate a benefit worth more than five lives, the consequentialist override will not justify many instances of wartime killing. In addition, if someone's right is overridden, compensatory justice requires that the person whose right is overridden be given an apology, if not compensation. However, unjust wartime aggressors intuitively seem to be owed neither. Thus, there is reason to doubt that wartime killing is justified by an overriding of military members' rights.

Perhaps consent theory can justify wartime killing. If so, perhaps consent theory makes an important contribution not just to our understanding of the ethics of warfare, but also to the ethics of extreme circumstances generally, including emergencies.

2. The Nature of Consent

a. How consent works

Consent, roughly, creates a liberty in the consent recipient (that is, no duty not to do an act), where the act was previously wrong because of the consenter's right (that is, claim).⁴ More specifically, it has the following structure.

Consent: Necessarily, one person consents to a second's act only if the first intentionally or knowingly waives a claim against the second's act and the act satisfies the description associated with the waiver.⁵

⁴ An objector might argue that the definition seems to allow me to consent to my adult son's marriage, but this restatement seems to rule that out, since my son would not wrong me if he married without my consent. The problem with this is that the adult son's marriage was not previously wrong because of the consenter's right.

⁵ The idea for this account comes from work by Heidi Hurd and Larry Alexander. Heidi Hurd gives a sufficient condition for consent that reduces consent to a fine-grained intention that must match what the second person does. See Heidi Hurd, "The Moral Magic of Consent," *Legal Theory* 2 (1996), pp. 121-46, esp. p. 134. Larry Alexander provides a sufficient condition that reduces consent to a forgoing of objection to, roughly, what the second does. See Larry Alexander, "The Moral Magic

This is only a necessary condition because it is an analysis of consent rather than valid consent or morally transformative consent. In some areas, such as political obligation, “consent” refers to promises as well as the above consent-notion.⁶

A promise, roughly, creates a claim in the promise-recipient. More specifically, it has the following structure.

Promise: Necessarily, one person promises to a second to do an act only if the first intentionally or knowingly waives his liberty against the second to refrain from doing the act and the act satisfies the description associated with the waiver.

Because what appears to be a promise is often a combination of promise and consent, the distinction between the two is not always clear.

It is worth noting that having consented provides only a necessary condition for consenting to be moral transformative. The same goes for a promise. These accounts can be converted into sufficient conditions for moral transformation by adding further conditions. The additional conditions are that the person making the waiver is competent and informed, and that her waiver is voluntary.⁷

Terminology differs, but on one account the speech-act that is given by a person without satisfying one of these conditions (competence, information, or voluntariness) is not consent. On another account, because the speech-act alone is consent, such an act is consent, but not valid consent. I will use the second locution, although nothing turns on it.

Valid consent occurs when one person waives a claim by using a term (or behavior) with conventional meaning to communicate to another her intention to waive the claim under conditions that result in such a waiver.⁸ Consent, like promise, has a bootstrap-like quality.⁹

of Consent (II),” *Legal Theory* 2 (1996), pp. 165-74, esp. p. 168.

⁶ See A. John Simmons, “Political Obligation and Consent,” in *The Ethics of Consent: Theory and Practice*, ed. Franklin Miller and Alan Wertheimer (New York: Oxford University Press, 2010), pp. 305-28.

⁷ See John Kleinig, “The Nature of Consent,” in *The Ethics of Consent*, ed. Miller and Wertheimer, pp. 3-24; Franklin Miller and Alan Wertheimer, “Preface to a Theory of Consent Transactions: Beyond Valid Consent,” in *ibid.*, pp. 79-106.

⁸ The idea for this comes from John Searle, “What Is a Speech Act?” in *Philosophy in America*, ed. Max Black (Ithaca, NY: Cornell University Press, 1965), pp. 221-39.

⁹ See Charles Fried, *Contract as Promise* (Cambridge, MA: Harvard University Press, 1981).

If this is correct, then consent requires the consenter to have certain thoughts (specifically, intentions). In particular, an individual must have the following thoughts to give consent:

- I intend to temporarily eliminate a claim held against another.
- I intend to use a particular conventional expression.
- I intend to eliminate the claim via the conventional expression.

An individual can also consent by promising to follow a set of rules. These might include rules of which the consenter is not aware. On this account, the consent is morally transformative despite his not having an intention about the particular rule of which he was unaware. By analogy, when a customer is in a restaurant, the soup-or-salad rule allows him to order only one without paying extra, even if he is not aware of this particular rule. A customer is bound by it insofar as he consents to obey default restaurant rules.

b. Consent-thresholds

There are different models of the thresholds required for valid consent. By thresholds, I mean the degree to which a consenter must be competent or informed and her consent voluntary for her consent to be valid. Here is the first model.

Model #1: Constant Threshold. The conditions for valid consent do not vary with context.

On this account, there are set thresholds for competence, knowledge, and voluntariness that hold across all contexts. The legal recognition attached to the consent or its moral weight might vary, but this is due to considerations other than those that make consent morally valid or invalid. For example, this might include the consequences of allowing consent to be legally recognized in various contexts.

Here is a second model.

Model #2: Variable Threshold. The conditions for valid consent vary with the context.

Analogous models to the thresholds address the issue of whether there is a constant threshold for the quality of consent (the degree to which all three conditions—competence, knowledge, and voluntariness—are present) and the stringency of consent (the degree of moral obligation that consent undermines or overrides).

By analogy, consider the contextual thresholds for legally valid consent. First, consider knowledge. The law allows people to gamble despite being presented with little, if any, information on gambling odds or how the games work. It requires much more information for consent to medical

treatment. The law also allows people to marry with little disclosure from the would-be spouse, but requires considerable disclosure to buy a house. Second, consider voluntariness. The law allows intoxicated people to consent to gamble, but not to get tattooed. Third, consider competence. Confused thought patterns that are found in some elderly people legally might not invalidate consent to life-saving surgery, but might invalidate an attempt to revise a will.

The issue is whether the threshold for morally valid consent varies with context or whether it is constant with a context-dependent threshold for legally valid consent. On both models, it is difficult to see how there can be a borderline region of competence, knowledge, and voluntariness, where consent is neither morally valid nor invalid. This is because such a region would be one in which another individual neither has nor lacks a duty to a consenter and this intuitively seems incoherent.

If autonomy justifies consent, then there is a reason to accept the *Variable Threshold* model. On almost every account, the demands of consenting in a way that make the consenter morally responsible depend on situational factors that vary with context. They so vary because different contexts place different demands on competence, knowledge, and voluntariness. For example, the knowledge of options required for autonomously deciding to buy a house might be greater than that for autonomously making a medical decision, because medical contexts more often have parties whose interests align with the consenter's. Hence, if a moral-responsibility-based feature explains the morally transformative function of consent and if moral responsibility in different areas sets different demands for competence, knowledge, and voluntariness, then the threshold for these conditions will vary with the context.

Parallel reasoning applies to interest-based accounts of the morally transformative function of consent. On this account, the transformative role of consent is tied to its role in protecting or promoting people's interests. Similar to the above reasoning, the demands of consenting in a way that makes the consenter's life go better (or promotes people's interests more generally) depend on situational factors that vary with context.

A similar thing is true for a fairness-based justification of consent. This is again because the demands of consenting in a way that is fair depend on situational factors that pose different threats to fairness. For instance, it might be fairer, given the information asymmetry involved, to require that a consenter have a knowledgeable agent when it comes to plea-bargaining, but not when it comes to marriage.

Quality of consent is a function of the degree to which an individual is morally responsible for his consent. This might be seen in turn as, roughly, a function of the degree to which his consenting reflects his psychology and the degree to which he is responsible for his psychology. Lack of knowledge or voluntariness lessens the first condition; lack of competence lessens the second. On my account, while a specific quality-level of consent can be met by having these features in different degrees (more knowledge and less voluntariness or vice versa), the required level of each component feature

varies with context. Specifically, the aggregate level also varies with the contextual threat to a self-shaping life. Self-shaping decisions might, for example, require a quality of consent much higher for sex than buying yogurt.

Were the moral force of consent to be justified by something other than autonomy (for example, interest), the argument is the same. The same is true even if consent-based change is justified by a relational property such as fairness or justice, rather than a monadic one such as interest, because these factors also vary with context. Consent likely does not depend on these relational properties because the most likely candidates (fairness, justice, and comparative desert) depend on the moral force of consent and thus cannot also justify it. For example, voluntary sex is fair while rape is not because of the role of consent. If this is correct, then consent is not justified by fairness.

This opens the door for a scalar-level account of consent whereby the moral force of consent might not be enough to change a moral relation, but it can change the net effect of the consent on an opposed duty. Consider this case:

Underage Consent

A bright 13-year-old girl who knows something about sex and who very willingly consents to have sex with a 25-year-old teacher might not be able to give consent with sufficient quality to make it permissible, but the sex is less wrong than that involving a slow 13-year-old who knows little about sex and consents out of fear.

We are now in a position to explore whether members of the military have validly consented and what the implications are for wartime killing.

3. Consent to Wartime Killing

a. Consent is irrelevant to killing enemies and breaking their things

Whether a person gives valid consent depends on whether she performs the relevant speech-act and whether she is sufficiently competent and informed and her doing so is sufficiently voluntary. Members of the military consent to something when they take the military oath and when they sign a contract with the government regarding military service.

Here is my argument:

(P1) If a member of the military's consent (or promise) is not made to a potential enemy or is ineffective, then it does not justify wartime killing and destruction.

(P2) A member of the military's consent is not made to a potential enemy or is ineffective.

(C1) Hence, a member's consent does not justify wartime killing or destruction. [(P1), (P2)]

The first premise rests in part on the notion that if a potential target did not consent to being attacked, then his rights remain in effect and hence killing him or breaking his stuff would (other things equal) be wrong. It also rests in part on the notion that even if a potential target waived his right, if the waiver is weak enough, then it likely does not override consequentialist concerns and hence killing would be wrong even if it does not wrong the target.

There is also an issue as to whether duties and permissions can conflict. On one account, such as that of W. D. Ross, *prima facie* duties (and permissions) can and often do conflict.¹⁰ For example, where one considers breaking a promise to help an injured motorist, the duty of beneficence conflicts with the duty to keep one's promise. This is also true if, as John Searle asserts, merely *prima facie* duties have normative force (that is, constitute a moral reason to do something) even if they are overridden.¹¹ This is not true on Ross's account, where *prima facie* duties provide epistemic, but not metaphysical, justification for a moral duty.

On Robert Nozick's account, *prima facie* duties cannot conflict. This is because natural claims (and correlative duties) are negative and do not conflict. On this account, all positive duties are derived from natural ones and hence cannot conflict. If one adopts this account, then oath-based duties take place within the framework of pre-existing duties and hence cannot conflict.

There is an issue as to whether duties can appear to conflict even if they do not actually do so. For example, if John promises Big Paul to kill a witness, it might be thought that John has a duty relative to Paul to kill the witness, but not permission relative to the witness. These deontic states are consistent because they involve different interpersonal moral relations. If a duty to do something is understood as a reason to do it and a reason can rest on one person's relation to a second, then the duties are consistent even if they call for conflicting acts.

b. Is consent made to a potential target?

An American soldier's oath or other promise might be seen as largely irrelevant to wartime killing. A promise cannot affect rights of third parties because third parties neither make it nor receive it. This is true even with regard to a person whom the promisor pledges to help but is not the one to whom the promise is made. Oaths are promises that affect the claims and liberties of the promise-maker and -recipient. They do not affect others' claims and liberties because others have neither waived a moral relation nor accepted another's waiver. If this is correct, then the oath does not make permissible any act that is not already permissible.

¹⁰ See W. D. Ross, *The Right and the Good* (Indianapolis, IN: Hackett, 1988), chap. 2.

¹¹ See John Searle, "Prima Facie Obligations," in *Practical Reasoning*, ed. Joseph Raz (New York: Oxford University Press, 1978), pp. 81-90.

Here are cases in which the purported duty to obey U.S. military orders is morally irrelevant because of the effect on third parties.

Burning Down a Village

There is controversy over whether an order is immoral. Consider, for example, an order to burn down a village found hiding weapons for the Viet Cong.

Water Boarding

There is a controversy over whether an order is illegal. Consider, for example, an order to water-board irregular combatants who are taken prisoner.

It might be objected that, for many countries, members of the military consent to be killed in virtue of their consenting to governments that in turn have consented to international laws that set forth various rules about when and how nations may go to war. They have thus consented to rules about killing in the case of international conflict as part of their consent to their government's authority. Consider, for example, the rules of war found in the Hague and Geneva Conventions. This is analogous to the way in which, on some theories, offenders consent to be punished in virtue of their having consented to a government that either contains a particular penalty system or a more fundamental procedure by which a penalty system is chosen and implemented.¹²

This assumes that government authority is justified by consent. I think this is correct, although it should be noted that many theorists deny this. They argue that citizens don't consent and, if they did, the supposed consent would be invalid because it was done involuntarily or without adequate knowledge. In addition, A. John Simmons argues that consent cannot justify government because the government's proposed deal (for a given territory, an individual and government trade consent for government-dependent benefits) presupposes that the government already has legitimate authority over the territory and thus may offer such a deal.¹³ This, Simmons argues, pushes the issue of government authority one step back.

There is a further problem with consent theory in that, on some accounts, asking people to consent to certain arrangements is wrong, even if the consent is informed and free. For example, it seems wrong to ask women

¹² The consent theory of punishment is defended in C. S. Nino, "A Consensual Theory of Punishment," in *Punishment*, ed. Simmons, pp. 94-111; C. S. Nino, "Does Consent Override Proportionality?" *Philosophy and Public Affairs* 15, no. 2 (1986), pp. 183-87; and C. S. Nino, *The Ethics of Human Rights* (Oxford: Clarendon Press, 1991).

¹³ See A. John Simmons, "Political Obligation and Consent," in *The Ethics of Consent*, ed. Miller and Wertheimer, pp. 305-28.

to consent to marriages that permit marital rape even if this is made clear to them and they are not coerced into marrying. That is, on some accounts, valid consent is not sufficient for a just agreement, even if it is necessary.

Assuming that the problems with consent legitimating governments can be overcome, and I think they can, the issue is whether the international war-fighting conventions are binding on citizens, especially members of the military. A concern is that above-the-threshold consent is effective only if the consented-to arrangement is reasonable, fair, or non-exploitative and that the military's consent does not meet this condition. Here are two examples of supposedly invalid consent because the deals fail to meet this criterion.¹⁴

Lecherous Millionaire

A Pakistani businessman pays for the life-saving surgery of five Pakistani children each year. An attractive Indian woman wants him to pay for her Indian daughter rather than a Pakistani girl. They agree that the businessman will pay for the expensive surgery that alone can save the child's life provided that the woman becomes his mistress for a period of six months. No one else will pay for the life-saving surgery. The businessman makes the offer.

Boat (Robert Nozick)

B's boat has capsized and he has been swimming for hours near the center of a large and seldom frequented lake. He is nearing exhaustion when A's boat approaches. A says to B: "You may climb into my boat and avoid drowning if and only if you promise now to pay me \$50,000 within three days."¹⁵

In the past, an objector might argue, states have permitted marital rape and slavery-like state punishment and this does not show that married women consented to rape or that offenders consented to be temporarily enslaved.¹⁶

There is reason to think that consent is valid even in unfair or exploitative contract situations such as the above ones. It is difficult to see

¹⁴ The first example comes from Stephen Kershner, *Pedophilia and Adult-Child Sex: A Rights-Based Exploration* (Lanham, MD: Lexington Books, forthcoming).

¹⁵ This example comes from Robert Nozick, "Coercion," in *Philosophy, Science, and Method*, ed. Sidney Morgenbesser et al. (New York: St. Martin's Press, 1969), pp. 440-72.

¹⁶ The Thirteenth Amendment does not rule out slavery imposed as punishment. It says, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." There is an issue of whether one can consent to rape if rape is unconsented-to sex. If this is impossible, then the notion is that women did not consent to forced sex that is not rape.

why the party in the stronger position wrongs the one in the weaker one if the former does not have a duty to save the latter and if merely forming an agreement with someone to whom one does not owe a positive duty does not by itself create positive duties other than those contained in the agreement.¹⁷ There is further reason to think that such consent is valid if there is no defensible notion of an unfair or non-exploitative price.¹⁸

Even if there is a defensible notion of an unfair or exploitative price, it is unclear that the waiver of the right against being injured or killed in wartime is an unfair or exploitative contractual condition, especially for people in more desirable countries. The benefit of being part of some countries (for example, the U.S., Canada, and Great Britain) is substantial. The chance that a citizen will be a young adult during wartime and that his country will draft him, put him in a combat unit, and put his unit into actual combat is quite small.¹⁹ As a result, it is unclear whether this price is too high, *ex ante*, for the benefit of being a member of the world's more desirable countries.

An analogy here is an organ lottery. In such a lottery, a person who signs up is guaranteed an organ if he needs it to live provided his lottery number does not come up. If it comes up, and this is very unlikely, and organs for others who need them cannot be recovered from the newly dead, then he is killed and his healthy organs redistributed. If, *ex ante*, the expected value of the organ transplant greatly exceeds the expected disvalue of his being killed for organ-redistribution purposes, then entry into the lottery is a good deal. Even if it is not a good deal, such lotteries do not intuitively seem to wrong those who are killed, assuming that they consented and did so with sufficient knowledge, voluntariness, and competence.

The problem is that in at least some countries, the draft is not part of what citizens consent to. In the U.S., for example, if the Constitution disallows the draft, and I think it does, then it is not part of what citizens consent to. It should be noted that the U.S. Supreme Court has found that the Constitution permits the draft, although its reasoning is shoddy.²⁰ The draft is

¹⁷ For a development of this argument, see Kershnar, *Pedophilia and Adult-Child Sex*. Even if there is a duty to save, unfair or exploitative contracts will fail to generate a duty based on a duty to save only if the duty is perfect, specifically owed to the person in the above type of case, rather than imperfect.

¹⁸ See *ibid.*

¹⁹ Capitalist democracies almost never go to war against one another. See, e.g., Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin Books, 2011).

²⁰ See *Arver v. United States*, 245 U.S. 366 (1918) (known as the Selective Draft Law Cases); and *United States v. Holmes*, 387 F.2d 781 (7th Cir.), cert. denied, 391 U.S. 936 (1968).

a part of the practice of many contemporary countries, including Israel, Switzerland, and both North and South Korea.

In summary, then, even if people consent to their government and their government consents to various international rules of law, it is unclear whether this constitutes consent to allow members of other militaries to kill them in wartime in the sense that it is not punished under international law. It seems that consent to one's government does not directly do so, but it still might indirectly do so. This, then, raises the issue of whether indirect consent is of sufficient quality to permit an attack by unjust forces. Note that with respect to unjust forces, rules of law (or the moral underpinnings for them) might themselves prohibit an attack, but they still might not hold accountable the soldiers fighting for the unjust side in virtue of their participating in the unjust attack.

c. Even if consent is made to a potential target, it would be too defective to be valid

The problem with the above consent to the laws is that it likely lacks sufficient quality to be valid. Given the threat to the right-holder's autonomy (or interest), the threshold for quality of consent is quite high. This is similar to the requirement that the patient be sufficiently informed in order for her to provide valid consent to surgery. Even if a young adult consents to be bound by the laws of his country, he might not, and in many cases does not, know that this includes international laws and treaties. Even if he did know this, he is even less likely to know that this includes laws of war that make him a legitimate target in war, if he is in the military, even if his side is engaging in a just war.²¹

In addition, a young adult's consent often has a low degree of voluntariness. While he might be free to go to another country (and this is not always the case), the price he would pay for leaving is significant, whether in terms of distance from family and friends, cultural difficulties, or financial loss.

Now an objector might argue that a high price does not make consent involuntary. To see this, consider the following case:

Black Mamba

During an expedition into Africa, a highly venomous black mamba bites a wealthy scientist. He is quickly taken to the house of a local doctor who offers to sell him the doctor's only portion of mamba antivenin for the market price. The scientist quickly agrees and signs a contract. He is then given the antivenin. After a month of lying near death, the scientist

²¹ For the notion that consent to wartime killing has to be informed, see Helen Frowe, *The Ethics of War and Peace: An Introduction* (New York: Routledge, 2011), pp. 118-24.

recovers. He then refuses to pay, arguing that the contract is invalid since his consent was coerced.²²

A high price for mamba antivenin does not by itself make it involuntary and the price is still far less important to the scientist than is his staying alive. Still, it has the same payoff structure as a robber's your-money-or-your-life proposal and it reduces voluntariness for much the same reason. Why it does so depends on an explanation of why a serious threat makes choices less voluntary and an explanation of why an offer with a payoff structure similar to that of a serious threat also reduces a choice's voluntariness. It is unclear whether theories of responsibility, rather than justice, provide an adequate account of these issues, but perhaps we can rely on relatively clear intuitions about these sorts of cases to know that the consent of young adults drafted into the military is not especially voluntary.

If the above argument is correct, then even though people consent to the laws of war and in so doing consent to make themselves targets when serving as members of the military, their consent might not have sufficient quality to be valid consent. Similar to the consent of those with dementia to a change in a will, uninformed consent to surgery, and intoxicated consent to a business transaction, such consent might be invalid given what is at stake.

Here is an argument for this. Consider the following case:

Indian Bride

An Indian-American woman whose family lives in the U.S. meets an Indian physician in medical school and moves to India to marry him. She explicitly consents to obey Indian laws, including its marital laws, although she knows next to nothing about them. In the first few months of marriage, her husband rapes her. The prosecutor rejects her attempt to get him prosecuted and a trial court throws out her civil suit for pain and suffering on the ground that he did not violate a legal duty owed to her. Under Indian law, marital rape is not a crime.

While she does consent to obey India's laws, including its marital laws, her consent has a low level of quality because of her ignorance of the law. It intuitively seems that her consent does not legitimize forced sex because of the low quality of consent. If this is true of the woman, then it is also true of the young adults of draft age in countries that have not had a draft for years. They likely do not recognize that remaining in the country makes them legitimate targets in wartime. What's more, the price they would have to pay to leave is (on average) more than the price the Indian woman would have to pay in order to avoid marrying and living in India. Rape, while horrible, is (on average) less bad than being killed or mutilated in wartime. Hence, if the

²² See Stephen Kershnar, "A Liberal Case for Slavery," *Journal of Social Philosophy* 34 (2003), pp. 510-36.

woman's consent does not authorize the forced sex, then living in a country with a previously dormant draft does not authorize military targeting by wartime opponents.

Cases of countries that regularly draft their citizens and voluntary members of the armed services involve less ignorance, but it is still unclear whether they have sufficient knowledge to warrant becoming legitimate targets. In the draft case, there is also an issue with voluntariness that is not present in *Indian Bride*.

If consent eliminates duties owed to potential military targets, then there is no conflict between those duties and the duty to participate in military destruction that might be owed to one's government or fellow citizens. In some places, citizens don't and can't consent. Also, in some places, large numbers of citizens lack the requisite competence, knowledge, or voluntariness to give valid consent. In these cases, members of the opposing military do not consent to be killed nor do citizens consent to have their things broken. It is worth considering, then, which duties are stronger.

d. Even if consent is given, it is still too weak to justify killing and destruction

Even if promise-based duties to kill people and break things on command can compete against duties owed to people who do not consent to be killed, the former duties are relevant only if they are strong enough to override the latter duties. If a promise-based duty is strong, then it has strength in its content ("I hereby incur a strong duty to do . . ."). The American military oath does not have this content.

Military Oath of Enlistment

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice. So help me God.

Oath for Officers, Upon Commission

I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.

Note that these two oaths do not include a strength-condition. Note that such an oath could include a strength-condition, but does not. The "true faith and allegiance," "well and faithfully discharge," and "help me God" provisions do

not contain strength conditions. Other agencies, such as the Federal Bureau of Investigation, have nearly the same oath.²³

Still, it might be argued that the strength-condition is implicit in the common understanding of the oath. Alternatively, the strength-condition might be implicit in the solemn manner in which the oath is taken or the context in which it is taken. Alternatively, the serious subject matter (risking one's own life and promising to take others' lives on command) either alerts the promise-maker to the strength of the commitment or would do so for a reasonable person.

A promise does not have implicit content. If the above account is correct, a promise is the way in which a person intentionally binds himself and his intention determines the promissory content. The promise can refer to things that are opaque to the promisor, but they are still set by his conscious intention. For example, when I play Monopoly, I intend to be bound by the rules of the game even though I don't know all of them. Here the rules are explicit. In other cases, the rules might be set by the nature of the thing (constitutive rules), meaning of a term, or understanding of the relevant community of experts. An example of a constitutive rule is that a chess match is over when one player captures the other player's king. This rule in part makes chess what it is.

In the context of a military oath, the promise-based obligation is not strong. First, a member of the military makes a single promise to obey orders. If he makes only one promise, then there is a single ground for any duties the promise generates. If the ground for any duties the promise generated does not vary, then the strength of the duty does not vary across settings. That is, it is the same in different settings. Hence, if the duty is weak in some cases, then it is weak in all. Here is a case in which it is weak:

Strawberries

A ship captain orders his men to search a ship from top to bottom that afternoon in pursuit of stolen strawberries. He specifies that every single inch of space be searched. The lieutenant decides not to search his own locked closet. The captain is frazzled and mistaken about whether any strawberries were stolen. The lieutenant knows these things as well as the fact that no one has unlocked or broken into his locker.²⁴

²³ The FBI oath is the following: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

²⁴ The idea for this example comes from the film *The Caine Mutiny*, directed by Edward Dmytryk (Columbia, 1954).

Here is another such case:

Potato-Peeling

A newly minted West-Point-educated lieutenant orders an enlisted man to peel potatoes and, in particular, to peel off every fleck of skin. He does so because a classmate theorized that establishing command on trivial matters effectively communicates who is the boss. If a lowly but excellent enlisted man follows this order, his peeling time will triple and he will miss dinner. He skips peeling small-and-very-hard-to-peel flecks.

Even if the enlisted man violates a *prima facie* duty, he does not infringe on a stringent one.

An objector might claim that the duties in these examples are in fact strong—being cases of obeying military orders—despite the fact that they might intuitively seem weak. In the absence of an argument to overcome the intuitive seeming in this case, it is not clear what supports the claim.

By analogy, consider the duty to obey laws against murder and jaywalking. If the duty to obey both laws is equally strong, because they flow from the same promise (whether explicit or implicit), and the duty to obey the law against jaywalking is weak, then the duty to obey the law against murder is weak. The duty to obey the law against jaywalking *is* weak. This can be seen in both the intuitive notion that jaywalking is not very wrong and the notion that it does not warrant a severe punishment. Note there are strong duties against murder, but they are independent of the law. Similarly, there might be strong duties to satisfy the content of an order (for example, “I hereby order you not to shoot these Vietnamese civilians”), but they are independent of the order.

The at-most weak duty is also true for contradictory orders and orders that are vague or ambiguous. A separate problem occurs when the Constitution is vague or ambiguous because one who takes the U.S. oath is only bound with regard to constitutional orders (see the requirement of true faith and allegiance to the Constitution). Also, it is unclear whether unconstitutional orders satisfy the Uniform Code of Military Justice. Constitutionally contested orders include acts that are part of an undeclared war or a war that Congress has refused to fund. This is not a matter of mere theoretical interest, given that Presidents Clinton and Obama ordered attacks on Serbia in 1999, Libya in 2011, and ISIS in 2014 that were unaccompanied by a declaration of war and did not meet requirements of the War Powers Act.

In summary, the duty to obey military orders is weak in the sense that it does not override duties against killing and property destruction. Hence, if the members of an opponent military retain claims against being attacked, these claims override competing duties that members of the military owe to their government or fellow citizens.

e. Other objections

Jeff McMahan, Uwe Steinhoff, Helen Frowe, and others object to the consent argument for wartime killing and destruction on a number different grounds.²⁵ Let's consider their objections.

First, an objector might argue that the argument does not apply to the involuntary soldier.²⁶ The objection strengthens if one thinks that the reason a soldier on the just side can kill an involuntary soldier unjustly attacking his homeland is the same reason he can kill a voluntary soldier doing the same. The idea here is that the aggressor's consent plays no role in justifying defensive violence in the involuntary case and that the justification is the same in the voluntary and involuntary cases.

As mentioned in the beginning of the article, the justification for killing an involuntary attacker has to rest on a right being lost (waived or forfeited) or overridden because such an attacker does not consent to fight, let alone consent to be targeted as a price for doing so. If forfeiture works, there is good reason to reject the consent model because forfeiture can explain why and when defensive violence is permitted. Arguably, it can do so in both individual and collective violence cases. The price of this move, though, is to adopt the forfeiture model generally and not just in the context of war. As noted above, this theory has been subject to a series of criticisms.

A related objection is that even if consent does justify killing members of the military, it does not justify killing civilians or breaking their things, even if done so indirectly. The problem with the related objection is that if soldiers can consent to be destroyed in wartime so long as it is done within international rules, the same can be said for the indirect death and destruction done to civilians. That is, civilians might consent to indirect harm so long as it occurs within the rules. After all, if governments in advanced nations are justified by consent and what people consent to is a set of rules that allows for indirect harm within certain parameters, then it is not clear why civilians' consent does not authorize this harm.

Second, McMahan argues that even if soldiers in standing armies consent to allow opponents to try to kill them, this is not true for soldiers who volunteer for a particular war.²⁷ Consider, for example, people who volunteered to fight in World War II. McMahan asserts that they didn't volunteer to be targeted. This objection misunderstands how consent works. If the consent argument works, it is the soldiers' consent to their government and its laws that permits them to be targeted. Consent operates in the same

²⁵ See Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), pp. 51-60. Uwe Steinhoff discusses the need to defend noncombatants as the justification of wartime killing. See Uwe Steinhoff, "Debate: Jeff McMahan on the Moral Inequality of Combatants," *Journal of Political Philosophy* 16, no. 2 (2008), pp. 220-26.

²⁶ See Frowe, *The Ethics of War and Peace*, p. 120.

²⁷ See McMahan, *Killing in War*, p. 53.

way whether the soldier is consenting to serve in a standing army or to fight in a particular war and, also, whether or not he recognizes that it permits opposing soldiers to target him. This can be seen in the fact that volunteers for a standing army and a particular war take the same oath (at least in the U.S.). In addition, it is not clear why we should think they have different intentions. After all, they consent to obey the same set of laws that in fact incorporates international agreements, even if they may not know, or even think about, this feature of the laws any more than NFL players know, or even think about, some of the obscure rules that govern NFL football.

Third, McMahan argues that the consent argument confuses consent with taking the risk of being killed by enemy soldiers.²⁸ *Contra* McMahan, if what soldiers consent to are laws that include a legal permission for opponents to target them, then it is actual consent to be targeted and not a mere recognition of a risk.

McMahan or others might respond that giving another moral permission is different from giving him legal permission. In this context, though, consent theorists might assert that what is being consented to is a waiver of a right to punishment or compensation against opponents and that this waiver has both moral and legal aspects. By analogy, when boxers consent to a match, they waive both moral and legal claims against being battered by the other.

Fourth, McMahan argues that even if soldiers did consent to allow enemy soldiers to try to kill them, consent is not sufficient to make an act permissible.²⁹ In particular, McMahan argues that a lesser-of-two-evils condition must also be present for an act to be permissible.

There are different pictures of how side-constraints work. Here is what I think is the best picture. Leaving aside consequentialist considerations, a plausible view is that an act is right if and only if it does not infringe a side-constraint. On this account, a side-constraint simply is a duty one person owes another.³⁰ On this account, a two-person duty (one person owes another a duty) just is a claim viewed from the perspective of the person to whom the duty is owed. If this is correct and if valid consent eliminates a claim, which is its function, then there is no other wrong-making feature present. That is, absent consequentialist considerations, valid consent is sufficient to make an act permissible. McMahan and others might disagree.

A variant on this objection is that even if members of the military waive their right against others trying to kill them, this does not justify unjust

²⁸ *Ibid.*, p. 52.

²⁹ See *ibid.*, p. 56.

³⁰ I am assuming here that there are no free-floating wrongs. These are acts that are wrong on non-consequentialist grounds, but do not wrong anyone. For a discussion of them, see Joel Feinberg, *Harmless Wrongdoing: The Moral Limits of the Criminal Law* (New York: Oxford University Press, 1988), chap. 28.

aggression.³¹ Even if this is correct, it still is true that the worst features of war are killing and property destruction. If these things are permissible in virtue of the two sides having waived rights against them, then while unjust aggression is not thereby made permissible, it is far less wrong than ordinarily thought. It is far less wrong in virtue of the deactivation of the strongest wrong-making reasons—namely, those against killing people acting justly and destroying their property. Also, if wrongness is not a matter of degree, then the conclusion can be restated in terms of the weakening of the normative force of the reasons against such aggression.

Still, it might be argued that voluntary members of the just side of a war at most waive their right to punish or receive compensation from members of the unjust side. This is not the same as waiving one's right against being attacked. By analogy, a homeowner might sell his legal right to punish or receive compensation from trespassers without waiving his legal right against their trespassing. The homeowner is still legally free to try to prevent their trespassing through the use of force, threat, or fence. By analogy, members of the military engaged in unjust aggression still act wrongly even if those they wronged may not legally (and, perhaps, morally) punish or receive compensation for the wrongdoing. This is a good reason to think that consent theory does not warrant unjust aggression even when done within the confines of international warfighting rules. I am assuming here that rights against trespass and aggression are possible even when disconnected from derivative rights such as the right to punishment or compensation for infringement of the primary rights.³² In contrast to killing in war, boxers and voluntary gladiators have waived the primary right against aggression and not merely the secondary right concerning responses to the aggression.

4. Conclusion

If a member of the military's consent is not made to a potential enemy or below the quality-threshold to be effective, then it is irrelevant to wartime killing and destruction. On the other hand, if members of the military consent to their government and their government consents to various international rules of war, including ones that allow opponents to try to kill them in wartime, then they have consented to be so targeted. This does not make aggression permissible because the consenters still have not waived their right against unjust aggression; they likely have at most waived their

³¹ See McMahan, *Killing in War*, p. 59.

³² An argument that the derivative rights are justified by the same ground as the primary right and thus necessarily accompany them, can be seen in Jan Narveson, "Pacifism: A Philosophical Analysis," *Ethics* 75, no. 4 (1965), pp. 259–71; and Jan Narveson, "Is Pacifism Consistent?" *Ethics* 78, no. 2 (1968), pp. 148–50. This is not the case if they are distinct moral relations and the ground (e.g., autonomy) allows them to be separately maintained or alienated.

right to take certain punitive and compensatory actions in response to the aggression.³³

³³ I am very grateful to James Delaney, Neil Feit, David Hershenov, Jason Rourke, and Dale Tuggy for their comments and criticisms of this argument.

Catastrophic Events versus Infectious Disease Outbreak: Distinct Challenges for Emergency Planning

Thomas May
Medical College of Wisconsin

Michael P. McCauley
Medical College of Wisconsin

Jessica Jeruzal
Medical College of Wisconsin

Kimberly A. Strong
Medical College of Wisconsin

1. Introduction

Since September 11, 2001, significant attention has been directed toward the capacity of the United States health system to address a potential surge in patients following a terrorist event. The ability to manage an increase in patient volume is important not only for response to catastrophic terror activities such as bombings, but also for natural catastrophic events such as earthquakes, hurricanes, fires, or tornadoes. Such scenarios can place tremendous strain on response personnel and can quickly overwhelm limited resources. However, the type of surge capacity necessary in the wake of an infectious disease outbreak (be it a natural public health emergency or a bioterror attack) requires a different set of resources than does the capacity to handle patient surge following a catastrophic event. Unlike a catastrophic event, wherein large numbers of patients present in a short period of time, an infectious disease outbreak would likely result in a slower, yet more sustained patient surge. In addition, an infectious disease-related surge is unlikely to be limited to selected locations, undermining the ability effectively to move resources to areas experiencing a surge. Thus, unlike catastrophic surge scenarios, the surge resulting from an outbreak cannot adequately be addressed through traditional emergency planning.

2. Catastrophic Events

Traditional concerns for disaster response following a catastrophic event have influenced most emergency response planning. Such diverse governmental agencies and think tanks as the Institute of Medicine, the Council on Foreign Relations, the United States General Accounting Office (GAO), the Congressional Research Service, the Heritage Foundation, and Trust for America's Health (supported by the Robert Wood Johnson Foundation and the Bauman Foundation) have studied the capacity to handle the influx of patients likely to occur in the wake of a catastrophic event.¹ Overwhelmingly, these reports emphasize the ability of first responders such as EMS crews, firefighters, emergency room staff, and law enforcement personnel to provide relief for large numbers of patients. The need to reflect on this type of capacity is significant as the number of emergency departments at hospitals across the country is decreasing due to the financial drain such departments often represent.² As a result, even as the number of emergency departments dwindle, we are becoming better prepared to meet the challenges of a surge in patients resulting from catastrophic events, thanks in large part to planning and cooperative agreements between health care facilities developed in the wake of the 9/11 terrorist attacks.

A report published by the American Hospital Association (AHA) describes model plans that have been developed for emergency preparedness following the 9/11 tragedy.³ Problems identified during preparations for expected casualties during that tragedy include logistical and bureaucratic challenges in getting supplies to where they are expected to be most needed, certification of supplemental medical personnel, triage, and distribution of resources among regional medical centers. Unsurprisingly, planning for emergency "surge capacity" preparedness has centered on these problems. In

¹ See S. Knobler, A. Mahmoud, and L. Pray, *Biological Threats and Terrorism: Assessing the Science and Response Capabilities* (Washington, DC: Institute of Medicine National Academy Press, 2002); W. Rudman, R. Clarke, and J. Metz, "Emergency Responders: Drastically Underfunded, Dangerously Underprepared," Report GAO-03-924 (2003); GAO, "Hospital Preparedness: Most Urban Hospitals Have Emergency Plans but Lack Certain Capacities for Bioterrorism Response" (2003); Congressional Research Service, "Bioterrorism: Legislation to Improve Public Health Preparedness and Response Capacity" (2002); L. P. Bremer and E. Meese, "Defending the American Homeland" (2002); "Trust for America's Health, Ready or Not? Protecting the Public's Health in the Age of Bioterrorism" (2003), accessed online at: <http://www.healthymamericans.org>.

² Institute of Medicine, *The Future of the Public's Health in the 21st Century* (Washington, DC: National Academies Press, 2003).

³ AHA Section for Metropolitan Hospitals, "Proceedings for the National Symposium on Hospital Disaster Readiness" (2002).

the AHA report, hospitals describe plans to cooperate with partner medical centers in their region to allocate needed resources and supplies in the event that one of the partners must respond to a catastrophe in its area. Staffing needs (including necessary time for rest and recovery) have been considered and addressed, with bureaucratic mechanisms for the quick certification (or even pre-certification) of regional or even out-of-state medical professionals in the event of a declaration of emergency. The GAO has made similar recommendations for resource sharing and response capacity,⁴ and disaster preparedness drills motivated by the events of 9/11 have focused on patient triage and the quick distribution of medications.

Catastrophic events create a need for rapid response in providing the manpower, medications, and equipment necessary to care for large numbers of casualties who present immediately. What is required in such circumstances is a capacity for movement of resources to provide sufficient medications and supplies. An increased number of health care professionals is also necessary, so that triage plans can be developed to identify how medical attention can be prioritized among large numbers of present casualties and delays in needed medical attention can be avoided. It is precisely this type of planning, grounded in lessons from past terrorist events and natural disasters, that is reflected in disaster preparedness drills and cooperative regional partnerships developed by hospitals and healthcare systems throughout the country.

3. Infectious Disease Outbreaks

While each of the programs described above has significant value, offering improved surge capacity for catastrophic emergencies, these programs fail to provide adequate preparation for potential *biological* events, or a host of natural public health emergencies involving emerging and re-emerging infectious diseases. The reason is that such emergencies pose the threat of a vastly different type of patient surge, and thus require different capacities. First, catastrophic events result in casualties that are limited to a defined location or set of locations. Tornadoes or hurricanes, for example, strike in such a way that casualties are limited to the area or areas in the path of these storms. Similarly, a bomb exploded in Oklahoma City or an airplane flown into a building in New York City does not result in casualties outside the immediate area of attack. Simultaneous attacks (for example, in New York and Washington, D.C.) may create multiple areas experiencing a surge in patients, but the surge is nonetheless limited to those areas directly attacked. Chemical attacks normally also share this feature.

However, large-scale biological terrorism or the widespread outbreak of a contagious infectious disease would result in a vastly different type of patient surge. Patient surge resulting from an infectious disease outbreak will likely be accompanied by a high risk that the disease will spread. Infectious

⁴ GAO, "Bioterrorism: Preparedness Varied across State and Local Jurisdictions," Report GAO-03-373 (2003).

disease outbreaks rarely involve the immediate influx of patients experienced during catastrophic emergencies. Instead, a surge in patients results from disease propagation that is not necessarily limited by time or geographic location. For this reason, responding to the influx of patients from an infectious disease outbreak would likely require that patient care be slow and deliberate, rather than sped, so that careful attention could be paid to isolation procedures designed to deter the spread of infection.

During the SARS outbreak of 2002-2003, for example, hospital workers took steps that included the use of masks, gloves, disposable gowns, eye protection, and increased attention to hand washing and disinfection, in addition to the use of negative-pressure rooms where available, the isolation of patients, and the grouping of health workers themselves to minimize the number of individuals exposed.⁵ It was only with strict adherence to these infection-control procedures that the spread of disease was controlled.⁶ Failure to devote due diligence and attention to deliberate infection control procedures is dangerous, as illustrated by the recent Ebola cases in Dallas, where the less stringent protocols initially recommended were inadequate to keep the disease from spreading to nursing staff.⁷ The CDC soon changed recommendations to reflect more stringent protocols, but these more intricate protocols are accompanied by additional costs.

Infection control procedures take time and care, reducing the number of individual patients to which any one health care worker might attend. Absent such careful attention, health care facilities themselves can become incubators that exacerbate the spread of disease. During the SARS epidemic, for example, the spread of the disease was greatest among health care workers. In Vietnam, more than half of the first 60 patients with SARS were healthcare workers.⁸ In Canada, 77% of probable SARS cases resulted from in-hospital exposure, and in Taiwan almost 94% of SARS cases were transmitted within hospitals.⁹ In developing countries that have experienced Ebola outbreaks, lack of proper sanitation, isolation, and infection-control procedures have resulted in hospitals becoming focal points for the spread of

⁵ R. Wenzel and M. Edmond, "Managing SARS Amidst Uncertainty," *New England Journal of Medicine* 348, no. 20 (2003), pp. 1947-48.

⁶ L. C. McDonald, A. E. Simor, I. J. Su, et al., "SARS in Healthcare Facilities, Toronto and Taiwan," *Emerging and Infectious Disease* 10, no. 5 (2004), pp. 777-81.

⁷ M. McCarthy, "US Deploys Rapid Response Teams to Hospitals with Ebola Cases," *BMJ*. 349 (2014), pp. g62-66.

⁸ B. Reilley, M. Van Herp, D. Sermand, and N. Dentico, "SARS and Carlo Urbani," *New England Journal of Medicine* 348, no. 20 (2003), pp. 1951-52.

⁹ R. W. Grow and L. Rubinson, "The Challenge of Hospital Infection Control During a Response to Bioterrorist Attacks," *Biosecurity and Bioterror* 1, no. 3 (2003), pp. 215-20.

the disease among other patients, health care workers, and visiting family and friends.¹⁰

Because of the nature of casualties in an infectious disease outbreak, another phenomenon that differs from catastrophic events will likely emerge: the influx of patients would likely occur over a period of days and weeks, rather than minutes and hours. This would result in less need for the type of rapid response and capacity required for a catastrophic event, but greater need for ongoing care and treatment. During the SARS outbreak in Hong Kong, for example, the initial increase in patients was accommodated through diversion of patients into a cluster of hospitals, but the healthcare system was eventually overwhelmed by a massive increase in healthcare demand.¹¹

In short, infectious disease outbreaks differ from catastrophic events in how surge occurs and whether surge is limited in time or location. Thus, significantly different considerations will be salient to response planning. Most significantly, because infectious disease outbreaks are not limited by time or location, challenges for outbreak response will reflect system-wide needs for healthcare delivery rather than location-specific needs and logistical concerns.

4. Challenges for Emergency Planning

To the extent that those concerned about surge capacity have considered the overall healthcare system, they have focused largely on the problems created by decreasing numbers of emergency departments and overcrowding within those departments. For example, consider an April 2003 GAO report assessing preparedness for a bioterror event.¹² While the report recognized the importance of basic surveillance and infection control for response efforts, it largely combined these concerns with traditional surge capacity issues surrounding immediate response, going so far as to describe its examination of hospitals on the basis of their likelihood of assuming a role as “first responders.” This, in turn, has led to a focus, in the context of hospital and health system preparedness, on emergency departments, mass casualty triage planning, and the movement of resources to areas experiencing a surge in patients.

However, initial challenges during an infectious disease outbreak will be related to the timely identification of the event itself. Biological agents seldom show immediate signs of infection, but are instead characterized by symptoms that develop slowly and in ways that might be

¹⁰ L. Garrett, *The Coming Plague* (New York: Penguin Books, 1994).

¹¹ C. D. Naylor, C. Chantler, and S. Griffiths, “Learning from SARS in Hong Kong and Toronto,” *Journal of the American Medical Association* 291, no. 20 (2004), pp. 2483-87.

¹² GAO, “Bioterrorism.”

ascribed to a number of different causes, such as the flu. Plague, for example, presents with clinical symptoms that include fever, cough, and chest pain. Initial smallpox symptoms resemble those of acute viruses such as influenza, beginning with nonspecific fever before the onset of a distinctive rash. Hemorrhagic fevers usually have an incubation period of 5-10 days before the onset of fever, myalgia, and headache, and symptoms include nausea, vomiting, abdominal pain, and diarrhea before more recognizable manifestations occur approximately five days after the onset of illness.¹³

Because of the indeterminacy of symptoms, considerable time would elapse before it is even realized that the cause of illness is more sinister than initial symptoms suggest. Indeed, clinicians involved in the SARS outbreak indicated that identification of the illness itself was their most difficult challenge—even greater than the lack of treatments or vaccines.¹⁴ This would likely add to the spread of infection beyond the site or sites of initial release, as affected individuals interact with and expose others. Once symptoms of exposure to a biological agent begin to manifest themselves, patients are likely to begin presenting to hospitals or clinics in different areas of a city or region, or perhaps even nationwide. Should release occur in a location such as an airport, exposed individuals will likely be scattered to diverse national and international regions before symptoms begin to appear. Partly because patients are likely to present at different locations, significant time may elapse before the commonality of symptoms leads to a realization that these symptoms are connected to the spread of an infectious biological agent. This is true even when one looks at symptoms rather than diagnosis. In the anthrax cases, for example, the number of people exposed was so small in any one geographical area that recognition of a cluster of symptoms was unlikely absent prior realization of the agent's release.¹⁵

5. Pandemic Fears and Pandemic Communications

Perhaps the most significant challenge posed for infectious disease response planning concerns limiting unnecessary demands on an already strained healthcare delivery system. The challenge of meeting increased healthcare demand during an outbreak would likely be exacerbated by the presentation of people who have no symptoms and have not been exposed to the disease, but seek healthcare intervention because they are worried that

¹³ V. Sidel and B. Levy, "Biological Weapons," in *Terrorism and Public Health*, ed. B. Levy and V. Sidel (New York: Oxford University Press, 2003), pp. 175-98.

¹⁴ A. S. Abdullah, B. Tomlinson, C. S. Cockram, and G. N. Thomas, "Lessons from the Severe Acute Respiratory Syndrome Outbreak in Hong Kong," *Emerging and Infectious Disease* 9 (2003), pp. 1042-45.

¹⁵ A. Reingold, "If Syndromic Surveillance Is the Answer, What Is the Question?" *Biosecurity and Bioterror* 1, no. 2 (2003), pp. 77-81.

they *may have been* exposed (the “worried well”).¹⁶ The U.S. experience with anthrax in the fall of 2001 confirms this challenge, as described in *Journal of the American Medical Association*: “Frontline clinicians faced a challenge that often was even more difficult than diagnosis of anthrax—that of excluding the diagnosis among the many worried patients with concerns about potential exposure or among those who sought care for rashes or illnesses suggestive of the diagnosis.”¹⁷

Contemporary anxiety about infectious disease has a long history. In Europe, fears about sudden outbreaks of unclear origin go as far back as the Plague of Athens (430-426 BC), and calls for quarantine are evident in historical accounts of the Black Death (1347-50 AD), the French Pox of 1494, and American epidemics of yellow fever and cholera in the eighteenth and nineteenth centuries.¹⁸ Nancy Tomes has described two famous bouts of “germ panic” in the U.S., the first spurred by tuberculosis and the second by the HIV/AIDS epidemic.¹⁹ Various influenza-based panics have been evident more recently. Most relevant was the fear-induced “run” on seasonal influenza vaccine following a shortage resulting from contamination at vaccine-production facilities in Liverpool, England, and another fear-induced “run” following the October 2001 Anthrax scare, when recommendations to get vaccinated in order to reduce suspected cases presenting to doctors and emergency departments (symptoms of anthrax mimic flu in its early stages) were misunderstood to suggest that seasonal flu vaccination conferred protection against anthrax (which it did not and does not).

The most recent example of public panic in the face of infectious disease concerns Ebola. To be sure, Ebola and the fears that accompany it are hardly new. The Centers for Disease Control and Prevention counts thirty-four separate instances of Ebola since the 1976 outbreak that claimed 318 lives in Zaire.²⁰ “Alarm and near panic” were reported at a Sudanese hospital that same year, and the anxious neighbors of some healthcare workers who elected

¹⁶ T. V. Inglesby, R. Grossman, and T. O’Toole, “A Plague on Your City: Observations from TOPOFF,” *Clinical Infectious Disease* 32, no. 3 (2001), pp. 436-45.

¹⁷ J. L. Gerberding, J. M. Hughes, and J. P. Koplan, “Bioterrorism Preparedness and Response: Clinicians and Public Health Agencies as Essential Partners,” *Journal of the American Medical Association* 287, no. 7 (2002), pp. 898-900.

¹⁸ D. M. Morens, G. K. Folkers, and A. S. Fauci, “Emerging Infections: A Perpetual Challenge,” *Lancet* 8 (2008), pp. 710-19; M. Honigsbaum, “Ebola: Epidemic Echoes and the Chronicle of a Tragedy Foretold,” *Lancet* (2014), pp. 1740-41.

¹⁹ N. Tomes, “The Making of a Germ Panic, Then and Now,” *American Journal of Public Health* 90, no. 2 (2000), pp.191-98.

²⁰ Centers for Disease Control and Prevention, “Outbreaks Chronology: Ebola Virus Disease” (2015), accessed online at: <http://www.cdc.gov/vhf/ebola/outbreaks/history/chronology.html>.

to stay on the job during that outbreak threw stones or, in some cases, drove these workers from their homes. During Uganda's 2000-2001 outbreak, many Ebola survivors returned home to find that fearful neighbors had burned their possessions and, in some cases, their huts.²¹ The same kinds of fearful reactions remain all too prevalent in the midst of the current outbreak, in which thousands of people have died in West Africa.²²

Infectious diseases are invisible, transmissible, and often deadly.²³ When pandemics occur, people who perceive a great risk from infection must suddenly find ways to cope. The prevalence of adaptive coping responses (e.g., "keep calm and carry on") largely depends on the level of trust that people have in their *ability* to keep the disease at bay.²⁴ In the case of Ebola, a number of factors—including perceived severity, lack of vaccines, and open confusion about etiology and transmissibility have created an environment in which many Americans do not trust the public health system to keep them safe.²⁵

²¹ J. Kinsman, "A Time of Fear: Local, National, and International Responses to a Large Ebola Outbreak in Uganda," *Global Health* 8 (2012), accessed online at: <http://www.globalizationandhealth.com/content/8/1/15>.

²² B. Diallo and S. DiLorenzo, "Survivors of Ebola Face Second 'Disease': Stigma," *Associated Press*, April 27, 2014, accessed online at: <http://bigstory.ap.org/article/survivors-ebola-face-second-disease-stigma>; M. Diallo, "Battling Fear and Stigma over Ebola in West Africa" (2014), International Federation of Red Cross and Red Crescent website, accessed online at: <http://www.ifrc.org/ar/news-and-media/news-stories/africa/guinea/battling-fear-and-stigma-over-ebola-in-west-africa-65367>; S. Briand, E. Bertherat, P. Cox, et al., "The International Ebola Emergency," *New England Journal of Medicine* 371, no. 13 (2014), pp. 1180-83; "Ebola Outbreak: Thousands of Orphans Shunned," *BBC News*, September 30, 2014, accessed online at: <http://www.bbc.com/news/world-africa-29424919>.

²³ G. Pappas, I. J. Kiriaze, P. Giannakis, and M. E. Falagas, "Psychosocial Consequences of Infectious Diseases," *Clinical Microbiological Infections* 15, no. 8 (2009), pp. 743-47.

²⁴ R. S. Lazarus and S. Folkman, *Stress, Appraisal, and Coping* (New York: Springer, 1984); A. T. Beck and D. A. Clark, "An Information Processing Model of Anxiety: Automatic and Strategic Processes," *Behavior Research and Therapy* 35 (1997), pp. 49-58.

²⁵ R. D. Smith, "Responding to Global Infectious Disease Outbreaks: Lessons from SARS on the Role of Risk Perception, Communication, and Management," *Social Science and Medicine* 63 (2006), pp. 3113-23; G. Gonsalves and P. Staley, "Panic, Paranoia, and Public Health—The AIDS Epidemic's Lessons for Ebola," *New England Journal of Medicine* 371 (2014), pp. 2348-49.

How have public health officials tried to calm these fears? In the most recent Ebola outbreak of 2014, CDC spokespersons and other officials continually stressed that Ebola could only be contracted through contact with the bodily fluids of someone who began to exhibit symptoms of the disease. These messages, designed to avert panic and facilitate calm, were often ineffective—in part, because they were constructed largely from the viewpoint of the scientists and public health officials who promulgated them (reasonable, if somewhat dispassionate scientific estimates based on calculations of probability by experienced epidemiologists). However, these officials did not fully account for public perceptions about the dangerousness of Ebola, or the ways in which ordinary citizens perceive risk.

There is significant risk from “over-downplaying” such outbreaks. If scientists purposely downplay risk in order to buffer against the possibility of overreaction and public panic, they may inadvertently undermine the trust of the very people they are trying to help. In 1976, concerns about a potential swine flu epidemic resulted in a mass vaccination campaign that addressed public concerns about the new vaccine with particularly strong reassurances about confidence in the vaccine’s safety—culminating in President Gerald Ford’s being vaccinated on national television as a demonstration of personal confidence. Subsequent discontinuation of the vaccination campaign due, in part, to emergent identified risks (including Guillain-Barre syndrome) resulted in public distrust of the motives of public health campaigns that continues to be felt in the vaccination community.²⁶ In 2009, French officials—puzzled by the lack of uptake in an H1N1 vaccination campaign—also learned that contemporary efforts to protect public health are often confounded by a fraying of trust that happened because of prior episodes of miscommunication. In this case, public suspicions were rooted in the French government’s previous minimization of the health hazards associated with fallout from the Chernobyl nuclear plant disaster more than twenty years earlier.²⁷

6. A Call for Balance in Public Health Messages

For politicians and health officials, the key imperative for communicating during infectious disease outbreaks is to convey accurate and agenda-free (i.e., *trustworthy*) information while at the same time modulating the tone of their messages, lest they trigger a sense of panic that outruns the severity of the actual threat. This is a challenging task in cases like Ebola,

²⁶ L. B. Schonberger, D. J. Bregman, J. Z. Sullivan-Bolyai, et al., “Guillain-Barre Syndrome Following Vaccination in the National Influenza Immunization Program, United States, 1976-1977,” *American Journal of Epidemiology* 110, no. 2 (1979), pp. 105-23; R. E. Neustadt and H. V. Fineberg, *The Swine Flu Affair: Decision-Making on a Slippery Disease* (Washington, DC: National Academies Press, 1978).

²⁷ C. Rousseau et al., “Public Media Communications about H1N1, Risk Perceptions and Immunization Behaviours: A Quebec-France Comparison,” *Public Understanding Science* 24, no. 2 (2015), pp. 225-40.

since traditionally high fatality rates in Africa—coupled with gruesome symptoms described in the news and in popular books (e.g., *The Coming Plague*²⁸ and *The Hot Zone*²⁹)—provoke strong, instinctual responses aimed at avoiding the disease. In the words of one prominent psychologist, Ebola “hits all the risk-perception hot buttons.”³⁰

Communication about threats to public health is a dynamic process, one in which health officials must seek to understand and address public perceptions of disease risk.³¹ When communication is perceived as agenda-driven (be it beneficent or not), it undermines the perceived reliability of the message and, hence, its effectiveness. For example, if outbreaks were to result in the need to “shelter in place,” citizens must have confidence that this policy is not driven by an agenda that sacrifices their own interests for the sake of overall population health. If trust wears thin, people will likely flee rather than shelter. Noting the challenge of dealing with individual-level risk perceptions during the recent Ebola outbreak, an article in *Forbes* suggested that health officials made a crucial mistake by telling people “not to worry” because other conditions and hazards, such as common seasonal flu viruses, are actually more deadly. The flu comparison, the author contends, is not at all valid as “rational people know we’re going to die someday. [But] people are rightly scared of things that might take us out while we’re still young.”³²

When the public is confident that its concerns and interests are heard and respected, it is much less likely that panic will ensue. If the public feels that symptom etiology described by health officials can be trusted, it is much more likely that challenges posed by the “worried well” can be avoided. Effective emergency response planning for infectious diseases outbreaks, then, must include strategies for effective public communication in order to gain the public trust necessary to facilitate disease containment.

²⁸ Garrett, *The Coming Plague*.

²⁹ R. Preston, *The Hot Zone* (New York: Anchor Books, 1994).

³⁰ Josh Sanburn, “The Psychology Behind Our Collective Ebola Freak Out,” *Time*, October 20, 2014, accessed online at: <http://time.com/3525666/ebola-psychology-fear-symptoms/>.

³¹ Z. Cirhinlioğlu and F. Gül Cirhinlioğlu, “Social Representations of H1N1 Influenza A (Swine Flu),” *Revija za sociologiju* 3 (2010), pp. 273-95; C. Barrelet, M. Bourrier, C. Burton-Jeangros, and M. Schindler, “Unresolved Issues in Risk Communication Research: The Case of the H1N1 Pandemic (2009-2011),” *Influenza and Other Respiratory Viruses* 7, supp. 2 (2013), pp. 114-19.

³² Faye Flam, “Three Ways Health Officials and Doctors Fumbled in Communicating Ebola Risk,” *Forbes*, November 5, 2014, accessed online at: <http://www.forbes.com/sites/fayeflam/2014/11/05/three-ways-health-officials-and-doctors-fumbled-in-communicating-ebola-risk/>.

7. Conclusion

Emergency response planning is a contextual project that must account for divergent circumstances and challenges resulting from different types of emergency events. Catastrophic events such as earthquakes, tornadoes, hurricanes, or terrorist bombs will present those healthcare facilities located nearest to the event with an immediate surge in patients, while having limited impact beyond the region directly affected. In contrast, infectious disease outbreaks will present a slower surge in patients, but will require a more sustained response effort—an effort whose effectiveness will depend on deliberate, methodical attention to detail (in the form of adherence to infection control procedures) rather than the emphasis on speed and movement of resources that characterizes effective response to catastrophic events. Equally important, strains on the healthcare delivery system resulting from the sustained, deliberate approaches required during outbreak response, combined with the difficulties inherent in distinguishing mundane causes of symptoms from more serious etiology of these symptom manifestations, will require special emphasis on public communication in order to avoid unnecessary demands on the healthcare system.

Discussion Notes

Happiness or Life, or Both: Reply to Ole Martin Moen

David Kelley
The Atlas Society

1. Introduction

Ole Martin Moen has mounted an interesting challenge to the foundations of the Objectivist ethics.¹ Unlike too many other critics, he gives an accurate and insightful statement of those foundations, especially in Section 2. Nevertheless, I am not entirely convinced by his critique of the thesis that life is the ultimate value, nor by his alternative view that happiness is the ultimate value. In this commentary, I want to address two aspects of his article: (1) the structure of Moen's argument against life as the ultimate value, and (2) his views about happiness.

2. The Structure of the Argument

There are two claims in the Objectivist ethics that interpreters have struggled to understand, clarify, and evaluate:

- (a) That for any organism, including humans, the life of the organism is the ultimate value that determines what other things are values or disvalues for it.
- (b) That for humans, an individual's choice to live is a precondition for life's being a value to him.

Most expositions of Rand's theory of value, including her own, argue for thesis (a) prior to and independent of (b). Thesis (a) applies across the entire biological realm, including plants and lower animals. It is grounded in the inductive generalization that living organisms, and only living organisms, are capable of goal-directed action. An organism's life is conditional; it depends on the organism's action to acquire and maintain the conditions of its own existence. In seeking any such goal, such as food, organisms face the alternative of success or failure.

¹ Ole Martin Moen, "Is Life the Ultimate Value? A Reassessment of Ayn Rand's Ethics," *Reason Papers* 34, no. 2 (2012), pp. 84-116. Subsequent page references to this article are given parenthetically in the text.

Success or failure in achieving the goal makes a difference to the organism because it makes a difference to its continued survival, which is the ultimate alternative: life or death, existence or ceasing to exist. This is why Rand says that life “is a process of self-generated and self-sustaining action.” It is also why she says, “Metaphysically, life is the only phenomenon that is an end in itself.”² Understanding the precise meaning of this latter statement, whether it follows from the basic analysis of life and value, and whether it is true—these questions are one focus of debate about the Objectivist ethics.

To continue with the standard account: Every type of organism has its own specific needs that it must meet to sustain itself, and has specific capacities for self-generated action to meet those needs. For man, the essential capacity is reason, which enables us to produce material things that benefit our lives on a far greater scale than any other species is capable of. By contrast with perceptual awareness, reason is a conceptual faculty, and it is volitional. Conceptual thought enables us to identify facts far beyond the range of what is given to our senses, and we depend on such knowledge for our survival. But reason does not operate automatically; we initiate and direct the process of thought by choice.

This brings us to thesis (b), the choice to live as the precondition of life’s being a value. The second focus of debate is about what this means and in what sense, if any, it is true. Most discussions and debates frame the issue in terms of two alternatives:

- (b1) One should choose life because it is a value. The choice to live is not pre-moral.
- (b2) Life is a value because one chooses it. The choice is a precondition for moral values and obligations.

Both positions, however, accept that life is the only thing that *could* be an end in itself or of ultimate value. Within this framework, the fundamental choice is the choice to live, and the only alternative is choosing not to live. The concern that a pre-moral choice opens the door to subjectivism, which leads Douglas Rasmussen and others to defend (b1), pertains specifically to a fundamental choice to live, on the assumption that once we settle the issue between (b1) and (b2), all other choices can and should be made on the basis of reasons tracing back to the standard of supporting one’s life. In other words, all of the writers Moen considers in Section 4—Rasmussen in defense of (b1), Nathaniel Branden, Allan Gotthelf, Irfan Khawaja, and me in defense of (b2)—share the same framework. First we establish that life is the only thing that could be an ultimate value, and only then raise the question of how that value relates to choice.

² Ayn Rand, “The Objectivist Ethics,” in Ayn Rand, *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 16 and 18.

Moen rejects that framework. He denies that the ultimate value of life can be established prior to and independently of choice. As he puts it, “the choice to live cannot be seen as superfluous to the justification of the principle that life is the ultimate value” (p. 97). His argument runs as follows: Rand’s biocentric analysis of value establishes that

- (1) Values are made possible by life.
- (2) Life, in turn, is constituted by and depends upon valuing.
- (3) Values exist only in relation to living agents. (p. 92)

This list does not include thesis (a) above, that life is an ultimate value. Nor does it include the claim that life is metaphysically an end in itself, nor the claim that life or death is a fundamental alternative. Moen mentions these further claims, but argues that none of them follows from (1)-(3). As he says of the items on his list,

I think these observations are all correct, and that they have important implications for value theory and philosophy of biology. Still, none of these observations, either alone or in conjunction, establishes that life is the ultimate value. These observations are compatible with but do not establish it. (p. 92)

Moen’s case for that claim is not entirely clear to me. In the passage immediately following, he says that the observations

do not establish that, descriptively, life is the goal of all valuing. Though the ultimate reason organisms need to pursue values might be that such activity is required to sustain their lives—and though a great many of our actions are in fact life-enhancing—we are clearly able to pursue values that harm our lives. The most obvious example is suicide. (p. 92)

The second sentence seems to acknowledge that life may indeed be the ultimate value for nonhuman organisms. The counterexample of acting in ways that harm us applies only to humans. Moen seems to acknowledge the same point elsewhere. Responding to Rasmussen’s argument that life is the ultimate value because it is metaphysically an end in itself, he says,

This, however, is macrobiology, not normative theory, and it remains unclear how the biological root of value, by itself, can issue binding obligations. Macrobiologically, it is true that life exists for its own sake. If we take for granted the biological teleology favored by Rand, life (in an inclusive sense that includes reproduction) is roughly the telos of our actions.

Moreover, there seems to be no further telos to which life is the means. Such an argument, however, is doomed to fail as an argument for life's being the ultimate value in an ethically relevant sense. (p. 95)

As these passages make clear, Moen is relying on a distinction between descriptive and prescriptive accounts of value. He is concerned with the claim that life is the ultimate value in a *prescriptive* sense. Because we have the capacity for choice—including the choice of what to accept and pursue as an ultimate value—it is possible for us to act in ways that do not support our lives. The question is whether we *should* act in accordance with a moral code based on our lives as ultimate *ethical* values. Here is Moen's analysis of Rand's answer to the question:

What, then, is needed in addition to the argument above in order to ground the view that life is the ultimate value in the prescriptive sense? According to Rand, what is needed is a choice to live—a commitment to continue living In "Causality versus Duty" she writes, "Life or death is man's only fundamental alternative. To live is his basic act of choice. If he chooses to live, a rational ethics will tell him what principles of action are required to implement his choice. If he does not choose to live, nature will take its course." . . . [T]he choice to live is a pre-moral, pre-rational choice. Rather than this choice itself being either moral or rational, the choice to live opens up the realm of ethics and of reasons for action. Ethics provides rules for living, so if living is not a goal, the science of ethics does not arise. (p. 93)

But this raises the question of subjectivity. Like Rasmussen, Moen is concerned that the moral code will lack prescriptive force if it depends on a pre-moral choice. Since Moen denies that the ultimate value of life can be established prior to and independently of choice, moreover, the threat of subjectivism is much wider. The choice of an ultimate value is not a constrained choice between choosing to live and choosing not to live. The choice is wide open. Of course we must choose to live if we are to pursue any value at all. But that does not necessarily mean we are choosing life as our *ultimate* value. And not choosing life as an ultimate value does not necessarily mean we are choosing death. In general,

it is wrong to assume that not choosing A as one's ultimate value means that one chooses the opposite of A as one's ultimate value. If this premise were true, a hedonist—who holds that pleasure is the ultimate value—would be right in claiming that Rand's theory, in choosing something other than pleasure as the ultimate value, is tantamount to "choosing pain." This is

not a fair criticism of Rand, and the criticism is not fair the other way either . . . (p. 98)

Moen wields this point like a razor against Branden, Khawaja, and Gotthelf, and might have done so against the rest of us—and against Rand herself. And it seems to me that this consequence does follow from Moen's prior conclusion that life as an ultimate value cannot be established prior to the issue of choice. The question is whether he has established that conclusion.

I don't think he has.

For one thing, I think Moen misstates Rand's point about the significance of the choice to live. In the passage quoted above, he says that what grounds her "view that life is the ultimate value in the prescriptive sense is a choice to live—a commitment to continue living." But a choice is an act, not a premise or an argument that can ground a view. For Rand the choice to live is what makes a person's life an actual value for him. But what makes life an ultimate value (once chosen) is that it is a fundamental alternative, an end in itself. In this respect, I don't think Moen has fully addressed Rand's account of the transition from *value as such*, a concept that applies to all living organisms, to *ethical value*, applicable only to humans.

My main concern about Moen's argument, however, is the sharp distinction he draws between descriptive and prescriptive claims, and the allied distinction between biological (or, as I would prefer to say, biocentric) values and ethical or moral values. Moen seems to take these distinctions for granted. But given the weight they bear in the argument, I think he owes us a fuller analysis. In his summary of Rand's view that the concept of value depends on the concept of life (Section 2), he takes pains to explain her epistemological view that to understand the meaning of a concept we must trace it back to its perceptual basis. He goes on to show how Rand follows this method in her analysis of value. How would that method apply to Moen's conception of prescription, of moral values and obligations?

The question is important because Rand, along with most of her followers and interpreters, does not think that the distinction is as stark as Moen does.³ There is a distinction, to be sure, between value as such and moral value. As Rand says, morality is "a code of values *accepted by choice*."⁴ Choice is what underlies the prescriptive element in morality, the feature that makes praise and blame appropriate. Rand is not always careful

³ Moen himself seems to acknowledge the point in his summary of Rand's view: "Rand operates with two definitions of 'value,' one descriptive and one normative. These, importantly, are not two different concepts referred to by the same word. The normative definition, as Rand sees it, is a development of the descriptive definition" (p. 88 n. 10).

⁴ Rand, "The Objectivist Ethics," p. 25 (emphasis added).

about observing the distinction, as when she says, “The fact that a living entity *is*, determines what it *ought* to do. So much for the issue of the relation between ‘*is*’ and ‘*ought*’.”⁵ If “ought” has its usual prescriptive sense, then it does not apply to nonhumans. Nevertheless, the distinction is not a dichotomy. Ethical values are a species of values as such. The distinguishing features that differentiate them as a specific type of value, according to Rand, are rooted in the distinguishing features of man’s mode of knowledge—that it is conceptual and volitional. Thus ethical values must be discovered by conceptual thought and identified in the form of principles, and they must be chosen. But what is true of a genus is true of a species. Ethical values inherit the properties of value as such, including the fundamentality of the alternative of life or death and the fact that things have value only in relation to the life of the organism as an ultimate value.

The foregoing line of thought started with the concept of moral value and argued that it is grounded in the wider concept of biocentric value. We can also look at the transition from the other end, so to speak, beginning with values and valuing in the nonhuman realm. Moen refers to values at this level as “descriptive” (pp. 91 and 92). But are they not normative? Beavers survive by building dams. Doesn’t that mean dams are good for beavers, that it is good for them to build dams, that a good dam-builder is a good beaver? These are not prescriptive claims—we can’t blame a lazy or incompetent beaver as a moral failure—but the claims are normative. Given Rand’s basic analysis of value and life, with which Moen seems to agree, we have already crossed a line from the purely descriptive to the normative. From there, the further step from the merely normative to prescriptive norms does not seem a giant leap. On the contrary, it’s a reasonable step in light of the considerations in the previous paragraph.⁶

⁵ *Ibid.*, p. 18.

⁶ In contemporary philosophy, the terms “normative” and “prescriptive” tend to be treated as synonyms, equally contrasted with “descriptive.” That may reflect an implicit assumption that norms and rules apply only to humans. An exception is Philippa Foot, who, like Rand, thinks that evaluative terms have wider application to living organisms as such. In *Natural Goodness*, Foot uses the term “evaluative” consistently in talking about judgments regarding the good of living things—their flourishing, survival, and reproduction in accordance with the mode of life of the species. But she also frequently uses the term “normative,” e.g., “In the description of natural goodness in plant and animal life we have been talking about normative judgments of goodness and defect that, even here, would naturally be called ‘evaluative’” (Philippa Foot, *Natural Goodness* [Oxford: Oxford University Press, 2003], p. 36).

3. Happiness

Like the two issues I mentioned at the beginning of the previous section, the relation between life and happiness is another perennial issue in the Objectivist ethics. In what way (if any) is happiness a constituent part of life as an ultimate value?

In making his case that happiness rather than life is the ultimate value, Moen begins with a question:

[I]t seems that some features of life have the power to make it more worth living (say, friendship, love, excitement, pleasure, and health) while other features make life less worth living (say, failure, agony, pain, and disease). How can this be accounted for if life is the ultimate value? (p. 103)⁷

The first step in Moen's argument, accordingly, is that happiness adds to the value of a life—makes it more worth living—in a way that makes it valuable for its own sake. The second step comes in his response to the objection that making happiness the ultimate value raises the same question about justification that arises with choosing life. If happiness is valuable as an end in itself, not a means to some further value, then where does the choice to pursue happiness get its prescriptive force? Moen argues that “it is argumentatively less costly to justify the ultimate value of happiness than the ultimate value of life” (p. 109). In the case of life,

what one faces is genuinely a choice: Among all the things that it is possible to hold as one's ultimate value, one is urged to choose one among these, namely, life. In the case of happiness, however, it seems that one would not make a choice, but rather, acknowledge a fact. I, for one, do not choose that happiness is better for me than suffering is. I acknowledge that happiness is better than suffering, and granted the kind of being I am, I cannot acknowledge otherwise. (p. 109)

⁷ I make the same point in “Choosing Life” (talk given at The Objectivist Center's 1999 Summer Seminar, accessed online at: <http://www.atlassociety.org/choosing-life>, Section III.a.):

If I ask you what gives your life meaning, what makes it worth living, you understand what I am asking . . . Yet on the Objectivist theory, this question shouldn't make any sense. Life is the highest value, the ultimate value, the end in itself, with everything else serving as a means to it. So how can some other value make life worth living? Doesn't that imply that that other value is highest, that it's the real end in itself for which life is a means?

But I take this question in a different direction from Moen.

Though his argument seems at odds with Rand's, the view that Moen ultimately defends is very close to hers. In the final section of his paper, he notes that at times Rand herself treats happiness as an ultimate value, as do many other Objectivist writers. He goes on to suggest a reconciliation based on Rand's distinction between a purpose and a standard: "Happiness can properly be the *purpose* of ethics, but not the *standard*."⁸ I think Moen's analysis of this distinction is accurate and insightful. At the end of the day, at least on this issue, his view seems essentially the same as hers. But there are differences that I want to flag.

The first has to do with the complexity of a human life as a phenomenon, and thus as an ultimate goal. When Rand says that happiness is a legitimate moral purpose but that life must be the moral standard, she is distinguishing happiness as an emotional state from life as an existential state and process. But in the same section of "The Objectivist Ethics," she asserts a very tight connection between them:

The maintenance of life and the pursuit of happiness are not two separate issues. To hold one's own life as one's ultimate value, and one's own happiness as one's highest purpose are two aspects of the same achievement.⁹

Elsewhere, she speaks more expansively about ultimate purposes. Consider, for example, this list of passages from *Atlas Shrugged*, each of which seems to assert some ultimacy for the term in bold¹⁰:

(1) Dagny and Rearden (I, 4)

If **joy** is the aim and the core of existence, [Dagny] thought, and if that which has the power to give joy is always guarded as one's deepest secret, then they had seen each other naked in that moment. (p. 87)

(2) The young Francisco (I, 5)

Dagny: "Francisco, what's the most depraved type of human being?"

Francisco: "The man without a **purpose**." . . .

"Dagny, there's nothing of any importance in life—except how well you do **your work**. Nothing. Only

⁸ Rand, "The Objectivist Ethics," p. 33.

⁹ *Ibid.*, p. 32.

¹⁰ All page references are to the centennial edition: Ayn Rand, *Atlas Shrugged* (New York: Plume, 2005).

that. Whatever else you are, will come from that. It's the only measure of human value" (pp. 99-100)

(3) Dagny-Rearden love scene (I, 8)

Through all the steps of the years behind them, the steps down a course chosen in the courage of a single loyalty: their love of **existence** . . . they had moved by the power of the thought that one remakes the earth for **one's enjoyment**, that man's spirit gives meaning to insentient matter by molding it to serve **one's chosen purpose**. (p. 252)

(4) Dagny waiting for Rearden to arrive (II, 1)

The hours ahead, like all her nights with him, would be added, she thought, to that savings account of one's life where moments of time are stored away in the **pride** of having been **lived**. The only pride in her workday was not that it had been lived, but that it had been **survived**. It was wrong, she thought, it was viciously wrong that one should ever be forced to say that about any hour of one's life. (p. 367)

(5) Rearden watching Dagny at the Taggart wedding party (II, 2)

Then, as if a single, sudden blow to his brain blasted a moment's shift of perspective, he felt an immense astonishment at what he was doing here and why. He lost, for that moment, all the days and dogmas of his past; his concepts, his problems, his pain were wiped out; he knew only—as from a great, clear distance—that man exists for **the achievement of his desires**, and he wondered why he stood here, he wondered who had the right to demand that he waste a single irreplaceable hour of his life, when his only desire was to seize the slender figure in gray and hold her through the length of whatever time there was left for him to exist. (p. 398)

(6) Francisco speaking to Rearden (II, 3)

"Did you ask me to name man's motive power? Man's motive power is his **moral code**. Ask yourself where their code is leading you and what it offers you as your final goal." (p. 455)

(7) Dagny's reaction to Directive 10-289 (II, 6)

She did not know that the thing which seemed so violent, yet felt like such a still, unfamiliar calm within

her, was the power of full certainty—and that the anger shaking her body, the anger which made her ready, with the same passionate indifference, either to kill or to die, was her love of **rectitude**, the only love to which all the years of her life had been given. (p. 552)

- (8) Rearden's soliloquy on signing the Gift Certificate (II, 6)
I damned the fact that **joy** is the core of existence, the motive power of every living being, that it is the need of one's body as it is the goal of one's spirit, . . . (p. 564)
- (9) Francisco at Dagny's cabin, trying to recruit her (II, 8)
“They use your love of **virtue** as a hostage. They know that you'll bear anything in order to work and produce, because you know that **achievement** is man's highest moral purpose, that he can't exist without it, and your love of virtue is your love of **life**.” (p. 619)
- (10) Dagny in the Gulch, at Galt's powerhouse (III, 1)
But she knew that there was no meaning in motors or factories or trains, that their only meaning was in man's **enjoyment of his life**, which they served—and that her swelling admiration at the sight of an achievement was for the man from whom it came, for the power and the radiant vision within him which had seen the earth as a place of enjoyment and had known that the work of **achieving one's happiness** was the purpose, the sanction and the meaning of life. (p. 731)
- (11) Francisco to Dagny, on discovering she is alive in the valley (III, 2)
“Dagny, every form of happiness is one, every desire is driven by the same motor—by our love for a single value, for **the highest potentiality of our own existence**—and every achievement is an expression of it.” (p. 768)
- (12) Thompson tries to persuade Galt to cooperate (III, 8)
Thompson: “Don't you want to **live**?”
Galt: “Passionately.” He saw the snap of a spark in Mr. Thompson's eyes and smiled. “I'll tell you more: I know that I want to live much more intensely than you do. I know that that's what you're counting on. I know that you, in fact, do not want to live at all. I want it.

And because I want it so much, I will accept no substitute.” (p. 1104)

What I find interesting about such passages is the range of things that Rand asserts are fundamental purposes, values, commitments, and/or motivations. The list includes joy, purpose, work, existence, pride, achievement of one’s desires, one’s moral code, rectitude, virtue, happiness, realization of potential—and, of course, life. We could reduce the list to a few categories—perhaps life/existence, happiness, purpose/achievement, and virtue/pride. In any case, Rand’s ease in moving from one to another suggests that she sees them as intrinsically connected elements in the ultimate value. Those elements can be distinguished conceptually; we can analyze their multiple relationships and dependencies; but they cannot validly be treated as isolated atoms. They are structurally connected elements in the complex whole that is a life well-lived, the life we pursue as our ultimate value. That seems to me the best interpretation of Rand’s thought, and in any case I believe it is true.

At several points, Moen seems to take a more atomistic view of these elements. One example is a criticism of a point I make in “Choosing Life,” when I introduce a discussion of core purposes in one’s life with an anecdote:

In a local Department of Motor Vehicles I once saw a poster intended to discourage drunk driving. It was called “50 Reasons for Living,” and the reasons were: balloons, ice cream, hugs, Thanksgiving, flowers Despite its sentimentality and superficiality, the list reflects an obvious truth: [The meaning of life] is connected with things we find intrinsically satisfying and not merely means to an end.¹¹

In response, Moen says, “It seems that in the strict sense of the doctrine that life is the ultimate value, the choice to live would have to be made without regard for the experiential content of life” (p. 111). I think the response misinterprets my point. I was not concerned with either of the abstract meta-ethical theses I discussed in Section 2 above: that life is the ultimate value and that a person’s life is a value to him because he chooses it. I was concerned with the way in which the choice to live is made and experienced concretely. Choosing to live means choosing the life one has, choosing to continue existing as an entity with a specific identity. It means choosing to continue a life with a unique, particular content that includes the things one has done; one’s traits, beliefs, goals, and circumstances; and—to the point in the passage at hand—the core purposes that one experiences as intrinsically valuable, constitutive rather than instrumental means to the ultimate value of one’s life. In this sense, the value *of* a life consists in the

¹¹ Kelley, “Choosing Life.”

values *in* that life. In short, I do not see how one can separate life from its content, including its experiential content.¹² (Of course one can change that content, even its basic elements: one can modify or abandon a purpose, enhance a virtue, overcome a fault, etc. But one does these things with the resources one has as the person one is, in pursuit of more fundamental goals.)

My argument so far has aimed to undermine what I take to be an atomistic distinction between life *per se* as a value and its elements. At an abstract level, the passages I cite above from *Atlas Shrugged* illustrate the way in which Rand thought of existence, achievement, and happiness as intrinsically connected elements in the ultimate value of life. In the concrete, the life of an individual is the ongoing existence of a person with a specific identity, whose life has a specific content. To put the point in epistemological terms, the conception of life as an ultimate value depends on the concept of life, and life is a complex phenomenon. We can isolate its various dimensions conceptually. In particular, we can abstract the dimension of survival—the existence of an entity that initiates action to sustain itself—from the other attributes of human beings. Like all concepts, however, the concept of life subsumes *all* the attributes of its referents.¹³

On the Objectivist theory of concepts, however, we must identify which characteristics are essential. So we can still ask, in regard to the choice to live, which element or dimension is essential to the object of our choice. In this sense, Moen's claim that happiness is the essential element is an answer to a valid question. But I would argue on epistemological grounds that the claim cannot be sustained.

Happiness includes a wide range of emotional states with positive affective and motivational valence: the giddy joy of falling in love, the pride of meeting a deadline, the serenity of coming to terms with a threatening fact, the experience of flow when one is engrossed in an activity that is going well, and on and on. As modes of consciousness, these experiences are of or about something; they have intentional content. The Objectivist axiom of consciousness asserts that to be conscious is to be conscious of something, and the axiom is true of affective states no less than cognitive ones. The corollary principle is the primacy of existence: In the subject-object relation, the object is primary; it is what it is, independently of the consciousness of it, whereas consciousness is dependent.

For a cognitive state like perception, what this means is that the apple I see is there, it exists, and it is the content of my perceptual awareness. My

¹² Other Objectivist scholars have made similar points, pointing to positive elements in the content of one's life that can motivate the choice to live and function as reasons for it (not reasons that make the choice morally obligatory but that draw one's attention to what is at stake). See Moen's references, p. 111.

¹³ Rand, *Introduction to Objectivist Epistemology* (New York: New American Library, 1979): "the concept subsumes *all* the characteristics of its referents, including the yet-to-be-discovered" (p. 66).

experience is not of a phenomenal world created by my conscious capacities, as some idealists have held. Nor am I directly aware only of an inner content—an appearance—that is independent of the external object, as many representationalists have held. To be sure, the apple does appear a certain way that is partly determined by the nature of my visual system as well as the conditions of perception. But it is still the apple that appears, the apple that I perceive. It is fallacious to infer that, because I perceive the apple in virtue of its appearance, I am therefore really aware of the appearance.¹⁴

Of course one can attend to the appearance, in the way that a painter would, and in that sense make it an object of attention. Even so, what one attends to is the appearance *of* the apple, not a detached or independent state of consciousness. Again, one can desire a perceptual experience because of its phenomenological character, as when I go outside to enjoy the sunset. But the experience I seek is the experience *of* the sun, sky, and horizon. Perception is a real relation to its objects in the world. By the primacy of existence, those objects are essential terms in the relationship.¹⁵

Affective states like pleasure, pain, and emotions are modes of consciousness in which we experience objects as good or bad for us. The felt qualities of these states are analogous to the sensory qualities in perceptual experience. The red color of the apple, for example, is the form in which I am aware of the reflectance properties of the apple's surface. Its coolness to the touch is the form in which I am aware of the molecular kinetic energy of its surface in relation to that of my hands. In the same way, I would argue, when a knife slips and I cut my hand, the pain is my awareness of the cut in a form that makes me aware of the tissue damage. By analogy with the case of seeing the apple, the fact that pain is the way such damage appears to me does not imply that the real object of my experience is of an inner quality, separated from and independent of the knife and the cut. The painful dimension of the experience, moreover, cannot be detached from the other dimensions in my perception of the cut, including the awareness of the pressure and motion of the knife, just as seeing the apple's color is one dimension of the integrated perception of the apple as an entity, which includes my awareness of its shape, size, and location.

Emotions too are directed at objects. To be afraid is to fear something, to love is to love someone (or something), to feel pride is to be proud of something. But emotions are more complex because, unlike sensory pleasure and pain, they are typically based on an appraisal of the object, an appraisal that, whether conscious or not, has conceptual content: this action

¹⁴ The systematic case for these claims can be found in David Kelley, *The Evidence of the Senses* (Baton Rouge, LA: Louisiana State University Press, 1986).

¹⁵ Cf. Ayn Rand, *Atlas Shrugged*: "A consciousness conscious of nothing but itself is a contradiction in terms: before it could identify itself as consciousness, it had to be conscious of something" (p. 1015).

was unjust (anger), this person embodies my deepest values (love), I met this challenge (pride), etc. In the Objectivist epistemology, the relation between conceptual cognition and its objects in reality is far more complex than is the case in perception, and the point applies as well to emotions with conceptual content. An emotional response depends in particular on how one interprets and evaluates the object, and the interpretation and evaluation in turn depend on prior knowledge and value premises. In order to be angry at an insult, I must recognize it as an allegation about me and evaluate it as unjustified.¹⁶

The conceptual content implicit in an emotion can be extensive. For example, I am proud that I finished and published a book. That's a happy feeling. But the emotion is not a direct perceptual response to the physical copy in my hands. It arises from and embodies a much wider context of knowledge: what books, publishers, and readers are; what it took to write the book and get it published; the insights I expressed in the book, and the thinking behind them; etc. In short, the affective quality of an emotion is the form in which we experience the value or disvalue of the object as conceptually identified, rather than as perceived directly. As with pleasure and pain, however, it is the object—and specifically its value significance—that we experience by means of the affect.

Moen addresses the dependence of emotion on value judgments when he acknowledges Rand's objection to hedonism: that happiness cannot be the standard of value, because, as an emotion, it results from the values one has antecedently accepted. That is why, in the end, he agrees with Rand's distinction between happiness as the proper purpose while life is the standard. But his formulation still suggests a sharper distinction than I think is warranted:

It might be that in order to achieve happiness, an agent must hold as his standard of value not happiness, but something external to his emotions—for example, his life. Perhaps holding life as one's ultimate value and acting accordingly is the best means to achieve happiness. (p. 114)

What I take exception to in this passage is the term “external.” If we take the primacy of existence seriously, and apply the principle to emotions as well as cognition, the object of an emotion is *not* external to the emotion. As a conscious state, the emotion is necessarily related to its object(s) in the world.

¹⁶ This “appraisal theory” of emotions, which is now widely accepted, has long been the standard Objectivist view of emotions. See Nathaniel Branden, *The Psychology of Self-Esteem* (New York: Bantam, 1971), chap. V. In psychology, the view was pioneered by Magda Arnold in *Emotion and Personality* (New York: Columbia University Press, 1960). Arnold's book may have been an influence on the Objectivist view; it was positively reviewed by Robert Efron in *The Objectivist* 5 (January 1966), pp. 12-15.

I have made this point in regard to specific emotions—specific, at-a-moment experiences of objects and specific forms of happiness. But if we think of happiness as an ongoing, pervasive reaction to a life that is going well, which I take Moen to be referring to here, my point applies on that larger scale: One is happy *about* one's life. One's life is the internal object of the emotion, and to seek and experience that happiness is to seek and experience the value of one's life. In that sense, life is the purpose as well as the standard of valuation.

4. Conclusion

In Section 2 of my response to Moen's article, I raised questions about the logic of his argument for the thesis that happiness, rather than life, is the ultimate value. The argument centers on the choice to live in Rand's ethics and Moen's concern that if the choice is pre-moral then life will not have prescriptive force as an ethical value. Unlike other interpreters of Rand who share this concern, however, Moen does not think that life as an ultimate value can be established prior to the question of choice—leaving the field wide open to other possible values as ultimate. In addition to noting gaps in the case he makes for that claim, I questioned his dichotomy between “descriptive” and “prescriptive” values.

In Section 3, I discussed Moen's view of happiness as an ultimate value. His final view is similar to Rand's in holding that even if happiness is properly considered the ultimate purpose in ethics, achieving happiness requires that one adopt life as the fundamental standard of value. But I questioned his formulation of that view on two counts: (1) I think Moen draws too sharp a distinction between life as a value and the values that make up the content of one's life, especially those that are constituent means. (2) The Objectivist principle of the primacy of existence implies that an emotion like happiness is internally related to its object; making an emotion the goal of one's actions is *ipso facto* to make its object a goal.

That said, I salute Moen for taking Rand's project seriously and raising such important questions to think about.

Reply to Danny Frederick's "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*"¹

Mark D. Friedman
Independent Scholar

I wish to start by thanking Danny Frederick for investing his time in reading and carefully critiquing my book.² If all critics were as meticulous and fair as Frederick has been to me, there would be far more constructive engagement between philosophers, and much less of theorists fruitlessly talking past each other. I concentrate below on what I regard as the key points raised in his review essay.

In *Nozick's Libertarian Project (NLP)* (pp. 20-29), I reconstruct as a deductive proof what I take to be Robert Nozick's argument for libertarian rights in *Anarchy, State, and Utopia (ASU)*; see especially *ASU*, pp. 29-34 and 48-51).³ This consists of five premises, leading to the conclusion: "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 note in the introduction that despite the fact that Nozick does *not* present his ideas in this fashion, I have elected to do so because it "makes his premises explicit and allows us to assess the overall strength of his reasoning" (*NLP*, p. 5). Subsequently, when I actually detail Nozick's argument, I caution further that "[p]hilosophy is not a branch of mathematics. These premises are certainly controversial, and cannot be conclusively demonstrated" (*NLP*, p. 29).

I am also quite open about my view that Nozick's argument is built on a foundation of certain widely shared and deeply felt moral intuitions. In

¹ A slightly different version of this Discussion Note appears on Mark Friedman's blog *Natural Rights Libertarian*, September 16, 2014, accessed online at: <http://naturalrightslibertarian.com/2014/09/my-reply-to-danny-fredericks-review-of-nlp-in-reason-papers/>.

² Danny Frederick, "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*," *Reason Papers* 36, no. 1 (July 2014), pp. 132-42.

³ Mark D. Friedman, *Nozick's Libertarian Project: An Elaboration and Defense* (New York: Bloomsbury, 2011); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

this vein, I quote Bertrand Russell's observation that ethical reasoning starts with "the kind of proposition of which proof is impossible, because it is so simple or so obvious that nothing more fundamental can be found from which to deduce it" (see *NLP*, p. 21).

Frederick's critique of my (Nozick's) argument for libertarian rights focuses on the transition from Premise (4) ("Persons are inviolable *because* they are rational agents") to Premise (5) ("Persons have a right to exercise their rational agency without interference, subject only to the equal rights of other rational agents"). I offer two reasons why an agent who accepts the truth of (4) should also accept (5). The first draws on the notion that "[b]ecause the special moral status of rational agents is rooted in their autonomy, appropriate deference [to this characteristic] requires that they be permitted to live the life they choose, so long as they do not infringe the equal rights of others" (*NLP*, p. 27).

The second reason draws on the appeal of "moral impartiality," meaning that there are no special privileges or exemptions that apply to some persons, but not others. So, those who accept the inviolability of persons generally, "may not, without contravening a basic moral principle, demand respect for their own autonomy while denying equal respect to other persons" (*NLP*, p. 28). I further explain that while many egalitarians may purport to accept Premise (4) while nonetheless rejecting (5), they do so on the basis of faulty logic. For example, they draw an indefensible distinction between the stringency of property and other sorts of rights (*NLP*, p. 28). Accordingly, although they may not realize this, if they assent to Premise (4), they cannot consistently reject Nozick's argument for libertarian rights.

Frederick is satisfied with neither justification. He objects to the first on the grounds that Premise (4) does not entail (5) because "Friedman's argument for (4) showed only that rational agency and overridable middling side-constraints are correlated. We are looking to the second part of his argument to provide the *because*" (p. 137; his emphasis). Frederick is right that (4) does not logically imply (5) in some strict sense, but I nevertheless believe that (4) provides a *reason* for accepting (5), at least as far as "reason" is usually understood in moral discourse.

Suppose that Joe is a classical utilitarian who believes accordingly that the wanton infliction of pain on sentient creatures is wrong. I happen to encounter him standing idly by while his small child continuously cries out in intense pain, which could be immediately alleviated by a trivial exertion. What better reason could I give Joe for acting, other than pointing out to him that his inaction violates what he acknowledges to be a valid moral principle?

Analogously, I think that a person who accepts (4) is committed to respect the exercise of rational agency in the same way that the classical utilitarian is bound to promote pleasure and minimize pain. If an agent accepts that other persons have moral status only because they are rational agents, then at least if she wishes to act rightly, the appropriate response to this fact is

not to gratuitously impede the exercise of this attribute. If she lacks good will, then I am afraid no argument will suffice.

As noted, my second argument for the claim that an agent holding Premise (4) should also accept Premise (5) rests on the notion of moral impartiality. Here, Frederick asks first about those who reject (4): “Friedman is supposed to be explaining *why* rational agency grounds side-constraints; he must address his arguments to those who doubt or deny (4), not just to those who already accept it” (p. 137; his emphasis). I think he is demanding too much of me.

Premise (4) is built up from previous premises, all of which ultimately rest on Kantian notions of respect for persons, and particularly Kant’s idea that persons may never be used simply as a means for accomplishing objectives not of their own choosing. Committed utilitarians and those enamored of “social justice” are in the grip of other, inconsistent intuitions, and will thus never accept (4) or (5).

Frederick further contends that my appeal to moral impartiality does not give even those egalitarians who claim to accept (4) an adequate reason to endorse (5) (p. 137). In response to my argument that (as I purport to show in Chapters 2 and 3) egalitarians will not be able to draw a principled distinction between acceptable and unacceptable redistributions, he observes that I draw such lines in Chapter 6, so my argument “falls apart.” However, the redistributions I endorse there are *consistent* with (4), while those proposed by our egalitarian friends are not.

For instance, I argue in Chapter 6 that if no other means are available, coercive taxation to support the *innocent* poor can be justified under either Nozick’s Lockean proviso or by the demands of moral pluralism. The latter approach is consistent with (4) because the “inviolability” referenced there is not absolute. Conversely, I don’t believe that an egalitarian can commit to even a defeasible notion of inviolability, while at the same time endorsing massive social engineering projects that do not target the truly needy, and fail to discriminate between the blameless and the irresponsible.

This brings me to Frederick’s objection that my reconstruction of Nozick’s argument for rational agency does not produce a version of side-constraints that accurately encompasses or defines libertarian rights (p. 138). Frederick notes that respect for rational agency is not coextensive with a prohibition on using persons solely as a means (which Nozick identifies as proposition “*p*,” that is, “a strong statement of the distinctness of individuals” [ASU, p. 34]), and argues with various examples 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” (p. 138). Because Frederick contends that *p* is superior to my formulation of the partial libertarian side-constraint, he offers a friendly amendment along critical rationalist lines (p. 139).⁴

⁴ “Partial” because it does not cover paternalistic aggression; see Nozick, ASU, p. 34.

The issues that Frederick raises are interesting and complex, and they cannot receive here the detailed treatment they deserve. Clearly, reasonable libertarians can disagree about this, but to my eyes the “never simply as a means” and the “separateness of persons” formulations of the libertarian constraint, like Ayn Rand’s Non-Initiation-of-Force Principle, operate at too high a level of abstraction to function as adequate guides to action. I suspect that this concern is what prompts Nozick to ask, “in virtue of precisely what characteristics of persons are there moral constraints on how they may treat each other or be treated?” (*ASU*, p. 48), which leads him to offer the argument I describe in *NLP*. In any case, I am not convinced that what I take to be Nozick’s statement of the libertarian constraint fails adequately to resolve any of the examples Frederick presents, bearing in mind the interpretation given by me in Chapter 6.

With respect to Frederick’s suggested critical rationalist alternative (pp. 139-40), I would just say that I question whether Nozick is committed to the idea that it is exclusively through “pure reason” that “persons discover who they are and then live their lives accordingly.” I fail to see why, for Nozick, experience should not play a vital role. In fact, although Frederick is proposing a very different meta-ethics, the “framework for utopia” described in Part III of *ASU* seems very much in the spirit of Frederick’s proposal, including Nozick’s concern that his framework protect people’s right of exit from communities that no longer meet their needs (see *ASU*, pp. 307-8).

Finally, this brings me to my effort to improve upon Nozick’s defense of the coercion employed by the minimal state in the provision of national defense and domestic security (see *NLP*, pp. 89-100). With respect to the former, I argue that a relatively just and peaceful state threatened with foreign aggression may permissibly compel all citizens to pay their fair share of taxes for military defense. Since all rational agents in such a polity benefit from this public good, would-be free riders commit what I call a “passive form of aggression” (*NLP*, p. 95). Accordingly, it is *not* that their right to these resources is overridden by the necessity of preserving rational agency; rather, the state may prevent them from culpably refusing to pay. I believe that Frederick does not object to this argument.

With respect to domestic security, as Frederick rightly notes, the issue is different. Very briefly, my argument here is that the risk to the exercise of our rational agency comes not from potential free riders, but from the possibility that too many individuals and private protective agencies would insist on enforcing their own conceptions of justice by means of their own preferred legal rules and procedures, leading to widespread, violent chaos. Thus, I claim that in (and *only* in) states “that operate substantially in accordance with F. A. Hayek’s construal of the rule of law,” the government is entitled to “exclude private PAs and independents from the unauthorized administration of justice” (*NLP*, p. 96).

In such communities all citizens are required to forgo their personal conception of rights and their preferred procedures, but they do so as members of a state whose role is strictly limited to promulgating and enforcing only abstract and neutral rules that are consistent with Hayek's political ideal. Moreover, in such a polity, it is possible to reform laws that are shown unduly to limit freedom. Here again, the argument is not that the individualist anarchist's right to enforce justice is overridden by the demands of rational agency, but that no such right exists.

Frederick questions why I need to invoke the idea that citizens in a society governed by the rule of law have "collectively forgone" their individual notions of justice. Why not simply rest my argument on the paramount value of rational agency? As Frederick puts it, "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" (p. 142).

As I hope is clear by now, I agree with Frederick's point, but I am afraid that, as stated, it concedes more than I would like. I do not wish to say that the Hayekian minimal state is engaging in objectionable coercion that is nonetheless acceptable as the price of preserving our rational agency. Rather, my idea is that the individual anarchist would be acting wrongly if he insists on enforcing his own rights. Just as financing the military defense of a relatively peaceful state requires all citizens to pay their fair share of taxes, the rule of law requires all members to accept, subject to reform efforts, the state's monopoly of law enforcement. A contrary judgment would cede to the independent a special privilege surrendered by his fellow citizens (see *NLP*, pp. 98-99).

Reply to Mark Friedman

Danny Frederick
Independent Scholar

I thank Mark Friedman, and the editors of *Reason Papers*, for giving me an opportunity to say more clearly and more concisely what I take to be the key mistakes in Friedman's arguments for individual rights and the minimal state.

Friedman, following Robert Nozick, argues that the fact that (normal adult) persons have rational agency is what explains the *partial* libertarian side-constraint:

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

There are two main points at which the argument fails.

The first is the transition from an agent's rational agency to his right to exercise his rational agency without interference, subject only to the equal rights of other rational agents. Rational agency is a factual status. Having a right is a moral status. To get from the former to the latter we need to add some premises about *value*. Friedman makes a number of suggestions, the most promising of which are:

- (i) Rational agency is valuable.
- (ii) Appropriate deference to rational agency entails granting the right in question.

However, (i) will not do. From "A is a rational agent" and "rational agency is valuable," the most that seems to follow is that we ought to take *some* account of the value of the rational agency of A in our decisions. How much attention we should pay to the value of the rational agency of A depends upon *how* valuable rational agency is. Furthermore, however great is the value of the rational agency of A, it seems it might always be open to trade-off against some marginally greater value. Why should we not use A merely as a means, or even destroy A, if we can thereby create a slightly more valuable B (or B and C)?

Friedman's (ii) implies (i) because *appropriate deference* to rational agency makes sense only if rational agency is valuable. Adding (ii) as a premise will plainly get us from rational agency to a right to exercise rational agency, but only because it is wholly *ad hoc*: it simply affirms the connection

between the two. But we seek an explanation for *why* (ii) is true. As we have just seen, the mere fact that rational agency is valuable, even highly valuable, does not explain it.

The second main point at which the Nozick/Friedman argument fails is that there are two problems with the right to exercise rational agency without interference, subject only to the equal rights of other rational agents:

- (a) It differs from the partial libertarian side-constraint, (p).
- (b) It is not a right that persons have.

I illustrated these problems with an example. I see that Joe intends to ask Annie for the next dance, but before he does, I ask Annie to dance and she accepts. I interfere with Joe's exercise of his rational agency, preventing the execution of his plans. But I do not use him merely as a means for the benefit of other persons. I do not use him as a means at all. Furthermore, my action is morally permissible, despite interfering with Joe's exercise of his rational agency.

I suggested an alternative route from rational agency to (p) along the following lines.

- (1) Persons are marked by *critical rationality*, which enables them to ask: (q) What sort of life will fulfill me? [Premise]
- (2) A person can discover the answer to (q) only by making guesses and testing them. [Premise]
- (3) Testing proposed answers to (q) requires the person who asks (q) to experiment with different ways of life and to evaluate the results in the light of her sense of fulfillment. [Premise]
- (4) If a person is to discover the answer to (q), she must be free to direct her own life. [From (2) and (3)]
- (5) A person achieves fulfillment if and only if she discovers the answer to (q). [Premise, perhaps "true by definition"]
- (6) If persons are to achieve fulfillment, they must be free to direct their own lives. [From (4) and (5)]
- (7) The function of morality is to facilitate the achievement of the value of the fulfillment of all persons, so far as is practically possible. [Premise]
- (8) Morality requires that persons be free to direct their own lives. [From (6) and (7)]
- (9) Persons have the moral right to direct their own lives. [From (8)]
- (10) It is impermissible for a person to be used merely as a means for the benefit of others. [From (9)]

A caveat, which requires further argumentation,¹ says that the right specified in (9) is not absolute. It is permissible to use a person merely as a means for

¹ See Danny Frederick, "Pro-tanto versus Absolute Rights," *Philosophical Forum* 45

the benefit of others only in those relatively rare cases in which the value of doing so is *very large* in comparison with the wrong done to the victim. That gives us (p). A further step explains why the right of persons to direct their own lives requires that they are permitted to acquire and exchange private property with minimal restrictions.

I think that Friedman is largely right in his explanation for the legitimacy of the minimal state. What I find gratuitous and puzzling is his addition of an element of consent when he talks of citizens “collectively forgoing” their personal conception of rights and their preferred legal procedures. The idea that all members of a society would agree to forgo something, or even that there is anything they would all agree on, is not only preposterous, but unnecessary for the explanation and may even be inconsistent with it. I would spell out the explanation in a rule-consequentialist way. The depredations of feuding warlords would grossly undermine general human fulfillment. Therefore, morality requires that a state has the right to enforce laws consistent with the conditions required for general human fulfillment. Consequently, a minimal state has political authority. Such a state does not cease to have political authority if some people do not think it has political authority, or act as if it does not, any more than a dog ceases to be a dog if some people think it is a stone or treat it as if it is a stone. So the political authority of a minimal state does not require that its citizens agree that it has political authority or that they all act as if it does. The minimal state retains its political authority even if its citizens become befuddled by Karl Marx or John Rawls and set out to destroy it. Indeed, since a minimal state will respect freedom of expression, it will thereby enable open discussion about rights and the role of the state, and it will thus facilitate vigorous discussions about alternative conceptions of rights and whether the minimal state has political authority. Such an outcome seems inconsistent with the sort of “collective forgoing” to which Friedman mistakenly appeals.

There is much that is valuable and enjoyable in Friedman’s book, despite the mistakes I have discussed (and others besides). There is no book of philosophy (or of science, for that matter) that is not full of errors. We learn by making mistakes and correcting them. So I should end by conceding that I may be mistaken in what I think are mistakes in *Nozick’s Libertarian Project*.

Articles

Fetuses are Like Rapists: A Judith-Jarvis-Thomson-Inspired Argument on Abortion

Stephen Kershnar
SUNY, Fredonia

1. Introduction

A common view in the line of argument on abortion arising from Judith Jarvis Thomson's seminal piece is that abortion is permissible because the fetus has no right to be inside the woman.¹ If the fetus has no right to be inside the woman, there is then a well-developed debate on whether abortion is a doing versus an allowing (for example, a killing versus a letting die) and an intentional or merely a foreseeable bringing about of death. There is also an extended discussion about whether early abortions kill persons, that is, individuals who would be on a moral par with adult humans, rights-bearers, and so on. In this article, I argue that even if abortion is an intentional killing of a person with full moral rights, it is just. I then argue that if it is just, then it is permissible.

Section 2 of this article addresses whether abortion is just. It begins by providing Thomson's argument on why the fetus has no right to be inside the woman and proceeds to explain why abortion is just. Section 3 argues that if abortion is just, then it is morally permissible. That section argues that there is no duty to save people, and that if there is no duty to save people, then there is no duty to save fetuses. It then notes that even if there is a duty to save, the woman satisfies it.

2. Abortion Is Just

a. Concepts

Following Thomson, it is helpful to have some distinctions before us. Consider her account of a right:

Concept #1: Right. A right is a claim.

¹ See Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971), pp. 47-66.

Concept #2: Justice. One person acts justly toward a second if and only if the first respects the second's right.

Thomson illustrates this through the following case:

Case #1: Greedy Brother

A box of chocolates is given to an older brother. There he sits, stolidly eating his way through the box, his young brother watching enviously. Here we are likely to say, "You ought not be so mean. You ought to give your brother some of those chocolates." If the older brother refuses to give his brother any, he is greedy, stingy, callous—but not unjust.²

The right and justice notions then lead to her account of the right to life:

Concept #3: Right to Life. The right to life is the right not to be unjustly killed. One person infringes on a second's right to life if and only if the first infringes on the second person's right and her doing so kills the second.

Thomson illustrates this notion with the following case:

Case #2: Henry Fonda

If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice for him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them.³

These concepts then set up the argument for abortion's being just.

b. Most abortions are killings

Most abortions are killings.⁴ If one considers dilation and curettage (for example, suction curettage), dilation and evacuation (pulling a fetus apart

² See *ibid.*, p. 60.

³ See *ibid.*, p. 55. For an interesting discussion of this case, see Evangelos Proptopapadakis, "A Cool Hand on My Feverish Forehead: An 'Even Better' Samaritan and the Ethics of Abortion," *Philosophy Study* 2 (2012), pp. 115-23.

⁴ For other people who argue that Thomson's argument fails because it views abortion as a letting-die problem rather than an issue of permissible killing, see Francis Beckwith, "Personal Bodily Rights, Abortion, and Unplugging the Violinist,"

with forceps), dilation and extraction (also known as partial-birth abortion), and so on, they are all killings. They involve a doing, rather than an allowing, that intentionally causes the destruction of the fetus's body that leads to its death.⁵ This is similar to a Normandy peasant who comes upon a Viking raping a woman. The peasant cuts the Viking in half with a broadsword to end the rape. There can be some debate about whether the peasant intends the Viking's death. The peasant might have as his goal the protection of the woman and have in mind his means of disabling the attack and the means of dismembering the attacker, without having the death of the Viking as his goal or the means to his goal, but this is still considered a paradigmatic killing. If this is a paradigmatic killing, then so is abortion.

Case	Event	Mental State	Effect	Relation event & effect	Type
Normandy peasant cuts Viking with sharp blade (sword)	Doing	Intent	Dismemberment	Proximate cause	Killing
Abortion-doctor cuts fetus with sharp blade (suction curettage)	Doing	Intent	Dismemberment	Proximate cause	Killing

Some abortions are not killings. In 2011 in the U.S., 23% of abortions were early medication-abortions. The abortion pill (mifepristone)

International Philosophical Quarterly 32 (1992), pp. 105-18, esp. pp. 116-17; Frances Kamm, *Creation and Abortion* (Oxford: Oxford University Press, 1992), pp. 74-76; Iain Benson, "What's Wrong With 'Choice'," in *A Time to Choose Life: Women, Abortion, and Human Rights*, ed. Ian Gentles (Toronto: Stoddart Publishing Co., 1990), pp. 24-46, esp. pp. 43-44; Stephen Schwarz, *The Moral Question of Abortion* (Chicago, IL: Loyola University Press, 1990), 115-116; Stephen Schwarz and R. K. Tacelli, "Abortion and Some Philosophers: A Critical Examination," *Public Affairs Quarterly* 3 (1989), pp. 81-98, esp. pp. 84-87; Baruch Brody, *Abortion and the Sanctity of Human Life: A Philosophical View* (Cambridge, MA: The MIT Press, 1975), p. 30; John Finnis, "The Rights and Wrongs of Abortion: A Reply to Judith Jarvis Thomson," *Philosophy and Public Affairs* 2 (1973), pp. 117-45, esp. p. 141.

⁵ On the notion that abortion is an intentional causing of death, see Patrick Lee, *Abortion and Unborn Human Life* (Washington, DC: Catholic University of America Press, 1996), p. 111; Thomas Hurka, "Review of F. M. Kamm's *Creation and Abortion*," *Journal of Medical Ethics* 20 (1994), pp. 121-22.

causes the fetus to detach from the uterine wall. If a fetus is detached from the uterine wall, then the detachment prevents the woman from keeping the fetus alive.

If one individual detaches himself from another and the detachment prevents the first from keeping the second alive, then the first lets the second die. Medication-abortions involve one individual detaching himself from another where the detachment prevents the first from keeping the second alive (that is, it is a letting die). Hence, a medication-abortion involves one individual letting a second die. If something is a letting die, then it is not a killing. Hence, a medication-abortion is not a killing.

The notion that a medication-abortion involves one individual detaching himself from another and the detachment is a letting die rests on an analogy. To see this, consider a famous case:

Case #3: Violinist

You wake up in the morning and find yourself back to back in bed with an unconscious violinist—a famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. [If he is unplugged from you now, he will die; but] in nine months he will have recovered from his ailment, and can safely be unplugged from you.⁶

Were the hooked-up person to disconnect himself from the violinist, this appears to be a paradigm case of letting die.⁷

⁶ Thomson assumes that one can disconnect oneself from the violinist. See Thomson, "A Defense of Abortion," p. 55. On some accounts, it is wrong to disconnect oneself from the violinist. See David Hershenov, "Abortions and Distortions: An Analysis of Morally Irrelevant Factors in Thomson's Violinist Thought Experiment," *Social Theory and Practice* 27 (2001), pp. 129-48; Peter Singer, *Practical Ethics* (New York: Cambridge University Press, 2011), p. 134.

⁷ Jeff McMahan argues that it depends on who disconnects the violinist. See Jeff McMahan, "Killing, Letting Die, and Withdrawing Aid," in *Killing and Letting Die*, ed. Bonnie Steinbock and Alastair Norcross, 2nd ed. (New York: Fordham University Press, 1994), pp. 383-420. He argues that if the person connected to him disconnects the violinist, it is a letting die. If a third party does so, then in some circumstances it is a killing. Elsewhere, Thomson argues that it is permissible to kill the fetus if that is necessary to detach him. See Judith Jarvis Thomson, "Rights and Deaths," in *Rights, Restitution, and Risk: Essays in Moral Theory*, ed. William Parent (Cambridge, MA: Harvard University Press, 1986), pp. 31-32.

The medication-abortion is similar to the violinist case. A rape victim who takes the abortion pill is similar to the person who disconnects himself from the violinist in terms of the action (disconnection), intention, causal relation, and effect. Hence, if a disconnection in the violinist case is a letting die, then so is the case of the rape victim who takes an abortion pill. If a rape victim who takes an abortion pill lets the fetus die, then so does the pregnant woman who is not a rape victim. Here is a table that illustrates the parallel features.

Case	Subject	Object	Act	Effect	Relation	Type
Violinist	Kidnap victim	Violinist	Disconnection	Death	Cause	Letting die
Pregnancy (Rape)	Rape victim/Pill taker	Fetus	Disconnection	Death	Cause	Letting die
Pregnancy (Voluntary sex)	Pill taker	Fetus	Disconnection	Death	Cause	Letting die

If in a given scenario killing someone is permissible, then so is letting that person die. Thus, if as I argue below, it is permissible for a woman to kill a fetus (or zygote or embryo), then it is permissible for her to let it die.

c. Argument

Here is Thomson's argument for abortion:

(P1) If abortion is unjust, then it infringes on the fetus's right to life.

(P2) Abortion does not infringe on the fetus's right to life.

(C1) Hence, abortion is just. [(P1), (P2)]

Premise (P1) rests on the nature of the right to life. Premise (P2) rests on the following three assumptions:

Assumption #1: No Right. The fetus has no right to be inside the woman.

Assumption #2: Removal. If the fetus has no right to be inside the woman, then it may be removed with proportionate force.

Assumption #3: Proportionate Force. In abortion, the woman uses proportionate force.

Thomson's argument is that sex is not consent for a fetus to be inside a woman. Even if it were consent, she can withdraw it.⁸ Thomson argues that mere intercourse is not consent because it clearly is not present in the case of rape. Nor is it present when a woman has sex with contraception. To see this, consider the following:

Case #4: Burglar 1

The room is stuffy and Alice opens a window to air it. She had had bars installed outside her windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It would be absurd to say, "Ah, now, he can stay, she's given him a right to use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars and burglars burgle."⁹

The analogy here is to sex with contraception. Just as the owner has not consented to the burglar to enter and stay in the house, the woman has not consented to the fetus to enter and stay in her uterus. The same is true in the case of sex without contraception. To see this, consider the following:

Case #5: Burglar 2

Same as burglar #1, but Alice did not have bars installed outside her windows.

Even if consent had been given, it can be withdrawn. To see this, consider the following case (from me, not Thomson):

Case #6: Party Pooper

Betty has a party and invites everyone to her house. She notices her boyfriend making out with another woman. She tells everyone to leave.

Just as Betty may withdraw consent to partygoers who are in her house even if she earlier granted it, a woman may withdraw consent from a fetus in her uterus even if she previously granted it.

In summary, (P1) rests on the nature of the right to life. The above arguments support the first assumption underlying (P2) (the fetus has no right to be inside the woman). The second assumption (if the fetus has no right to

⁸ For an in-depth defense of Thomson's argument here, see David Boonin-Vail, "A Defense of 'A Defense of Abortion': On the Responsibility Objection to Thomson's Argument," *Ethics* 107 (1997), pp. 286-313.

⁹ See Thomson, "A Defense of Abortion," p. 60.

be inside the woman, then it may be removed with proportionate force) rests on a standard assumption about defensive force being just only if it is proportionate to the threat. An “unjust threat” is a thing that has a significant likelihood of causing unjust harm.¹⁰ I use “threat” as shorthand for “unjust threat.” Here the threat is a trespass.

From here I switch the argument from Thomson’s to mine. What needs to be shown is that in abortion, the woman uses proportionate force. This argument begins with the notion that as a matter of justice, a person may use lethal force to prevent rape:

Case #7: Prison Rape

In prison, a large man (Big Amp) goes to rape a small one (Sheldon). The only way Sheldon can defend himself is to stab Big Amp with a shank. Given the absence of guards and the nature of the shank, it will likely kill Big Amp.

Intuitively, as a matter of justice, Sheldon may stab Big Amp if this is the only way the former can prevent the latter from raping him. On my account, this is due to Big Amp’s forfeiting his right.¹¹ However, this is compatible with Sheldon’s having this right because his right to his body overrides Big Amp’s right to life.¹² It is also compatible with Sheldon’s having this right because Big Amp’s right has a complex content. For example, the right is the following: it-is-wrong-to-penetrate-Big-Amp’s-body-unless-he-consents-or-attacks-another-or-¹³

¹⁰ I am assuming here that only doings, and not omissions, can cause harm and that a doing is a real (non-Cambridge) change in the properties of an object.

¹¹ Those who assert that a criminal forfeits some of his moral rights include Stephen Kershnar, “The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing,” *Philosophia* 29 (2002), pp. 57-88; A. John Simmons, “Locke and the Right to Punish,” in *Punishment*, ed. A. John Simmons et al. (Princeton, NJ: Princeton University Press, 1995), pp. 238-52; Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), pp. 365-66; Vinit Haksar, “Excuses and Voluntary Conduct,” *Ethics* 96 (1986), pp. 317-29; Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982); Alan Goldman, “The Paradox of Punishment,” *Philosophy and Public Affairs* 9 (1979), pp. 30-46; Roger Pilon, “Criminal Remedies: Restitution, Punishment, or Both?” *Ethics* 88 (1978), pp. 348-57. These theories differ with regard to whether rights-forfeiture is a fundamental feature of rights or explained by a more fundamental principle.

¹² The notion that it is a permissible rights-infringement can be seen in Phillip Montague, *Punishment as Societal Defense* (Boston, MA: Rowman & Littlefield Publishers, Inc., 1995), chap. 5.

¹³ The notion that self-defense involves a narrowly bounded right (e.g., a right to life except-where-necessary-to-save-someone’s-life) is discussed in Judith Jarvis Thomson, “Self-Defense and Rights,” in *Rights, Restitution, and Risk*, ed. Parent, pp.

If the rights that protect autonomy are alienable, they can be waived. Can they also be forfeited? It intuitively seems so. It intuitively seems that a person can forfeit some of his rights. Consider the following:

Case #8: Bar Rapist

Outside a bar, a fully responsible attacker, Don, tries to rape and kill a woman, Erin. She defends herself by hitting him with a tire iron, badly bruising his leg and discouraging him from continuing the attack.

Consider what happens to the attacker's right to his body. If the right is neither overridden nor alienated, then Erin's hitting Don was wrong, although perhaps excused.¹⁴ This intuitively seems incorrect. If the defensive action is permissible, then the right is either overridden or not infringed. If it is merely overridden by Erin's right to control her body, then there is a residual duty that Erin owes Don. She thus owes him an apology, if not compensation. This is implausible. If Don's right has a complex content: do-not-hit-unless-necessary-for-defense-or-punishment-or- . . . , then the right presupposes the conditions under which defensive violence, punishment, etc. can be done.¹⁵ If so, then the right does not explain when and why such actions may be taken; it merely reflects the conclusion with regard to these things. However, rights theorists often think that rights are part of the moral world precisely because they do such explanatory work. This explains why theorists reason from rights to conclusions about abortion, free speech, and the right to privacy, rather than vice versa.¹⁶ The best explanation of Don's right is that it is lost. Because Don does not intend this to happen, it is forfeited rather than waived.

Rights-forfeiture is consistent with the alienability of rights. Just as rights can be waived as part of a self-shaping life, rights can also be forfeited as a way of restricting some individuals from interfering with others having self-shaping lives. The underlying picture of both is that rights protect a self-shaping life, although waiver is more directly connected to the exercise of the shaping process than is forfeiture.

37-42.

¹⁴ The notion that it is a permissible rights-infringement can be seen in Phillip Montague, *Punishment as Societal Defense* (Boston: Rowman & Littlefield Publishers, Inc., 1995), chap. 5.

¹⁵ The notion that self-defense involves a narrowly bounded right (e.g., a right to life-except-where-necessary-to-save-someone's-life) is discussed in Judith Jarvis Thomson, "Self-Defense and Rights."

¹⁶ See Thomson, "A Defense of Abortion"; Judith Jarvis Thomson, "The Right to Privacy," *Philosophy and Public Affairs* 4 (1975), pp. 295-314.

On a different account, defensive violence is permissible because it involves the fair distribution of the risk of harm from an attack.¹⁷ The problem with this account is that it does not address how fairness affects the rights of the two parties. In addition, if fairness is a value that depends on other values (for example, desert, rights, or equality), then fairness-based arguments likely need to be re-cast in terms of the more fundamental values before we can assess them.

This same thing holds true if one person grants the second the right to have sex with her and then withdraws it. Consider the following:

Case #9: Didn't Stop

A couple decides to have intercourse. The woman becomes frightened and sex becomes extremely painful for her. The man refuses, increases his forcefulness, and continues onward for an hour. After an hour the woman stabs him to make him stop.

Again, as a matter of justice, the woman may stab the man.

If the above argument is correct, then it is just to use lethal force to prevent rape. Given this and if carrying an unconsented fetus is as great an unjust trespass as unconsented-to sex, then it is just to use lethal force to prevent an unconsented-to pregnancy. To see why carrying an unconsented-to fetus is as great an unjust trespass as unconsented-to sex, consider the following:

Case #10: Nazi Choice

In Auschwitz, the Nazis notice an attractive twenty-year-old Jewish woman. They tell her that she can have sex with the Nazi officers (rape), carry the fetus of an officer and his wife (unwanted pregnancy), or be killed. She chooses the sex. Other women in her position would have a difficult time making this decision and some would prefer the sex.¹⁸

One infringement is as great as a second just in case the severity of infringement of the first is as great as the second. The severity of infringement is a (weighted) product of the importance of the right and the degree to which it is infringed. This product depends on what a right protects. On different theories, it protects the rights-holder's interest, legitimate interest, or

¹⁷ For such an account in the context of torture, see Michael Moore, "Torture and the Balance of Evils," in Michael Moore, *Placing Blame* (Oxford: Clarendon Press, 1997), pp. 726-36.

¹⁸ The idea for this case came from a visit to the Museum of Jewish Heritage in Lower Manhattan. A spritely elderly woman who (along with her sister) was in Auschwitz explained that the Nazis did not send them to be killed on account of their being pretty teenagers.

autonomy. On a rule-utilitarian theory, rights are rules about interactions that would maximize utility were a significant number of a population to follow them. A problem with this latter theory is that it is often thought that rights are side-constraints or trumps on utility maximization, and as such are not justified by utility.¹⁹

One guide to the severity of a rights-infringement is people's preferences. That is, preferences with regard to a choice of rights-infringements are evidence, albeit defeasible evidence, of the wrongness of the infringement. This is because people are somewhat good at ranking their interests, autonomy, and so on and estimating the degree to which others' acts set these things back.

A related guide is the market for acts that would otherwise be an unconsented-to rights-infringement.²⁰ Here, while there is a market for intercourse and carrying fetuses, this is likely not an accurate guide to the market value for unconsented-to versions of these acts because the acts are so different as to be disanalogous. Even if we could estimate the disvalue of such things by looking at the market for various insurance-compensation plans and defensive measures, the former does not exist and the latter is not tied closely enough to rape.

On one account, the stringency of a right varies, at least in part, with how bad the infringement of that right would be for the rights-holder (that is, the degree of harm to the rights-holder).²¹ On a second account, the stringency varies, at least in part, with the degree to which the rights-holder values that right. On a third account, it varies, at least in part, with the possibility of compensation.²² This third account overlaps significantly with the other two accounts because compensation should track the extent to which someone is harmed or disvalues what is done to her. One way to understand the first account is that because rights protect against harm, rights-stringency co-varies with it. The second rests on the notion that a claim is justified by what the rights-holder values, and so valuation co-varies with rights-stringency.

¹⁹ See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 28-32; and Ronald Dworkin, *Taking Rights Seriously* (New York: Harvard University Press, 1977), p. xi.

²⁰ For the use of a market to rank rights-infringements, see Michael Davis, "How to Make Punishment Fit the Crime," *Ethics* 93 (1983), pp. 726-52; Michael Davis, *To Make the Punishment Fit the Crime: Essays in the Theory of Criminal Justice* (Boulder, CO: Westview Press, 1992).

²¹ See Samantha Brennan, "How Is the Strength of a Right Determined? Assessing the Harm View," *American Philosophical Quarterly* 32 (1995), pp. 383-93.

²² All three accounts are found in Judith Jarvis Thomson, "Some Ruminations on Rights," in *Rights, Restitution, and Risk*, ed. Parent, chap. 4.

On the first two accounts, were the woman in question to be harmed by or disvalue the unconsented-to-Nazi pregnancy more than the unconsented-to-Nazi sex, then unconsented-to pregnancy would be at least as severe a rights-infringement as unconsented-to sex. If rights-stringency is a function of how in general women in that situation would be harmed by or would disvalue the infringement, and if women in the Nazi case would frequently prefer the sex to the pregnancy, the pregnancy would be as severe a rights-infringement as the sex.

These accounts (harm, valuation, and compensation) take a stronger view than the theory that asserts that rights-holder preference or valuation is evidence of rights-stringency rather than a determinant of it.²³ A problem with the former accounts is that this makes rights-stringency vary between people. In addition, rights-stringency might depend on irrational preferences or uninformed judgments. This is true regardless of whether the judgments are *ex ante* or *ex post*.

Another problem is that if rights are justified by one type of interest (for example, autonomy-related interests) then the focus on overall harm or valuation is too broad in that effects on autonomy can diverge from overall interest protection. Rights might be thought to focus on autonomy-related interests because most, if not all, rights protect choices; because most rights are claims to non-interference and correlate with morally permissible options; and because the rights-holder usually, if not always, has a Hohfeldian power over the claim that is the right. A Hohfeldian power is the standing by which to eliminate, modify, or leave in place another Hohfeldian element (for example, a claim or power).²⁴ All three features (choice-protection, claims to non-interference correlating with options, and claims being accompanied by powers) are autonomy-related.

Yet a further problem is that if harm does the justificatory and explanatory work and if a right can be overridden when a benefit exceeds the harm of its infringement, then it is unclear what work rights do. The moral work would be done by harm- and benefit-elements.²⁵ One response to this last objection is that the stringency of the right is a function of harm, but the claim that is a right is not against harm. That is, harm might determine the stringency of a right without determining its content—what it requires of agents other than the rights-holder.²⁶

An additional problem that hampers the harm model is that it intuitively seems wrong to infringe on someone's rights even if doing so does

²³ See *ibid.*

²⁴ Wesley Newcomb Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 23 (November 1913), pp. 16-59.

²⁵ The idea for this point comes from Brennan, "How Is the Strength of a Right Determined? Assessing the Harm View," pp. 387-88.

²⁶ For this point, see *ibid.*, p. 392.

not harm the rights-holder.²⁷ A related notion is that something like a promise can increase the stringency of a right.²⁸ For example, Jones's promise not to steal Smith's stuff intuitively seems to strengthen Jones's duty not to do so. However, the promise might not increase the harm that would come about from Jones's stealing the stuff. If promises create or strengthen claims (that is, rights) in cases like this, then the harm model is problematic.

The right to one's body is the same in the case of *Prison Rape, Didn't Stop, Nazi Choice*, and unwanted-to pregnancy. Preventing rape warrants lethal force. The woman in *Nazi Choice* prefers the unconsented-to sex to the unconsented-to pregnancy. So do plenty of women with whom I discussed this case. I will assume that this preference is reasonable and moderately widespread. This is some evidence that the pregnancy-related rights-infringement is at least of the same magnitude as sex-related rights-infringement. This is true whether such preferences are relevant to harm, valuation, compensation, autonomy, or whatever else grounds rights-stringency. Hence, there is some reason to believe that preventing unconsented-to pregnancy warrants lethal force.

The notion that autonomy justifies rights can be seen in the will theory of rights. On this theory, rights protect choices and take the form of a Hohfeldian power over other Hohfeldian elements.²⁹ Consider the degree to which unconsented-to sex sets back autonomy as opposed to unconsented-to pregnancy. A life is autonomous to the degree it is self-shaped. While the comparison varies between individuals, the unconsented-to sex often, if not always, produces great psychological harm that hinders a woman's ability to

²⁷ See *ibid.*, p. 389.

²⁸ See F. M. Kamm, "Non-Consequentialism, the Person as an End-in-Itself, and the Significance of Status," *Philosophy and Public Affairs* 21 (1992), pp. 354-89.

²⁹ The autonomy-based theory of rights is called the "will theory of rights." This theory asserts that rights function to protect choices. As such they always include a Hohfeldian power plus the other Hohfeldian elements over which the power ranges. See, e.g., H. L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon, 1982); Carl Wellman, *A Theory of Rights* (Totowa, NJ: Rowman and Allenheld, 1985); and Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994). I should mention that on my version of the will theory, rights are constituted by claims, although these claims are often accompanied by powers.

In contrast, the "interest theory of rights" asserts that rights function to protect interests. As such they are constituted by a claim. See, e.g., David Lyons, *Rights, Welfare, and Mill's Moral Theory* (New York: Oxford University Press, 1994); Neil MacCormick, "Rights in Legislation," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, ed. P. Hacker and Joseph Raz (Oxford: Oxford University Press, 1977), pp. 189-209; Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); and Matthew Kramer, "Rights Without Trimmings," in Matthew Kramer et al., *A Debate Over Rights* (New York: Oxford University Press, 1998), pp. 7-111.

shape her life according to her values, preferences, and wants. In addition, it likely hinders her exercise of this ability. On the other hand, unconsented-to pregnancy often, if not always, produces some psychological harm and, in many cases, mother-related responsibilities that also hinder women's ability to shape their own lives. It also hinders their exercise of this ability. My guess is that the latter sets back the ability and exercise more because the duties of motherhood last for years, are incredibly time-and-energy consuming, and are given up only with great effort and suffering. If this is correct, then the rights-infringement characterizing unconsented-to pregnancy is on average as severe as the rights-infringement characterizing unconsented-to sex. At the very least, if rights are autonomy-based, then we have little reason to believe that unconsented-to pregnancy is on average a less severe rights-infringement than unconsented-to sex. As a result, we cannot rule out that, as a matter of justice, unconsented-to pregnancy warrants killing.³⁰

One concern here is that I am assessing the problems with pregnancy-and-motherhood, not just pregnancy here. The concerned individual might agree that motherhood is a significant burden and one that often follows from pregnancy, but not necessarily—and it wouldn't explain our intuitions in the *Nazi Choice* example. The critic is correct here, but the burdens of pregnancy and birth are enough to explain our intuitions in that example.

Another concern is that if the demands of motherhood are what infringe on autonomy, then infanticide would be equally justified. This is incorrect because motherhood can be prevented by means short of killing. This is not so for pregnancy, at least given current technology.

A third concern is that the benefit to the fetus has enough value to override the threshold of a body-right. The idea here is that an individual may as a matter of moral permissibility override another's right if certain conditions are met. The conditions might include ones such as a net benefit and a beneficiary from the rights-infringement who gains at least as much as the rights-holder loses.³¹ The problem with this is that we don't think that

³⁰ A very different account of rights from interest- or autonomy-based models is that rights are assigned by fairness as modeled by the Rawlsian Original Position. To see this theory applied to abortion, see Stephen Maitzen, "Abortion in the Original Position," *Personalist Forum* 15 (1999), pp. 373-78.

³¹ For the idea for these two conditions and a third one (for an aggregate whose interests exceed a threshold each and every member of the aggregate has a minimum benefit from the rights-infringement), see Samantha Brennan, "Threshold for Rights," *The Southern Journal of Philosophy* 33 (1995), pp. 143-68. On some accounts, it matters whether the beneficiary is also the rights-holder; see Samantha Brennan, "Paternalism and Rights," *Canadian Journal of Philosophy* 24 (1994), pp. 419-40. For a more general discussion of how an account of overriding rights is necessary for a moderate theory of rights, see Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), pp. 4-5 and 50-51.

body-trespass is permissible when necessary to save another's life. For example, it intuitively seems wrong to remove a woman's spleen or kidney, or drain some of her spinal fluid, against her will even when doing so can be done with minor surgery and will save another's life.

One might be less intuitively opposed to this situation if the woman in question has only survived because someone else has undergone the same operation in order to save her life. Still, the fact that another has sacrificed for the woman is not enough to change our overall intuition about the case, namely, that this should not be done against her will. The intuition is strengthened if the one who demands that the surgery be forcibly imposed has not herself sacrificed for another.

Here is a chart summarizing my findings.

Rights-infringement	Importance of Right Infringed	Degree of Infringement	Warrants
Unconsented-to Sex (Rape)	Body ownership or body control (Value: A)	Severe (Value: B)	Lethal Force (A x B)
Unconsented-to Pregnancy (Ordinary unwanted pregnancy)	Body ownership or body control (Value: A)	Severe (Value: Greater than B)	Lethal Force $\geq (A \times B)$

In summary, then, abortion is a killing. If it is a killing, then it is just only if it is proportionate to a threat. Thomson's argument shows that the fetus has no right to be inside the woman. Standard principles of justice assert that if the fetus has no right to be inside the woman, then it may be removed with proportionate force. I have argued for the claim that in abortion, the woman uses proportionate force. My argument is that the prevention of rape warrants lethal force. If the prevention of rape warrants lethal force and an unconsented-to pregnancy is a rights-infringement as severe as rape, then the prevention of unconsented-to pregnancy warrants lethal force. Abortion prevents an unconsented-to pregnancy. Hence, abortion is just.

d. Objections

One type of objection addresses whether the fetus has a right to be inside the woman. One version of this objection is that the fetus has a right to be inside the woman because it has no other place to go. This argument goes to the first part of the argument—the part that comes from Thomson—and I will not spend a lot of time defending this issue because I wish to focus on the proportionate-killing issue. The short version of the response is that the only way for one person to get a right to be inside a second person's body is through consent or forfeiture. The woman's having voluntary intercourse is not consent. Neither does it ground forfeiture because, in ordinary cases, voluntary sex does not infringe on someone's right. As such, it does not give

rise to a claim to an apology, compensation, just defense, or punishment as it would were it forfeiture.

A second type of objection is that abortion uses disproportionate force. One version of this objection is that the fetus is merely a trespasser and preventing trespass does not warrant lethal force. For example, in *Party Pooper*, Betty may have a claim that her guests leave, but she may not force them to leave by slicing them up with a giant suction-curettage device or ripping them apart with giant mechanized forceps. Similarly, an owner of a private Gulfstream jet may not eject a particularly rude passenger, let alone subject him to one of these devices.³² The problem with this is that the trespasser invades the human body and preventing body-trespass warrants lethal force. The fact that some far less severe rights-infringements does not do so is beside the point. If the rude passenger were raping a flight attendant, the owner could eject him if this were the only way to make him stop.

A second version of this type of objection is that the fetus is innocent while the rapist is not. This is because rapists are, or at least almost always are, morally responsible agents. They are also vicious, warrant punishment, and should feel shame and guilt for what they have done. However, just defense does not require that the threat be morally responsible for his act. Consider the following:

Case #11: Psychotic Aggressor

A woman's companion in an elevator goes berserk and attacks her with a knife. There is no escape: the only way for her to avoid serious bodily harm or even death is to kill him with her gun. The assailant acts purposely in the sense that he means to further his aggressive end. He does act in a frenzy or in a fit, yet it is clear that his conduct is non-responsible. If he were brought to trial for his attack, he would have a valid defense of insanity.³³

Intuitively, it seems that the woman may, as a matter of justice, use lethal force even though the attacker is innocent (that is, not morally blameworthy) with regard to his action. This is true even when the threat does not even act, but is merely an object used in an attack. Consider the following:

Case #12: Innocent Threat

You are at the bottom of a deep well. An aggressor picks up a third party and throws him down at you. The third party is innocent and a threat; had he chosen to launch himself at you in that trajectory, he

³² I owe this objection to Catherine Nolan and Ashley Bergman.

³³ This example comes from George Fletcher, "Proportionality and the Psychotic Aggressor: A Vignette in Comparative Criminal Theory," *Israel Law Review* 8 (1973), pp. 171-87.

would be an aggressor. Even though the falling person would survive his fall onto you, you use your ray gun to disintegrate the falling body before it crushes and kills you.³⁴

Just as the woman may, as a matter of justice, kill the psychotic aggressor, she may also kill a psychotic rapist:

Case #13: Psychotic Sex Aggressor

A woman's companion in an elevator goes berserk and tries to have intercourse with her. He is psychotic and believes that she is his wife and wants sex then and there. There is no escape: the only way for her to avoid being raped is to kill him with her gun. The assailant acts purposely in the sense that he means to further his sexual end. He does act in a frenzy or in a fit, yet it is clear that his conduct is non-responsible. If he were brought to trial for his attack, he would have a valid defense of insanity.

If this is correct and if, as argued above, the fetus's rights-infringement is as great as that of a rapist, then the woman may kill a psychotic rapist. For the same reason, she may kill an innocent fetus.

A third type of objection, from Nancy Ann Davis, is that the fetus is an innocent threat, not an innocent attacker, because it is not an agent. Because the fetus is an innocent threat, it does not forfeit its rights.³⁵ She uses the following case to illustrate her claim:

Case #14: Mountain Climbing

Alice and Ben are mountain climbing when a rockslide occurs that threatens to sweep Ben off the ledge that he has been standing on. If Ben falls straight down—as he is virtually certain to do—he will fall onto Alice, for she is standing on the narrow ledge beneath his, and will surely kill her. If Ben manages to land on Alice's ledge, however, he is unlikely to be killed: indeed, he is unlikely even to be seriously hurt. Alice can determine how Ben falls, for she can manipulate his rope if she chooses to do so. If she gives his rope a tug, she will deflect Ben's fall and thus preserve her life. But she will kill Ben in the process, for if he does not land on Alice's ledge, then he will tumble down the side of the mountain to his death. Alice cannot survive unless she deflects Ben's fall; Ben cannot survive if she does.³⁶

³⁴ See Nozick, *Anarchy, State, and Utopia*, p. 34.

³⁵ See Nancy Davis, "Abortion and Self-Defense," *Philosophy and Public Affairs* 13 (1984), pp. 175-207.

³⁶ See *ibid.*, pp. 190-91.

Davis argues that an innocent threat (Ben) generates an agent-relative permission to the person endangered by him (Alice) to defend herself. That is, Alice is morally permitted to tug the rope. Davis argues that the innocent threat (Ben) has a similar agent-relative permission to keep the endangered person (Alice) from killing him because they are in morally symmetrical situations. In addition, Davis claims that this agent-relative permission does not entitle third parties to intervene on behalf of the endangered person.

Here Davis is wrong because her intuitions are mistaken. First, it is intuitively permissible to use the ray gun in *Innocent Threat* and for Alice to tug the rope. It is intuitively wrong for Ben to prevent Alice from tugging the rope by shooting her with a ray gun, although it might be excusable. This is because Ben and the falling person in *Innocent Threat* are part of the initial interference with the autonomy of the other people and this gives the others priority in autonomy-based contexts.³⁷ By analogy, consider a driver who suffers from an unpredictable aneurism so that his car careens toward people in a store. The driver is not permitted to shoot someone in the store who tries to save herself by ray-gunning the car.

Second, Davis's account is inconsistent in that one person cannot have an agent-relative permission (specifically, a Hohfeldian liberty) to harm a second unless the second's right (specifically, claim to non-interference) has been lost (waived or forfeited), overridden, or does not oppose the imposition of harm. Ben did not intentionally give up his right, so waiver is not at issue. Nor is the right overridden because with regard to two opposing rights, the basis of one right cannot override a second right if the basis of the second right overrides the first right. This can be seen in two classic models of rights. On one account, autonomy justifies a consistent set of natural negative rights and all other rights are derived from them.³⁸ Rights so derived cannot contradict one another. On another account, rights are justified by utilitarianism or even rule-utilitarianism. Neither yields contradictory rights because utility in the particular situation or the tie-breaking rule will prioritize one of the rights. For the reason mentioned above, the complex-content theory of how rights operate in self-defense is implausible.

Third, if the woman has an agent-relative permission to kill the fetus (analogous to Alice's right to tug the rope) and if such permissions are accompanied by a claim to non-interference, then the woman has a right to

³⁷ The underlying assumptions here are: rights are all or mostly property rights, property rights rest on autonomy, and autonomy favors the person who is initially being interfered with in a certain way. I provide such a picture in Stephen Kershnar, "Private Property Rights and Autonomy," *Public Affairs Quarterly* 16 (2002), pp. 231-58.

³⁸ See Nozick, *Anarchy, State, and Utopia*; and John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988).

abortion on defensive grounds. This is true even if the fetus has a contradictory right to defend itself analogous to Davis's assertion that Ben has a right to defend himself. This is enough to show that abortion is just. The contradictory right of the fetus makes the overall moral scenario strange, but this is beside the point.

3. Abortion Is Permissible

A similar comparison to sex shows that abortion is not merely just, but also permissible. I think that once it is shown that abortion is just, then it follows that, short of preventing a catastrophe (consequentialist override), abortion is permissible. My assumptions here are that (a) except when a consequentialist override is present, an act is wrongful only if it wrongs someone and (b) an act wrongs someone only if it infringes on someone's right (that is, claim). Because these assumptions are controversial, and defending them is beyond the scope of this article, let us proceed without them. That is, let us proceed on the assumption that not all wrong acts infringe on someone's right.

Here is the argument for abortion being morally permissible:

(C1) Hence, abortion is just. [(P1), (P2)]

(P3) If abortion is just, then if it is wrong, then it infringes the duty to save.

(C2) Hence, if abortion is wrong, then it infringes the duty to save. [(C1), (P3)]

(P4) Abortion does not infringe the duty to save.

(C3) Hence, abortion is not wrong (that is, it is morally permissible). [(C2), (P3)]

Premise (P3) rests on the following notion: If abortion is just and still wrong, then it infringes on a duty not tied to a right. The most plausible duty is the duty to save.³⁹

Premise (P4) rests on two arguments. The first is that there is no duty to save. The idea here is that there is no duty to save strangers. Strangers are individuals to whom one does not stand in a special relation. Special relations include family, friends, and those whom one has harmed or put in danger. The

³⁹ David Boonin identifies other non-rights-based arguments concerning the Golden Rule, culture of death, pro-life feminism, and uncertainty about when an individual comes into existence. I assume that these arguments are less plausible than is the duty to save. See David Boonin, *A Defense of Abortion* (New York: Cambridge University Press, 2003), chap. 5.

next idea is that if there is no duty to save strangers, then there is no duty to save people.

The notion that there is no duty to save strangers rests on the arguments below. One argument focuses on distance. There is no duty to save distant strangers. Consider, for example, when one spends money on a vacation rather than on feeding Somali children. This case captures this notion:

Case #15: Caribbean Holiday

Al, a hard-working plumber, enjoys taking his family on vacation to the Caribbean. He does so once a year. Were he to give the money to Oxfam International, he could save the lives of a few starving children in places like Sudan and Somalia.

Distance is irrelevant. If there is no duty to save distant strangers, and the above case intuitively suggests there is not, and distance is irrelevant, then there is no duty to save strangers.

A second argument is that if there is a duty to save strangers, then there is a disjunctive duty. To see this, consider the following:

Case #16: Lifeguard

Charley is sitting on the beach drinking tequila and tanning. He sees a cruise ship go down and sees hundreds of people drowning. Because he is a weak swimmer who will have to go out in a life preserver, he can save at most one person.

There are no disjunctive duties. It is difficult to see how a duty can exist to save (or otherwise benefit) one of a collection of strangers, when it is neither owed to any member of the collection nor to the collection.

A third argument is that if there is a duty to save strangers, then the desperate strangers have a claim against the rescuer. If desperate people have a claim against the rescuer, then they have a right to the rescuer's body or labor. If desperate people have a right to the rescuer's body or labor, then they own the rescuer's body or labor. If there is a duty to save people, then the desperate people own the rescuer's body or labor; however, they do not.

A fourth argument is that if there is a duty to rescue, then people would have a duty to give to the point of marginal utility or some other principled threshold. Marginal utility is the point at which the benefit (in utils) to the recipient is less than the cost to the benefactor. There is no duty to give to the point of marginal utility or some other principled threshold. Here is an example illustrating this:

Case #17: Cabin

Bob, a spendthrift teacher, buys a cabin high up in the northern Rockies for his family (adult children and grandchildren) to enjoy during summer hiking expeditions. He puts in expensive electronics,

high-end furniture, and a great hot tub. The cabin has a stunning view of the valleys and lakes below. He knows that if he puts in drill-proof locks on the door and windows in metal lattices, no one will be able to break in. If he does this, this will prevent any hikers caught in early-and-unpredictable winter storms (an infrequent, but real, occurrence) from breaking into the cabin to save themselves. There is also some concern about theft from other hikers.

From an impartial perspective, the costs of the security devices likely outweigh the benefits. There is no principled threshold, short of marginal utility, by which we can say that Bob is or is not permitted to install the devices. Were the marginal-utility standard to be applied, then Bob would be wrong to pay for this luxurious cabin, let alone the devices.

The same argument intuitively seems to apply to the fetus in that the purported wrong-making features of abortion are present whether the fetus arose from the pregnant woman's egg or another's egg. This might be because the fetus is not a family member in the relevant sense. Let us proceed, however, on the assumption that there is a duty to save because these arguments are controversial and defending them will take us far afield.

Even if there is a duty to save, it does not make abortion wrong. Intuitively, in the case below, the woman has no duty to save the sick man:

Case #18: Anal Intercourse

The only way for a sick man suffering from a very rare disease to survive is to have anal intercourse with a woman who has a rare combination of immunities. She has not tried anal intercourse, but knows she would not enjoy it. That said, she would prefer it to nine months of an unwanted pregnancy.⁴⁰

⁴⁰ As a side note, plenty of women appear to enjoy sex episodes that include anal sex. Consider William Saletan's analysis: "Check out the orgasm data. Among women who had vaginal sex in their last encounter, the percentage who said they reached orgasm was 65. Among those who received oral sex, it was 81. But among those who had anal sex, it was 94. Anal sex outscored cunnilingus." See William Saletan, "The Ass Man Cometh: Experimentation, Orgasms, and the Rise of Anal Sex," *Slate.com*, October 5, 2010, accessed online at: http://www.slate.com/articles/health_and_science/human_nature/2010/10/the_ass_man_cometh.2.html. There is some reason to believe that this is enjoyment of the anal sex itself and not a gift to men for doing other things women like. See William Saletan, "The Riddle of the Sphincter: Why do women who have anal sex get more orgasms?" *Slate.com*, October 11, 2010, accessed online at: http://www.slate.com/articles/health_and_science/human_nature/2010/10/the_riddle_of_the_sphincter.html. Saletan's data come from Debby Herbenick et al., "An Event-Level Analysis of the Sexual Characteristics and Composition among Adults Ages 18 to 59: Results from a National Probability Sample in the United States," *The Journal of Sexual Medicine* 7, supp. 5 (October 2010), pp. 346-61. Were the woman in the above case to enjoy anal sex, this still would not change our intuition about the case. Still, this would make it less similar to unconsented-to abortion.

If, in this case, the woman has no duty to save the sick man, then the pregnant woman does not infringe the duty to save the fetus. This rests on the notion that the duty to save only applies when there is a reasonable cost. The anal-intercourse cost is sufficiently high to cancel (undermine, override, or make inapplicable) the duty to save. The unconsented-to pregnancy cost is at least as high as the anal-intercourse cost. Hence, the unconsented-to pregnancy cost is sufficiently high to cancel the duty to save.

4. Conclusion

This article has argued that abortion is just because it does not infringe on anyone's right. The claim rests on three assumptions. First, the fetus has no right to be inside the woman. Second, if the fetus has no right to be inside the woman, then it may be removed with proportionate force. Third, in abortion, the woman uses proportionate force. The third argument rests on the notion that when the fetus's presence is unconsented to, the fetus's infringement on the woman's right is as severe as rape, and rape warrants lethal force. I then considered two objections: abortion is disproportionate because trespass does not warrant lethal force, and abortion is disproportionate because the fetus is innocent and thus unlike a rapist. I take these objections to have failed.

I then argued that abortion is morally permissible because pregnant women do not fail to satisfy the duty to save. One reason for this is that there is no such duty. A second reason is that even if there is such a duty, it does not make abortion wrong. A woman does not have the duty to engage in anal intercourse as a means of saving someone because the anal-intercourse cost is sufficient to cancel the duty to save and the unwanted pregnancy cost is at least as high as the anal-intercourse cost.

This chart summarizes the two main arguments.⁴¹

Thesis	Issue	Argument
Abortion is just.	Does abortion respect the fetus's rights?	Yes <ol style="list-style-type: none"> 1. Assumption #1: No Right. The fetus has no right to be inside the woman. 2. Assumption #2: Removal. If the fetus has no right to be

⁴¹ I am very grateful to James Delaney, Neil Feit, John Martin Fischer, David Hershenov, Rose Hershenov, John Keller, Catherine Nolan, Dale Tuggy, PANTC Reading Group members, and audience members at the Society of Christian Philosophers for their extremely helpful comments on and criticisms of this argument. I would also like to thank State University of New York at Buffalo and State University of New York at Fredonia for hosting debates and Niagara University for hosting a talk on this topic.

		<p>inside the woman, then it may be removed with proportionate force.</p> <p>3. Assumption #3: Proportionate Force. In abortion, the woman uses proportionate force.</p>
Abortion is morally permissible.	Does the woman satisfy the duty to save?	<p>Yes</p> <p>1. Assumption #1: No Duty to Save. There is no duty to save.</p> <p>2. Assumption #2: Duty to Save. Even if there is a duty to save, it does not make abortion wrong.</p>

The Scope of Attorney Confidentiality

Clifton Perry
Auburn University

1. Introduction

The right of confidentiality might be founded on grounds of respect for personal self-regulation. The decision of a self-governing individual to disclose private information to another may be predicated upon the other's autonomous acceptance of the condition of secrecy. An unauthorized disclosure might constitute a breach of secrecy and might well demonstrate a failure of respect for the autonomy of the disclosing party. This is not to say that the disclosure might not be justified, but respect for an individual's right of self-governance would have to figure prominently in the justification, or the breach was necessary to prevent the unjustified breach of third-party autonomy.¹

In certain professional relationships the right of confidentiality might otherwise be justified as *sine qua non* for the very existence and effective functioning of the valued relationship. It is generally argued that without a right and corresponding duty of confidentiality between the party seeking professional help and the professional offering help, respectively, those seeking professional services might suffer a debilitating reluctance to disclose information to the professional which the disclosing party wishes not to be revealed by the professional. This information might prove essential to the professional's treatment of the party seeking help. Yet, because of the party's fear that the professional will disseminate the secret, the professional is not made privy to the secret and the professional services to the party suffer as a result. For example, a patient seeking medical care might keep secret information essential for the physician's proper diagnosis and/or treatment out of fear that the physician will disclose the information to a third party, and thereby impair the help offered by the physician.²

The right and correlative duty of confidentiality also obtains within the attorney-client relationship. Were confidentiality not to infuse the

¹ For respecting autonomy as the central moral concern, see Immanuel Kant, *Foundations of the Metaphysics of Morals*, trans. Lewis W. Beck (New York: The Bobbs-Merrill Co., 1959).

² John Stuart Mill, *On Liberty*, ed. D. Spitz (New York: W. W. Norton, 1975).

attorney-client relationship, as it does the physician-patient relationship, similar untoward events might result. For instance, the client might be tempted to withhold what might prove to be beneficial and important to the attorney's representation of the client because the client believed that the attorney was free to publish the information to third parties.

Indeed, within the law there are two safeguards for confidential information. The first is the well-known and frequently misunderstood attorney-client privilege. The second is the professional duty of confidentiality. The distinction between the two is quite an important one in the law. The attorney-client privilege covers only confidential communications between the client or would-be client and the attorney that arise within the scope of representation or potential representation, respectively. The privilege protects such communications against governmental and adversarial demands for disclosure. As such, the privilege is delineated in the federal and state rules of evidence.³

The scope of the professional duty of confidentiality is much broader than that of the privilege. The American Bar Association's (ABA) Model Rules of Professional Conduct (MRPC) details the professional rule and that rule is incorporated within state codes of professional ethics, with or without minor modifications. The MRPC rule of confidentiality (Rule 1.6a) notes that "A lawyer shall not reveal information relating to the representation of the client . . ."⁴ The rule has several enumerated exceptions allowing attorney disclosure of confidential information. The exceptions, however, do not define what is covered under confidentiality, but rather specify the conditions under which what is covered by the Rule (1.6a) may, nevertheless, be disclosed.

Rule 1.6a differs in the scope of confidentiality from that of privilege. Where privilege notes "communications," the rule references "information." Where the privilege refers to "between client and attorney," Rule 1.6a without modification covers all informational sources. Where the privilege covers these communications within and about client representation, the professional conduct rule encompasses all information "relating" to the representation.

³ For example, see the *Federal Rule of Evidence*, Rules §501 and §502.

⁴ See *Model Rules of Professional Conduct* (MRPC), American Bar Association (ABA) 2008, Rule 1.6a: "A lawyer shall not reveal information relating to the representation of a client" The remainder of Rule 1.6a allows for attorney disclosure upon a voluntary and informed client waiver or as necessary for effective representation of the client. Rule 1.6b delineates exceptions to 1.6a. Of course, neither the waiver provision nor 1.6b alter the scope of 1.6a. An attorney is one who is a legal agent of another and who practices the law. A lawyer is one licensed to practice the law. See *Black's Law Dictionary*, 9th ed. (2009), pp. 147 and 968, respectively. I will use "attorney" and "lawyer" as synonyms.

There is, of course, an additional difference between privilege and the professional duty of confidentiality. The latter protection prevents the duty-bound party, the attorney, from making voluntary disclosures of covered information to third parties. Generally, while the attorney-client privilege will, with some exceptions, protect against governmental demands for covered information, a similar demand by the government for information covered only by the professional duty of confidentiality will prove ineffective.

It is the difference in the breadth of confidentiality between the privilege and the professional rule that causes concern. The Rule appears to cover all information relating to the representation of the client irrespective of whether or not said information is known by others outside of the attorney-client relationship and irrespective of whether or not those third parties owe the client a duty of confidentiality. There is, however, a more modest interpretation of the Rule. A more restrained reading might exclude from coverage that information known by those third parties who are not otherwise obliged by a duty of confidentiality to the client. The considerations favoring the more constricted reading of the Rule may not be individually dispositive. However, under the totality of the considerations, it is contended, the weight favors the narrower readings. It will be argued, therefore, that there are intractable problems with the broad interpretation of the Rule, that these problems may be eliminated through a narrower, more modest reading of the Rule, and that the narrower reading still satisfies the goal ascribed to confidentiality.

Lest it be thought that the referenced dispute is of little moment, it might be noted that an attorney's breach of the rules of professional conduct occasions disciplinary responses by the State Bar. Given the prodigious importance of confidentiality to the relationship between the attorney and the client, a breach of confidentiality by the attorney is of major significance to the State Bar and its response to a breach is not, generally, inconsiderable.

2. The Scope of a Broad Reading

The broad, literal reading of the professional rule would have the Rule cover not merely communications between the client and the attorney to which no one else is privy, but also those to which others are privy, so long as those communications relate to the representation of the client. The broad interpretation of the Rule would protect third-party information that was relevant to the representation of the client. Information, even public information, known widely, would be covered, if it related to the representation of the client. Because the covered information's connection to the representation of the client is that it simply be related to his case, the attorney's obligation of secrecy would seem also to include information that, albeit not directly related, might reasonably lead to information that relates to the representation of the client.⁵

⁵ W. Bradley Wendel, *Professional Responsibility* (The Netherlands: Aspen Publishing, 2004).

It is, of course, true that an attorney could not breach Rule 1.6a by disclosing information to a third party who already knew the information. One cannot *reveal* information to one who already knows the information. That is, if “reveal” means to make known, then one cannot reveal something to one who already knows it. The problem for the attorney wishing to disclose but not reveal pertinent information would be in determining whether the other party already knows the information, and in so determining does not reveal the information in question. Thus, notwithstanding an attorney’s knowledge that non-obligated third parties knew the material information, even public information, the attorney would have to remain silent until the attorney verified that the particular third party already knows the information. This would appear to mean that the disclosure of representationally relevant public information to a third party would violate the professional duty of confidentiality to the client, if the disclosure revealed the public information to a third party who did not already know the information. This would apparently be the case even though the third party could acquire the information, at will, from another source, for example, a public newspaper or the Internet.

3. Counter Considerations

Arguably, there are four considerations gainsaying the broad reading of Rule 1.6a. An initial consideration is concerned with the consistent use of the term “confidentiality.” First, it would appear that the notion of privacy is inherent in the idea of confidentiality. If one wants to keep information confidential, one wants to keep it private. If one were without a privacy interest, one could not expect confidentiality. If information could not be kept private, it could not be held confidentially. It might be wished that the information not be further disseminated but if it were not private, it could not be held confidentially between the party with the previous privacy interest and the party whose reticence is sought.⁶

The above-argued relationship between privacy and confidentiality serves as the underpinning for the constitutional right against unreasonable search and seizure by the government. The Fourth Amendment’s reach of protection is detailed in *Katz v. United States*, 389 US 347 (1967). According to *Katz*, one’s Fourth Amendment protection is circumscribed within the area

⁶ The following illustrates the necessity of secrecy for confidentiality: “A man goes into the confessional and tells the priest, ‘Father, I am eighty-two years old and last night I made love to two twenty-year-old girls at the same time.’ The priest responds, ‘When was the last time you went to confession?’ The man says, ‘Never, I’m Jewish.’ Taken aback, the priest says, ‘Then why are you telling this to me?’ The old man answers, ‘Gee, I’m telling everybody!’” The communication fails to be covered by any duty of confidentiality the priest owed the confessing party for two reasons. First, the confession is not penitential. Second, the confessing party is making everyone privy. See David Leonard, Victor Gold, and Gary Williams, *Evidence, A Structured Approach*, 3rd ed. (The Netherlands: Wolters Kluwer Publisher, 2012), p. 610.

in which one enjoys a reasonable expectation of privacy.⁷ The so-called “Third Party Doctrine” presents an exception to the acknowledged Fourth Amendment protection. Where one holds out information to a third party, one will fail to enjoy a reasonable expectation of privacy. The numbers one dials by phone (*Smith v. Maryland*, 442 U.S. 735 [1979]), the material one places in an open field (*Oliver v. United States*, 466 U.S. 170 [1984]), and the trash one places at the curb for collection (*California v. Greenwood*, 486 U.S. 35 [1988]) are all examples of the loss of privacy through third-party knowledge. But the failure of privacy in the above examples is of previously private information made public. The initial privacy concern could never arise with information already available or known by third parties, let alone public information. Yet this is just what the broad reading of Rule 1.6a yields.

Second, confidentiality is an essential element in the attorney-client privilege. Privilege does not define confidentiality, but rather protects a narrow class of possible confidential communications between the client and the attorney concerning the latter’s representation of the former.⁸ As noted, more may be held confidential than is covered under the privilege. But the broader scope of the former refers to other information held in the same fashion. That is, consistent use of confidentiality argues that the essential quality of confidentiality rendering communications confidential for privilege must be the same for that which renders information confidential for the professional duty. The difference between the two client protectors is the quantity of included interactions, not the nature of the interactions. Were it otherwise, a different term would have been recommended in order to safeguard against confusion.

In the case of privilege, the failure of confidentiality eliminates the privilege. What vitiates confidentiality is the capture of the attorney-client communication by a third party not already obligated to the client by a duty of confidentiality. If the above consideration is correct, then disclosure of confidential communication to a non-obliged third party by either party also violates the professional duty. Arguably, the same would obtain with that information included within the professional duty not included under the

⁷ In *United States v. Jones*, 132 S. Ct. 945 (2012), Justice Scalia argued that the historical foundation of the Fourth Amendment, i.e., trespass, was not eliminated by *Katz*. Rather, *Katz* supplemented the theory of trespass. Nevertheless, not all of the Court’s members agreed nor did Justice Scalia deny the continuing supreme importance of *Katz*. See *Annotated Model Rules of Professional Conduct*, 6th ed. (Chicago, IL: ABA Publishing, 2007), p. 90; and Ronald D. Rotunda and John S. Dzienkowski, *Professional Responsibility* (Alexandria, VA: Thomson-West Publishing, 2005), pp. 190-255.

⁸ The confidentiality required for privilege and for the professional duty are alike in that both survive the death of the client. This consideration argues in favor of consistency of use of the term. See *Swidler & Berlin v. United States*, 524 U.S. 399 (1998).

privilege. Thus, case-relevant information obtained by the client, disclosed to the attorney and a non-obligated third party, would compromise the confidentiality of the information. Again, information already in the hands of the non-obligated third party could not be considered confidential.

Because the third party is not also duty-bound to keep the secret, irrespective of whether or not the third party does keep the secret, the secret is now discoverable by others. That is, once privileged communications are promulgated in violation of confidentiality, any interested person may legally discover the communication. A disclosure to one is essentially a disclosure to all. It may be discovered from the original party or the third party because it is no longer privileged.

If the information is already public or known by others, it cannot become privileged simply by having the client discuss the fact with the attorney. The underlying publicly known fact is not covered by privilege. The conversation between the attorney and client about the publicly known fact cannot render the fact privileged even if the fact is related to the attorney's representation of the client.

If the above is correct, and confidentiality enjoys a consistent usage between the client-protection doctrines of privilege and the professional duty, then notwithstanding the different ranges of covered interactions, it would appear that what would be covered by the broad reading of Rule 1.6a would prove to be an anomaly. The broad reading would leave the professional duty encompassing as confidential publicly held information that concerned the representation of the client. The broad reading would include not only such information told to the attorney by a third party, but also information relayed to the attorney by the client in the presence of others. The parameters of what will be included by the notion of confidentiality may be different between the two concepts, but it cannot be that what is covered in one client protection contradicts the very essence of the concept as used in the other client protection.

The third and related consideration mitigating against a broad reading of Rule 1.6a is that it would appear to constitute a *reductio ad absurdum*. That is, the broad reading of Rule 1.6a appears to lead to ridiculous conclusions. The force of a *reductio ad absurdum* argument is acknowledged in philosophical discourse and also enjoys a telling use in the law. For example, in *Lauritzen v. Larsen*, 345 U.S. 571 (1953) the United States Supreme Court (USSC) considered whether, pursuant to 46 U.S.C. 688, the Jones Act, a seaman could advantage himself of a U.S. federal court in a claim against an employer. The act provided that "any seaman who . . . suffered personal injury in the course of his employment" could sue for relief. The plaintiff was a Dane, employed upon a Danish ship, bound in employment by a Danish contract and injured in Cuba while performing his employee duties. The plaintiff sued in the U.S. federal court in New York. The plaintiff's argument for federal court jurisdiction was the literal language of the Act, that is, "any seaman." Such a literal reading, the USSC noted, would include "a hand on a Chinese junk, never outside Chinese waters."

The force of a *reductio* argument goes to the weight of the premises leading to the conclusion. A remedy for a fatuous conclusion following from a set of premises is modification of at least one premise.

In light of the foregoing, it is arguable that the broad reading of Rule 1.6a leads to less-than-serious conclusions. For example, the attorney who discloses to another attorney a particular brilliant solution she arrived at in a prior case would violate the Rule notwithstanding that she ensured that the attorney to whom she relayed her insight could not discover the identity of the client, the case, or the ultimate outcome of the case. Since the attorney's legal epiphany was "information relating to the representation of a client," the attorney's disclosure would be proscribed. However, this sort of attorney disclosure occurs not only in legal publications, but also by others reporting on the particular case in which the legal insight arose or was employed. The same information could be disclosed by various parties, but the attorney would incur a disciplinary response were he or she to do likewise. Is this because the information is confidential?

Recalling that the broad proscriptive scope of Rule 1.6a would encompass not merely information directly relating to the representation of the client, but also information that might reasonably lead to information directly relating to the representation of the client, compliance with the professional duty would seem most improbable. Consider an attorney who talks to the lover of a client who authorities only suspect of burglarizing a local jewelry store. The attorney might reasonably infer that the lover's new ring was the product of the burglary and the client was the miscreant who misappropriated the ring given to the lover. The attorney would not be allowed to disclose the inference nor the facts upon which the inference is based, according to Rule 1.6a. But also covered by the broad reading of Rule 1.6a would be an attorney's remark that she felt effusively joyous, upon learning of the paucity of information obtained by the police in their investigation of the burglary. Moreover, so also would the attorney's remark to a third party that she had investigated the reliability of the news reporter who conducted the media's independent investigation of the facts obtained by the police in its investigation. But this seems clearly unreasonable and surely not confidential.

Perhaps more absurdly, consider a case where a former client now suffers amnesia and wishes to talk with the attorney who, he discovers, may have previously represented him. The former client asks the attorney if she represented him and about the nature and details of the representation if she did. Arguably, on pain of violating Rule 1.6a the attorney would not be unreasonable to suffer considerable reluctance to "reveal" the information about the representation to the former but now forgetful client. However, the attorney might refer the client to a newspaper article which covered the case.

Arguably, these conclusions reached under the broad reading of the professional duty seem unreasonable. The unreasonable ramifications of a literal, broad reading of the professional rule and the lack of consistency in the use of the notion of confidentiality between the professional duty, on the one hand, and other areas of the law, including the law of privilege, on the other,

constitute considerations for either a narrow rule or for at least a narrower reading of the rule. Additionally, however, an equally weighty consideration against the broad reading of the professional duty is that the problems noted above are suffered at no benefit to the client's protected privacy.

The final reason for rejecting the broad reading of the professional duty is that it is completely unnecessary, given the obligation's purpose. The accompanying comments for Rule 1.6a note the utilitarian purpose of the professional duty of confidentiality.⁹ As noted above, attorney confidentiality is designed to elicit client disclosure to the attorney so that the attorney may process all information necessary to ensure the best and most effective representation of the client. The expressed idea is that the client will be reluctant, if not refuse, to disclose information to the attorney if the attorney might voluntarily disclose said information to third parties. But if the contended harm to the client by the attorney's disclosure is that people outside the attorney-client relationship will know such information, then the harm has already occurred where the information the attorney disclosed is already known by others outside the relationship, even if it is not known by the individual to whom it is revealed. There is, after all, a difference between promulgating client information not previously known outside of the attorney-client relationship and repeating client information previously promulgated and known by parties who are not under a duty of confidentiality to the client. The goal is not clearly compromised by the latter disclosure, whereas it is compromised by the former disclosure.

If the above is correct, then it would appear that the broad reading of the duty of confidentiality suffers from problems of inconsistency of usage and absurdity of application, and all without necessity. The purpose of the professional duty may be fulfilled with a more narrowly read rule that is consistent with the other areas of the law, including the other client protector of confidentiality (privilege) and without suffering practitioners to unintuitive and unnecessary practices. As suggested above, such a rule would read "reveal" as entailing that the information has not been revealed beyond the parties to the professional relationship unless perhaps to one who also suffered a duty of secrecy to the client. This reading of the attorney's duty of confidentiality conforms to the confidentiality requirement of the attorney-client privilege and allows the distinction to be detailed where information might exceed communication and the type of attorney behavior to be curtailed. The narrow reading of the rule has the added benefit of restricting the extent of "relating to" to actual, confidential information.

4. Conclusion

Does the above, if correct, suggest that an attorney may reveal information the broad reading would keep secret and the client would just prefer that the attorney not repeat notwithstanding that said information is

⁹ See *Model Rules of Professional Conduct*.

already known by others who do not themselves suffer a duty of nondisclosure? Is the only harm to the client by an attorney's practice of disclosing already disseminated information to non-obligated parties that privacy has been breached? Assuredly not. But the reason is not because the information is confidential, but because it might appear to the client and to others that the attorney is not fully the client's advocate. There are other professional, ethical obligations the attorney owes to the client besides confidentiality.¹⁰

The attorney owes the client a duty of loyalty. This obligation includes a duty of attorney competency and zealous advocacy. The attorney must, within the scope of representation, always comport himself or herself to further the interests of the client within the limits of the law. The duty of loyal advocacy would prevent the attorney from unnecessarily repeating already known information the attorney knew or should know the client wished not repeated and the repeating of which might appear disloyal to the client.¹¹

This is not to suggest that the duty of attorney confidentiality is not also a function of the attorney's duty of loyalty. Rather, because attorney confidentiality does not exhaust attorney loyalty, there is no reason to include attorney disclosures of non-confidential information within the duty of confidentiality just so that the disclosures will also fall within the attorney's duty of loyalty.

¹⁰ See MRPC, Rules 1.1 (competency), 1.3 (diligence), 1.7, 1.8, 1.10, and 1.11 (avoiding conflicting interests).

¹¹ Pursuant to California's Fair Political Practices Commission's 2012 announcement, already public financial disclosure statements of state judges would be published on the Commission's public website. State judges did not complain because the information was confidential; indeed, they could not so complain because the information was already public. The re-publication was simply deemed disadvantageous to those already subject to an electoral process.

Portraits of Egoism in Classic Cinema II: Negative Portrayals

Gary James Jason
California State University, Fullerton

1. Conceptual Recap

In this trio of articles, I examine how egoism is explained in six great classic films. I suggested in the first review that we need to distinguish the various meanings of “egoism.”¹ I distinguished “psychological egoism,” which is the strong claim that all humans (or even all animals generally) always act to maximize their individual self-interests, from “default egoism,” which is the weaker claim that all humans usually act to maximize their individual self-interests, though they can and will on occasion act out of ultimately other-regarding concern.

I also distinguished both of these psychological views from “ethical egoism,” which holds that any person ought to act solely to maximize his or her ultimate self-interest, and “rational egoism,” which holds that any person is irrational if he or she does not act to maximize his or her ultimate self-interest.

These, I suggested, were essentially philosophic concepts. More psychological are the concepts of egotism and cynicism, both personality traits, and also the concepts of a narcissist and a psychopath, both personality disorders (i.e., psychologically dysfunctional personality types).

An egoist of whatever stripe need not be an egotist (i.e., a boastful person) nor a cynic (i.e., a person who has or routinely expresses skepticism of others’ motives). And neither an egotist nor a cynic need be an egoist.

We noted that both narcissism and psychopathy are psychologically extreme manifestations of egoism, so while a narcissist or a psychopath is certainly an egoist, an egoist need not be either. Since both personality disorders will be important in this review, it is worth recalling how psychologists typically characterize them.

A “narcissist” is a person who is very emotional, feels superior to and has contempt for those deemed inferior, is egotistical, craves admiration, fantasizes about fame and power, wants to dominate others, is insensitive to

¹ Gary James Jason, “Portraits of Egoism in Classic Cinema I: Sympathetic Portrayals,” *Reason Papers* 36, no. 1 (July 2014), pp. 107-21.

others' feelings, sets grandiose goals, is given to jealousy (and suspicion of jealousy in others), is thin-skinned, and is manipulative.² A "psychopath" (or "sociopath") is a person who may appear to be charming and good, but in reality is completely self-absorbed; thoroughly dishonest; domineering; attention-seeking; comfortable with danger; impulsive; totally without empathy; unable to feel guilt; unable to take responsibility for his actions; and predatory, manipulative, and callous in his relationships with others.³

2. The Egoist as Narcissist or Psychopath

In the first of this trio of articles, I looked at two classic films in which egoism is presented as more or less morally benign. Let us turn next to a pair of films in which the filmmakers (specifically, the directors and writers) portray egoists more negatively, namely, as narcissists, or worse, as psychopaths.⁴

a. *All about Eve*

Let's start with a great melodrama, made in 1950, in a genre movie studio executives used to call the "women's movie." It is the superb *All about Eve*, and was both a commercial as well as a critical success. In fact, the film was nominated for a then-record fourteen Academy Awards, winning six (including for Best Picture, Best Supporting Actor, and Best Director). Even more unusually, the actresses in all four of the major female parts were nominated for Oscars for their acting—that is, either Best Leading Actress or Best Supporting Actress—in the picture.

The movie is really all about that peculiar industry, Broadway Theater. All of the major characters in it are theater people. The movie opens at an awards banquet. We meet Eve Harrington—Broadway's new ascendant star—as she is being presented with the Sarah Siddons Award for best new actress on stage. As we watch, we hear the snide and snooty voice of the Dickensian-named Addison DeWitt. DeWitt introduces himself (he is a prestigious theater critic), and promises to tell us all about the meteoric rise of Eve—all about Eve, in fact.

DeWitt is played with supercilious charm by George Sanders, who won the Best Supporting Actor award for his performance. Sanders was a personality actor who typically played an intelligent, witty, sybaritic narcissist in his roles—which seems to have been his genuine personality. Eve is

² Accessed online at: <http://www.mayoclinic.com/health/narcissistic-opersonality-disorder/DS00652>.

³ Scott O. Lilienfeld and Hal Arkowitz, "What 'Psychopath' Means," accessed online at: <http://www.scientificamerican.com/article.cfm?id=what-psychopath-means>.

⁴ *All about Eve*, directed by Joseph L. Mankiewicz (Twentieth Century Fox Film Corporation, 1950); *The Third Man*, directed by Carol Reed (London Film Productions, 1949).

magnificently played by Anne Baxter, who was nominated for a Best Leading Actress Oscar for her work here.

Just before Eve is given her award, the presenter intones, “We know her humility, her devotion, her loyalty to her art, her love, her deep and abiding love for us, for what we are and what we do, the theater. She has had one wish, one prayer, one dream—to belong to us. Tonight, her dream has come true. And henceforth, we shall dream the same of her.” We see that the audience is surprisingly unenthusiastic. They know all about her, and as DeWitt’s voice over her freeze frame says, “You all know all about Eve. What can there be that you don’t know?” Quite a bit, it turns out.

We then flash back about a year, and meet the film’s other leading female character, actress Margo Channing (played with all her formidable emotional intensity by Bette Davis, who was nominated for the Best Leading Actress Oscar for her work here). Margo, while the top actress on the stage, is now forty years old, and worried that her career path will head downward from here. (As an aside, we should note that among other important sub-texts in this richly complex movie, there is an exploration of the tension between career and marriage for women—rather surprising, since the film was produced in 1950.)

One night after a performance, Margo’s closest girlfriend Karen encounters a young woman in the alley near the theater’s stage door. (Karen is well-played by Celeste Holm, who was nominated for the Best Supporting Actress Oscar for this part.) The sad-faced woman introduces herself as Eve Harrington, and tells Karen how much she admires Margo, the lead actress, and how she has seen all of the performances of the play in which Margo is currently starring. In an act of compassion she will come to rue, Karen invites Eve backstage to meet her professed idol.

Eve and Karen go into Margo’s dressing room, where Margo, along with her coterie, is resting after the show. These include her loyal, long-time maid Birdie (played as comic relief by veteran character actor Thelma Ritter, also nominated for a Best Supporting Actress for this film). There is also Lloyd Richards (Hugh Marlowe), the author of the play and Karen’s husband. Also present is Bill Sampson, Margo’s long-suffering beau and a director about eight years younger than she is. Bill is superbly played by Gary Merrill, who had the difficult job of playing opposite Bette Davis as her romantic interest. (In fact, the two actors married after the film was completed and released.)

Eve tells the assembled group the tragic story of her life. She tells them (displaying a docile and dejected demeanor) that she was born the daughter of a poor farmer, and went on to work as a secretary for a brewery, where she fell in love with acting after joining the company’s small theater. She found acting “like a drop of rain on the desert.” She married a local boy, and moved to San Francisco while her husband fought in the Pacific. When he was killed in combat, she was all alone there. It was only the transformational experience of seeing Margo on stage that saved her, and she followed Margo to New York. While telling her sad story, she meekly flatters Margo with such

lines as, "I've seen every performance . . . I'd like anything Miss Channing played in . . . I think that part of Miss Channing's greatness is her ability to pick the best plays."

The group—Margo's inner circle—is deeply moved, especially Margo herself. She is obviously vain, and such flattery helps Eve sell her sob-story. Only the sardonic Birdie sees through Eve, remarking sarcastically, "What a story! Everything but the bloodhounds snappin' at her rear end." This comment doesn't disabuse Margo—it only angers her, and she rebukes Birdie: "There are some human experiences, Birdie, that do not take place in a vaudeville house—and that even a fifth-rate vaudevillian should understand and respect." So Eve joins Margo's circle, and moves in with her as an assistant.

But we soon see that even as Eve is working as a seemingly loyal assistant to Margo, she is in fact craftily moving to replace Margo. Eve works to sow division between Margo and her boyfriend Bill, as well as between her and Lloyd. She tricks the overly trusting Karen into arranging for Margo to miss a performance (allegedly for her own good), which means that, as Margo's understudy, Eve will get to perform—and she slyly makes sure that all of the theater critics are in attendance.

Eve then makes a play for Bill, though he rebuffs her. She even blackmails Karen into pushing Lloyd to give Eve (rather than Margo) the lead in his new play, by telling Karen she will let Margo know that Karen helped her to arrange Margo's missing the performance. To Karen's relief, Margo independently decides she doesn't want the part anyway.

All of this gives us the perfect picture of the manipulative and deceptive tricks a thoroughgoing narcissist might use to get her way. However, it is precisely here where Eve's narcissistic thespian *pleonexia* (over-reaching) leads her to her final fate.

At this point, having secured the lead role in Lloyd's new play, but having angered Margo, Bill, and Karen in the process, she decides to use DeWitt to advance further. This, we realize, is rather like a Siamese cat fighting *mano-a-mano* with a tiger. Before the premiere of Lloyd's new play, she confides in DeWitt that she intends to get Lloyd to divorce Karen—the very woman who gave Eve the initial chance to become part of Margo's circle—and marry her. Eve claims that Lloyd has professed his love for her, and will now write brilliant plays for her.

DeWitt, angry because she is attempting to use him—a novice arrogantly trying to best the master!—and, we suspect, because he wants Eve for himself, lets her know that he has discovered all about the real Eve, that is, has learned her actual life story. She is, in fact, Gertrude Slojanski, and while she is indeed from Wisconsin and did actually work for a brewery, she was paid off to leave town and keep quiet about her affair with her boss. She is neither an orphan, nor the wife of a war hero, nor a passionate devotee of Margo. DeWitt blackmails her, saying that she now belongs to him, and won't be marrying Lloyd or anyone else. She is visibly stunned and completely silenced.

In the dénouement, we switch back to the Sarah Siddons award ceremony, where the regal Eve accepts her award with all of the faux humility we now expect. Her disingenuous acknowledgement of Margo, Bill, Karen, and Lloyd is met with their cold stares. After the ceremony, she gives the award to DeWitt and—forgoing the party in her honor—returns home. As she wearily enters her apartment, she finds that a teenage girl named Phoebe (from the Greek for “bright and shining”—like a new star) has managed to get in and is sleeping on her couch. Phoebe (played nicely by Barbara Bates) immediately starts to ingratiate herself to Eve, offering to pack Eve’s trunk for her trip to Hollywood.

In the final scene, Eve’s doorbell rings while she is in her bedroom, and Phoebe answers. It is DeWitt, who is dropping off the Siddons award. Phoebe flirts with him, and considering how much older he is, this is clearly manipulative, and we sense that DeWitt, so very used to this sort of treatment from this sort of woman, immediately recognizes a future acquisition to his “stable.”

After he leaves, Phoebe tells Eve that it was just a cabby dropping off the award. The film closes with Phoebe dressing in Eve’s costume dress, and admiring herself in the mirror with Eve’s award held above her head.

Seeing this image of Phoebe in a multiple reflection, we recognize the grandiose dreamwork of yet another narcissist with thespian ambitions, and we know that Eve faces additional retribution.

What are we to make of these characters? While Margo and Bill aren’t complete narcissists, they are certainly vain and more or less full of themselves.

Looking first at the character of Margo, it seems clear that she is certainly a vain, domineering drama queen (which is why casting Bette Davis for the part was so inspired). Her emotional overreaction to turning forty, and her general histrionics indicate this. (Who can forget her announcement at her party, “Fasten your seatbelts, it’s going to be a bumpy night!” warning the guests of the dramatic outbursts to come.) We also see this in her supercilious comments on autograph seekers: “Autograph fiends, they’re not people. Those are little beasts that run around in packs like coyotes. They’re nobody’s fans. They’re juvenile delinquent, they’re mental defective . . .”

Bill is also vain, bragging at one point as he leaves for Hollywood to sign a picture deal, “Zanuck is impatient. He wants me, he needs me.” (Bill is referring, of course, to Darryl F. Zanuck, and this is a sly, self-referential joke, for Zanuck was in fact the producer of this film.)

However, Margo isn’t totally narcissistic in the clinical sense we defined it above. For it is obvious she loves Bill, and has deep affection for Lloyd, Karen, and Birdie, and is drawn in by Eve precisely because she is compassionate (if also gullible).

Eve, by contrast, is surely a perfect narcissist. She is cunning, a manipulative liar to the core, and freely uses people for her own purposes—from her hometown boss, then Karen, then Margo, then tries to use DeWitt. Indeed, she attempted to steal the husband of the very woman who first

interceded on her behalf, using sex as a tool for her advancement (as she did in her home town). And she deeply craves the adulation that comes from being a star—like being in a desert and craving rain.

Eve is only contained in the end by DeWitt, an equally profound, if more crafty and calculating, narcissist. He controls her, we suspect, for sexual purposes, though this is unclear. In fact, some have argued that both DeWitt and Eve are obliquely portrayed as gay⁵—but I find that dubious. Consider first DeWitt. To begin with, there is no indication that he is attracted to either of the male leads (or any other men in the movie). More importantly, Sanders was invariably cast in the role of the debonair woman's man or womanizing cad, and it seems to me that we are meant to view him in this film as a heartless narcissist who uses his power as a theater critic (the power to make or break actors' careers) to prey sexually on young, upcoming actresses. One sees this also in the scene at Margo's party: DeWitt has brought a gorgeous, ambitious young actress, Claudia Casswell (played appropriately by Marilyn Monroe, in a brief appearance). While DeWitt gives her advice on how to make use of the contacts at the party, he is dismissive of her talent, saying that she is "a graduate of the Copacabana School of Dramatic Art." In *Eve* (and at the very end, Phoebe), we see that he understands his prey all too well.

Regarding Eve's sexuality, there is likewise little evidence that she is sexually attracted to any of the other women in the story. Yes, she moves in with Margo as an assistant, which perhaps can be construed as some sort of spousal relationship, though even that claim is debatable. However, she looks at Margo not with erotic interest, but (as Birdie notes) with predatory interest. From what we can tell, then, the only people Eve seems sexually involved with or interested in are men, and then only for what they can do for her. She isn't so much gaily homosexual as grimly heterosexual, or perhaps asexual.

Looking at the main characters in this film, we see yet another subtext. The film advances the view of the people who gravitate toward the theater (and presumably to the motion picture industry as well) as being generally vain, grasping, overly emotional, self-absorbed, desperate for adulation, and often even clinically narcissistic. It is a view of show business as a kind of Hobbesian state of narcissistic nature, that is, a war of all narcissists against all. (I leave it to the reader to decide whether this view is an accurate sociological observation.)

b. The Third Man

Let us consider next *The Third Man*. This film is a superb piece of film noir crime cinema, but—as do *The Bridge on the River Kwai* and *All about Eve*—it transcends its genre. It was brilliantly directed by Carol Reed (who was nominated for a Best Director Oscar for his work in the film), and the screenplay was written by eminent author Graham Greene, who first wrote

⁵ Accessed online at: http://en.wikipedia.org/wiki/All_About_Eve.

it as a short novel. While it won an Academy Award only for Best Black and White Cinematography, it won the British Academy Award for Best Film, and the Grand Prix at the Cannes Film Festival. What's more, it is rated as the greatest British film of the twentieth century by the eminent critics association BFI (the British Film Institute).

It is outstanding again at every level. Visually, it is stunning, with the action taking place against the bombed-out streets of Vienna, and toward the end, its sewer system.⁶ The cinematography was enhanced by the use of odd camera angles and stark lighting, though not all critics have appreciated it.⁷

Adding to the film's visual power is the aura of political and moral ambiguity of the city. During this period, Vienna was a pawn in the Cold War, and it was divided into four occupation zones, each governed by a major Allied occupier: the U.S., the Soviet Union, The United Kingdom, and France. The economy of Austria at this time was less than 60% what it was before the war, with food and consumer goods in severe short supply, and with inflation, crime, and unemployment rampant. There were a number of food riots. All of this spawned a large black market, which forms the backdrop for the story.

This compelling cinematography was accented by the film score, written and played on a solo zither by Anton Karas. The title theme was a huge international hit.

At a literary level, the Graham Greene story is a fascinating and novel crime story, one in which the lead character doesn't appear until the middle, and in which the story (and film) both opens and closes with the funeral of its lead character. Moreover, it is one involving very odd (not to say *outré*) characters, with often very witty dialogue.

Greene's writing really lent itself to cinema: nearly seventy of his novels were put on film. He wrote popular books in a literarily respectable style, and was a close contender for the 1961 Nobel Prize in Literature. He wrote a number of works infused with his Catholic religious sensibilities, but was also fascinated by "great power" international intrigue, and especially international espionage—an interest spurred no doubt by his stint in Britain's MI6, its equivalent of the CIA, during WWII. That interest colors this film, as does Greene's life-long focus on the reality and prevalence of evil in our world.

At a philosophic level, *The Third Man* is brilliant for making the viewer think about the nature of evil and what leads people to live a life of evil, why love can go unrequited, and the ideas of friendship, betrayal, and conflicts of duties.

⁶ The only other movie I can recall that features a major city's sewer system as an essential venue for the flight of the main character is the underrated film noir classic *He Walked by Night*. A good précis of the film can be accessed online at: http://en.wikipedia.org/wiki/He_Walked_by_Night.

⁷ On these points, see: http://en.wikipedia.org/wiki/The_Third_Man.

The film opens with Holly Martins (impeccably played by plastic⁸ actor Joseph Cotten) arriving in post-WWII Vienna.⁹ Holly is a writer of pot-boiler Westerns—a kind of Zane Grey manqué. He has been invited to Vienna (and his ticket purchased) by his long-time closest friend, Harry Lime, with the promise of a job.

Harry is portrayed in a legendary performance by Orson Welles. Welles had worked with Cotten both in radio and in cinema, most importantly in the classic *Citizen Kane* (1941). Welles, though he could be a plastic actor, was usually a persona actor. He often played the arrogant, intelligent narcissist (a paradigm case of type casting!).

Welles had a hand in writing some of his dialogue—especially the “cuckoo clock speech”—and it is rumored in some of the direction as well, especially the final chase through the sewer system. In any case, it appears that Reed was certainly influenced by Welles’s own directing style in such great Welles pictures as *The Stranger* and *The Lady from Shanghai*, and especially the aforementioned *Citizen Kane*.

Holly decides to go to the address he was given, and there he is told that Harry is dead—he was hit by a car while he crossed the street, and his funeral is being held even then. Holly rushes off to it, and there he meets two British military policemen, Major Calloway (admirably played by Trevor Howard), and Calloway’s aid, Sergeant Payne (Bernard Lee). Payne, it happens, is a devotee of Holly’s books. Holly also meets a beautiful woman, Anna Schmidt (alluringly acted by Alida Valli), who turns out to be Harry’s mistress.

Calloway offers to buy Holly a drink, and takes him from the cemetery along the main road back into the city. Over drinks, Calloway tells Holly that Harry was wanted by the police, saying, “[Harry’s accidental death] was the best thing that ever happened to him He was about the worst racketeer that ever made a dirty living in this city You could say that murder was part of his racket.”

Holly, who thinks of Harry as a lovable rogue—mischievous perhaps, crafty certainly, but not vicious—becomes angry, and tries to punch Calloway, whereupon Payne punches him first. Calloway shows his obvious contempt for Holly by telling Payne to take “the scribbler with too much drink in him” to a British military hotel, tossing Holly some military money (script) and advising Holly to get out of Dodge, so to say, that is, to fly back to America.

⁸ In the first article of this three-part series, I defined a “plastic actor” as one who acts his character strictly as guided by the scriptwriter and director. A “persona actor” is one who usually informs the character with the actor’s own (real or projected) personality.

⁹ A detailed summary of the film can be found on Filmsite.org, the American Movie Channel’s cinema database site, accessed online at: <http://www.filmsite.org/thir.html>.

At the hotel, Holly is invited to deliver a lecture on modern literature, which allows him to stay. He sets out to prove that his friend is innocent—saying that he plans to write a new novel—“It’s a story about man who hunted down a sheriff who was victimizing his best friend . . . I’m gunning just the same way for your Major [Calloway].”

Parenthetically, one subtext in this film is the clash between the black-and-white moral perspectives of a simplistic American Western with the moral ambiguities in the modern age. In the original novelette/script, both Holly and Harry are Englishmen. Carol Reed’s decision to make the lead characters American, and make one of them a writer of dime-Westerns, was a brilliant stroke.

Holly then meets a friend of Harry’s, “Baron” Kurtz (unctuously portrayed by Ernst Deutsch), who also claims to love Holly’s books, in a café. Kurtz tells him that Harry was killed when he crossed the street to talk to another friend, a Romanian by the name of Popescu (menacingly played by Siegfried Breuer). Harry was hit by a truck, Kurtz says, and Kurtz and Popescu carried him to the sidewalk, where Harry told Kurtz to take care to see that Holly is well taken care of and sent home.

But Holly realizes that Kurtz’s story differs significantly from the one he was told earlier (by the porter nearby) that Harry had died instantly. Holly presses Kurtz on this:

Holly: [Pointing to the porter] But he said he died instantaneously.

Kurtz: Well, he died before the ambulance could reach us.

Holly: So it was only you and this friend of his, uh, who was he?

Kurtz: A Rumanian, Mr. Popescu.

Holly: I’d like to talk with him.

Kurtz: He-he has left Vienna.

When Holly presses him for information about Anna, Kurtz is even more evasive, only telling Holly that she works at the Josefstadt theater, and advises Holly that “You’d better to think of yourself”—an egoistic criminal recommending that Holly think egoistically, perhaps, but also a covert threat to get Holly to back off.

Holly returns to the hotel, where Payne offers him a ticket home, courtesy of Calloway, but Holly—increasingly convinced that something happened to his friend, and wanting to get to the bottom of it all—hands the ticket back. As Calloway and Kurtz have learned, Holly is driven to find the truth—a sort of Sheriff Oedipus, so to speak—and, like Oedipus’s search, Holly’s will have shattering, unintended consequences.

That evening, Holly goes to the theater and meets Anna, who proves equally cryptic and elusive. Holly—who we see is clearly attracted to her—asks if she loved Harry, and she replies melodramatically, “I don’t know. How can you know a thing like that afterwards? I don’t know anything more except I want to be dead, too.” When he questions her about Harry’s death, she gives an account different from both Kurtz’s and the porter’s. She reports that

Harry's own doctor just happened to be passing by when the accident happened, and—stranger still—that the driver of the car/truck was in fact—*Harry's own chauffeur!* At this point, Holly is convinced that his roguish friend has been murdered.

Holly and Anna then visit Harry's apartment, and Holly talks to the porter, who was an eye-witness. The porter's version of events has it that Harry did die instantly, apparently with a crushed head, and that there was a third man present at the scene, a man who was not Harry's doctor, who was never questioned by the authorities. Holly presses the porter to tell the police his story, but the porter refuses to get involved. He tells Holly to leave. As he walks Anna back to her apartment, she warns him not unkindly, "You shouldn't get mixed up in this . . . Why don't you leave this town—go home?" Calloway, Kurtz, and now Anna have warned Holly to get out, but he is too obtuse or stubborn to heed the advice.

Holly and Anna arrive at her apartment to discover that the police (including Calloway) are searching it. They find a forged passport Harry had given her. Holly feels protective of her, but also annoyed that Calloway won't take seriously Holly's theory that Harry was murdered. Calloway said he doesn't care how Harry died, and reiterates that Holly should leave. When Holly says that he intends to get to the bottom of the matter, Calloway cynically replies, "Death's at the bottom of everything, Martins. Leave death to the professionals."

Holly persists in his quest. After Anna is arrested, he visits Harry's doctor, Dr. Winkel (Erich Ponto), who tells him that Harry's crushed skull was consistent with either an accident or a murder. Later, after Anna is released, Holly accompanies her to a club, where Kurtz introduces him to the Rumanian Popescu who—just coincidentally—is now back in Vienna. Popescu tells Holly his version of the story—that Harry was killed by a truck, and there was no third man there. Holly tells him that, obviously, someone is lying.

We next see several scenes in rapid succession. We see Popescu talking to someone on the phone, arranging a meeting with an unknown person, along with Kurtz and Winkel. Then we see the porter shout to Holly that if Holly will come by later, the porter will tell him more about the accident.

But when Holly and Anna show up later at the porter's residence, they find that he has been murdered. The crowd gathered outside suspects Holly of committing the crime, and he flees. He finds a cab, tells the driver to take him to Calloway's headquarters, but the cab takes him instead to a literary club meeting (which he had earlier agreed to address). While betraying his ignorance of modern literature, he is obliquely threatened by Popescu, who is accompanied by two thugs. After making it clear that he intends to continue investigating Harry's murder, the thugs chase him. Holly eludes the thugs, and makes his way to Calloway's office. This sets up the dénouement.

Calloway expresses exasperation, saying, “I told you to go away, Martins. This isn’t Santa Fe. I’m not a sheriff and you aren’t a cowboy. You’ve been blundering around with the worst bunch of racketeers in Vienna, your precious Harry’s friends, and now you’re wanted for murder.” Calloway then calls for Harry’s dossier. It shows that Harry’s gang has been stealing penicillin from the military hospital, watering it down (so they can sell more of it), and peddling it on the black market. When the ever-obtuse Holly asks, “Are you too busy chasing a few tubes of penicillin to investigate a murder?” Calloway connects the dots for him, replying, “These were murders. Men with gangrened legs, women in childbirth. And there were children, too. They used some of this diluted penicillin against meningitis. The lucky children died. The unlucky ones went off their heads. You can see them now in the mental ward. That was the racket Harry Lime organized.”

Calloway then shows him a slide-show montage of evidence: pictures of Harbin, the orderly at the hospital who stole the penicillin for Harry, fingerprints, and other photographs that finally convince Holly that Harry was evil. Holly agrees to leave Vienna.

An intoxicated Holly later visits Anna again, and finds that while Calloway has also informed her of the extent of Harry’s criminality, she still loves Harry—as she puts it, “Harry was real. He wasn’t just your friend and my lover, he was Harry. . . . A person doesn’t change because you learn more.” As he leaves her apartment building, Holly sees a figure in a dark doorway across the street. He shouts out, and when a resident upstairs opens a window, the light illuminates the face of the lurking man. It is—*Harry Lime*.

Harry, it turns out, faked his own death. *He* was the third man, and had his car run over Harbin (the complicit hospital orderly), and then buried Harbin in Harry’s grave—a ruse that completely fooled Calloway (and everyone else).

Harry vanishes before Holly can get to him. Holly immediately informs Calloway, who at first thinks Holly’s drunk (which he is), but rapidly figures out that Harry is indeed alive and has fled into the city’s huge sewer system.

Anna, brought in to police headquarters again for questioning, is at first shocked to hear that Harry is alive, but refuses to give the police any information about him, even to save herself from deportation to the Russian zone. She shows her protective love of Harry, saying, “Poor Harry. I wish he was dead. He would be safe from all of you then.”

Holly arranges (through Kurtz and Winkel) to meet Harry the next day at the giant Ferris wheel at the Wiener Riesenrad park. In arguably the most riveting scene in the film, the two meet and talk in one of the gondolas as the wheel takes them high above the city. Holly tells Harry about Anna’s plight, which Harry derisively dismisses by saying, “What did you want me to do? Be reasonable. You didn’t expect me to give myself up. ‘It’s a far, far better thing I do.’” Anna’s love is as unrequited by Harry, it appears, as Holly’s is for her. In fact, as I will explore below, Harry was complicit in Anna’s arrest.

When Holly brings up Harry's victims, Harry displays his mentality, a side of him Holly doubtless never saw (because Harry doubtless hid it):

Victims? Don't be melodramatic. Look down there [at the other people in the park, who look like small dots in the distance]. Would you really feel any pity if one of those dots stopped moving forever? If I offered you 20,000 pounds for every dot that stopped, would you really, old man, tell me to keep my money? Or would you calculate how many dots you could afford to spare? Free of income tax, old man, free of income tax. The only way you can save money nowadays.

Harry then tells Holly that he always carries a gun, indicating that he is contemplating using it to kill Holly. However, Holly tells him that the cops have already figured out what's going on (they dug up the corpse from Harry's supposed grave and identified it as Harbin). Harry then resumes his self-justification, noting, "Nobody thinks in terms of human beings. Governments don't. Why should we? They talk about the people and the proletariat, I talk about the suckers and the mugs—it's the same thing. They have their five year plans, I have mine."

When they reach the ground, Harry offers to take Holly on as a partner (reminding Holly that "I've always cut you in"), advising Holly that it wouldn't be difficult for Holly to adjust his moral views in order to be comfortable joining the volunteers. Harry makes the point implicitly in his "cuckoo clock speech," to which I will return below.

Later, pressed by Calloway to help, but still under Harry's spell, Holly is reluctant to set Harry up for capture, but Holly agrees to do so when Calloway agrees to stop Anna's deportation. However, when Holly meets Anna later, she angrily refuses, saying that while she no longer loves Harry, she "couldn't do a thing to harm him." (This signals that despite her protestations, she really still does love Harry.)

Holly returns to Calloway, and says that he now just wants that ticket back home. Calloway realizes that Anna has swayed the weak Holly. He offers Holly a lift to the airport, but takes him to the children's ward at the hospital instead. Here Holly actually *sees* the victims of Harry's handiwork. (We, the viewers, never see the children directly—we only see a sad, discarded teddy bear.) Holly relents—he will arrange a meeting with Harry at a place, a café, where the police will be waiting. As he says wearily to Calloway, "You win . . . I'll be your dumb decoy duck."

Later, while Holly sits at the café (truly a sitting duck), Anna rushes in, having learned of the trap from Kurtz (now under arrest), and angrily confronts Holly, as Harry enters from the back:

Anna: What's your price [for cooperating with the police in Harry's capture] this time?

Holly: No price, Anna.

Anna: Honest, sensible, sober, harmless Holly Martins. Holly—what a silly name.

Seeing Harry enter, she warns him to get away. Instead, Harry draws his gun, and motions for Anna to get out of the way. But Harry is forced to flee when Sergeant Payne comes in through the front of the café.

The movie ends with Harry, after being chased through the streets, going underground into the sewers, where the police follow, entering at multiple points. Harry kills Payne, and in turn is wounded by Calloway. Holly takes the gun from Payne's hand, and he strides off after Harry—like a sheriff striding after the bad guy, gun in hand, facing a showdown. He catches up with Harry, who is now wounded and trapped, and—when Harry seems to invite it—finishes his friend off with a single shot.

The movie closes ironically similar to the way it opened: Holly, Anna, and Calloway all at Harry's funeral, only this time it's real.

What are we to make of the main characters in this film? Let's start with the two male leads, the protagonist Holly and his eventual antagonist Harry, and discuss them in order.

Certainly, whatever else Holly is—morally simplistic? overly single-minded? simply obtuse?—he is no egoist. He is clearly a devoted friend of Harry until his eyes are opened in the children's ward—even, it would appear, at the bitter end in the sewers of the city. And his search for the truth shows a commitment to principle. He also clearly felt the children's suffering, which is why he helped the stern and unlikable Calloway hunt down Harry. And he obviously falls in love with Anna.

As an aside, some have suggested that Holly's relationship with Harry is somehow "homoerotic."¹⁰ This seems unlikely, however. There is no evidence we see in the film that Holly has ever had any sexual involvement with or even any sexual attraction to Harry. He only says the he was a lonely student at school, and that Harry was his best friend. This hardly indicates anything more than fraternal feeling. (This "school" was very likely a boarding school; both characters were British in the original script/novelette, and sending one's children off to boarding school is very common in Britain.) And more to the point, he falls in love with Anna—while he is convinced that Harry is dead. (He doesn't make a play for her during the period when he knows that Harry is alive.)

What about Harry Lime? It seems clear that while Harry is charming, not only is he an egoist, he is a criminal, and to the core—indeed, a classic sociopathic criminal. Holly initially views him as a kind of lovable rogue, recalling Harry as his best friend in school—who always knew the best ways to cheat on tests—until he is disabused of that notion by Calloway, and more importantly, by his own eyes as he tours the children's ward.

¹⁰ See, for example, the Filmsite.org entry on the film, accessed online at: <http://www.filmsite.org/thir2.html>.

That most compelling scene of the movie (mentioned above) gives us important insight into Lime's psychopathy. Recall that Harry meets Holly at a park, and takes him up in a Ferris wheel gondola. As they reach the apogee, Harry rhetorically asks Holly to look at the small figures walking around below on the fairgrounds, and whether he wouldn't be willing to see some of those tiny figures toppled over for a decent sum of money. This fascinating scene shows us the mentality of the psychopath: they see other people as though looking at them through a telescope held backwards—it is to see them as tiny, like ants, small in their significance, not as ends in themselves.

But in the gondola, Harry reveals to Holly (and us) that he has been cooperating with the Russians, and in fact is the one who informed on Anna. He says this, while drawing a heart with Anna's name in it on the fogged-up window. This reveals how lacking in loyalty he is to his country and his paramour. He shows no empathy.

He also shows his manipulative side, when he says to Holly—whom Harry surely has learned has fallen in love with Anna—to take good care of her. He seems to be offering her to Holly as a kind of reward or bonus to recapture Holly's loyalty.

Along with his inability to empathize and his tendency to manipulate others, the psychopath often suffers from a grandiose self-image. Harry is not immune to this, as betrayed by his infamous “cuckoo clock speech.” He tells Holly saucily,

“You know what the fellow said—in Italy, for thirty years under the Borgias, they had warfare, terror, murder and bloodshed, but they produced Michelangelo, Leonardo da Vinci and the Renaissance. In Switzerland, they had brotherly love, they had five hundred years of democracy and peace—and what did that produce? The cuckoo clock!”

He arrogantly supposes himself to be some kind of prince—instead of a vicious and heartless racketeer willing to make money even at the cost of children's lives. (The Swiss were not amused by the line, which was as historically inaccurate as it was insulting.)

Of course, there have been hundreds of portrayals of psychopaths in film over the years—serial killers, for example, have proven especially fascinating to filmmakers. (In fact, we have Hitchcock to thank for the widespread use of “psycho” in our vernacular English, from his extremely popular eponymous film.) However, while Orson Welles's portrayal of Harry Lime is fascinating for a variety of reasons, it is especially fascinating for his illustration of the fact that the psychopath can be seductively handsome and charming.

The point here is that the serial killers we see in film—think Hannibal Lecter, Norman Bates, not to mention Freddie Krueger or Jason Voorhees—are typically weird, menacing, or otherwise repellant. But in real life psychopaths are often (if not typically) good looking and able to project

charisma. For example, Ted Bundy and Albert DeSalvo (a.k.a. “the Boston Strangler”) were both handsome and could talk their way into their victims’ trust.

Again, portraits of racketeers are common in cinema. The “mob” or “gangster” movie is an enduring genre that dates back to the earliest days of the film industry, starting in 1906 with *The Black Hand*. This genre ascended in the 1930s, reflecting the flourishing of organized crime in the 1920s and 1930s—a flourishing, of course, fueled by the passage of Prohibition in 1920.¹¹ Examples include such classic gangster films as: *Little Caesar* (1931), starring Edward G. Robinson; *The Public Enemy* (1932), starring James Cagney; *Scarface* (1932), with Paul Muni; and *The Petrified Forest* (1936), with Humphrey Bogart. But in these films, while the filmmakers may have showed the mobster as arising from poverty or an otherwise rough background (thus on occasion portraying crime as a social problem), the gangsters are almost always portrayed as manifestly dangerous and generally repellant.

The power of this point—that beauty can mask evil—is driven home both internally in the film’s structure, and externally in the film’s reception.

Internally, two additional scenes from the film are crucial to conveying this idea. First, note that when Holly visits the hospital ward, he actually *sees* the children sickened or crippled by Harry’s black-market penicillin; however, we (the audience) do *not*. Why Reed chose not to show us any of the victimized children, or their grieving parents, is unclear. (Just imagine what a director such as Steven Spielberg would have put on the screen in this situation.) It is possible that this could simply be the use of a Greek dramatic device—let the violence occur offstage (here, off-screen), so that the audience will be forced to imagine it, which increases its power to affect the viewer. And it is possible that the intention of this scene is to underscore that to the psychopath, his victims are invisible to him; he doesn’t see them, or at least, doesn’t see them as important or worth consideration. But I would argue that the director wants us to know only intellectually that Lime is a child-killer: we (like Anna) never see it, so are still under the influence of Lime’s charisma.

Second, the closing scene also illustrates the power of physical appearance to cloud moral judgment, one that is jarring in its moral impact. After Lime’s (genuine) burial at the end of the film, Holly initially accepts a ride with Calloway, but asks to get off out when they pass Anna as she walks down the road. He stands facing her, and the camera focuses on her as she walks toward him. We know that Holly loves her, and that Anna knows it, so we expect that she will stop and reconcile with him, because he truly is a morally good (if shallow or even fatuous) man, or at least he did the right thing in bringing down Lime, an evil criminal. Yet she walks stone-facedly right by Holly, and we wonder—*why?*

¹¹ Accessed online at: http://en.wikipedia.org/wiki/Prohibition_in_the_United_States.

Some critics have suggested she is cold toward Holly because he “betrayed” Harry.¹² This again seems dubious. Yes, in the café where Holly awaits Harry in a police trap, Anna is angry at Holly and shows contempt for him. But this just shows her continuing love for Harry. She shows no hatred toward Holly, just indifference. And that indifference is all she has *ever* shown him during the movie, even when it must have been clear to her that Holly loved her. At one point, she tells him bluntly, “You know, you ought to find yourself a girl,” signaling that *she* doesn’t want to be his lover. In fact, to the extent that she has thought about Holly at all, it is with contempt—he is nothing compared to the charismatic Harry.

No, it seems clear that the power of Lime’s charismatic personality, suave wit, and handsome features still command her affections, even after knowing his crimes and even after his death. None but the good *deserve* the fair, we think, but the film suggests they don’t always *get* the fair.

Parenthetically, it is important to note that the decision to end the film with Anna snubbing Holly was the director’s, not the writer’s. Greene had originally ended the story with Anna walking off arm in arm with Holly. In the original novella, he writes:

I watched him [Holly] striding off on his overgrown legs after the girl. He caught her [Anna] up and they walked side by side. I don’t think he said a word to her: it was like the end of a story except that before they turned out of my [Calloway’s] sight her hand was through his arm—which is how the story usually begins. He was a bad shot and a very bad judge of character, but he had a way with Westerns (a trick of tension) and with girls (I wouldn’t know what).¹³

But over Greene’s strong objection, Reed (backed by David O. Selznick, the film’s producer) refused to have Holly wind up with the girl. He was right, in my view—he made the film more philosophically rich and psychologically insightful.

Externally, after the film’s release and commercial success, the public fell in love with the character of—*Harry Lime!* Welles was able to parlay his success in the film into a successful radio series of the same name, one that used the same theme music, which ran from 1951 to 1952.¹⁴ In this series, he played Harry Lime as a benign, cosmopolitan, genially roguish con

¹² Accessed online at: http://en.wikipedia.org/wiki/The_Third_Man.

¹³ Graham Greene, *The Third Man* (New York: Viking Press, 1949), p. 157.

¹⁴ For a sketch of the series, and to listen to its episodes, see: <http://www.otrfan.com/otr/series/harrylime.html>. We should remember that Welles experienced his earliest acting success on his highly successful *radio* series—*The Mercury Theater on the Air*. That series ran from 1938 to 1940.

man, doing good for (or at least not doing harm to) society generally.¹⁵ It appears that the public, no less than Anna Schmidt, couldn't get over Lime's good looks, brilliance, and charisma, positively associating it in the end with a (non-existent) morally good character.

This film thus superbly illustrates a very important psychological insight. Psychologists refer to it as the "halo effect": it is difficult for people generally to resist associating (or more precisely, imputing) moral beauty with physical beauty.

The halo effect has been empirically convincingly demonstrated. Eminent psychologist Robert Cialdini puts the point nicely in his book on the psychology of persuasion.¹⁶ He defines the halo effect as a situation in which one salient positive characteristic completely dominates the way that individual is evaluated by others. As he puts it:

Research has shown that we automatically assign to good-looking individuals such favorable traits as talent, kindness, honesty, and intelligence. Furthermore, we make these judgments without being aware that physical attractiveness plays a role in the process. . . . For example, a study of the Canadian federal elections found that attractive candidates received more than two and a half times as many votes as unattractive candidates. [But] . . . follow-up research shows that voters do not realize their bias. In fact, 73 percent of Canadian voters surveyed denied in the strongest possible terms that their votes had been influenced by physical appearance.¹⁷

Cialdini cites other research that shows that physically attractive individuals are hired much more frequently than unattractive applicants with the same credentials, and that physically attractive defendants are given jail time half as often as unattractive ones accused of the same crimes. Moreover, attractive people are far more likely to get help when in need, and are far more likely to persuade an audience than are the unattractive.

Cialdini adds that this phenomenon is equally found among men and women, and applies to others of the same or opposite sex. I would add that it is not a matter of homoeroticism if men judge other men who are handsome as also having other good qualities or women who judge other women who are beautiful as also having other good qualities. Instead, it is a matter of

¹⁵ Accessed online at: <http://www.mercurytheatre.info>.

¹⁶ Robert Cialdini, *Influence: The Psychology of Persuasion* (New York: William Morrow and Company, 1993). See also Judith H. Langlois et al., "Maxims or Myths of Beauty: A Meta-Analytic and Theoretical Review," *Psychological Bulletin* 126, no. 3 (2000), pp. 390-423.

¹⁷ Cialdini, *Influence*, p. 171.

evolutionary psychology: members of the tribe look up to the physically dominant individuals.

Put another way, male members of a wolf pack don't want to have sex with the alpha male; they are just subordinate to him. Only *he* gets to mate with the alpha female. Holly is under the spell of the halo effect of Harry until he sees the children's ward; we and Anna never see the ward, and so remain under the halo spell to the end. Calloway was wrong: not death, but evolution, is at the bottom of everything.

Don't Be an Ass: Rational Choice and Its Limits

Marc Champagne
University of Helsinki

1. Introduction

If deciding is akin to taking a leap, then deciding rationally is tantamount to ensuring that one leaps over as narrow a chasm of uncertainty as possible. One contemplates a range of possible actions, assigns weights and probabilities to each, and then calculates which is likely to best serve one's elected ends. Such deliberation is often seen as the site of human freedom, but the binding power of rationality does seem to imply that deliberation is, in its own way, a deterministic process. After all, if one knows the starting preferences and circumstances of an agent, then, assuming that the agent is rational and that those preferences and circumstances don't change, one should be in a position to predict what the agent will decide. However, given that an agent could conceivably confront equally attractive alternatives, it is an open question whether rational choice theory can ever eliminate indeterminacy—fully bridging the chasm, as it were.

The clearest support for such a limitation of rationality comes from the “Buridan's ass” scenario, where an agent is confronted with two (or more) equally attractive/unattractive options. The famished ass stuck between equidistant bales of hay is of two minds on the matter. Its eventual action, if any, will of course attest to a singular commitment. But, it seems there must be a prior bottleneck, and it is what transpires in this anteroom of agency that is disputed.

“Choice” can be defined as something that “presupposes alternatives plus a requirement that an outcome be reached in favor of one of them to the exclusion of the other.”¹ Call this last clause the univocity assumption. This assumption reveals some common methodological aspirations. Indeed, “the explanatory ideal in science is always to form hypotheses from which a *unique* observational consequence can be deduced.”² Buridan's ass cases compromise this desire always to churn out a univocal verdict.

¹ James I. McAdam, “Choosing Flippantly or Non-Rational Choice,” *Analysis* 25, suppl. no. 3 (1965), p. 133.

² Jon Elster, “The Nature and Scope of Rational-Choice Explanations,” in *Actions and Events: Perspectives on the Philosophy of Donald Davidson*, ed. Ernest LePore and Brian P. McLaughlin (Oxford: Blackwell, 1985), p. 65 (emphasis added).

Does rationality by itself have the resources needed to prevent paralysis of action? Differing answers to this question obviously entail differing research programs. One view asks us to note that rational agents are endowed with a power to “just do it,”³ while the other view asks us to collect still finer empirical details about situated exercises of rational agency. If, however, there can remain genuine leeway in the choices of even the most rational agents, this would undermine the prospect of predicting and/or guiding decision-making processes in a totally gap-free way. A modicum of voluntarism must, it seems, always be in the mix.

As we shall see, those who (implicitly or explicitly) adhere to the univocity assumption cannot accept the decisional impotence one finds in Buridan’s ass cases, and so devise ways to avoid it. I will catalogue common responses and argue that each are either unwarranted or flawed. Obviously, the philosophical criticisms I will articulate need not challenge the specifics of decision theory—though they might pose a cap on its range of application. My presentation will follow a straightforward structure: I will first pinpoint the problem that concerns me, and will then examine four untenable responses to it.

2. The Problem

In this article, I want to focus solely on what is essential. Mark Balaguer, for instance, distinguishes Buridan’s ass scenarios from “torn” decisions.⁴ The former involve qualitatively identical but numerically distinct options (e.g., two soup cans of the same brand), whereas the latter involve qualitatively different and numerically distinct options (e.g., a soup can versus a banana). One can certainly make this distinction. However, doing so is needless, since the assignment of an abstract valence like “utility” is, by design, general enough to subsume such features. Hence, it makes no difference *what* one is stuck between, provided one desires each equally. We simply have to play with the variables until they truly even out, at which point the discussion begins (though to foster clarity, I will nevertheless use qualitatively identical options as my examples).

If we disregard the fact that it involves a non-human animal, the problem of “Buridan’s ass” poses no great difficulty for the imagination (at least not obviously so). The “weights” that are balanced are not physical weights, but preferential weights. Hence, a trace element of physical matter added to or withdrawn from a given option does not automatically translate

³ See Marc Champagne, “Just Do It: Schopenhauer and Peirce on the Immediacy of Agency,” *Symposium: Canadian Journal of Continental Philosophy* 18, no. 2 (Fall 2014), pp. 209-32.

⁴ Mark Balaguer, *Free Will as an Open Scientific Problem* (Cambridge, MA: MIT Press, 2010), pp. 72–73.

into an increase or decrease in the utility assigned to that option. Moreover, no controversial (say, supernatural) elements are posited. In fact, some theorists like Edna Ullmann-Margalit and Sydney Morgenbesser hold that cases of symmetrical preference abound, and propose that “[s]uper-market shelves supply us with paradigmatic examples of social picking situations proper.”⁵ Of course, a lot of money is spent by firms for “featuring” their products by placing them in more conspicuous spots. Nevertheless, it does not offend the laws of physics one bit to think that two soup cans (on whatever shelf) might be equidistant from a customer. To the extent that this is correct, Buridan’s story might be a ubiquitous part of our daily lives, and we should be intimately familiar with our decisions in such cases.

Rational animals would be at a severe disadvantage if they had not evolved ways of wriggling out of decisional paralysis (otherwise their species-specific differentia would be a considerable hindrance). Can we proceed from this to the conclusion that human agents are endowed with a faculty or power that escapes the net of traditional decision matrices? Ullmann-Margalit and Morgenbesser introduce the terms “picking” and “choosing” to describe decisions made in symmetrical and asymmetrical preferential contexts, respectively. “Picking” is non-monotonic, in the sense that one cannot deduce on the basis of an agent’s prior commitments and context what the outcome of her rational deliberations will be. Hence, when it comes to picking, the use of the adjective “rational” is moot.

Positing the existence of a faculty like picking would seem to be a perfectly respectable inference to the best explanation. Interestingly, before Buridan and his Latin peers discussed the matter, al-Ghazali had formulated the problem of preferential symmetry using a man stuck between two equally mouth-watering dates. Al-Ghazali concluded that “[e]veryone, therefore, who studies, in the human and the divine, the real working of the act of choice, must necessarily admit a quality the nature of which is to differentiate between two similar things.”⁶ More often than not, though, this line of abductive reasoning is not carried out, as a certain bias manifests itself.

Philosophy as a distinctive activity is often said to rest on deliberation, so the suggestion that the ambit of those rational powers is limited can naturally be seen as tainting that disciplinary identity. Many philosophers thus assume that, given well-defined circumstances, a theory of rational choice can always tell us what to do. This assumption in turn fosters (or is fostered by?) a general confidence in the exhaustive power of reason.

⁵ Edna Ullmann-Margalit and Sydney Morgenbesser, “Picking and Choosing,” *Social Research* 44, no. 4 (1977), p. 761.

⁶ Quoted in Nicholas Rescher, “Choice without Preference: A Study of the History and of the Logic of the Problem of ‘Buridan’s Ass,’” *Kant-Studien* 51, no. 2 (1959–60), p. 148.

There is a distinctively rationalist flavor to this belief. Rene Descartes, in his Fourth Meditation, offers a canonical statement:

But the indifference I feel when there is no reason pushing me in one direction rather than another is the lowest grade of freedom; it is evidence not of any perfection of freedom, but rather of a defect in knowledge or a kind of negation. For if I always saw clearly what was true and good, I should never have to deliberate about the right judgement or choice; in that case, although I should be wholly free, it would be impossible for me ever to be in a state of indifference.⁷

Pursuing that view, Benedict de Spinoza⁸ thought it would be flatly irrational for anyone to regard two options as truly equal, and Gottfried Leibniz⁹ thought that decision without preference offends the (in his view, ubiquitous) principle of sufficient reason. Not everyone in the philosophical canon thinks that the principle of sufficient reason has exhaustive coverage, so some (like Arthur Schopenhauer¹⁰ and Jean-Paul Sartre¹¹) would find no problem here.

⁷ Rene Descartes, *The Philosophical Writings of Descartes*, vol. 2, trans. John Cottingham, Robert Stoothoff, and Dugald Murdoch (Cambridge, UK: Cambridge University Press, 1984), p. 40. For a similar view, see Brand Blanshard, *Reason and Analysis* (Chicago, IL: Open Court, 1991), p. 493.

⁸ Spinoza doubts whether a person frozen in equilibrium would still count as a person. The topic of balanced utilities, though motivated by formal considerations, thus becomes the province of “babies, fools, and madmen.” See Benedict de Spinoza, *Complete Works*, trans. Samuel Shirley (Indianapolis, IN: Hackett, 2002), p. 276.

⁹ According to Leibniz, the scenario of Buridan’s ass is typical of the medieval “Schoolmen, whose ideas”—unlike, say, his windowless monads—“tend towards the chimerical.” Thanks to the activity of those Leibnizian monads, “small perceptions” (somehow) intervene to ensure that “[t]here is always a prevailing reason which prompts the will to its choice.” See Gottfried Leibniz, *Theodicy*, trans. E. M. Huggard (LaSalle, IL: Open Court, 1985), p. 148. As we are about to see in the following section, this is a prime example of response (c), which gratuitously posits subpersonal influences.

¹⁰ For Schopenhauer, determinism applies to everything we perceive, but there is no reason to think that everything we perceive exhausts everything there is. See Arthur Schopenhauer, *Essay on the Freedom of the Will*, trans. Konstantin Kolenda (Mineola, NY: Dover, 2005). See also Champagne, “Just Do It: Schopenhauer and Peirce on the Immediacy of Agency.”

¹¹ For Sartre, consciousness always effaces itself before whatever intentional object it has. Since the conscious ego is nothing (literally, no thing), it cannot be subject to any law or causal force. To maintain otherwise would be to craft a cowardly excuse for one’s freely elected stance/attitude toward the world. See Jean-Paul Sartre, *Being and*

Still, there is a minority view, so the rationalist stance dominates, informing current debates.¹²

Of course, it is rare to find a theorist or philosopher openly affirming that rational decision knows no bounds. Nevertheless, when confronted with such limits, many write them off as merely apparent. Bruno de Finetti, for example, resorts mainly to (supposedly shared) intuitions to motivate his claims. He characterizes the idea that the world can house cases which have “no feature that would make one preferable to the other” as something that “puts nature in the terribly embarrassing situation of Buridan’s ass.”¹³ By parity of reasoning, one could just as easily say that strong dominance puts nature in the situation of making the choice for the agent.

3. Four Untenable Responses

The world likely admits of a whole range of balances and imbalances, so it is difficult to see why one situation should be deemed more metaphysically absurd than the other. At any rate, the quick fixes encouraged by such a mindset are riddled with difficulties that are more significant than is typically assumed. I will now look at four common strategies.

a. *Postulating a neutral valence or state*

We can begin with the least sophisticated response. Situations that appear problematic can be made less so by including “indifference” into the calculus. After all, since no recommendation can be inferred from indifference over and above the idea that both options are equally good and could both be picked, this seems like a perfectly sound analysis.

Alas, this response completely dodges the problem. Given that in the end an action will be taken, we have to explain why a specific option was privileged. Clearly, the idea of indifference cannot be of any help here; it is coined to express a state which may perhaps precede an action, but surely cannot prompt or accompany an action. Hence, it is legitimate to ask whether it was a utility or something else that put an end to the indifference.

Nothingness, trans. Hazel E. Barnes (New York: Random House, 1994). This resembles the claim, “[i]n the Objectivist view, [that] no antecedent, deterministic factors can explain why people choose or do not choose to focus.” See Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical*, 2d. ed. (University Park, PA: Pennsylvania State University Press, 2013), p. 153. For a comparative study of existentialist and objectivist views on free will and commitment, see Marc Champagne and Mimi Reisel Gladstein, “Beauvoir and Rand: Asphyxiating People, Having Sex, and Pursuing a Career,” *The Journal of Ayn Rand Studies* (forthcoming).

¹² It could be argued that, by moving from a human to an ass, the Western tradition (re)cast the thought-experiment in terms that rhetorically poison the well.

¹³ Bruno de Finetti, “Probabilism: A Critical Essay on the Theory of Probability and on the Value of Science,” *Erkenntnis* 31, nos. 2–3 (1989), p. 178.

b. Tipping the utilities

If one endorses a twofold menu of utilities and indifference, then by virtue of a disjunctive syllogism, the observable absence of indifference licenses the inference of utilities. Another response therefore consists in doctoring a single optimum *in re* for each closed context and attributing all of the remaining rational indeterminacy to a straightforward lack of information on the part of the deciding agent. For de Finetti, equal cases are “only cases that differ in respects that are either unknown or causally unrelated to their happening.”¹⁴ Such unknown differences allow one to brush aside challenges to the univocity assumption.

The inherent shortcomings of measurements provide a ready asylum for the presumed impossibility of preferential symmetries, as many (or most) of the differences that could move an agent to prefer one option over another fall below a threshold of discernment. Given that minuscule differences in the weight of soup cans go undetected at point-of-purchase by a human *ceteris paribus*, one (fairly unobvious) way to safeguard the univocity assumption is to interrupt a customer midway and inform her that the selection she was about to make is in point of fact less desirable, say, on account of its slightly lesser weight. However, not only would such an intervention doctor the situation in a question-begging way, it would violate the normal phenomenology of the event and thereby relinquish the claim that what is being modeled is the actual decision-making process of the agent(s).

The point can be stated in a methodological key. Regardless of one’s stance on the question of complete preferential symmetries, decision theory can hope to yield verdicts only if the alternatives, expected utilities, and predicted probabilities are kept finite and constant. All parties to the debate agree that the input data must at some point be frozen into place, at least for a given time-slice. To be sure, the social scientist or economist can always leave the observation booth, as it were, and actively intervene in the situation under scrutiny. Doing so, however, would contaminate the results on any gloss. So, while it can certainly be interesting to complicate an experimental design by allowing for a transparent feedback loop that permits agents to revise their forecast of a contingent future in the light of new third-person information about their conduct,¹⁵ the difficulty I am interested in is that which remains once all of these bells and whistles have been added. In other words, a supermarket customer can be informed of the weight of competing soup cans to as many decimal points as an experimenter wishes, but the relevant

¹⁴ *Ibid.*, p. 177.

¹⁵ For an account of rational choice in the face of changing expected utilities, see Edward F. McClennen, *Rationality and Dynamic Choice: Foundational Explorations* (Cambridge, MA: Cambridge University Press, 1990).

situation emerges when the quantitative match is perfect or she simply stops caring, whichever comes first.

It could perhaps be replied on behalf of the interventionist strategy that, all other things being equal, an agent would want to know as many decimal points as possible. After all, charity recommends that we try to maximize the rationality of the agent whose antics we are interpreting.¹⁶ According to what may be termed *ideal conditions theory*, “[i]f we have any reason to think that the agent is operating with partial or misleading information . . . then we should not take the choices that they make as revealing their ‘genuine’ preferences.”¹⁷ Isaac Levi expresses this same idea when he writes that “failure to live up to the commitment is excusable insofar as it is due to lack of memory and computational capacity or to emotional disturbance,” such that ascriptions of irrationality or incoherence “ought to be reserved for those who persist in violating logical closure even in the absence of such excuses.”¹⁸ Hence, on this view, if one happens to choose the lighter soup can, one is not “knowingly” going against the calculus of her utilities.

The difficulty with this seemingly benign gloss, however, is that agents always operate with partial information and imperfect circumstances (as any philosophical skeptic will gladly demonstrate). This is problematic, since there is no standard by which to gauge when to halt the data-gathering. By searching for further facts, descriptive accounts of human decision can thus covertly partake in the intolerance of undecidability.

Faced with this, one might insist that “we should seek to narrow the gap between commitment and performance by improving the technologies which enhance our reasoning and computational capacities.”¹⁹ I agree that it is generally laudable to foster one’s rational skills. It is debatable, though, whether a lack of preference for two identical soup cans betokens a lapse in reason. To be sure, one can stipulate that preferential symmetries are to be taken as a sign to harvest more informational grist for the rational mill. Yet, “[g]iven a rule or a requirement, we can ask whether you ought to follow it, or whether you have a reason to do so.”²⁰ Even if we accept for the sake of the argument that rationality is “a medal of honor bestowed upon certain decision makers by decision theorists,”²¹ it is not clear why an agent should receive

¹⁶ Dagfinn Føllesdal, “The Status of Rationality Assumptions in Interpretation and in the Explanation of Action,” *Dialectica* 36, no. 4 (1982), pp. 301–16.

¹⁷ José Luis Bermúdez, *Decision Theory and Rationality* (Oxford: Oxford University Press, 2009), p. 57.

¹⁸ Isaac Levi, “Possibility and Probability,” *Erkenntnis* 31, nos. 2–3 (1989), p. 366.

¹⁹ *Ibid.*, p. 367.

²⁰ John Broome, “Is Rationality Normative?” *Disputatio* 2, no. 23 (2007), p. 162.

²¹ Itzhak Gilboa, *Rational Choice* (Cambridge, MA: MIT Press, 2010), p. 6.

demerit points for being genuinely perplexed (and/or breaking with her symmetrical preferences “just because”).

c. Positing sub-personal influences

Another way to protect univocity is to hold that the minute discrepancies of available options are not consciously accessible but nevertheless exert a “subliminal” force on agents. In essence, one can tip the utilities, unbeknownst to the decider.

Despite criticizing decision theory for being narrower in scope than typically assumed, Jon Elster succumbs to this strategy. There are many moments in Elster’s critique of standard accounts where the need for a novel non-rational element suggests itself, yet he opts to pursue explanations that do not challenge a stimulus-response model. He observes, for instance, that even when a situation is such as to present an agent with several equally weighed options that leave no room for rational choice, the agent will nonetheless retain the power “at least to ‘pick’ one of the options.”²² Since countenancing such a faculty has far-reaching implications, Elster effectively dodges the commitment by introducing more environmental factors like “perceptual salience or some other value-neutral feature of the situation [that] led to one option rather than another being ‘picked’.”²³ In this way, sub-personal influences are posited in order to avoid the potentially unnerving implications of recognizing a different kind of decision-making power.

Such an appeal misunderstands Ullmann-Margalit and Morgenbesser’s original notions, insofar as Elster cannot add a “causal supplement” without adulterating “picking” and transforming it into a “choosing.” It is as if, upon noticing the plain fact that the ass in Buridan’s example will nevertheless choose one source of food, the philosopher uncomfortable with challenging determinist models of the mind would prefer invoking the time of day that bestowed on one sunlit bowl a perceptual salience, rather than positing some *causa sui* (“self-caused”) capacity. One can always add epicycles to save a theory. It is debatable, though, whether calling on situational minutia to break Buridan’s stalemate is more plausible than accepting a supplementary faculty like picking, which most subjects would likely report possessing.²⁴

It could be argued that the very idea of unknown utilities is suspect or incoherent, because genuine agency requires an ability to give reasons for

²² Jon Elster, “The Nature and Scope of Rational-Choice Explanations,” in *Actions and Events: Perspectives on the Philosophy of Donald Davidson*, ed. LePore and McLaughlin, pp. 65–66.

²³ *Ibid.*, p. 66.

²⁴ Balaguer, *Free Will as an Open Scientific Problem*, pp. 89-91.

what one does.²⁵ Unless one wants to convert decisions into mere bodily happenings, unknown utilities cannot be unknowable utilities.²⁶ In any event, the proponent of sub-personal influences is in need of an argument to show why and how something inaccessible to consciousness can nonetheless contribute to tilting the balance of an agent's decision. Such a claim is notoriously difficult to establish (think of the many posits of Freudian psychoanalysis).

This is not to deny the existence and causal efficacy of “subliminal” influences, for which there is undoubtedly experimental support. However, invoking the possible presence of such influences is a plausible strategy only in some situations. If injected into the situation of perfect balance that concerns me, it constitutes a change of topic.

Those worried about manipulative marketers (or well-meaning “nudgers”) would do well to consider that, since the problem at hand is a general one, an agent could in principle be frozen before soup cans of the *same* brand, which would hardly be conducive to purchase. In other words, subliminal pulls could conceivably tug an agent evenly in opposing directions, jointly prompting incompatible courses of action with an equal degree of psychological force.

In a perfect preferential symmetry, the machinery of rationality is brought to a standstill because the set of options it confronts are deprived of any ordinality. In a bid to restore mock preferences, the subliminal retort posits a causal story but plunges it into murky waters, with the convenient assumption that there must be some account to be told in this regard—only we'll never know it. I fail to see how this appeal is more epistemologically responsible or ontologically parsimonious than countenancing an ability simply to “pick” in a subset of cases.

d. Bunching the options

We have now seen a variety of ways to protect the univocity assumption and explain away the troublesome prospect of confronting preferential symmetries. All of those responses have important flaws. Hence, instead of privileging analysis and increasing the pixellation to something more fine-grained, one could privilege synthesis and reduce the pixellation to something coarser-grained. Elster mentions that “one might redefine the choice situation by bunching the top-ranked alternatives into a single

²⁵ See, for example, the cluster of views presented by Chauncey Maher in *The Pittsburgh School of Philosophy: Sellars, McDowell, Brandom* (New York: Routledge, 2012).

²⁶ Interestingly, when they address the topic of subliminal influences, Richard H. Thaler and Cass R. Sunstein require that institutional “choice architects” be prepared to give (presumably persuasive) reasons for the selections they privilege. See their *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008), pp. 244–45.

option.”²⁷ The idea, in sum, is that “If I am indifferent between a red umbrella and a blue umbrella, but prefer both to a raincoat, the choice becomes determinate once we have bunched the first two options as ‘an umbrella.’”²⁸

Perhaps, but then this raises the following question: Why bunch *these* specifically? One might just as easily redefine the choice situation so that umbrellas and raincoats jointly become a single option, say, “Items that protect one from the rain.” For the bunching proposal to go through, one would need a principled criterion for why the discrimination of alternatives should be blurred at specific categorization boundaries and not others. It simply won’t do to say that the differently colored umbrellas are, as a class, preferred over the raincoat. The predicament is *not* that an agent stands before undifferentiated umbrellas and is plagued by (“akratic”) failure to act in accordance with her preference for them. Rather, the situation is philosophically interesting (and problematic) precisely because she fully *notices* the distinction in color yet nevertheless remains patently *indifferent* to it.

In a sense, the bunching strategy attempts to treat macroscopic differences as the equivalent of unnoticed differences. Minute differences are indeed bunched, but in such cases the preferential indifference stems from a straightforward cognitive ignorance. It is platitudinous to say that one does not care about the complementary class of things one knows nothing of.²⁹ Hence, for the bunching strategy to succeed, it has to accord with the actual experiential situation of the agent, and therefore must acknowledge that the agent is indifferent with regard to two options, not one. Otherwise, one could just as well “bunch” a grocery store as a whole, since it is clearly preferred over starvation. Needless to say, that would not be very helpful. A rewrite into one “option” will thus remain ineffectual unless it can be shown to be more than merely *ad hoc*.

4. Conclusion

Factually, paralysis of action is not a pervasive phenomenon. This is either because (i) the utilities one assigns to two or more options can never be balanced or because (ii) thanks to some non-rational faculty (say, the will), we would not be stuck even if those utilities *were* perfectly counterpoised. Having looked at four untenable responses, it becomes apparent that (i) is often just a dogma and (ii) is by no means a silly position.

²⁷ Elster, “The Nature and Scope of Rational-Choice Explanations,” p. 66.

²⁸ Ibid. For an example of this maneuver, see Hans-Hermann Hoppe, “A Note on Preference and Indifference in Economic Analysis,” *The Quarterly Journal of Austrian Economics* 8, no. 4 (2005), pp. 90–91.

²⁹ See the discussion of neutral valences in Marc Champagne, “Axiomatizing Umwelt Normativity,” *Sign Systems Studies* 39, no. 1 (2011), pp. 45–47.

A table of alternatives and probabilities, whatever the complexity of the resultant grid, is a fairly benign construction. Moreover, standard accounts of rational choice openly omit to discuss where the input utilities come from. Hence, Ullmann-Margalit and Morgenbesser conclude that “we pick or we choose as the case may be; but as to our utilities or values themselves, to the extent they can be thought to be selected at all, they can only be picked.”³⁰ If it does not matter where the agent’s elected preferences come from, I do not think it should create a kerfuffle to acknowledge that, once refined in accordance with the canons of rationality, these utilities still allow for *causa sui* actions. Endorsing a threefold menu of utilities, indifference, and will, the observable absence of indifference no longer licenses the inference of tacit utilities.³¹

³⁰ Ullmann-Margalit and Morgenbesser, “Picking and Choosing,” p. 783.

³¹ I would like to thank Muhammad Ali Khalidi, Mathieu Doucet, Susan Dimock, and audience members at the 2012 meeting of the Canadian Philosophical Association for feedback on an earlier version of this article.

Review Essay

Review Essay: Philip Booth's (ed.) . . . *and the Pursuit of Happiness: Wellbeing and the Role of Government*

Gary James Jason
California State University, Fullerton

Philosophy has long been a discipline that is invigorated and informed by research in related subjects. Research in deductive logic is informed by mathematics, inductive logic by mathematical statistics, philosophy of mind by cognitive psychology and neuroscience, philosophy of science by history of science, and so on. A fertile area of current research in both economics and psychology is empirical investigation into happiness. This research is increasingly being followed by ethical theorists and political philosophers.

The excellent anthology under review provides a useful survey of recent research by economists on well-being and government.¹ It contains original essays by some of the most eminent researchers in the field of happiness economics. The volume is edited by professor of business Philip Booth. It is a good resource for moral and political philosophers who want a solid understanding of the results of this research (as well as its limitations).

After a forward and an introductory chapter, the essays in the anthology are gathered into three parts. The first part consists of essays on whether economists should focus on the traditional economists' measure of well-being, the Gross Domestic Product (GDP), or some new measure based on surveys of national happiness—perhaps some kind of General Well-Being (GWB). The second set of essays deals with the issue of happiness and governmental size and policy. The third set of essays explores the question of whether national happiness is delivered more reliably by governmental activity or the free market.

The foreword is by economist Mark Littlefield, who sketches out the importance of the concept of happiness for both philosophy and economics. It is obvious that utilitarianism—which equates moral rightness with the maximization of good results for everyone involved—takes the concept of happiness seriously. However, Littlefield doesn't note that the notion of maximizing happiness is of equal importance in ethical egoism—the other

¹ Philip Booth, . . . *and the Pursuit of Happiness: Wellbeing and the Role of Government* (London: Institute of Economic Affairs, 2012).

main variety of consequentialism—as well as in Aristotelian virtue ethics. Moreover, contemporary deontologists typically allow that maximizing good results (happiness, generally) is relevant to questions about right action, even if it is not the whole (or even the main) story. Littlefield observes that some recent economists, public policy experts, and politicians have used happiness research to argue that the traditional economic focus on GDP is misplaced; instead, the field should focus on some national measure of happiness.

Editor Philip Booth takes up these issues further in his introductory chapter, noting that British Prime Minister David Cameron urged in a 2006 speech that “[i]t’s time we focused not just on GDP, but on GWB—general well-being” (p. 25). Booth notes that this led Paul Omerod and Helen Johns to produce an earlier anthology² critically analyzing the happiness literature. Booth notes that Cameron cited that earlier book in later speeches (in which he seemed to be more skeptical of the notion of GWB), but in 2011 started expressing attraction to the idea again, stating that “[measures of well-being] could . . . lead to government policy that is more focused not just on the bottom line, but on those things that make life worthwhile” (p. 5). Booth adds that this confusion in politicians grows right out of the confusion in the economic literature on happiness, and that the papers in this anthology aim to clarify these issues.

After briefly reviewing the contributions, Booth concludes with a Bishop Butler sort of observation: a government will have the best chance of promoting well-being if it doesn’t make that its objective, just as it will have the best chance of maximizing GDP if it doesn’t make *that* its explicit goal. Instead, a government will maximize both if it focuses on maximizing the freedom of its citizens and economy.

The second chapter is by economist Paul Omerod. Omerod’s focus is on disputing the notion that government policy should aim at maximizing happiness (or “well-being,” which he argues is used synonymously with happiness). He notes that the U.K.’s Office for National Statistics began to collect data on self-reported happiness in 2011, pursuant to a push by Prime Minister Cameron to do so the previous year.

Omerod argues that the driving force behind this push to collect happiness data is the thought by some social scientists and policy advocates that governments have until now focused too narrowly on maximizing GDP growth, which is (they hold) too narrow an indicator of national well-being. He quotes Derek Bok as a typical case, who wrote, “People are surprisingly bad judges of what makes them happy” (p. 40). This, Omerod suggests, is a serious mistake.

First, Omerod reviews the recent elections in both the U.K. and U.S., and notes that while economic growth and prosperity matter to voters, so do a

² Helen Johns and Paul Omerod, *Happiness, Economics, and Public Policy* (London: Institute of Economic Affairs, 2007). For a review of the book, see Gary Jason, *Independent Review*. 14, no. 3 (Winter 2010), pp. 458-60.

variety of other things, such as the levels of immigration and crime. And he concedes the shortcomings of GDP as a measure of social well-being, which were recognized even by Simon Kuznets, its originator. Indeed, as far back as the 1970s, economists like Bill Nordhaus and James Tobin suggested incorporating measures of environmental health into GDP estimates.

However, Omerod points out that the well-being movement doesn't just want to modify or clarify GDP, but instead, replace it by measures of the happiness of a country's citizens. He adds that one motivation for this demand to replace GDP as the primary measure of national success is that surveys of individual happiness over long periods of time seem to show that the average level of happiness tends to remain flat while GDP rises significantly.

This phenomenon has a name: the Easterlin Paradox, named after economist Richard Easterlin. He concluded (after first studying Japanese data on self-reported happiness over the decades of its rapid post-World War II economic expansion) that after an initial rise, happiness levels off despite the increasing per capita income. This result is puzzling, because under standard economic theory happiness consists in having one's preferences met, and money is the prime mechanism for getting what one prefers. Easterlin and others drew the conclusion that it is not *wealth* that causes happiness, but *equality of wealth* that does. From this paradox, progressive economists (such as Richard Layard) draw out policy implications that conveniently fit their preexisting worldview. These include various schemes for wealth redistribution and steeply progressive income taxes.

Omerod questions the logic of the policy argument. He notes by analogy that during the past forty years in the U.K., while happiness levels remained flat, government spending rose dramatically (by 60%, in fact). Yet few progressive economists would argue that because of this, government spending should not be increased because it doesn't make the people happier. Similarly, during that period, inequality in the U.K. (as measured by the Gini index) rose dramatically, again while happiness remained constant, which would seem to indicate that we should not try to correct inequality of income, since it hasn't negatively correlated with happiness level.

Again, Omerod notes that U.S. data show that during the roughly past forty years, while happiness levels remained flat, life-spans increased significantly and gender pay inequality dropped sharply. But few progressive economists—or anyone else—would conclude that longevity and women's equality are irrelevant to happiness.

Omerod's conclusion is that happiness data as it is now measured is flawed. He notes that happiness is usually measured by surveying people and asking them to rank their happiness on a small, discrete scale (say, "1" for "not happy," "2" for "fairly happy," and "3" for "very happy"), and averaged over the whole population. That is empirically crude, in that it only records increases or decreases in happiness when they are relatively large, and beyond the top number, no increases are able to be recorded.

To show how crude this data measurement technique is, Omerod notes that if 1% of the population were to move a step up on this scale, the

average happiness only bumps up by 0.01. Looking at the U.S., surveys that use a 3-point scale show an average happiness score of 2.2. It would take more than 20% of the population moving up a full point (very difficult to achieve, obviously) to see the average go up a modest 10%.

Moreover, while GDP has no theoretical upper limit (and in fact has risen significantly over the last two centuries), all existing happiness measures are on point scales that each have a maximum value, and so are incapable by construction of showing persistent long-term trends. This raises tricky mathematical issues of interpreting putative correlations between GDP and average happiness scores.³

Omerod then briefly reviews more recent (and more sophisticated) work on happiness. He notes that recent research indicates that the positive correlation between happiness and wealth has no upper limit. He doesn't name the two scholars who have done yeoman's work to refute the Easterlin Paradox—Betsey Stevenson and Justin Wolfers—but they are well represented in this book.

Omerod also sketches the recent work by Daniel Kahneman (one of only a few non-economists to win a Nobel Prize in economics) and Angus Deaton, in which they first disambiguate the concept of happiness, and then use it to explore a database of nearly a half million responses by Americans to various happiness queries.⁴ Kahneman and Deaton distinguish the concept of *life satisfaction*, which is one's feeling about how well one's life is turning out, from *emotional well-being*, which is one's feeling about the happiness of one's current life (i.e., how much joy, anger, or sadness one is experiencing). They showed that while life satisfaction is clearly strongly positively correlated with income, emotional well-being isn't.

Omerod concludes by noting that these recent developments in happiness data studies haven't stopped progressive policy analysts from trying to use happiness measures to replace GDP and justify progressive policy prescriptions, even though that same data can justify conservative policy prescriptions. (The data show, for example, that being married and being religious both strongly positively correlate with happiness. These facts could be used to support policies intended to encourage marriage and religious observance, but progressive policy advocates never draw *that* inference.)

³ For investigating techniques to help establish sound statistical inferences from these sorts of data sets—"cointegration vector" techniques—Clive Granger and Robert Engle won the 2003 Nobel Prize in economics. The reader can review the Wikipedia entry for more details, accessed online at: <http://en.wikipedia.org/wiki/Cointegration>.

⁴ Daniel Kahneman and Angus Deaton, "High Incomes Improve Evaluation of Life, but Not Emotional Well-Being," *Proceedings of the National Academy of Science* 107, no. 38 (2010), accessed online at: <http://www.pnas.org/content/107/38/16489.full?sid=4b9b9633-871d-41eb-b0ee-9781b022c6c3>.

Nor has the past failure of the econometric uses of GDP to successfully predict—much less guide policies which forestall—recessions and rises in unemployment deterred these progressive policy analysts from attempting to use the happiness index. This leads Omerod to observe:

Of course, the fact that economics has made little or no progress in its ability to predict and control the macro-economy does not necessarily mean that the same fate awaits the happiness index and its devotees. Changes in both real GDP and happiness over time share a deep common feature, however. Namely, that they are, across the Western world as a whole, scarcely indistinguishable from purely random series. There is a small amount of pattern, of potential information, in the US GDP data, but it is small. And, more generally, these data series are dominated by random noise rather than by any consistent signal. (p. 55)

I will return to this skeptical point below.

The third chapter is by economists Daniel Sacks, Betsey Stevenson, and Justin Wolfers. It is an update of the classic 2008 paper⁵ by Stevenson and Wolfers that so rocked the Easterlin Paradox literature that it made news in *The New York Times*.⁶

Sacks/Stevenson/Wolfers used data sets of wealth and reported subjective well-being that together covered 140 countries and almost all of the world's population. They note that Easterlin had argued in a number of influential papers over thirty years that while *within* a country, wealthier individuals report higher levels of happiness on average than do poorer ones, *across* countries he found no statistical link between per capita wealth and average happiness. This is the paradox. The conclusion Easterlin and others draw is that it is not *absolute*, but rather, *relative* wealth that determines an individual's well-being. So it would seem that policies aimed at increasing national wealth/GDP—even if successful—would fail to make people happier on average.

Sacks/Stevenson/Wolfers also note two other views advanced by some economists that reinforce the Easterlin findings. First, some hold that subjective well-being adjusts to circumstances over time. This would seem to suggest that as wealth in a society increases, people adapt to their higher income with just higher expectations (so experience no greater feeling of well-

⁵ Betsey Stevenson and Justin Wolfers, "Economic Growth and Subjective Well-Being: Reassessing the Easterlin Paradox," *Brookings Papers on Economic Activity* 1 (2008), pp. 1-87.

⁶ See David Leonhardt, "Maybe Money Does Buy Happiness After All," *New York Times*, April 16, 2008, accessed online at: http://www.nytimes.com/2008/04/16/business/16leonhardt.html?_r=0.

being). (This is often called “the hedonic treadmill.”) Furthermore, some argue that individuals have a point of satiation beyond which more wealth will not bring more happiness.

Sacks/Stevenson/Wolfers refute these claims with three major findings. First, universally, in all 140 countries they studied, wealthier people report higher levels of satisfaction with their lives. Indeed, universally, it appears that the relation between well-being and income is functionally simple: the rise in well-being is correlated with the rise in the logarithm of income (as opposed to merely the *increase* in income). So while going from \$500 to \$750 in income will correlate with a 50% increase in average reported well-being, it would take an increase of \$250,000 to achieve the same average increase starting with a base of \$500,000.

Second, the authors found that there is a statistically significant positive correlation between the average level of well-being of a country and the log of its GDP. This helps resolve the paradox: the authors argue that Easterlin’s data sets were too small (and in the case of the Japanese data, failed to take into account a change in the survey questions) to show a correlation; he took absence of evidence of a correlation to be evidence of the absence of a correlation. Moreover, to the claim of satiation, Sacks/Stevenson/Wolfers argue that their data analysis shows no upper limit beyond which the correlation fails to hold.

Third, the authors offer analyses of time-series data sets that span twenty years and dozens of countries. They show that, over time, increasing economic growth correlates significantly with increasing well-being. This further refutes the paradox, as well as the notion that people’s expectations adapt to rising incomes.

Finally, Sacks/Stevenson/Wolfers show that their results are robust even when other measures of subjective well-being are employed. This includes reported happiness as well as “effect-specific measures of subjective well-being,” such as feelings of enjoyment or love, and absence of pain. Looking at a variety of measures is important, for as the authors note (p. 63), the Easterlin literature has tended to look only at life-satisfaction data (which is often simply characterized as “happiness” data).

The authors make another important point, one that ties in the happiness research done by economists with that done by psychologists. They note that while some economists have criticized data consisting of self-reported feelings of life satisfaction as being overly subjective, in fact, psychologists (such as Kahneman and Diener) have shown that there is a strong correlation between that “subjective data” and objective anchors such as heart rate, health, and sleep quality, as well as independently gathered reports by friends. Furthermore, this data is stable over both time and retesting.

The Sacks/Stevenson/Wolfers piece strikes me as the most important one of the anthology, both for the wealth and quality of its data and robustness of its results, as well as the fact that it takes on the Easterlin paradox directly. However, one aspect of their analysis is questionable. The authors seem to

think that there are two major explanations for within-country correlation between income and life satisfaction, both hedonistic ones (p. 70). Specifically, either more income causes more satisfaction (because it allows more purchases of leisure, health care, good food, and so on), or people are more concerned with how their income compare with some fixed point (such as the average income in the country or people's previous income). Their data analyses rule out the second explanation, and so they favor the first. This leads them to suggest that "transferring a given amount of money from rich to poor countries could raise life satisfaction, because \$100 is a larger percentage of income in poor countries than rich countries" (p. 3). I will return to this point.

The fourth chapter is by historian Christopher Snowden. Snowden acknowledges that some scholars have argued that Easterlin was wrong in holding that, in recent decades, rising GDP has not been correlated with a rise in happiness. However, he takes that lack of correlation as a fact, and examines the question about how much comfort that should give critics of the free market.

Specifically, Snowden takes up the issues the Easterlin paradox purports to establish, namely, the notion that there is a correlation between equality of wealth and level of happiness. He nicely frames the issue:

It has been suggested that people living in 'more equal' societies are happier than those who live in countries where the gap between rich and poor is wider. If so, it would mean that wealth redistribution is more important than wealth creation. By a happy coincidence, that is exactly what those who make such claims have always believed. (p. 100)

And indeed, the idea that people are happier in societies with more equal distributions of wealth seems to be a commonly held belief. But Snowden argues forcefully that this idea is simply a canard.

Snowden points out that, in fact, few studies have been done actually comparing inequality rates and happiness levels over time. Certainly, a scatterplot of happiness levels versus inequality levels (as measured by the Gini coefficient) by country shows no apparent correlation. High equality societies like Sweden and Norway show high national levels of happiness, but so do high inequality countries such as Singapore and the U.S. And, as Snowden notes, Arthur Brooks found earlier that the U.S. happiness level was essential flat from 1972 to 2004, while the Gini coefficient rose by nearly half.

If we take suicide as a proxy for unhappiness, again Snowden (citing a number of relevant studies) shows that there is no positive correlation between inequality and suicide. If anything, there is a negative association: suicide rates tend to be *higher* in countries with lower inequality.

Snowden then reviews several studies that show that differences in the relation between happiness and inequality vary by country. While some poor are comfortable with inequality (for example, in America), in Europe the

reverse is true. This would seem to indicate that “perceptions of fairness and social mobility are more important than inequality itself” (p. 105).

After surveying a large number of studies, Snowden argues that the majority of them show no significant correlation (either positive or negative) between happiness and inequality. There is essentially no evidence supporting the claim that inequality leads to unhappiness in society. Even Richard Layard finally conceded this point. Layard is reduced to making the weaker claim that the poor are made happier than are the rich for every extra dollar gained, and then concluding that this justifies income redistribution measures—a point even echoed, as we saw above, by Sacks/Stevenson/Wolfers. To this, Snowden has an astute reply: the fact that a given amount of new income makes the poor happier than the rich is only a reason to conclude that we should focus on making the poor richer more quickly. It is not *in the least* a reason to conclude that economies with income redistribution schemes will help the poor.

Snowden then takes up the issue about how happiness relates to relative income. He points out that many writers—including many who should know better—conflate the concept of “relative income” (or what I call “local income inequality”) and “income inequality” (what I call “global income inequality”). But income inequality is a notion that refers to the entire distribution of a country’s income, whereas relative income refers to the income gap between specific individuals or groups.

The difference between these concepts is huge. As a lecturer, I might well be more disturbed by the disparity between my pay and that of a senior professor than between my pay and that of an NFL quarterback. And Snowden’s literature search indicates that most studies have shown that happiness levels are certainly affected by relative income inequality, though studies vary in their assessment of the effect. Snowden cites at the lower end Layard’s⁷ estimate that one’s unhappiness at a personal loss of 10 to 30 cents is equivalent to his unhappiness at seeing his neighbor gain \$1, while other researchers⁸ put the equivalence at one dollar to one dollar.

Snowden attributes this to two factors. One is that seeing people in my own “reference group” increase their wealth increases my own expectations, that is, income levels I thought were only for the rich are in fact open to me. The other is “status anxiety,” that is, most people prefer earning *less* money if means they still earn *more* than the neighbors are earning.

⁷ Richard Layard, *Happiness: Lessons from a New Science* (London: Penguin, 2005), pp. 46 and 252.

⁸ Snowden cites: (a) Ada Ferrer-i-Carbonell, “Income and Well-Being: An Empirical Analysis of the Comparison Income Effect,” *Journal of Public Economics* 89 (2005), pp. 997-1019; (b) Erzo Luttmer, “Neighbors as Negatives: Relative Earnings and Well-Being,” *The Quarterly Journal of Economics* 120, no. 3 (2005), pp. 963-1002.

Snowden cites here a study⁹ where students at the Harvard School of Public Health were polled on whether they prefer to earn \$50,000 when everyone else earns \$25,000, or \$100,000 when everyone else earns \$200,000. Half the students preferred the first to the second option. A subsequent survey showed that those same students—public health students, recall—when asked if they would prefer having two painful dental operations while others endured four, to undergoing one painful procedure when everyone else endured none, nearly one-fifth said they would prefer the first option.

So if feelings of status anxiety are held to buttress government policies aimed at equalizing incomes, would it not also support government policies to equalize pain?

In short, Snowden avers, there is no empirical proof that people in more equal societies are happier than those in less equal ones, nor is there any compelling analytical reason they should. He ends by quoting Diener and Biswas-Diener: “Thus, our advice is to avoid poverty, live in a rich country, and focus on goals other than material wealth.”¹⁰

In the second part of the book, the chapters deal with the topic of happiness and government intervention. In Chapter 5, economist J. R. Shackleton looks at happiness literature as it bears on life in the workplace. In particular, he focuses on the question of whether recent findings on happiness economics justify increased governmental regulation of personnel practices in private industry.

He starts by noting that research documents what appears to be common sense, namely, that over the last century at least, work has become much safer, less exhausting, cleaner, more well-compensated, and healthier. By any objective measure, the quality of jobs has risen over time.

But, Shackleton notes, psychologists have focused on workers’ mental states. This psychological literature tends to distinguish two basic senses of job-related well-being: “hedonic” well-being, meaning ongoing positive feelings (of pleasure, say), and “eudemonic” well-being, involving senses of purpose, meaning, personal growth, and social respect.

Such studies are based on surveys done using Likert scales for measuring job satisfaction (which range from “very dissatisfied” to “very satisfied”). They show various correlations, such as levels of job-satisfaction with higher pay, smaller workplaces, higher job security, higher job autonomy, less tight deadlines, and less performance monitoring. This, Shackleton notes, has led a number of researchers to posit a Manichean division between “good” jobs, which involve the positive qualities mentioned

⁹ Sara Solnick and Robert Hemenway, “Is More Always Better?: A Survey on Positional Concerns,” *Journal of Economic Behavior and Organization* 37 (1998), pp. 373-83.

¹⁰ Ed Diener and Robert Biswas-Diener, “Will Money Increase Subjective Well-Being?” *Social Indicators Research* 37 (2009), pp. 119-54.

above, and “bad” jobs, which lack those qualities. Bad jobs are purported to be the jobs that cause excessive stress, potentially leading to health problems.

However, he notes, this view is oversimplified for a number of reasons. First, research shows that differences in self-reported job satisfaction often grow out of personal characteristics (such as age, gender, and ethnicity), personality traits, individual health factors, and even the business cycle (employees report higher happiness during economic booms).

More importantly, employing the notion of “compensating differentials,” Shackleton argues that in a free labor market, any negative job factors will likely be compensated for by higher pay, and positive job factors will by lower pay, and he reviews some studies that document this. Pay differentials would explain why “bad jobs” characteristics (such as long hours) don’t seem to reduce reported job satisfaction. So the idea of restricting work hours in hopes of increasing job satisfaction (such as France did) is dubious, as is the contrary notion of increasing minimum wages (which can kill off jobs many workers might prefer, such as unpaid or low wage internships for students).

Shackleton briefly reviews the evidence on the issue of whether the case can be made for employers to adopt practices explicitly aimed at increasing employee job satisfaction (on the basis of improved productivity), and argues that to the extent such measures work, they are likely already implemented. He concludes by reviewing whether the employment happiness literature lends much support for increased regulation of business, and again argues that it doesn’t, especially considering how much unemployment is shown to lower happiness levels.

Chapter 6, by economist Christian Bjornskov, examines the relation between average well-being and the size and scope of government. Do people report higher levels of life satisfaction in countries where the government “does more” for them?

He starts by noting two reasons why economists and political scientists have traditionally assumed that there must be a positive correlation between government spending and happiness. First is the “standard working assumption” that politicians and government employees are kindly and disinterested purveyors of public goods (p. 160). Second is the “classical welfare economics” assumption that since the increase in well-being the poor experience from the gain of a given amount of money exceeds the decrease in well-being the rich experience from the loss of it, redistribution schemes will therefore increase national well-being (p. 161). (He attributes the second assumption to socialist economist Abba Lerner; he should have noted that the first is a Hegelian one.)

In reply, Bjornskov points to the massive amount of empirical work done over the last half-century in public-choice economics, which refutes the notion that the actors in government (politicians and bureaucrats) are disinterested and benevolent. He concludes that any sound consequentialist argument for increasing the size and scope of government will have to show

that there is a positive correlation between government intervention and well-being.

Certainly, he reminds us, there are theoretical reasons why such a correlation is apt to be nonexistent. There is Friedrich Hayek's information problem: How could politicians know what specific people or groups want? And assuming the politicians could even approximately know what the "average" citizen wants, there is still a "heterogeneity" problem: a large number of citizens will be over-provided with specific public goods, while others will be under-provided. Citing the work of Gordon Tullock, he argues that because consensus in a democracy on spending is typically reached by logrolling, any redistribution of public goods will be driven by special interest groups that will gain a disproportionate share of the redistribution.

Bjornskov gives a nice review of what factors have been shown to correlate with greater national average well-being (unemployment, quality and fairness of governmental institutions, degree of religiosity and social trust in the population), most or all of which seem not to be a result of government action. He then does a literature survey of the empirical studies of the relation between the size and scope of government and well-being (much of which he and his colleagues have done). Some research has found no relation between government size and average well-being, and some has found a strong *negative* correlation between governmental spending and average well-being—especially (and ironically) among the poorest citizens. Nor is there a positive correlation between redistributionist governmental policies and average well-being.

Bjornskov concludes by putting together his research and that of Sacks/Stevenson/Wolfers. If large, activist government doesn't result in increased well-being, but economic growth does, and if (as other studies he cites indicate) large, activist government results in lower economic growth, then the happiness economics research would seem in fact to support Adam Smith's classic public policy prescription of "peace, easy taxes, and a tolerable administration of justice."

The third part of the anthology examines whether happiness is delivered by government or the free market. In Chapter 9, law professor Marc De Vos critically examines the use of happiness measures to drive public policies. He starts by observing that the nature of happiness and how to achieve it were central questions of philosophy from the ancient Greeks onward, and the utilitarians made maximizing people's happiness the foundation of public policy. But in the setting up of the welfare state, the goal was traditionally a materialistic one: insuring populations against material privation (as opposed to making them happy). Yet more recently, the pursuit of happiness has been used to argue for expansion of the welfare state.

De Vos agrees that the recent research on happiness economics is valuable for several reasons. It "adds a quality dimension" to other quantitative economic measures, such as GDP growth, unemployment rates, educational test scores, and poverty rates (p. 182). It broadens economic

understanding of human action beyond the view of people as rational egoists. And personal happiness is important as an issue of public concern.

But the author is skeptical that this means that the promotion of happiness is an appropriate area of policy making, much less that it should be the goal of policy. He has several reasons for this skepticism.

First, De Vos doubts that we have or will ever have reliable happiness data, which he terms “crude and unsophisticated” (p. 185). He lists sixteen different survey questions aimed at eliciting subjective estimates of a person’s happiness; they range widely, including the Gallup World Poll question that asks the respondent to imagine a ladder with the rungs representing a successively better life. He remarks that this “data” is little better than the “data” of the psychoanalyst’s therapy sessions, hopelessly subjective and relative to our personal biases (p. 186).

Second, he notes that with happiness data, there is always a problem in disaggregating causality from mere correlation.

Third, happiness data are ephemeral “snapshots” of people’s feelings at a given time. Here De Vos makes a good point: if we are to drop economic growth as the focus of governmental policy because people become accustomed to higher wealth, why focus on happiness, when people also adapt to misfortune (and revert to their prior levels of happiness)?

Fourth, he notes the distinction between eudemonic and hedonic happiness, and argues that happiness scholars are too focused on measures of hedonic happiness. This, he avers, runs the risk of leading to policies that focus on “instant and often simple gratification,”—which is the very thing happiness proponents accuse traditional economists who focus on GDP of doing (p. 192).

Here De Vos makes a point one wishes more economists who advocate policies would acknowledge: in making a policy recommendation based on happiness data, one must make value judgments about the type of happiness (merely hedonic, or actually eudemonic) that one wants to promote. I would generalize the point: in *any* move beyond empirical economics to the realm of public policy, one inevitably crosses the “is/ought” divide (i.e., commits the naturalistic fallacy).

In Chapter 8, economists Peter Boettke and Christopher Coyne bring insights from Austrian and public-choice economics to bear on the happiness debate. Boettke/Coyne define the Easterlin paradox narrowly as the alleged phenomenon that as incomes rise, beyond a certain point, average happiness remains flat. The two most common explanations offered are that people judge their wealth by relative rather than absolute terms, and the hedonic treadmill effect (which holds that any increase in wealth leads to an initial uptick in happiness, but it returns to its prior level as the person becomes accustomed to it). The authors note that progressive policy advocates who accept these views call for similar policies—especially steeply progressive taxes on income and heavy taxes of so-called “luxury goods”—because those progressive advocates view the greater wealth of some as a negative externality on everyone else.

But Boettke/Coyne pose several objections to happiness economics and the policy prescriptions it is used to justify. Regarding happiness economics, the authors (following Will Wilkinson¹¹) note that the literature has at least four different elements of “happiness”: life satisfaction, hedonic experiential quality, some third state besides life satisfaction and hedonic quality, and well-being (p. 208). Worse yet, people don’t even agree what these elements *are*, and researchers seldom try to make clear which concept they are attempting to measure in their research.

Moreover, Boettke/Coyne argue that the data on happiness are context- and time-sensitive, making cross-respondent, cross-country, and cross-time comparisons dubious.

They also question the notion that status is a zero-sum good, that is, that the more status one person has, the less other people have. This is used by progressive policy advocates to urge the adoption of policies that lessen wealth inequality, since it causes status envy and thus unhappiness. The authors reply that this assumes that the amount of “status” is somehow fixed. But in a modern economy, old forms of status may lessen or disappear, while new and more varied ones emerge.

Regarding the policy proposals, Boettke/Coyne make a couple of common-sense points. Even if we view above-average income/wealth as a kind of “pollution” to be taxed, we have to remember that to tax income is to tax productive entrepreneurship, which would deter productive activity. This would cost us in increased wealth, hence in better standards of living, education, longevity, and so on. More generally—and here the authors invoke Hayek’s knowledge problem—redistribution will always result in negative unintended consequences.

They also observe that in taxing productive work to provide public goods, it is unlikely the government will deliver these goods in an optimal manner. Moreover, if the hedonic treadmill thesis is correct, and people adjust to an increase in material wealth to return to their prior level of happiness, that would surely apply to any public goods as well.

Chapter 9, by economist and historian of philosophy Pedro Schwartz, takes on utilitarianism. Schwartz provides a useful survey of Layard’s (and Bentham’s) ethical philosophy. Schwartz argues three points. First, Layard’s utilitarianism elevates (hedonic) happiness to the supreme value, which unduly narrows the field of normative economics. Second, by making happiness a public good, it confuses negative and positive rights and thus guarantees that civil rights will be violated. Third, this philosophy confuses the morality of small groups with that of society as a whole. Contentment is fine as the goal of small groups, such as the family, but a large society requires competition to flourish.

¹¹ Will Wilkinson, “In Pursuit of Happiness Research. Is It Reliable? What Does It Imply for Policy?” *Cato Institute Policy Analysis* no. 590 (Washington, DC: Cato Institute, 2007).

The author makes a couple of trenchant criticisms along the way. One is that Layard's sort of happiness philosophy "elevates envy to the category of a public virtue" (p. 236). Another is that if we really want to maximize the public happiness, we should enact cruel and unusual punishments, entirely outlaw immigration, and totally end free trade, for people seem to want these things. (Yes, in the long run, the nation would be impoverished, but income equality would be achieved!)

I think that Schwartz's criticisms make sense only if you take happiness to be hedonic. If we take happiness to be eudemonic, utilitarianism is not so easily dismissed, which may be why Mill moved away from Bentham's sort of hedonism and later utilitarians (such as G. E. Moore) gave it up entirely.

One drawback of this estimable anthology is that there is a certain tension between the strains of criticism offered in the selections. One strand (represented by Omerod, De Vos, and Boettke/Coyne) seems to hold that the happiness data—at least as presently collected—is simply so unreliable, so statistically noisy (i.e., so governed by random results), that it is useless as an evidential basis from which policy conclusions of any stripe can be drawn. The other strain (represented by Sacks/Stevenson/Wolfers and Bjornskov) holds that while happiness data, properly analyzed, certainly is reliable enough to draw policy conclusions, the problem is that the egalitarian policy prescriptions that have been drawn from it are either not supported or outright refuted by that data.

So are we simply to reject happiness measures as being fatally noisy and thus uninformative, or embrace them and cheerfully use them to argue against egalitarian policies? This tension isn't explicitly addressed in the anthology, although Sacks/Stevenson/Wolfers touch on this obliquely when they note in passing that psychologists (including Kahneman and Diener) have shown that this subjective data strongly correlates with intersubjective reports and objective physiological measures.

However, Stevenson and Wolfers have addressed this point in an interview they did with Russ Roberts for the online journal *EconTalk*.¹² Wolfers points out that while happiness data seem "noisy," it is noisy in a way that correlates with the noisy GDP data. This seems difficult to explain if the two data sets were purely or mainly a result of random noise. In fact, as Wolfers notes, the observed strong correlation between income and happiness must be in reality even stronger if both data sets are as noisy as claimed.

A second critical point is that several of the readings (including the Sacks/Stevenson/Wolfers paper) seem to accept the Lerner thesis that transfers of money from the wealthier to the less wealthy will increase happiness on net. This is because gaining a given amount of money correlates with a greater increase in well-being of a poor person than the decrease of well-being correlated with the loss of that same amount of money among the

¹² See: http://www.econtalk.org/archives/2013/Stevenson_and_W.html.

rich. However, that crucially assumes that *giving* money to the poor will cause them to be happier. But happiness studies of lottery winners show that they typically show no permanent (i.e., long-term) increase in self-reported well-being despite the increase in wealth. This suggests that it is not any money that correlates with increased well-being, but *earned* money. An obvious explanation for this would be that it is meaningful work that produces *both* wealth and well-being.

Put another way, a possible explanation for the correlation between income and life satisfaction may be found in a virtue theory of happiness rather than a hedonistic one. Perhaps the reason higher income correlates with life satisfaction is that people—especially in an epistemic (i.e., knowledge-based service) economy—usually have to exercise their virtues (especially their intellectual virtues) to get higher income. That is, while income and life satisfaction correlate, it is the exercise of virtue that causes both. So merely transferring money—that is, giving unearned money—to the poor will not increase their life satisfaction, because that money is not earned virtuously. This would explain Bjornskov’s findings that there is no positive correlation between redistributionist policies and happiness.

Another critical point is worth making. The editor would have done well to solicit a contribution from an economic historian to sketch out the broad historical background from which the Easterlin impulse—the impulse to denigrate the amazing economic flourishing brought about by the modern capitalistic enterprise—derives much of its appeal.

Specifically, there is a strain of anti-capitalist criticism that has been recurrent for centuries, going back to the 1950s with the work of John Kenneth Galbraith, to the mid to late 1800s with the work of Karl Marx, all the way back to the mid to late 1700s with the work of Jean-Jacques Rousseau. This is the strain of Romantic anti-materialism, which is a visceral revulsion against the focus on individual wealth (especially “consumer goods”) involved in the Industrial Revolution.

This visceral disgust at industrialization (and the consumer economy it enables) is typically articulated as the thesis that growing material wealth leaves people greedy, spiritually shallow, and ultimately unhappy. In fact, a word was coined to name this alleged spiritual or moral disease: “affluenza” (a portmanteau word combining “affluence” and “influenza”).

The basic tenets of Romantic anti-materialism were laid out by Rousseau in his two immensely influential early essays, *Discourse on the Arts and Sciences* (1750) and *Discourse on the Origin of Inequality* (1753). These tenets are that primitive life (i.e., life in a “state of nature”) is superior to modern life, that the civilized (industrialized) life is characterized by disgusting greed and degrading inequality, and that the root of these evils is the existence of private property.¹³

¹³ Rousseau did not hesitate to draw out public policy prescriptions from his ideology, prescriptions startlingly similar to those of today’s progressives, most notably that

I would suggest that the reason the work by Easterlin and others has attracted so much support is that Romantic anti-materialism has been a constant and compelling ideology from Rousseau's day to the present, and that this recent work seems *prima facie* to provide "empirical proof" of it.

In conclusion, this anthology should be of great use to ethical theorists and political philosophers. For ethical theorists, the nature of happiness is a crucial component of the field of ethics. Happiness has been philosophically analyzed for millennia, of course, but it has been only relatively recently that happiness has been the subject of intense empirical work, chiefly among economists and experimental psychologists. All ethical theorists ought to be familiar with this empirical research, and this anthology is an accessible survey of the relevant recent work done by economists.

Political philosophers will find that the arguments and data this anthology presents provide ample reason to be skeptical of proposals for redistributionist and anti-growth policies justified on the grounds that they will make people happier. There may be other more compelling reasons to call for such policies—and, then again, there may not be—but the facile invocation of the Easterlin Paradox clearly will no longer suffice.

income taxes should be steeply progressive and that there should be heavy taxes on "luxury goods."

Book Reviews

Audi, Robert. *Moral Perception*. Princeton, NJ: Princeton University Press, 2013.

In *Moral Perception*, Robert Audi maintains that we have three sources of moral intuitions which yield moral knowledge: moral perception, reflection (either on concrete cases or on general principles), and some kinds of emotion. In his first chapter he sketches an account of *non-moral* perception (of physical things) as involving a representational experience with specific phenomenal qualities. The phenomenal element in perception depends causally on the perceived object and varies systematically with changes in it.

Chapter 2 contains Audi's account of moral perception. We perceive a moral property of an action or of a person in virtue of our perception of the non-normative properties on which the moral property is constitutively based and our "felt sense of connection" (p. 39) between the two kinds of property. For example, I perceive a man furtively removing a bracelet from a woman's handbag as wrong because I perceive the non-normative properties of the action and I have a felt sense of connection between those properties and wrongness. The representation of the moral property is not part of the *sensory* phenomenal content of the perception, but it is integrated with that content to form part of the total phenomenal content of the perception. The perceiver does not *infer* the moral property from the non-normative base properties with the aid of the felt sense of connection, but rather, *sees* the moral property in virtue of the felt sense of connection.

In Chapter 3, Audi claims that the relation between the moral properties and their base properties is necessary and *a priori*. Therefore, non-inferential moral beliefs which are formed in direct response to moral perceptions may be justified. Moral perception therefore provides inter-subjectively accessible grounds for a wide range of moral judgements, thereby making a major kind of ethical objectivity possible.

The topic of moral disagreement is taken up at the end of Chapter 3 and pursued through the first part of Chapter 4. Audi contends that rational moral disagreement is possible because people may differ with regard to

- moral sensitivity;
- standards for sound inference;
- having made a mistake in inference;
- knowledge of relevant facts;
- background theories;

- how various relevant moral considerations should be traded off against each other; and
- epistemic parity, where epistemic peers are equally rational and thoughtful and have considered the same relevant evidence equally conscientiously.

He says that “the common kinds of disagreements in ethics . . . are not between people who are epistemic peers” (p. 82). Disagreement between epistemic peers is possible, he somewhat reluctantly concedes (p. 77), but it is very difficult to know whether another person is an epistemic peer. By re-checking our own grounds for a belief we may increase our justification for it: “Insofar as we are self-critical and have justified self-trust, as some of us do, our retention of a belief after such scrutiny tends to be confirmatory” (p. 80). In the last two-thirds of Chapter 4 Audi is concerned with moral intuitions which, he claims, are direct responses to something a person non-perceptually sees, not inferences from prior premises, even though they may result from wide-ranging reflective consideration rather than being obvious.

Chapter 5 compares ethics and aesthetics. Aesthetic properties, like moral ones, depend on non-normative properties, and aesthetic perception and aesthetic intuition parallel their moral counterparts, although aesthetic intuitions seem to require more experience and education than do moral ones. An intuition that an action is overall obligatory, or wrong on balance, is a response to a complex pattern of factors, as is an aesthetic judgement. The complexity of the pattern is usually much greater in aesthetic than in moral cases, but in both types of case the intuition results from reflective consideration, not from inference.

Audi turns to emotions in Chapter 6. He says that while emotions do not have a content that may be true or false, most have cognitive, motivational, and affective constituents and typically embody beliefs (sometimes intuitive ones). Emotion is often a response (appropriate or inappropriate) to a pattern. It may enable us to see more and it may respond to the whole as more than the sum of the parts, so that it may be part of the basis for a moral intuition.

Chapter 7 gives illustrations of the kinds of emotions that are appropriate to, and that may provide evidence for, the violation of, or the fulfillment of, the obligations involved in W. D. Ross’s “eight principles of prima facie obligation” (p. 146). Audi discusses how emotions may play a similar role in thought experiments and other exercises of moral imagination, and he makes some comments on moral judgment.¹

¹ I note here some general points, leaving substantive issues for the body of the review. The book is generally clear, but there are some obscure sentences or longer passages that I could not construe despite several re-readings (pp. 37-38, p. 57 n. 7, p. 63, p. 91). There is a good deal of repetition between and within chapters. The book is written in a scholastic style; there are ponderous digressions (pp. 17-20, 71-74, 85-88, 134-36, 160-61, 162-64), occupied with drawing more distinctions than seem necessary for the job

The primary concern of Audi's book is moral perception and the possibility of non-inferential and objective moral knowledge connected with it. That will be the focus of my discussion. The claim that there are moral perceptions should not surprise anyone who is already aware, either from the philosophy of science or from the empirical psychology of perception, that observations are theory-laden. What we (seem to) see depends not only on what we are looking at and on our sense organs, but also on our background theories. For example, what a layperson sees as an oscillating iron bar with a mirror attached, sending a beam of light to a celluloid ruler, a physicist sees as the electrical resistance of a coil.² In the case of the physicist, the background theories are articulated theories which are learned and may, of course, be mistaken. If the relevant body of physical theory were falsified and replaced with something better, the physicist in learning the new theories, may simultaneously acquire a new way of seeing old events. However, the theories which help determine the content of our perceptions need not be articulated and they need not be learned. Young children, and also tribal people, see inanimate things, particularly those which move—such as rivers, leaves, the sun, the moon, clouds, a thrown stone—as living beings with wills subject to moral laws or moral authority. The background theory here is neither learned nor initially articulated, though it becomes increasingly, though unsystematically, articulated as the child grows. Children in modern societies, as opposed to tribal ones, presumably under the influence of their parents and the larger culture, replace their unlearned and largely unarticulated animistic theories with learned and more-or-less articulated mechanical ones on average a little after their tenth year.³

It seems clear that the felt sense of connection between moral and non-normative properties, of which Audi speaks as generating the moral aspects of our moral perceptions, is an incompletely articulated and unsystematic background moral theory. It also seems clear that such theories are not purely an outcome of biology (as the child's animistic theories seem to be), but are largely products of the influence of the culture in which a person lives. That seems clear because people raised in different cultures have different moral perceptions of the same events. For example, suppose that a woman uses a knife to remove the clitoris and inner labia of a five-year-old girl, without anaesthetic, in the absence of any medical reason to do so. A

at hand, unless Audi's job at hand is simply to draw distinctions rather than to solve theoretical problems.

² Pierre Duhem, *The Aim and Structure of Physical Theory*, 2nd ed., trans. P. P. Wiener (Princeton, NJ: Princeton University Press, 1954), p. 145.

³ Jean Piaget, *The Child's Conception of the World* (London: Routledge and Kegan Paul, 1929), chaps. 5-7. For other examples of how background theories influence what we perceive, see James Kalat, *Introduction to Psychology*, 9th ed. (Belmont, CA: Wadsworth, 2011), pp. 123-40.

person (male or female) from a culture in which this is a norm may see the woman's action as morally good and right, either simply because of a felt sense of connection between such action and those moral properties, or because of a slightly more elaborate background theory which links such treatment of females with what is good for them or good for society.⁴ In contrast, most people reared in a contemporary Western culture would see the woman's action as morally wrong, and may feel the moral emotions of indignation or disgust toward the woman and sympathy toward the child, because the background theory is that inflicting such a gross injury on an innocent is wrong.

So we have:

- (i) The moral aspects of a moral perception are not part of the sensory content of the perception, but are contributed by the perceiver's background moral theory.
- (ii) The background moral theories of different perceivers often contradict each other and, when that is so, at most one of them can be true.

The conjunction of (i) and (ii) seems to undermine Audi's claims that moral perception may ground moral knowledge and that it provides inter-subjectively accessible grounds which make ethical objectivity possible. Audi seeks to extricate himself from this dilemma by discounting moral perceptions he finds troublesome, as due to background moral theories which reflect bias or moral or epistemic failings (pp. 74-83). Unfortunately, that maneuver tends to convert rational disputes into *ad hominem* ones, as I will illustrate with one of Audi's examples.

A priest and a pimp, Audi says, will see very different things when they observe a desperate woman turn to prostitution:

The priest sees [the] woman . . . as demeaned and treated merely as a means. The pimp . . . may see her amorally, as needing to make the best living she can The pimp may . . . have certain moral concepts and a good sense of the base properties for them, but may also be *amoral* in . . . [having] no moral commitments regarding the woman or anyone else and no motivation to act on any moral propositions he may happen to believe. . . . [Or] he may lack the morally important notions of violation of a person and of treating a person merely as a means . . . [or] he might not apply them by all the same criteria as the priest, or may simply be insensitive to the evidences that indicate their application . . . [which] is in part a matter of moral education. (pp. 74-75)

⁴ Her Majesty's Government, *Female Genital Mutilation* (London: The Stationery Office, 2011), pp. 6-7.

Audi presumably regards a priest as a paragon of virtue, despite all of the child-abuse scandals, and a pimp as a paradigm of vice: the disputants are chosen so that one can be dismissed as lacking the credentials for a moral discussion. However, I am not a pimp, but I think that the pimp is at least partly right and that the priest is wrong. So Audi must say that I amorally ignore my moral obligations, lack the relevant moral concepts, misapply them, or am morally insensitive and morally uneducated. If I allow myself to be provoked by such insults, I might respond in kind and say that Audi and the priest exhibit the immaturity of holding that the moral dogmas drummed into them as children are unquestionably true. But, of course, I have better manners. Ironically, one of Audi's aims is to show how "cross-cultural communication in ethics" is possible (p. 4). I suppose that mutual abuse and recrimination do count as communication, though of an unedifying sort. Rather than grounding moral knowledge and ethical objectivity, Audi's moral epistemology encourages holy war between closed-minded sects, all proclaiming their own "justified self-trust."

That there is such a thing as moral perception seems irrelevant to moral epistemology, the central problem of which is how we can evaluate, objectively, rival moral theories, including the background moral theories on which moral perception depends. It would be question-begging to appeal to moral perceptions to try to solve that problem because of (i) and (ii) above. One lesson we can learn from the failure of Audi's approach is that, rather than trying to locate the sources of the theories of our intellectual adversaries in their personal defects, we should focus on the rival theories themselves and find ways to criticize and test them.⁵ To some extent this can be done *a priori*, by pointing out inconsistency, explanatory inadequacy, unnecessary complexity, disanalogy, or *ad hocness*. However, some of the argument will usually be empirical, appealing to consequences. Let us return to Audi's example.

On the priest's view, it is inherent to prostitution that the woman is demeaned, violated, and treated merely as a means. But why should that be so? It is not inherently demeaning to sell services for money; Audi and the priest both do it. It is not inherently demeaning to engage in casual sex: for both sexes, such encounters can be physically and emotionally gratifying,⁶ and casual sex need not result in lower self-esteem or impaired well-being.⁷ If

⁵ Karl Popper, "On the Sources of Knowledge and of Ignorance," in Karl Popper, *Conjectures and Refutations* (London: Routledge and Kegan Paul, 1963), pp. 3-30.

⁶ Justin Garcia and Chris Reiber, "Hook-Up Behavior: A Biopsychosocial Perspective," *Journal of Social, Evolutionary, and Cultural Psychology* 2, no. 4 (2008), pp. 192-208.

⁷ Marla Eisenberg, Diann Ackard, Michael Resnick, and Dianne Neumark-Sztaine, "Casual Sex and Psychological Health Among Young Adults: Is Having 'Friends with

neither selling services nor casual sex is inherently demeaning, how could it be inherently demeaning to combine the two? In fact, many women have made a good living from prostitution, either for a short period of time or as a life's work, and many enjoy the work and derive increased self-esteem from it.⁸ Furthermore, it is not inherent to prostitution that the woman is violated in any objectionable sense: she *consents* to the sex. Similarly, a patient who consents to surgery is not violated in any objectionable sense. The prostitute is not treated *merely* as a means either. She is paid for her services and she consents to sell them because doing so helps her to achieve her *ends*. Her client no more treats her merely as a means than Audi treats a plumber merely as a means when he pays her to straighten out his drooping ballcock. Of course, some women are coerced into prostitution by people-traffickers and other thugs, but some people are coerced into various forms of manual labor (in North Korea, for example) without that impugning the legitimacy of manual labor as an occupation. It is therefore difficult to see how prostitution could be inherently wrong. I do not claim that these considerations are decisive. My point is that we can argue rationally over the propositions at issue, that such discussion can reveal the weaknesses of our culturally inherited background theories, which we can then discard, and that internecine disputes over each other's credentials are a pernicious distraction from rational criticism of theories.⁹

Danny Frederick
Independent Scholar

Benefits' Emotionally Damaging?" *Perspectives on Sexual and Reproductive Health* 41, no. 4 (2009), pp. 231-37.

⁸ Ronald Weitzer, "New Directions in Research on Prostitution," *Crime, Law and Social Change* 43, nos. 4-5 (2005), pp. 213-18.

⁹ This review has benefitted from critical comments made by Mark D. Friedman on an earlier draft.

Blackledge, Paul. *Marxism and Ethics*. Ithaca, NY: State University of New York Press, 2011.

What do Marxists have to tell us about ethics? After the events of the twentieth century, many would be tempted to reply “nothing,” and many Marxists might even agree with them. Paul Blackledge disagrees, though. His book is a powerful attempt to develop a Marxist ethics that is relevant to contemporary society and that avoids many of the caricatures that Karl Marx has suffered in the century and a half since his death. In particular, Blackledge is concerned with restoring to prominence a tradition of Marxism which is just as critical of the statist forms of socialism that once dominated much of the globe as it is of capitalism. Moreover, he argues that a renewed version of this tradition offers a compelling alternative to contemporary models of anti-capitalist politics, such as those offered by thinkers like Slavoj Zizek, John Holloway, and Simon Critchley. In his own words:

[C]lassical Marxism, once adequately reconstructed and disentangled from its Stalinist caricature, provides the resources to underpin an ethical political practice that is able to move beyond the negativity of anti-capitalism toward a positive socialist alternative to capitalism. (p. 4)

As the above quotation suggests, this book is unashamedly partisan, in the sense that it starts from a fairly basic assumption that Marx’s criticisms of capitalist society are substantively correct. You will not find here much in the way of detailed explanations and justifications of why wage-labor is necessarily exploitative, or why gross inequalities of wealth and power deserve to be condemned. What you will find is an impressive interpretation of Marx’s own ideas about ethics, followed by an equally impressive narrative of the subsequent development of ethics by Marxists. Both of these things ought to be of value to anyone interested in the history of critical thought, particularly in the twentieth century.

Marx’s own relative silence on explicit questions of ethics means that they have been the subject of major controversy in the twentieth century. Loosely, Marx’s explicit rejection of (at least certain varieties) of moral thought has led his interpreters down two distinct paths. The first emphasizes the “scientific” aspect of Marxism, suggesting that the absence of normative concerns is only to be expected, and perhaps even a virtue, since Marx’s theory is intended as purely descriptive and explanatory and aimed at demonstrating the necessary emergence of communism from the failures of capitalism. The second argues that this, in fact, is a fatal weakness; if Marxism is to be an effective instrument of social change, it must be supplemented with normative resources not to be found in Marx.

Blackledge rejects both of these approaches, arguing that Marx’s work contains within it an implicit ethics, specifically a form of virtue ethics

which privileges human freedom. This is an ethics that does not accept the traditional separation between “ought” and “is,” seeing human goods as rooted in human practices. This means that Marx’s theory has to be understood as simultaneously descriptive and normative; “is” and “ought” are two sides of the same practice. As a result, he sharply rejects what is sometimes described as the “ethical turn” in contemporary political theory, in which ethics is developed as something distinct from and in addition to descriptive theory. In his criticism of this “ethical turn,” Blackledge endorses Alasdair MacIntyre’s vision of contemporary ethics as “a cacophony of incommensurable perspectives” (p. 4):

Contemporary morality is consequently characterised by ‘interminable’ disagreements which seem immune to rational closure: debates on war, rights, and justice, etc. each generate a multiplicity of rationally justified opposing positions which exclude reason as an independent arbiter. (p. 5)

Blackledge is heavily influenced by MacIntyre, in particular MacIntyre’s early Marxist writings, of which Blackledge has edited a collection. MacIntyre abandoned Marxism, but Blackledge evidently believes that he did so prematurely (“a minor intellectual tragedy” [p. 193]), and that a suitably modernized virtue ethics can provide the solution to this apparently interminable conflict.

Blackledge endorses MacIntyre’s Aristotelian claim that ethics must be concerned with goods that are internal to practices. This means that any adequate ethical criticism of capitalism must be rooted in particular practices and must come from a standpoint within these practices. He argues that Marx himself adopted this substantively Aristotelian position, albeit filtered and modernized through G. W. F. Hegel. From Hegel and the radical Enlightenment, Marx inherits a historicized concern for freedom, in which freedom is understood as the *human essence itself*, realized differently at different stages of human history and understood as self-determination through (rather than against) society. Marx thus rejects a purely egoistic and individualistic conception of freedom, arguing instead that true self-determination can only take place in and through social forms.

According to Marx, capitalism is incapable of realizing this self-determination. The egoism and alienation integral to it give rise to contexts in which these sorts of social forms can develop, but only in opposition to it:

Marx suggested not only that workers feel compelled to struggle against the power of capital, but that in so doing they begin to create modes of existence which also offer a virtuous alternative to the egoism characteristic not only of capitalist society generally, but also of working-class life within that society more specifically. (p. 93)

This is because “the collective struggles of workers underpinned the emergence of virtues of solidarity and sociability which pointed beyond the limitations of liberalism’s world of egoistic individuals” (p. 92). The realization of a higher kind of freedom, understood as self-determination, was possible through the institutions and practices of struggle that develop in the antagonism between workers and capitalists.

It is sometimes unclear what exactly the relationship is between these virtues of solidarity and the specific concern for freedom. The language of freedom in Blackledge’s discussion gives way quite quickly to the language of solidarity, and the relationships between the two are under-examined. Toward the end, he suggests that working-class solidarity is “the concrete form taken by freedom as self-determination” (p. 198). But why exactly is it that *solidarity* as a virtue permits a greater degree of *self-determination*? Blackledge does make an important point about Marx’s treatment of the relationship between freedom and democracy, in which I think he is on strong ground. This reformulates the conception of freedom as “self-determination through democracy” (p. 58), and follows Marx in suggesting that “freedom consists in ‘converting the state from an organ superimposed upon society into one completely subordinate to it.’” However, it would have been good to hear more about this.

Having established this basic framework, Blackledge then traces the development of Marxist thought through the later nineteenth and twentieth centuries. The great strength of his account is that it links this intellectual history to the history of the working-class struggles which he considers to be central to Marx’s perspective. Thus, the various developments in the Marxist tradition are not put down to intellectual fashion or moments of insightful genius, but to the growth and subsequent decline of working-class institutions. Most notably, Blackledge identifies the development of a purely “scientific” socialism which sought to sever completely Marx’s explanatory theory of history and economics from any normative concerns with the growth of a reformist, state-focused socialism that was no longer interested in the independent action and institutions of the working-class.

In reaction to this, a renewed revolutionary tradition developed around thinkers like Lukács, Lenin, and Gramsci, a tradition which is inextricably connected to the development of vibrant and dynamic organizations in Hungary, Russia, and Italy. The factory councils and soviets were institutions that allowed both for the development of solidarity, and also posed questions of political power that allowed for the development of a new form of democracy:

Lukács extended Lenin’s conception of soviet democracy to suggest a potential bridge between the ‘is’ of existing society and the ‘ought’ of socialism. Workers’ councils or soviets, he argued, had since the Russian Revolution of 1905 spontaneously emerged in periods of heightened class struggle. . . . These spontaneous institutions of workers struggle provide a

potential ethical basis from which to criticise the alienation of capitalist society. (pp. 128-29)

The discussion of these thinkers is particularly rich and interesting, showing, if nothing else, the sheer creativity and diversity of the Marxists of the early twentieth century, as they attempted to interpret and re-interpret Marx in the midst of revolutionary upheavals and against the orthodoxy which had gone before. His discussion also offers a significant departure from accounts of Lenin and the Bolsheviks which stress a crude instrumental approach to ethical questions, permitting anything in service to the revolution. Rather, Lenin saw the self-activity of the proletariat as central to the project of socialism, and directed his activity accordingly. In re-instating activity at the heart of Marxism, Blackledge argues, Lenin offers pointers toward a Marxist ethics, even if it remains under-theorized.

However, it is in the discussion of the period following World War II where Blackledge's most significant arguments, at least for contemporary debates, emerge. Blackledge, rightly, in my opinion, draws a sharp distinction between the revolutionary tradition of Lenin and the later rise to power of Stalin. In the context of the rise of Stalinism in the Soviet Union and the absence of class struggle in the West, many Marxists retreated from their earlier revolutionary positions. In the context of the decline of the institutions that had in a previous era grounded a Marxist ethics, commitment to Marxism increasingly took the form of what Blackledge calls (following Lucien Goldmann) a tragic wager:

From this perspective, Marxism involves not a determinate prediction of the socialist future of humanity, but a wager on the revolutionary potential of the proletariat. Precisely because it takes the form of such a wager, [Goldmann] suggests that the defeats experienced by the labour movement in the mid-twentieth century led some of the most honest thinkers of the period to recognise the existence of a 'dichotomy . . . between man's hopes and the human predicament.' They found themselves in a situation where the forces that had offered the potential to move beyond the tragic condition appeared no longer to exist. (p. 142)

This notion of a wager on the radical potential of the working class provides an important underpinning for Blackledge's own project. He clearly and unambiguously sides with those who maintain a confidence in this radical potential even in the most difficult circumstances. It is, however, worth noting that a wager is not the same as an article of faith or a blind commitment. A wager, if it is to be a good one, ought to be informed by research, analysis, and experience, even if its outcome is necessarily uncertain. This means that while it does depend on confidence in the future, it avoids the charge of teleology or inevitability that has been levelled (often rightly) at many

varieties of Marxism.

It is on the question of whether this is a good wager where Blackledge, ultimately, diverges from MacIntyre, who is the subject of the entire final chapter. Blackledge focuses on MacIntyre's mature critique of Marx, in particular on a 1985 article entitled "The Theses on Feuerbach: A Road not Taken," in which he argues that while Marx had correctly identified the way in which capitalism pushed workers into resistance, he had failed to realize that capitalist ways of life simultaneously eroded the kinds of moral resources that would allow workers to challenge capitalism itself. He specifically makes reference to the Silesian Weavers revolt of 1844, the first major political event in which Marx had identified the radical significance of working-class struggles. The weavers had moved rapidly from narrow economic demands to raising broad social questions, leading the young Marx to conclude that "every economic revolt contains a universal soul." However, according to MacIntyre, this was due to the virtues involved in their small-scale community life, something that the advent of industrial capitalism was systematically destroying. The largely pre-capitalist weavers retained virtues which did not exist in the newly formed industrial proletariat.

For Blackledge, it was MacIntyre, and not Marx, who took the wrong road. Far from eroding the virtues of community and solidarity, the growth of an industrial working class made possible new, different, and arguably higher forms of them. Blackledge argues for this, in part, through an examination of the history of working-class struggles, with a particular focus on mining communities in Britain. He suggests that these indicate, against MacIntyre's pessimism, that it remained possible to move from the sectional struggles of trade unions to a broader sense of community and solidarity, including a committed internationalism: "[W]hile there was not automatic relationship between the trade-union struggles in the pits and the formation of the broader mining communities, neither was there, as MacIntyre's mature critique of Marxism seems to suggest, an unbridgeable gulf between these two processes" (p. 192). These experiences suggest an ongoing basis for the wager on the revolutionary potential of the proletariat: The persistence of working class struggle means that institutions can emerge which point beyond capitalism.

However, I think that Blackledge underestimates the problem faced by the *absence* of particular institutions of working-class struggle. It is all very well to expect them to emerge, and to have good (if defeasible) reasons for that expectation, but this does not get to the heart of the problem. If these institutions offer the vantage point from which to both criticize capitalism *and* to offer an alternative, then their contemporary absence presents a problem—namely, that we do not have that vantage point. Thus, on what basis can we in the present criticize capitalism or offer alternatives? This points to a general ambiguity in Blackledge's account of the perspective internal to working-class struggles from which we are to criticize capitalism, which he sometimes calls "the standpoint of the proletariat." Is it a standpoint which is *always* available, or one which only exists in a given historical moment, when certain specific

institutions come into being? Sometimes, it seems like the position is available in the everyday life of the working class, in their daily struggles and relations with one another, but at others it seems that it emerges in particular special institutions, like the workers councils in Russia, Hungary, and Turin. While these institutions emerge out of these daily struggles, they do not clearly do so inevitably or necessarily.

I think Blackledge ought to prefer the second option, since it is far clearer in what sense these institutions can be said to “point beyond” capitalist society; they provide a possible alternative way of organizing social life. However, this confronts him with the problem I have already referred to: what do we do when such institutions do not exist? One solution to this might be to separate out more clearly the two different functions which Blackledge ascribes to the standpoint of the proletariat. On the one hand, there is the negative function of criticizing or denouncing capitalist society. On the other hand, there is the positive function of offering an alternative to it. Perhaps it is correct to say that in the absence of emerging institutions of solidarity it is impossible to say very much about what an alternative to capitalism might look like. However, this does not necessarily prevent us from *condemning* it. This, I would argue, would be consistent with what Marx himself said and did, rejecting speculation about the details of a post-capitalist society as “writing recipes for the cookshops of the future.” However, to say this would depend on the claim that it is possible to *criticize* capitalism without simultaneously offering an alternative, something which Blackledge does not discuss or defend.

This would also be compatible with the great strength of Blackledge’s account, which is that he does not perceive socialism as one particular vision to be built or imposed on society, but as the outcome of collective self-determination. Socialism is not just one possible outcome from the collective self-determination of the proletariat. Rather, socialism *is* the collective self-determination of the proletariat. Thus freedom is “simultaneously the means to and end of the struggle against capitalism” (p. 16).

Nonetheless, all of this shifts the burden of responsibility onto both examining and encouraging the practices developing within communities that might permit this kind of self-determination. It requires close analysis and engagement with such practices, as well as attempting, where possible, to spread and propagate them. If encouraging more people to do that, whether Marxist or not, is the consequence of Blackledge’s book, then it will be no small achievement.

Dan Swain
University of Essex

Böwering, Gerhard, et al. (ed.), *The Princeton Encyclopedia of Islamic Political Thought*. Princeton, NJ: Princeton University Press, 2012.

Islamic political thought represents a vast area of research that has preoccupied the minds of both specialist and non-specialist alike for over a millennium. As with any body of people that total more than one billion in number, the political history of the thought, nations, and thinkers of the Islamic world, past and present, is incredibly complex and colorful. With this complexity in mind, *The Princeton Encyclopedia of Islamic Thought*—the first comprehensive encyclopedia of its type to be published in the English language—is a welcome compass by which students, policymakers, and journalists can navigate this vast area of study. The need for such a publication becomes even more apparent when considered in light of the recent proliferation of books precipitated by the so-called Arab Spring and an ever evolving political dynamic in southwest Asia.

The Princeton Encyclopedia of Islamic Thought was edited by Gerhard Böwering (Yale), who was assisted by four Associate Editors, namely, Patricia Crone (Princeton), Wadad Kadi (Chicago), Devin Stuart (Emory), and Muhammad Qasim Zaman (Princeton). All five editors are counted amongst the leading authorities in their respective fields and, as such, bring with them both a wealth of knowledge and the ability to attract an array of highly esteemed contributors.

The 650-page volume is vast in its scope and appeal. As well as undertaking a thematic study of Islamic political thought, the volume helpfully divides its content into a set of broad historical periods. In his introduction to the encyclopedia, as well as his later entry on the Prophet Muhammad, Böwering acknowledges the importance of Islam's nascent period, but admits that with the passing of the Prophet Muhammad and later fall in 750 CE of Islam's first dynasty, the Umayyad empire: the "stage had been set for Islamic political thought to evolve through five successive periods." These five periods were: (1) the Abbasid ascendancy from 750-1055; (2) the influence of the Turkic Seljuks from 1055-1258; (3) the fall of Baghdad and division of the Islamic world into sultanates from 1258-1500; (4) the rise of the Ottomans, Safavids, and Mughals from 1500-1800; and (5) the decline of the Islamic empire and rise of revival and nationalistic movements from 1800 onward.

From a thematic perspective, the volume is similarly split into five wide spectrums of interest, with each area carefully edited by Böwering and the volume's Associate Editors. Broadly speaking, the division of labor is as follows:

- Gerhard Böwering: Central themes, including authority, government, knowledge, Muhammad, the Qur'an, Shari'a, and traditional political thought.
- Patricia Crone: Historical developments, sects and schools, regions, and dynasties.
- Muhammad Qasim Zaman: Modern concepts, institutions, movements, and parties.
- Devin Stewart: Islamic law and traditional Islamic societies.
- Wadad Kadi: Thinkers, personalities, and statesmen.

In addition to its prominent editors, the volume attracted the contributions of more than 200 academics, representing a healthy balance of leading specialists and early career researchers. The balance of the volume is further enhanced by the fact that the majority of contributors wrote only a couple of entries each, ensuring a refreshing blend of research and opinion.

Readers of the volume will be particularly interested in what Böwering terms the "core articles," written by each of the five editors and some guest contributors, comprising fifteen essay-length entries that offer the reader an overview of the key topics (Qur'an, Shari'a, Muhammad, etc.) and the interaction between many of the subjects discussed in the shorter entries. The introduction should be added to the list of core articles; in it Böwering skillfully summarizes much of the evolution of Islamic political thought throughout the ages, from the Prophet Muhammad to the Muslim Brotherhood and the so-called Arab Spring. Of the shorter entries, there are a number of insightful discussions that take place on modern and classical subjects (e.g., Osama Bin Laden, Police, etc.).

Despite the depth of the encyclopedia, there are a number of topics and personalities missing from the volume. For example, we find no dedicated entry for the modern influential Turkish thinker Fethullah Gülen who is only briefly mentioned in the entry on Knowledge (p. 304). Similarly, we encounter only a cursory treatment of Mohammad Reza Shah Pahlavi (p. 8) and the Pahlavi dynasty (p. 296). The prominent Egyptian writer and thinker Taha Husayn (p. 469) is mentioned only once, passively, and without context. The absence of these entries, amongst others, however, is perhaps not too surprising. As is inevitable with any encyclopedic work, the range of subjects that can be included is often at the mercy of several external factors. Add to this inevitable editorial complexity, and editors often find themselves forced to make difficult decisions. (Such omissions are perhaps something that could be addressed in a second edition?)

Though not surprising for an encyclopedic work, there are at times disparities in the depth of entries on subjects of a comparative nature. For example, the entry on Aligarh since 1801 (pp. 32-33) is disproportionately longer than the entry on Baghdad from the eighth century to the 2003 U.S.-led invasion of Iraq (pp. 60-61). Other entries appear to tilt their focus toward the twentieth century, offering little to no insight into the important roles they

played as Islamic political centers before the modern period. For example, the two brief entries on Iran (pp. 260-61) and Iraq (pp. 261-62) deal only with events and political thought since the turn of the twentieth century. Similarly, the entry on Egypt rather hastily glosses over the medieval period to deal in part with the modern period, but mainly with the so-called Arab Spring. The areas discussed were certainly worthy of inclusion, but so were the parts omitted or glossed over. These absences further enhance the significance of the fifteen core articles which often serve to fill in the gaps.

The transliteration and general editorial system applied is consistent and easy to use. However, given that the target readership will most likely be undergraduate students, policymakers, and journalists, a “how to use” page would have been helpful. Such a section could also benefit the reader with regard to cross-referencing. For example, it might not be apparent to the non-specialist reader that Osama Bin Laden would be listed under “B” or Abu Nasr al-Farabi under “F.” The encyclopedia’s index is excellent and the “Further Reading” section at the end of each entry a welcome door to more detailed research. The volume also contains useful maps and tables of statistics up to 2011.

The encyclopedia under review is a welcome and useful resource for the non-specialist reader. It certainly does serve its purpose of making the established or latest academic research on many subjects accessible to a wider audience. With the plethora of contemporary works on specific aspects of Islamic political thought, this volume will help to focus the minds of its readers. And rather than being viewed as a finished project, one hopes that the encyclopedia is a starting point that will lead to future editions.

Adam Walker
Georg-August-Universität Göttingen

Afterwords

The Symbolic Clash of *Whiplash*

Robert Begley
Independent Writer

From the opening drum beat one hears over a dark screen to another dark screen as its crashing, closing note, the movie *Whiplash* takes the audience on an intense journey they will not likely forget.¹ This film is, in a word, bold.

The theme of *Whiplash* is the single-tracked dedication to the pursuit of excellence. It is dramatized through two clashing characters. Terence Fletcher (J. K. Simmons, who deservedly won an Academy Award for his performance) is the respected, feared, foul-mouthed, face-slapping instructor at New York's Shaffer Conservatory of Music, the best music school in the country. He is intolerant of any form of mediocrity and bluntly says so. He despises the fact that his beloved jazz is dying in the musical swamp of "Starbucks jazz albums."

Andrew Neiman (Miles Teller), a freshman at the school, is the talented yet somewhat insecure drummer who aspires to be "one of the greats." But he doesn't just fantasize about it. He practices repeatedly, to the point of (often bloody) physical and mental exhaustion. His conflict is heightened by his single-parent father (Paul Reiser) who loves his son but admits that he does not understand his passionate devotion to his craft.

Whenever Fletcher enters a room at the school, he bursts into it like a force of nature, and all of the musicians snap to attention. The camera follows his black shoes in motion, up through the rest of his stylish black outfit. Then, while demanding perfection, he proceeds to cut down some of the best music students in the world. He also tells them to have fun.

Meanwhile, Neiman contends with those same musicians' hostility and envy toward his ability and demeanor. He tells his soon-to-be-ex-girlfriend (Melissa Benoist), "I don't think they like me too much. But I don't care too much." Though Fletcher sees both exceptional skill and drive in Neiman, the film hinges on the teacher throwing down the challenge, "If you want the part, earn it!" Neiman gives unswerving effort, overcoming one obstacle after another—first outperforming his competitors in the band, then losing his seat, only to be given a chance to redeem himself.

¹ *Whiplash*, directed by Damien Chazelle (Bold Films, 2014).

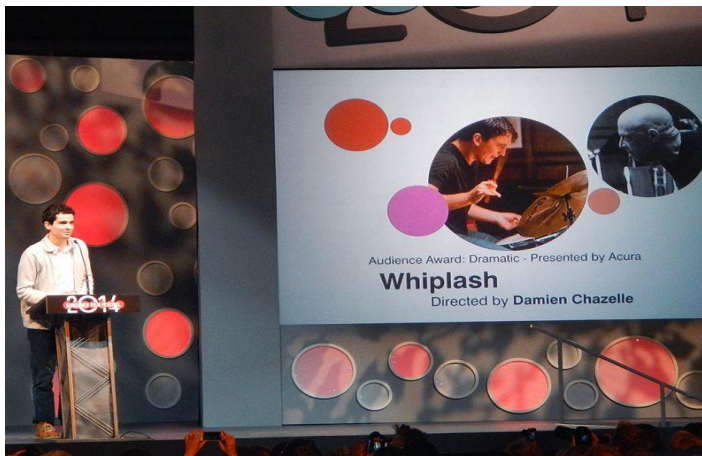
As much as *Whiplash* is about the pursuit of excellence, the value of the film is that it demonstrates the role that hero worship can play in that quest.

We see Neiman's admiration for his hero, Buddy Rich, as he constantly stares at posters, reads quotes, listens to CDs, and watches video clips of the master. This inspires Neiman to think and work harder, faster, and smarter. When he is not drumming, he is reading drum charts or thinking about drumming, in order to earn the part.

A high point of the movie is a contentious dinner scene, pitting Neiman against his relatives, when he describes his idea of success as being like Charlie Parker, "the greatest musician of the twentieth century."

Fletcher's hero worship of "the yardbird" Parker is also evident. He repeats the (historically inaccurate, though dramatically told) story of how the young Parker's saxophone playing got him laughed off the stage, only to return a year later determined "to play the best solo the world has ever heard."

Fletcher knows that his tactics of fear and intimidation have made him enemies, but he doesn't apologize. At one point he tells Neiman, "I was there to push people beyond what's expected of them. I believe that's an absolute necessity. Otherwise we're depriving the world of the next Louis Armstrong or Charlie Parker."



The highest drama plays out in the scenes where Fletcher and Neiman face off, as the camera pans quickly from one to the other. Profanity-laced insults come from one end. Blood, guts, and the sheer willpower to hold on come from the other. During rehearsal of Hank Levy's upbeat jazz composition *Whiplash*, the battle continues, as chairs, cowbells, and drums are hurled and kicked from one side, and are countered from the other by even faster pounding of sticks on skins and cymbals. That symbolic clash (and

cymbalic crash) continues. While everyone else cringes in Fletcher's presence, Neiman takes him on, even bodily attacking him at one point, after he is simply pushed too far.

It is easy to consider the flaw in Fletcher's character (especially his use of force and graphic language) as a flaw in the film. Although he is manipulative, abusive, and dishonest, he is not portrayed as someone to be emulated. (For those who believe that Fletcher's drill sergeant tactics are reserved for soldiers or athletes but not performing artists, my ballet teacher was somewhat less verbally abusive, but I still saw dozens of dancers march out of class in tears.)

In a film where classic jazz music is so prevalent, composers Justin Hurwitz and Tim Simonec manage to create an original score that often has a big band feel. A six-note melody is used repeatedly, in both major and minor modes, which enhances the emotion of each scene in which it is used. One often gets the feeling of being at a live concert. (These are some of the reasons why I returned to the theater eight times, and have watched the DVD several more times.)

Writer-director Damien Chazelle's second feature film is highly stylized; each scene suspensefully flows into the next. This makes the conflict more dramatic than a documentary about a teacher-student relationship. In real life faster is not always better, but in *Whiplash* it is—until the very end. Let's hope the thirty-year-old Chazelle has more of the same film success in the future.

On a deeper level the clash in *Whiplash* addresses important questions such as: What are the requirements of human greatness? Must one always go it alone, with a grim determination that causes one to sweep aside everything else? Or is it possible to integrate other positive values, including healthy romantic relationships, in that mission?

Whatever the answers to the above questions are, what we do know is that in the final ten minutes of *Whiplash*, during the performance of Duke Ellington's *Caravan*, we see Neiman reach inside to become the type of independent, creative hero he admires, with a vision of his own as he evolves from potential to actual greatness. Lights out!

In Search of Student Radicalism: YAL, SFL, and the GOP

Brandon Christensen
notesonliberty.com

Below is an informal, ethnographic account of my short stint as a member of Young Americans for Liberty (YAL), followed by some critical remarks. I want to thank Irfan Khawaja and Carrie-Ann Biondi for encouraging discussion on this topic.¹

I edit the group blog *Notes on Liberty* and consider myself to be a small-L libertarian. I graduated from UCLA in 2013 and majored in cultural anthropology, a discipline often derided by libertarians. I took enough classes on the Middle East and North Africa to minor in the subject. I did not write a senior thesis, but I did win a spot at an Honors consortium at Stanford University to present my work on Javanese political strategies and the Dutch East Indies Company's response to them in the early nineteenth century. I also led a small team on an ethnographic survey of two prominent student groups on campus, one that was pro-Israeli and one that was pro-Palestinian. While my accomplishments are not many or prestigious, they were done well and in a unique manner: I was voluntarily homeless for much of my time in Westwood; my story was featured in UCLA's A&E monthly, though for personal safety reasons it was abridged.²

My experience with libertarian youth organizations on campus began in early 2012, when I finally decided that I needed to incorporate some fellow libertarians into my social circles. The experience was awful, but in a way that has become useful for me in terms of understanding how organizations work and why they fail.

YAL itself is a non-profit founded by Ron Paul supporters after his successful 2008 presidential run (successful by libertarian standards, anyway). It is a little different from Students for Liberty (SFL, also founded in 2008) but I cannot tell how, nor can I explain why, only one group was represented

¹ Irfan Khawaja and Carrie-Ann Biondi, "Editorial," *Reason Papers* 36, no. 1 (2014), pp. 12-14, accessed online at: http://reasonpapers.com/wp-content/uploads/2014/09/rp_361_0.pdf.

² Loic Hostetter, "Close to Home," *Prime*, March 6, 2013, accessed online at: <http://dailybruin.com/2013/03/06/close-to-home/>.

at a school with 29,000 undergraduates. The ethnic composition of the group I interacted with—an important, if superficial, means of understanding an organization—was mostly Asian and, after that, Hispanic. WASPs such as myself were few in number, and I suspect mostly there for the intellectual kick we thought we would be getting. The Asians and the Hispanics both seemed, in my mind, to be the children of immigrants. Only one was a foreigner, a Chinese student and first-year economics major who fancied himself “an Austrian” (economist). The Asian contingent largely had ties to the Indian subcontinent and were studying some branch of engineering, though the founder of the chapter, an Indian-American, was a political science major with aspirations of becoming a behind-the-scenes operative for the Republican Party.

The Republican Party youth group at UCLA, Bruin Republicans, is dominated by white Greek students. I hope there is some data out there to contradict my clichéd ethnographic description, but I suspect that the odds and the gods are acting as one on this issue. YAL and Bruin Republicans had, for reasons I could easily fathom but not accept, a close working relationship, with YAL acting as the junior partner. The informal Young GOP functions bore especially good fruit for explaining why there were essentially two Republican youth groups on campus: alcohol-fueled jokes about blacks, Muslims, and Mexican immigrants are not particularly well-received by non-white conservatives or skinny, Rothbard-reading WASPs. Some stick it out, of course. American males with Chinese, Korean, and Filipino backgrounds made up a respectable portion of the Bruin Republicans. Japanese-Americans all seem to be Democrats, and this in spite of the fact that President Franklin D. Roosevelt threw their great-grandparents into prison camps during World War II.

In general, though, non-white conservatives possess a political refugee status on campus and the libertarian group fills a niche role in this regard: YAL and SFL are havens for conservatives still uncomfortable with their place in the broader GOP hierarchy. As a result, the libertarian group at UCLA is more conservative than libertarian, and therefore more tolerant of both the “fusionism” that has defined post-war right-wing politics in the United States and the strategies adopted by political activists (discussed below).³

I only attended two or three group meetings. All were held in the evenings, in a university-sanctioned classroom at a university-sanctioned time. There were eight people, give or take a few, and all were male. It was a new year and I volunteered to be the Activities Coordinator. My first (and only) task was to set up a trip to go shoot guns at a nearby gun range. The idea was not mine, and if I recall correctly it was borrowed from another chapter whose antics were highlighted on YAL’s webpage. I reserved a time and a place,

³ SFL is more vocally skeptical of fusionism than YAL, but prominent members of the Republican Party still adorn its website.

named the event “Fun With Guns,” plastered a photo of Elmer Fudd onto the event’s webpage, and sent out the Facebook invites. I was politely reprimanded for not going through leadership and getting its approval prior to sending out the invites. There were worries that some people—whether college administrators or YAL’s professional regional coordinators—might get the wrong impression.

This may seem like an insignificant or even petty detail, but the reprimand to get my volunteer work pre-approved did not sit well with me. Aside from my general distrust of bureaucratic formalities for student groups, of which the polite reprimand was most certainly an instance, there was also a disagreement about which outside student groups should be invited to “Fun With Guns.” I suggested that YAL reach out to the black, Muslim, and Hispanic groups around campus, on the strength of Adam Winkler’s 2011 essay in the *Atlantic Monthly* about gun rights and minorities that had been in the back of my mind.⁴ I did not have time to mention Winkler’s essay, though, because too many people began explaining to me why such a notion was impossible. Instead, an invitation was extended to the Bruin Republicans and perhaps a student gun club.

Provocative discussion about ideas and history—libertarianism’s bread and butter—was brushed aside. After all, the goal of YAL—as outlined from its headquarters in Washington, D.C.—is to grow chapters and reach out to organizations it deems friendly, not engage in armchair theorizing.

Out of a pool of 29,000 students, eight or maybe nine people showed up to “Fun With Guns” and I was not among them.

I had stopped going to club meetings after it became apparent that ideas were not going to be discussed there. However, I was still a member of the chapter’s Facebook group and an occasional contributor to the discussions going on there, until I got into an argument about how better to advocate for freer trade. Comparative advantage is, to my mind, the most important concept in all of the social sciences, and one that, when properly understood, gently shifts the worldview of people in a more libertarian direction. This, coupled with my respect for chapter two of John Stuart Mill’s *On Liberty*, made for the trappings of a good debate.

A student from a YAL chapter at a community college in the San Fernando Valley argued that YAL members should be patting protectionists on the head, empathizing with them, and then informing them that we—libertarians, that is—respectfully disagree with their position. He provided numerous articles from libertarian organizations to supplement his argument. I favored an approach that treats the curious and the adversarial as peers rather than as children or enemies (I still do). I did not engage in the argument with

⁴ Adam Winkler, “The Secret History of Guns,” *The Atlantic Monthly* (July 24, 2011), accessed online at: http://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/?single_page=true.

the goal of changing the man's mind. I merely wanted to present my view and let others come to their own conclusions.

Unfortunately, I came away from the argument with the conviction that student political organizations do more harm than good (at least if "truth" is your end goal), and recent quantitative research by a political sociologist suggests that my initial impression was correct. A 2014 essay by Kyle Dodson shows that student political groups tend to radicalize or solidify a student's previously held political views, whereas more interaction in the classroom with professors tempers political convictions.⁵ Insult was added to injury when the entire dialogue on free-trade advocacy, which was open to be read by all who wished to do so, was anonymously deleted with no explanation (although, to be fair, I did not ask for one). I suspect it was deleted for the sake of group unity, or something along those lines.

The aversion to dialogue solidified my suspicions about political student groups in general: discussion about ideas was discouraged, and when ideas were brought up in any form they were quickly squelched (or erased) by a leadership committee that had to be directly approved of by a bureaucratic process implemented from afar. The appeal to group unity, or group goals, or the authority of group headquarters is often an excuse used by individuals to exercise power, of course, but the problem of authority will nevertheless remain as long as a Washington-based non-profit is the foundational support for libertarian student groups.

My experience with libertarian student groups could be summarized as follows: talk was limited to discussions on how best to mimic other projects seen elsewhere (presumably ones advertised on the webpages of YAL and SFL), or on how poorly leftist organizations and professors treat libertarians and conservatives.⁶

A quick digression: The students who occupied so-called leadership positions (including myself) cannot be blamed for YAL's failure to attract and retain actual libertarians (much less others). All were intelligent, competitive, and creative individuals. One even managed to form a student group dedicated to bringing former Congressman and former Presidential candidate Ron Paul to campus. It was a long shot—Los Angeles is a Democratic stronghold and UCLA does not have the same politically conscious reputation as some other universities in the state—but he put in many extra hours of work. He had to form an entirely new student group and was constantly reminding people that his work could not be associated with YAL. His efforts brought Ron Paul, an

⁵ Kyle Dodson, "The Effect of College on Social and Political Attitudes and Civic Participation," *Professors and Their Politics*, ed. Neil Gross and Solon Simmons (Baltimore, MD: Johns Hopkins University Press, 2014), pp. 135-57.

⁶ Now that I think about it, there was a short—three- or four-minute—debate on whether or not YAL's UCLA chapter should support abortion rights. The seven or eight of us in the room concluded that it would be better to continue publicly supporting individual choice *so as to better set us apart from Bruin Republicans*.

active presidential candidate at the time, to campus. Today, this same student does internships over the summer for Senator Rand Paul's office, no small feat considering the Senator's high-profile status. I mention this anecdote to drive home the point that the abject failure of YAL to retain libertarians can be pinpointed to the organizational structure of political student groups rather than to personal failings.

This organizational structure can be traced back to the speech codes that universities imposed upon their students in reaction to the Free Speech Movement of the 1960s. Readers of *Reason Papers* are no doubt well-aware of this situation, so I will not delve into any details here, but I do make note of the fact that my awful experience with YAL can largely be blamed on the academy's conservatism. The academy's conservatism, and my own ethnographic account of YAL, prompts two additional trains of thought.

On the one hand, public, political activism has never sat well with me; it reeks of Puritanism. Activist stunts and outreach programs create the impression that one set of views ("yours") is so urgent or superior to another set of views ("mine") that adherents of the former feel the need publicly to shame everyone else for either not paying better attention or implicitly agreeing with the *status quo* through silence.

Tabling on campus to obtain email addresses and handing out fliers for politically motivated activities also seems to me counter-productive. For instance, consider the following hypothetical: I am a politically apathetic student, or I associate with groups that are politically antagonistic to you, and am walking through campus. My hormones are raging, I just received a "B-" on a pop quiz in Stats 101, I have a date with a Persian brunette next Thursday, there is a scolding email simmering in the back of my mind from my mother demanding to know why I need some extra cash, and I have a shift at the student call center to ask for donations ("a crummy job") only an hour away. The last thing I want to deal with is a proselytizing ideologue informing me of my ignorance. Dodson's research again comes into play: most students already know where they stand politically.

On the other hand, there is an obvious need for student political groups. The networking potential and the educational opportunities provided by organizations like YAL cannot be denied. For instance, the recent blog post about cat-calling and sexual harassment by Juliana Perciavalle on the SFL website⁷ could not have reached as many people as it did without the support of SFL's bureaucratic apparatus. (Perciavalle's post had more of an impact than hundreds of hours of tabling could ever hope to have, too.)

Why then do libertarians have to copy the in-your-face style of other student political groups? Why not "Hayek and beer pong" a couple of times a

⁷ Juliana Perciavalle, "An Open Letter to Internet Libertarians and Street Harassment," *Students For Liberty* (blog), November 9, 2014, accessed online at: <http://studentsforliberty.org/blog/2014/11/09/an-open-letter-to-internet-libertarians-on-street-harassment/>.

month instead? I understand that the goal of the YALs and SFLs of the world is to organize politically, and I understand that an in-your-face element is inherent in democracy itself, but political libertarianism—such as it is—is still a carefully narrow movement that aims for success in small steps and on the margin.

In 1936 Albert Jay Nock wrote an essay arguing that appeals to the masses are far less satisfying than simply letting other like-minded individuals seek you out for camaraderie.⁸ There were no mass emails involved in enticing me to show up to meetings. The YAL table positioned on the main thoroughfare of campus did not attract me to libertarianism. I Googled “libertarian groups at UCLA” and then did the necessary research to track down who to contact and where to go. My efforts were greeted with attempts by YAL, through its organizational setup, to get me behind a table in my free time.

It is clear that the academy needs reforming in the area of free speech. It is clear that libertarianism is a severely misunderstood philosophical and political movement. It is clear that libertarianism’s narrow-but-cerebral framework sometimes has trouble meshing well with the realities of democratic governance. What is not so clear is whether or not libertarians themselves understand libertarian philosophy and politics. What is likewise unclear is whether libertarians themselves understand the goals and aspirations of political non-profits based in Washington, D.C. Thus, I would argue that libertarian student groups need a much softer approach to activism. There is no need for us to be in the faces of the apathetic or of the opposition, especially given the “humble creed”⁹ of classical liberalism.

Activist stunts might prove worthwhile every now and again. They might make a difference. They might even come from the creative founts of the students themselves rather than from a website. However, there is nothing humble about calling attention to the worries of our ideological quadrant in the manner advertised on the websites of YAL and SFL. Think of the implications: If libertarian student groups are engaged in political activism, and political activism runs counter to the libertarian ethos of live-and-let-live, then a number of important questions will begin to take form in the minds of many libertarians, not least of which is the efficacy of libertarianism.

I make these criticisms because I believe that the networking and educational opportunities identified above are ample, and I think that the public demonstrations of piety that SFL and YAL have been encouraging young libertarians to perform are pathetic. I suspect, but cannot prove beyond a doubt, that stunts are encouraged because they are believed to be exercises

⁸ Albert Jay Nock, “Isaiah’s Job,” *The Atlantic Monthly* (June 1936), accessed online at: <http://mises.org/library/isaiahs-job>.

⁹ Friedrich Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1978), p. 8.

in team-building (rather than because they will have any impact whatsoever), and that Washington-based non-profits are more interested in molding Party leaders out of students than in fostering an eccentric, contrarian spirit necessary for citizenship in a free and open society.

My experience is rather typical for a libertarian, of course. The tension between the thinkers and the soldiers has always been present in the movement. As it stands, though, SFL and YAL have absolutely nothing in place to retain dissatisfied thinkers. Perhaps this is simply how it has always been, and I am naive for believing that libertarians could somehow have their cake and eat it, too.

