

REASON PAPERS

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Symposium: Jason Brennan's *The Ethics of Voting*

- Thoughts on Jason Brennan's *The Ethics of Voting* —Bryan Caplan
Do Voters Have a Duty to Promote the Common Good? A Comment on
Brennan's *The Ethics of Voting* —Randall G. Holcombe
Review of Jason Brennan's *The Ethics of Voting* —Ezequiel Spector
Civic Virtue without Politics: Reflections on Jason Brennan's *The Ethics of
Voting* —Nikolai G. Wenzel
Replies to My Critics —Jason Brennan

Symposium: Ayn Rand on Punishment

- Ayn Rand and the Problem of Punishment —David Boonin
Ayn Rand on Punishment —Irfan Khawaja

Articles

- Hoppe's Derivation of Self-Ownership from Argumentation: Analysis and
Critique —Danny Frederick
The Concept of Tradition: A Problem Out of MacIntyre —Philip Devine

Discussion Notes

- Tara Smith's *Ayn Rand's Normative Ethics: A Positive Contribution to the
Literature on Objectivism?* —Eyal Mozes
Response to Eyal Mozes, "Tara Smith's *Ayn Rand's Normative Ethics: A
Positive Contribution?*" —Carrie-Ann Biondi and Irfan Khawaja
Is It Necessary to Be Necessary? —David Schmidtz
It Is Necessary to Be Relevant: Reply to Schmidtz —Gordon Barnes

Review Essays

- Review Essay: Allan Gotthelf's *Teleology, First Principles, and Scientific Method in Aristotle's Biology* and James G. Lennox and Robert Bolton's (ed.) *Being, Nature, and Life in Aristotle* —Owen Goldin
- Review Essay: Sam Harris's *Free Will* —Eyal Mozes
- The History of Cinema and America's Role in It: Review Essay of Douglas Gomery and Clara Pafort-Overduin's *Movie History: A Survey* —Gary Jason

Afterwords

- Do the Top 1% Deserve Their Pay Packages—And Why? —Joseph S. Fulda
- Toward a Thick Libertarianism —Joseph S. Fulda
- Romantic Realism and Moral Value: Spielberg's *Lincoln* and Hooper's *Les Misérables* —Timothy Sandefur
- Film and Propaganda: The Lessons of the Nazi Film Industry —Gary Jason

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REASON PAPERS

Vol. 35.1 – July 2013

Editorial —Irfan Khawaja and Carrie-Ann Biondi 6

Symposium: Jason Brennan’s *The Ethics of Voting*

Thoughts on Jason Brennan’s *The Ethics of Voting* —Bryan Caplan 11
Do Voters Have a Duty to Promote the Common Good? A Comment on
Brennan’s *The Ethics of Voting* —Randall G. Holcombe 17
Review of Jason Brennan’s *The Ethics of Voting* —Ezequiel Spector 26
Civic Virtue without Politics: Reflections on Jason Brennan’s *The Ethics of
Voting* —Nikolai G. Wenzel 35
Replies to My Critics —Jason Brennan 44

Symposium: Ayn Rand on Punishment

Ayn Rand and the Problem of Punishment —David Boonin 58
Ayn Rand on Punishment —Irfan Khawaja 68

Articles

Hoppe’s Derivation of Self-Ownership from Argumentation: Analysis and
Critique —Danny Frederick 92
The Concept of Tradition: A Problem Out of MacIntyre
—Philip Devine 107

Discussion Notes

Tara Smith’s *Ayn Rand’s Normative Ethics: A Positive Contribution to the
Literature on Objectivism?* —Eyal Mozes 124
Response to Eyal Mozes, “Tara Smith’s *Ayn Rand’s Normative Ethics: A
Positive Contribution?*” —Carrie-Ann Biondi and Irfan Khawaja 132
Is It Necessary to Be Necessary? —David Schmitz 141
It Is Necessary to Be Relevant —Gordon Barnes 145

Review Essays

- Review Essay: Allan Gotthelf's *Teleology, First Principles, and Scientific Method in Aristotle's Biology* and James G. Lennox and Robert Bolton's (ed.) *Being, Nature, and Life in Aristotle* —Owen Goldin 149
- Review Essay: Sam Harris's *Free Will* —Eyal Mozes 158
- The History of Cinema and America's Role in It: Review Essay of Douglas Gomery and Clara Pafort-Overduin's *Movie History: A Survey* —Gary Jason 170

Afterwords

- Do the Top 1% Deserve Their Pay Packages—And Why? —Joseph S. Fulda 187
- Toward a Thick Libertarianism —Joseph S. Fulda 193
- Romantic Realism and Moral Value: Spielberg's *Lincoln* and Hooper's *Les Misérables* —Timothy Sandefur 197
- Film and Propaganda: The Lessons of the Nazi Film Industry —Gary Jason 203

Editorial

“In this refulgent summer,” Ralph Waldo Emerson wrote in July 1838,

it has been a luxury to draw the breath of life. The grass grows, the buds burst, the meadow is spotted with fire and gold in the tint of flowers. The air is full of birds, and sweet with the breath of the pine, the balm-of-Gilead, and the new hay. Night brings no gloom to the heart with its welcome shade.¹

Things would undoubtedly have been different for Emerson if he’d had to spend his “refulgent summer” in the frenetic task of writing for and editing *Reason Papers*. Try waxing poetic about the grass, the buds, and the meadow from an editor’s desk, watching the summer go by while you’re slogging through the *n*th iteration of the galleys and you’re still not sure they’re error-free.

By the time you read this editorial, of course, *Reason Papers*, Volume 35, Number 1 will at last be online, and we, too, will be back among the living—drawing the breath of life in what remains of the refulgence of summer. What’s striking about this issue, we think, is the way in which, whether implicitly or explicitly, it continues a series of conversations with interlocutors in recent issues of *Reason Papers*. It’s been “well worth the pith,” as Emerson puts it, to put such interlocutors into conversation with one another.

Our Fall 2012 issue featured a symposium on Sari Nusseibeh’s 2011 book *What Is a Palestinian State Worth?* In the book, Nusseibeh proposes a solution to the Arab/Israeli conflict which involves Israel’s annexing the West Bank and Gaza, and according their Palestinian inhabitants civil but not political rights. One implication of Nusseibeh’s proposal is that these Palestinians would (at least temporarily) become second-class citizens of Israel, deprived of the right to vote.

The prospect of depriving a population of the right to vote raises fundamental questions about the *ethics of voting*—among them, questions about the point and value of voting as such. What, exactly, is voting for, and what are the conditions under which the right to vote ought, as an ethical matter, to be exercised? In answer to those questions, we’re pleased in this issue to be featuring a symposium on Jason Brennan’s *The*

¹ Ralph Waldo Emerson, “Divinity School Address,” in *Selected Essays, Lectures, and Poems of Ralph Waldo Emerson*, ed. R. E. Spiller (New York: Washington Square Press, 1965), p. 81.

Ethics of Voting, with commentaries by Bryan Caplan, Randall G. Holcombe, Ezequiel Spector, and Nikolai G. Wenzel, and a response by Brennan himself. Though the order of the Nussiebeh and Brennan symposia was coincidental, it turns out to be fortuitous; the two symposia are profitably read in sequence, and shed interesting light on one another. The *Ethics of Voting* symposium was originally a panel discussion at the Association for Private Enterprise Education in April 2012 in Las Vegas, Nevada. We're very grateful to Joshua Hall of Beloit College and Douglas Den Uyl of Liberty Fund for arranging for the publication of the symposium in *Reason Papers*.

The generally libertarian character of the Brennan symposium will be obvious to anyone familiar with libertarian theory, and it dovetails with some important work on libertarianism in the rest of the issue. Much of this, for obvious reasons, focuses on libertarian conceptions of rights and related concepts. In "Hoppe's Derivation of Self-Ownership," Danny Frederick takes issue with Hans-Herman Hoppe's discursive justification of self-ownership, challenging that justification, and leaving us with some valuable lessons about discourse ethics generally.

Meanwhile, David Schmitz responds to Gordon Barnes's critique of Schmitz's defense of the right to private property (*Reason Papers*, 34, vol. 2), and Barnes responds. Here, too, we're left with lessons—or at least questions—about the scope and limits of a certain *kind* of argumentation. Is it (as Schmitz claims) sufficient for defenders of private property to claim that private property solves *an* important problem, so that arguments for it "offer a *supporting* condition for the institution" but no more than that? Or must an argument for private property (as Gordon insists) demonstrate the unique necessity of the institution by contrast with all relevant alternatives, so that arguments for private property fail unless their defenders demonstrate that private property is the *best* of the alternatives? Either answer has important ramifications for libertarian theory; the Schmitz-Barnes debate brings those ramifications sharply into focus.

Finally, two Afterwords by Joseph S. Fulda translate libertarian theory into practice. The first suggests (as against the views expressed by Occupy Wall Street protestors) that "the top 1%" really *do* deserve their pay packages. The second argues for a "thick" conception of libertarianism derived from the libertarian proscription on first uses of force, but extending beyond it. Both pieces suggest that libertarian politics presupposes a distinctive ethical outlook, underscoring the distance between that outlook and conventional American attitudes about politics.

Recent issues of *Reason Papers* have featured work on two self-styled philosophical radicals in the Aristotelian tradition, Alasdair MacIntyre and Ayn Rand. Our Fall 2012 issue featured an important

critique, by Daniel Dahlstrom, of MacIntyre's 1999 book *Dependent Rational Animals*. In this issue, Philip Devine offers a sympathetic but stringent critique of MacIntyre's conception of tradition-constituted rationality. If Devine's critique is right, MacIntyreans must either give action-guiding significance to the MacIntyrean conception of a tradition or risk jeopardizing the very asset that tradition-constituted rationality was intended to secure, namely, determinacy in ethico-political deliberation. We look forward to further engagement with MacIntyre's work in forthcoming issues of the journal.

Five items in this issue focus on Rand's Objectivism. A symposium on "Ayn Rand and Punishment" features essays by David Boonin and Irfan Khawaja on that subject. Boonin construes Rand's conception of punishment as a novel defense of a traditional form of retributivism, and subjects it to some astute criticisms. Khawaja, by contrast, offers a revisionist account of Rand's theory according to which punishment is a form of "debt collection." The result, on Khawaja's view, bears a certain surface similarity to what are called "debt-based retributivisms," but ends up being a *sui generis* theory that avoids Boonin's critique. The Rand symposium had its origins in a session of the Ayn Rand Society at the Pacific Division Meeting of the American Philosophical Association (April 2011), organized by Allan Gotthelf (Rutgers University) and chaired by Gregory Salmieri (Boston University). *Reason Papers* extends its thanks to both of them.

It's common belief in philosophy that conceptions of punishment—and by implication moral desert—presuppose claims about moral responsibility, free will, and determinism. Eyal Mozes, a research scientist and independent scholar, offers a distinctively Objectivist critique of Sam Harris's defense of determinism in Harris's 2012 book, *Free Will*. Having subjected Harris's book to eleven pages of withering critique, Mozes concludes that Harris's case consists not "of any scientific evidence or logical arguments, but only of the dogmatic acceptance of certain philosophical premises about the nature of causality." "Harris's defense of determinism," Mozes concludes, "is an emperor who turns out not to be wearing any clothes."²

Mozes returns to the fray in our discussion section, with a vigorous critique of Tara Smith's 2006 book *Ayn Rand's Normative Ethics* via criticism of Carrie-Ann Biondi's 2008 review of it here in *Reason Papers*. Though widely celebrated by Objectivists and others as the first academically respectable study of Rand's theory of the virtues, Mozes questions whether the book makes any positive contribution to the

² Eyal Mozes, "Review Essay: Sam Harris's *Free Will*," *Reason Papers* 35, no. 1 (July 2013), p. 169.

literature at all. In response, Biondi and Khawaja offer a defense of two features of Smith's book—its account of the harmony of rational interests and (what they call) its "lifespan criterion of virtue"—and contest the moral judgments that Mozes makes of the motivation behind Smith's work.

Although not strictly speaking a discussion of Objectivism, Owen Goldin's thorough and comprehensive discussion of a pair of books on Aristotle has important bearing on Objectivist normative theory. The first book is Allan Gotthelf's *Teleology, First Principles, and Scientific Method in Aristotle's Biology* (Oxford, 2012); the second is a *festschrift* for Gotthelf, *Being, Nature, and Life: Essays in Honor of Allan Gotthelf* (Cambridge, 2010), edited by James G. Lennox and Robert Bolton. Gotthelf is currently the Anthem Foundation Distinguished Fellow for Teaching and Research at Rutgers University; he is also Emeritus Professor of Philosophy at The College of New Jersey and Adjunct Professor of the History and Philosophy of Science at the University of Pittsburgh. With James Lennox, he has revolutionized the study of Aristotle (especially Aristotle's biological works), and has probably done more than anyone in the past few decades to bring Objectivism into conversation with academic philosophy.

Gotthelf was inspired, as he tells us in an autobiographical essay in the *Teleology* book, to go into Aristotle studies by Ayn Rand's review of John Herman Randall's *Aristotle* (he was a student of Randall's), and his Aristotle scholarship, though rigorously textual, is obviously influenced by Objectivism. One doesn't have to be a specialist in ancient philosophy to learn something—to learn a lot—from this scholarship. Goldin, our reviewer, is Professor of Philosophy at Marquette University. His area of specialization overlaps almost exactly with Gotthelf's, and though he's not an Objectivist, he certainly knows his way around Objectivism and capitalizes on that knowledge in his review.

Finally, we're pleased to note a revival of serious work on aesthetics and the arts in *Reason Papers*—visual, musical, and literary. Our Fall 2011 issue featured Adrienne Baxter Bell's discussion of Akela Reason's *Thomas Eakins and the Uses of History*. Our June 2012 issue, *Imagining Better*, offered eleven meditations on the philosophical significance of the *Harry Potter* series. Our October 2012 issue featured Roger Scruton's challenging critique of Dmitri Tymoczko's *A Geometry of Music*. The present issue extends the journal's aesthetic reach to film. Gary Jason provides an informed and detailed assessment of Douglas Gomery and Clara Pafort-Overduin's *Movie History: A Survey*, as well as an overview and analysis of the Nazi film industry as depicted in Erwin Leiser's documentary *Germany Awake!* On a happier note, Timothy Sandefur gives us nuanced but affirmative appreciations of Stephen

Spielberg's "profoundly effective" *Lincoln* and Tom Hooper's "superlative" *Les Misérables*. If Sandefur doesn't convince you to watch or revisit these films, nothing can.

Having begun on an Emersonian note, it's tempting to end on one. "Is not indeed every man a student," Emerson asks in "The American Scholar," "and do not all things exist for the student's behoof?"³ One of us isn't a man, and neither of us knows what a "behoof" is, but suffice it to say that this issue of *Reason Papers*, like every other, exists for the perpetual students out there. We hope you learn as much from it as we did.

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³ Emerson, "The American Scholar," in *Selected Essays, Lectures, and Poems of Ralph Waldo Emerson*, ed. Spiller, pp. 64-65.

Symposium:
Jason Brennan's *The Ethics of Voting*

Thoughts on Jason Brennan's *The Ethics of Voting*

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If you take a cynical look at moral philosophers, you could group them under two main types. I call them “conventional rationalizers” and “crazy rationalists.”

Conventional rationalizers largely take folk morality for granted. They then desperately try to deduce conventional moral conclusions from abstract moral principles. John Stuart Mill and John Rawls are good examples of this approach, which we can see in Mill's effort to reconcile utilitarianism with non-paternalism¹ and in Rawls's effort to explain why the Difference Principle implies a duty to help relatively poor co-nationals but not absolutely poor foreigners.² Conventional rationalizers' arguments are unimpressive because they use less obvious premises to argue for more obvious conclusions. The most they can usually achieve is to “convince” people who already agree with them.

¹ John Stuart Mill's *On Liberty* affirms full-blown utilitarianism: “I regard utility as the ultimate appeal on all ethical questions”; see John Stuart Mill, “On Liberty,” in *Classics of Western Philosophy*, ed. Steven Cahn (Indianapolis, IN: Hackett Publishing Co., 1977), p. 1027. In the span of two pages, though, Mill also presents “one very simple principle, as entitled to govern *absolutely* the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion”; the principle is: “the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection” (ibid., p. 1026, emphasis mine). Mill elaborates: “He cannot rightfully be compelled to do or forbear because it will be better for him to do so, *because it will make him happier*,” but of course, “It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties” (ibid., p. 1027, emphasis mine). Within two pages, there are two “absolute”/“ultimate” principles, each with one big exception—a clear case of intellectual desperation.

² See, e.g., John Rawls, “The Law of Peoples,” *Critical Inquiry* 20, no. 1 (1993), pp. 36-38.

Crazy rationalists, by contrast, take a supposedly self-evident moral principle for granted, and then dogmatically deduce bizarre moral conclusions. Immanuel Kant and Murray Rothbard are good examples of this approach. Kant infamously uses one version of his Categorical Imperative to deduce that lying is always wrong, even if a murderer asks you about a victim's location.³ Rothbard uses the libertarian non-aggression axiom to deduce parents' rights to allow their infant children to starve to death.⁴ Crazy rationalists' arguments are unimpressive because they use questionable premises to argue for absurd conclusions. The most they can usually achieve is to convince people who love logic but hate contrapositives.⁵

Both conventional rationalizers and crazy rationalists misunderstand the whole point of philosophic argument, namely, *intellectually to move from the more obvious to the less obvious*. If your conclusion is more obvious than your premises, your argument is useless. You might as well simply assert the conclusion and skip the argument. If the denial of your conclusion is less obvious than your premises, your argument is counter-productive. You don't have a "proof"; you have a *reductio ad absurdum*.

In *The Ethics of Voting*, Jason Brennan happily falls into neither of these intellectually sterile camps. Instead, Brennan begins with straightforward, common-sense moral intuitions, and uses them to deduce unconventional but plausible moral conclusions. Brennan's target is what he calls the "Folk Theory of Voting Ethics":

(1) Each citizen has a civic duty to vote. In extenuating circumstances, one can be excused from voting, but otherwise, one should vote.

(2) While it is true that there can be better or worse candidates, in general any good faith vote is morally acceptable. At the very least, it is better to vote than to abstain.

(3) It is inherently wrong to buy or sell one's vote.⁶

³ See Immanuel Kant's essay, "On a Supposed Right to Tell Lies from Benevolent Motives," in the appendix of *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics*, trans. Thomas Kingsmill Abbott (London: Longmans, Green and Co., 1889).

⁴ Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), p. 100.

⁵ The contrapositive of "If A, then B" is "If not-B, then not-A." A fundamental principle of logic is that if an inference is valid, so is its contrapositive.

⁶ Jason Brennan, *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2011), p. 3.

Brennan never denies the plausibility of the Folk Theory. Neither does he take a controversial moral principle (such as libertarian absolutism) to, say, deduce the justice of anarchism, implying the injustice of democracy, which in turn implies the wrongness of democratic participation. Instead, he finds moral starting points with even greater plausibility than the Folk Theory. The simplest is the fiduciary duty of competence:

[M]ost of us think that we are not obligated to become parents, but if we are to be parents, we ought to be responsible, good parents. We are not obligated to become surgeons, but if we do become surgeons, we ought to be responsible, good surgeons. We are not obligated to drive, but if we do drive, we ought to be responsible drivers.⁷

No one would praise the “participation” of an incompetent surgeon in an operation. Why then do we praise the participation of an incompetent voter in an election? If it is crazy to say, “It doesn’t matter where you cut, but cut,” why is it any better to say, “It doesn’t matter how you vote, but vote”? Brennan elaborates:

As a citizen, you do not owe it to others to provide them with the best possible governance. But if you take on the office of voter, you acquire additional moral responsibilities, just as you would were you to become the Federal Reserve chairperson, a physician, or a congressperson. The electorate decides who governs. Sometimes they decide policy directly. They owe it to the governed to provide what they justifiedly believe or ought to believe is the best governance, just as others with political power owe it to the governed to do the same.⁸

Brennan never presents his arguments as decisive “proofs.” He doesn’t have such proofs; philosophers almost never do. Instead, Brennan sets his sights on an achievable target: providing arguments that would persuade a reasonable person who initially disagrees with him. In most endeavors, incompetent participation seems blameworthy, especially when third parties involuntarily bear the cost of error. So why would anyone consider incompetent voter participation to be obligatory?

This is what I call a good argument. Why? Because unlike his competitors—the conventional rationalizers and the crazy rationalists—Brennan actually adds to our stock of moral knowledge. Conventional rationalizers fail to *add* to our moral knowledge because they merely affirm

⁷ Ibid., p. 69.

⁸ Ibid., p. 128-29.

what we already know.⁹ Crazy rationalists fail to add to our moral *knowledge* because their method is so unreliable. Even when crazy rationalists happen to be right, their tendency to reach absurd conclusions deprives their true moral beliefs of justification. Brennan, by contrast, tells his readers something that is new to them and gives them weighty reasons to change their minds.

As a social scientist, I am especially impressed by the fact that Brennan makes an effort to argue that his moral conclusions are not merely true, but practically important. His last chapter—“How Well Do Voters Behave?”—accurately and carefully reviews the relevant empirical literatures on voter cognition and voter motivation. Voters do well on one important dimension: motivation. Real-world voters usually try to promote the common good, just as Brennan prescribes:

Political scientists . . . generally agree that voters tend not to vote for what they perceive to be in their narrow self-interest. For example, the elderly are not significantly more likely to support social security programs than younger workers. Rather, voters tend to vote for what they perceive to be in the national common interest.¹⁰

Unfortunately, voters fail on another important dimension: cognition. In theory, the “perceived common good” and the “actual common good” can diverge. In practice, Brennan reports, multiple literatures confirm that they *do* diverge. Voters’ beliefs about the best way to promote the common good are far from the truth, and neither information short-cuts nor the “Miracle of Aggregation” does much to mitigate the problem of divergence.

Brennan actually understates the severity of voters’ failure. In “Sociotropes, Systematic Bias, and Political Failure,” I examine the *interaction* between voter motivation and voter cognition.¹¹ I conclude there that the worst possible combination of voter motivation and cognition is unselfish motivation plus irrational cognition. When voters are rational, unselfishness leads to widespread support for socially desirable policies. Selfishness throws sand in the wheels of democracy; naysayers might try to

⁹ At best. An unintended consequence of conventional rationalizers’ weak arguments, as Thomas Reid notes, is to cast doubt on their own conclusions: “[W]hen we attempt to prove, by direct argument, what is really self-evident, the reasoning will always be inconclusive; for it will either take for granted the thing to be proved, or something not more evident; and so, instead of giving strength to the conclusion, will rather tempt those to doubt of it who never did before”; Thomas Reid, *Essays on the Active Powers of the Human Mind* (Charlottesville, VA: Lincoln-Rembrandt Publishing, 1872), p. 637.

¹⁰ Brennan, *The Ethics of Voting*, p. 162; internal footnote omitted.

¹¹ Bryan Caplan, “Sociotropes, Systematic Bias, and Political Failure: Reflections on the Survey of Americans and Economists on the Economy,” *Social Science Quarterly* 83, no. 2 (2002), pp. 416-35.

block the policies that everyone knows to be beneficial. When voters are irrational, however, unselfishness leads to widespread support for socially *undesirable* policies. When democracy is going in a misguided direction, sand in the wheels is a blessing in disguise, because selfish naysayers block the policies that voters falsely believe to be socially beneficial.

Let us examine the case of tariffs. Almost everyone who can accurately explain the textbook case for free trade thinks that protectionism harms the common good, but those who can accurately explain the textbook case for free trade are a tiny minority. Most people think that protectionist policies are socially beneficial. Given this belief, unselfishness leads to broad-based support for protectionism. Under the circumstances, more voter selfishness would restrain support for harmful policies. After all, some selfish people would think, “Protectionism is good for society but bad for me personally, so I’ll support free trade.”

My main criticism of Brennan is that he doesn’t go far enough. *The Ethics of Voting* questions the morality of wrongful voting, but not the *right* to engage in wrongful voting. His surgeon analogy is equally relevant to both cases.¹² If you’re not a competent surgeon, it isn’t merely wrong to operate; you normally have no right to operate. At a minimum, an incompetent surgeon would need to disclose his incompetence and receive every patient’s explicit consent before he would have a right to practice his quackery. The strictures against incompetent voting should be at least as stringent.

But doesn’t the electorate have a right to “harm itself”? Not if it harms dissenting bystanders in the process—as it almost invariably does. As I explain elsewhere:

[W]hen the majority votes for socially injurious policies, it is not “just hurting itself.” Unless the decision is unanimous, the errors of the majority spill over onto innocent dissenters. No matter what the majority decides, of course, its choice makes *some* people worse off; for every policy, there are losers. But when the majority chooses the policies with the best overall consequences, at least it can offer the defense that “It is regrettable that we made some people worse off, but the decision was for the greater good.” When the majority errs, in contrast, it wrongs the minority *without a serious excuse*.¹³

¹² Since publishing *The Ethics of Voting*, Brennan has independently come to this very conclusion. See Jason Brennan, “The Right to a Competent Electorate,” *Philosophical Quarterly* 61, no. 245 (2011), pp. 700-24.

¹³ Bryan Caplan, “Majorities against Utility: Implications of the Failure of the Miracle of Aggregation,” *Social Philosophy & Policy* 26, no. 1 (2009), p. 207.

The Ethics of Voting wisely focuses on a mainstream audience, but Brennan's book also raises issues of special interest to libertarians. Let me conclude, then, with two questions for libertarians to ponder:

- (1) If Brennan's position were entirely correct, should libertarians be less inclined to vote (since there are many other ways to pursue civic virtue) or more inclined to vote (since their policy preferences are more likely to be epistemically justified and morally reasonable)?
- (2) How would Brennan respond to the libertarian who thinks that voting is wrong *per se*?

Do Voters Have a Duty to Promote the Common Good? A Comment on Brennan's *The Ethics of Voting*

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1. Introduction

Jason Brennan, in *The Ethics of Voting*,¹ argues that citizens do not have a duty to vote, but if they do vote, they have a duty to cast their vote to promote the common good. Adam Smith says, "I have never known much good done by those who affected to trade for the public good."² In the context of Brennan's book one is justified in asking whether Smith's observation about trade also applies to voting, in which case Smith's observation would appear to be directly relevant to Brennan's thesis. Brennan does make the argument that Smith's invisible hand applies to markets,³ but says nothing about voting, leaving open the possibility that Brennan's thesis could remain correct regarding voting, even if Smith's observation is correct that not much good comes from those who claim to trade to promote the public good.

A part of Brennan's thesis is that citizens do not have a duty to vote, and I agree with Brennan that they do not (although perhaps not for the same reasons), so I will set aside that argument in order to focus on Brennan's claim that if people do vote, they have an ethical duty to cast their votes to promote the common good. Two sub-issues arise here. First, the ethical responsibility Brennan places on voters requires that there be such a thing as the common good; otherwise, one could not possibly vote to promote it. Second, even if there is such a thing as the common good, voters can only have a responsibility to cast their votes to further it, if there is some way they can discover what it is. Brennan offers little help here. He says, "I do not intend to give a full theory of the common good here. . . . [D]oing so goes beyond the

¹ Jason Brennan, *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2011).

² Adam Smith, *The Wealth of Nations* (New York: Modern Library, 1937 [1776]), p. 423.

³ Brennan, *The Ethics of Voting*, pp. 125-27.

scope of the book.”⁴ He is telling readers they have a duty to vote to promote the common good, but apparently we have to read someone else’s book (or books) to find out exactly how we should vote.

2. Is There a Common Good?

Brennan takes an individualistic approach to the common good,⁵ in that he recognizes that the welfare of a group can be nothing more than the welfare of the individuals who make up that group. James Buchanan and Gordon Tullock, in *The Calculus of Consent*, take that same individualistic approach,⁶ but from there Buchanan and Tullock analyze politics as exchange, where people bargain with each other to achieve collectively what they could not accomplish individually. Buchanan and Tullock do not imagine that voters try to intuit the common good and vote on that basis, but rather that they use voting as a way of achieving outcomes that further their own interests, when those interests require collective action. Buchanan and Tullock do not take the normative approach Brennan does. Their goal is to analyze how the political process works, not how voters should behave. Still, their view is that there is no common good beyond the individual interests of participants in the political process.

Brennan tells readers there is such a thing as the common good, even though he does not tell readers what it is, so one would be hard-pressed to argue against Brennan’s theory of the common good, beyond saying there is no such thing. I am skeptical that there is such a thing, especially because Brennan does not tell readers what it is or even how to find it, but even if readers accept that there is a “common good,” Brennan’s argument is far from proven.

3. Can Voters Identify and Vote for the Common Good?

Because Brennan is so vague by what, exactly, constitutes the common good, this makes the next part of Brennan’s argument—that voters should cast their votes that way—very problematic. Even if there is a common good, voters cannot vote for it unless they know what it is. Brennan maintains, “Voters should justifiably believe that the policies or candidates they support would promote the common good.”⁷ This appears to mean that (1) voters gather enough knowledge to cast informed votes, and (2) they believe that the way they cast their votes furthers the common good, even

⁴ Ibid., p. 115.

⁵ Ibid., chap. 5.

⁶ James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor, MI: University of Michigan Press, 1962).

⁷ Brennan, *The Ethics of Voting*, p. 91.

though Brennan does not tell readers how to identify the common good. Indeed, Brennan tells readers they cannot really know what it is, when he says, “Harmful voting occurs when people vote for harmful or unjust policies or for candidates likely to enact harmful or unjust policies. . . . One might vote for what is in fact a harmful policy but be justified in doing so. . . . The policy might still end up being harmful, though everyone was justified in thinking it would not be.”⁸

Could this really be a guide to ethical voting? Brennan is saying voters should be informed about their choices, but that even when fully informed, they cannot know whether their vote does or does not further the common good. Brennan offers us no criteria by which to judge. He notes “that the theory of voting ethics presented here might allow someone to vote on the basis of the wrong conception of the common good.”⁹ Of course this is true. In the previous section, I questioned whether there is such a thing as the common good, but even if there is, there is no way for a voter to cast a vote to further the common good, if the voter cannot know what it is (except by chance).

As I write this article I have just flipped a coin, which has landed either heads or tails. Can any reader tell me which way it landed, and justify the conclusion? No. We do know that the answer is either heads or tails, but there is not sufficient information to justify concluding either heads or tails. In the same way, even if there is such a thing as the common good, Brennan has given his readers no reason to think that voters have any way of identifying it.

Brennan realizes that not everybody has the same conception of the common good. He cites Bryan Caplan approvingly,¹⁰ and even notes in his acknowledgements that if he had not read Caplan’s book, he would not have written his own book.¹¹ Caplan’s book is based on the idea of “rational irrationality,” which holds that because a person’s single vote does not affect election outcomes, he can rationally hold and act on political views that are in conflict with the common good. Caplan says that such “irrationality” is rational, and justified in the mind of the voter by the fact that one vote will not alter the aggregate outcome of an election, and Brennan says that voters must be justified in believing that they are casting their votes to further the common good. Combining these arguments, irrational votes are justified (certainly, in the eyes of the irrational voters), and often are cast in opposition to the common good.

⁸ Ibid., p. 69; internal footnote omitted.

⁹ Ibid., p. 118.

¹⁰ Bryan Caplan, *The Myth of the Rational Voter* (Princeton, NJ: Princeton University Press, 2007).

¹¹ Brennan, *The Ethics of Voting*, p. ix.

Even if one leaves aside rational irrationality, different people have different conceptions of the common good. The degree to which government transfer programs further the common good is but one example. Charles Murray argues that transfer programs in the United States have trapped welfare recipients in poverty,¹² and William Easterly argues that foreign aid from Western nations to the poorer countries in the world has made worse the lives of people in recipient nations.¹³ Meanwhile, many compassionate people argue that transfer programs should be expanded. Another example is the role to which nations should use their military power to intervene in other nations. Did the U.S. invasions of Iraq and Afghanistan further the common good? There are other contentious issues, such as abortion. Is the common good furthered by protecting a woman's right to terminate her pregnancy, or by protecting the right of an unborn fetus to be born? Assuming that there is such a thing as the common good, voters should all come to the same answer on these questions. How would voters go about determining the common good in public policy issues such as these? If there is no way for voters to determine which of these opposing positions furthers the common good, then they cannot ethically be bound to vote in a way that is impossible for them.

Brennan offers an interesting example of his own when he discusses California's prison guard union, California Correctional Peace Officers Association (CCPOA), which advocates various public policies that, Brennan claims, benefit CCPOA members. He says of CCPOA advertisements: "They convince voters to favor CCPOA-sponsored candidates, even though it is not in most voters' interests to do so."¹⁴ If what Brennan claims is in fact true, it would appear that voters would be justified in voting for the CCPOA-sponsored candidates. First, Brennan says that "it is not in most voters' interests to do so," but voters are supposed to vote for the common good, not for their own interests. This part of the argument appears irrelevant at best, because ethical voters vote for the common good, not their own interests. Second, Brennan claims of the CCPOA ads: "They convince voters to favor CCPOA-sponsored candidates," and if voters are convinced that this is an appropriate vote even though it is against their own personal interests, that provides the justification for voting that way. It appears to me that even though Brennan is trying to make an ethical argument against voting for CCPOA-sponsored candidates, the logic of his argument is that voters have a good justification for voting that way—they are convinced by the CCPOA ads—so ethical voters should vote for those candidates.

¹² Charles Murray, *Losing Ground: American Social Policy, 1950-1980* (New York: Basic Books, 1984).

¹³ William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest of the World Have Done So Much Ill and So Little Good* (New York: Penguin Books, 2006).

¹⁴ Brennan, *The Ethics of Voting*, p. 123.

Brennan's argument that voters must be justified in their beliefs that they are casting their votes to further the common good does not hold up, if there is no way for voters to identify the common good. One cannot be justified if identifying the common good is an impossible task. It may be impossible, if there is no such thing as the common good, but even if there is, it still may be impossible, if there is no way for voters to discover it.

4. A Minor Issue

Brennan discusses democracy as a mechanism for producing fair outcomes, saying, "Suppose you care only that political decisions be made fairly. If so, there is no special reason to prefer democracy. Instead of voting under majority rule we could flip a coin, or roll dice. . . . These methods would be fair, in fact, fairer than any real voting procedures."¹⁵ Brennan here has confused "unbiased" with "fair." A coin flip is unbiased, but the outcome is not necessarily fair.

Consider, for example, a wealthy individual who specifies in her will that her entire estate would go to one of her two children, based on the flip of a coin, with the other child getting nothing. Would an outcome that gave one child everything and the other nothing be fair, even if it was unbiased? Would a fair way to allocate two pieces of cake to two children be to flip a coin and give both pieces to one child, leaving the other with nothing? No. In cases like these, it is not fair to give everything to one person and nothing to the other when neither is more deserving than the other, even if the determination of which person gets everything is unbiased. Outcomes that are unbiased are not necessarily fair. Academics have drawn the conclusion that unbiased outcomes are the same as fair outcomes often enough, as I have noted before,¹⁶ that even though this is a minor issue in Brennan's book, it is worth raising here.

5. An Invisible Hand in Politics?

Adam Smith famously claims that, under certain circumstances, an individual pursuing his own interest is "led by an invisible hand to promote an end which was no part of his intention,"¹⁷ namely, the common good. Could this also apply to voting? There is a literature in public choice theory which argues that self-interested voting, lobbying, and other political activity is aggregated through political institutions such that the result of everyone's self-interested voting is an outcome that maximizes the common good. Gary

¹⁵ Ibid., p. 116.

¹⁶ Randall G. Holcombe, "Absence of Envy Does Not Imply Fairness," *Southern Economic Journal* 63, no. 3 (1997), pp. 797-802.

¹⁷ Smith, *The Wealth of Nations*, p. 423.

Becker and Donald Wittman are two of the scholars who promote this idea.¹⁸ While this line of reasoning has been controversial in the academic literature, it does show that there is academic support for the idea that voting based on one's narrow self-interest can be justified as voting to further the common good.

The argument is much the same as the argument behind the invisible-hand mechanism of the market. Political institutions, like market institutions, channel individuals' self-interested behavior so that the aggregate outcome is in the common interest. One voter does not determine the outcome of an election, and this literature suggests that there are mechanisms within a democracy that aggregate everyone's vote such that when voters vote based on their narrow interests, the common good is the aggregate result. Brennan says that a theory of the common good is beyond the scope of his argument, so it appears that ethical voters will have to look to other authors in order to determine how to justify that they are voting to further the common good. If those ethical voters look to Becker and Wittman, they will further the common good by simply voting to further their own personal interests.

If people are actively seeking to put their own interests aside and cast a vote that furthers the common good, they will tend to see the common good through a filter that reflects their own situation and experiences anyway. People like to think of themselves as public-spirited, or at least believe that their successes have not come as a result of their taking advantage of others. People feel better about themselves when they believe that what they have is deserved, and that what they want through the political process is just rather than being an attempt to use politics to benefit themselves at the expense of others. Seeing the common good through their own interests reduces cognitive dissonance and makes them feel better about themselves. Even when it is not true, this falls under the heading of Caplan's "rational irrationality." It is rational, and justified, for people to believe that the common good is furthered by policies that further their own narrow interests, even when this is not true.

If voters were to try to set their own interests aside and try to intuit what would be in the interests of other voters, they would at best be partially successful. This is partly because people are not good at judging what would be in the best interests of others, especially others in far different circumstances, and partly because they will not be able to set aside their own viewpoints anyway. As mentioned above, Murray and Easterly make arguments that public policies made apparently with good intentions have ended up being harmful to the intended beneficiaries. There is no information

¹⁸ See, for example, Gary S. Becker, "A Theory of Competition Among Pressure Groups for Political Influence," *Quarterly Journal of Economics* 98, no. 3 (1983), pp. 371-400; Donald Wittman, "Why Democracies Produce Efficient Results," *Journal of Political Economy* 97, no. 6 (December 1989), pp. 1395-1424; and Donald Wittman, *The Myth of Democratic Failure* (Chicago, IL: University of Chicago Press, 1995).

available to voters that could provide a justification that any vote they cast would further the common good.

By the very nature of collective decision-making, no one voter or small group of voters can determine the outcome of an election. Voters must cast their votes with the thought that many other people will also be voting, and that any eventual winner in an election must be preferred by many other voters. Brennan discusses strategic voting,¹⁹ which shows that he recognizes that voters realize that the way they should vote depends on the way they think others will vote. Voters do not determine an election outcome with their single votes; rather, in order for their votes to count in the aggregate, they must vote for an outcome that will be favored by many others. Thus, self-interested voters must consider the interests of others when they vote.

If Becker's and Wittman's idea that voting one's own interests generates an outcome for the common good, then for voters who justify their votes based on this line of reasoning, there will be no difference in how they cast their votes whether they choose to vote for their own interests or choose to vote to promote the common good. However, for voters who try to determine some larger common good beyond their own interests, Becker's and Wittman's logic would say that those voters are working against the common good, leading toward undesirable outcomes like those cited by Murray and Easterly. Their intentions may be good, but good intentions appear to fall short of a true justification.

Brennan not only is vague about what constitutes the common good, but also about what constitutes justification for voting to promote the common good. One way to read Brennan is that justification means knowing candidates' positions and having good intentions. If this is so, the argument clearly falls short, because having good intentions is no better than just flipping a coin without a mechanism that can turn good intentions into good results. Problems with coin tosses have already been noted.

6. Conclusion

Everybody tends to see things through their own eyes, based on their own situation. Everybody is naturally prone to understand the public good in terms of what would further their own interests—not because people are selfish or ignore the common good, but because the common good is defined for them by their own experiences and their own situations. Because of this, Brennan's thesis raises ethical issues of its own. If people recognize that their preferences in politics, and in life in general, reflect their own interests, they can carry on their activities with that in mind. If, following Brennan, people believe that they have some justified insight into what is the common good, human nature makes them believe that their own perception of the common good is something that should be imposed on everybody—because that is what government does. The result is that people on the winning side of an

¹⁹ Brennan, *The Ethics of Voting*, pp. 131-33.

election are justified in thinking that they are furthering the common good, whereas those on the losing side are justified in thinking that the will of a selfish majority is being imposed on them, even as they tried in vain to promote the common good. This seems more dangerous than recognizing that people cast their votes to further their own interests.

If voters were to buy into Brennan's voting ethics, that would create divisions within society. If everybody follows Brennan's ethical advice, both winners and losers in the political arena will see those with opposing political views as working against the common good. Meanwhile, winners will be justified, to use Brennan's term, in thinking that they have an ethical foundation for imposing the policies they favor on everyone. This is far worse for the political system than recognizing that politics involves people with different interests trying to accomplish their own individual ends through a collective process. Brennan is telling voters that when they end up on the losing end of an election, evil has triumphed over good; the common good has been defeated. This is much different from concluding that most people wanted this while I wanted that, and so I was outvoted.

Consider some controversial political issues mentioned above, such as the scope of the welfare state, foreign aid, military intervention overseas, and abortion. One line of reasoning is that people have different views on these issues. Another, for voters who follow Brennan's advice on ethical voting, is that people who hold different views from yours are voting against the common good. Brennan's framework invites much more social divisiveness than a belief that people can have different interests and hold different opinions on political issues.

If voters were to buy into Brennan's voting ethics, then people trying to vote ethically would be searching in vain for some common good. Brennan chose not to explain what this is, and the arguments above suggest that, first, it may not exist, and second, that even if it does, there is no way for voters to identify it. The undesirable consequences of good intentions with no indicator of how to fulfill them would lead to the results described by Murray and Easterly. Voters' attempts to promote the common good would have unintended consequences that would work against the public good.

If voters were to buy into Brennan's voting ethics, voters who actually choose to vote their own interests rather than search for the common good would then believe they are behaving unethically. People who believe they are behaving unethically in one dimension will have lower self-esteem, which might lead them to behave unethically in other dimensions. Self-interested voters would then shoplift more and engage in more securities fraud. The check on this is that everyone acts to reduce cognitive dissonance, so self-interested voters are more likely to reject Brennan's theory of voting ethics than actually become shoplifters.

Brennan's ethics of voting is like a building with no foundation. Before Brennan can argue that voters have an ethical responsibility to vote to promote the common good, he must demonstrate that there is such a thing as the common good and that voters have a way to identify it. Otherwise,

Brennan is telling voters that they have an obligation to be informed about the alternatives and to vote with good intentions. However, we have already noted above that good intentions can work against the common good.

Review of Jason Brennan's *The Ethics of Voting*

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1. Introduction

Jason Brennan's *The Ethics of Voting*¹ is definitively a significant contribution to one of the most important debates in political ethics. His theory of voting ethics is clear, original, and sophisticated. By means of plausible arguments and examples, Brennan challenges some of our strongest intuitions and sets the scene for further discussion concerning the ethics of voting.

Brennan claims that, when people vote, they can make government better or worse, so that people's votes can make their lives better or worse. Therefore, Brennan claims, voting is morally significant. Brennan's theory of voting ethics consists of three theses²:

(1) People do not have a moral duty to vote.

(2) If people decide to vote, they must vote well. In turn, voting well means the following: (a) One should vote for the candidate who one believes will best³ serve the common good (i.e., one should not vote for narrow self-interest). For Brennan, "serving the common good" means advancing the interests of *community members*, not the interests of the *community as a whole*, as if it were a real organism whose interests were irreducible to the interests of its members. He clarifies that his theory of voting ethics does not depend on any particular conception of the common good.⁴ (b) One should be guided by sound evidence in choosing a candidate. In order to be

¹ Jason Brennan, *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2011).

² *Ibid.*, p. 4.

³ *Ibid.*, pp. 128-29.

⁴ *Ibid.*, pp. 112-18.

guided by sound evidence, one needs to know about politics (e.g., know candidates' proposals), be rational (i.e., form beliefs through reliable processes rather than, e.g., through wishful thinking), and be guided by sound moral values (e.g., not dismiss a candidate because of his race).⁵ Thus, Brennan claims, people who cannot or do not want to vote well should abstain from voting.⁶

(3) Buying and selling votes is morally permissible only if it does not lead sellers to vote badly.

In this article I focus on theses (1) and (2). I argue that Brennan's argument in favor of thesis (2) shows that, in some circumstances, it is morally wrong for certain people not to vote. My thesis is that, in those circumstances, those people must vote and vote well. I will proceed in the following sequence. In Section 2, I expound Brennan's arguments in favor of theses (1) and (2). In Section 3, I explicate my thesis. Finally, Section 4 contains my conclusion.

2. Brennan's Theory of Voting Ethics

Brennan claims in thesis (1) that people do not have a moral duty to vote. In order to defend this, he refutes arguments which try to show that people do have this duty. In this section I present three of these arguments that are relevant for my purposes, and explain how Brennan refutes them.

The first argument is that one must vote because one must promote one's own interests; if one votes well, one promotes one's own interests. The second argument is that one must vote because, if one can perform an action that has an expected benefit for the public good, one should do so; if one votes well, one does that kind of action. Brennan claims that these arguments fail because they overstate the influence of individual votes. He argues that, in any

⁵ Ibid., pp. 9-10. Brennan starts from the premise that elected candidates generally implement the kind of policies they defended before being elected. See *ibid.*, p. 86. Brennan quotes empirical evidence in favor of that premise: Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton, NJ: Princeton University Press, 2007), pp. 166-81; David Lee, Enrico Moretti, and Matthew Butler, "Do Voters Affect or Elect Policies? Evidence from the U.S. House," *Quarterly Journal of Economics* 119 (2004), pp. 807-59.

⁶ Thus, for Brennan, a person who is ignorant about politics should not vote. However, he clarifies that it does not follow that this person lacks a *legal right* to vote. People could have a legal right to do morally wrong actions. For example, singing anti-Semitic songs is morally wrong, but it does not follow that people lack a legal right to sing these songs; perhaps the legal right to free speech includes the legal right to sing them. Brennan claims that some people should not vote, but he says that it does not follow that the *law* should forbid them to vote; see Brennan, *The Ethics of Voting*, pp. 5-6.

large-scale election, the influence of each vote is very small. Therefore, one's vote neither promotes one's own interests nor has an expected benefit for the public good.⁷

The third argument is that one must vote because voting, regardless of how one votes, tends to preserve a stable democracy, and failing to vote threatens to undermine democracy. This argument assumes that only a stable democratic government promotes the good of citizens. Brennan claims that "tends to preserve a stable democracy" can be understood in two ways. First, it could mean that there is some threshold of votes under which democracy collapses, and that the point of voting is to help ensure that this threshold is reached. Brennan argues that, under this understanding, the argument fails because it is extremely improbable that one's vote decisively saves democracy—that with one less vote, democracy collapses. Second, it could mean that each vote *marginally* improves the democratic nature of society. Brennan claims that, under this understanding, the argument also fails because there is no empirical evidence that the value of votes does not diminish so rapidly such that only *a few* people must vote.⁸ Thus, for Brennan, one of the reasons why people do not have a moral duty to vote is that each vote has negligible influence.

Brennan's second thesis is that, if people decide to vote, they must vote well. People should abstain from voting rather than vote badly. As I state above, for Brennan, a person votes well if, and only if, she (a) votes for the candidate she believes will best serve the common good and (b) is guided by sound evidence in choosing that candidate.⁹ Brennan distinguishes between two kinds of bad voting: unexcused harmful voting and fortuitous voting.

Unexcused harmful voting occurs when one votes without epistemic justification for a candidate who will probably not best serve the common good. Perhaps the candidate is not so bad, but this kind of voting is still harmful because the candidate is not the best. In that case, one could believe that the candidate one votes for will best serve the common good, but this belief is not supported by sound evidence. Brennan says that unexcused harmful voting is collectively, not individually, harmful because each vote has negligible influence.¹⁰

Fortuitous voting occurs when one votes for the candidate who will probably best serve the common good, but one's belief is not supported by sound evidence. In this case, one makes the right choice for bad reasons.¹¹

⁷ Ibid., pp. 18-20.

⁸ Ibid., pp. 21-28.

⁹ Ibid., p. 4.

¹⁰ Ibid., p. 68.

¹¹ Ibid.

Both unexcused harmful voting and fortuitous voting occur when one's choice is not supported by sound evidence. For Brennan, people who are not guided by sound evidence should abstain from voting. Note that voting for a candidate who will not best serve the common good is not necessarily morally wrong. That depends on whether the voter's belief that this candidate will best serve the common good is supported by sound evidence, which does not guarantee truths, but *probable* truths.¹²

Brennan claims that unexcused harmful voting is morally wrong because it implies violating a more general moral duty. This is the duty not to participate in a collectively harmful activity when not participating imposes low personal costs compared to the consequences of that harmful activity. In turn, Brennan defines "collectively harmful activity" as a harmful activity undertaken by a group, where individual inputs into the harmful activity are insignificant. According to Brennan, since abstaining from casting an unexcused harmful vote imposes low personal costs, casting this kind of vote is morally wrong. Perhaps harmful voters receive psychological benefits from voting—perhaps they feel good about themselves. If they do not vote, they could lose such benefits. However, Brennan says, these personal costs versus benefits are low compared to the consequences of that collectively harmful activity, for example, racist laws, worse economic opportunities, and so on.¹³

Brennan argues that fortuitous voting is morally wrong because it imposes unacceptable risk; fortuitous voting is collectively, not individually, risky because each vote has negligible expected influence. Although fortuitous voters make the right choice, fortuitous voting is morally wrong because it implies violating the more general duty not to participate in a collective activity which imposes unacceptable risk. The activity can lead to good consequences by chance, but this does not excuse the fortuitous voter from moral responsibility.¹⁴ People should abstain from voting rather than vote fortuitously.¹⁵ For Brennan, unexcused harmful voting and fortuitous voting are morally wrong, and it is irrelevant that each vote has negligible influence.

¹² Ibid., p. 69.

¹³ Ibid., pp. 69-77.

¹⁴ For Brennan, fortuitous voting imposes unacceptable risk, but other collective activities, such as driving, impose acceptable risk; see *ibid.*, pp. 79-81.

¹⁵ Note that unexcused harmful voting and fortuitous voting occur only if it is certain (or at least probable) that the candidate voted for will win. If a candidate has a negligible probability of winning, voting for him cannot imply participating in a harmful or risky activity. Since few people vote for that candidate, the activity can be neither harmful nor risky. However, for Brennan, if that candidate will probably not best serve the common good, voting for him is still morally wrong because it involves "littering" the system; see *ibid.*, pp. 77-79.

3. Not Voting Could Imply Participating in a Collectively Harmful Omission

When Brennan argues in favor of thesis (1), he holds that one of the reasons why people do not have a moral duty to vote is that each vote has negligible influence. However, when he argues in favor of thesis (2), he claims that unexcused harmful voting and fortuitous voting are morally wrong, *even though* each vote has negligible influence.

In this section I argue that the negligible influence of a vote is not a reason to believe that not voting is always morally permissible. More precisely, I argue that Brennan's argument in favor of thesis (2) shows that, in certain circumstances, it is morally wrong for certain people not to vote. In certain circumstances, not voting implies participating in a collectively harmful omission. These circumstances are likely to occur in contemporary democracies.¹⁶ I claim that, in these circumstances, certain people must vote and vote well. It is morally irrelevant, I say, that not voting is an *omission* and not an *action*.

a. When not voting implies participating in a collectively harmful omission

In some circumstances, not voting implies participating in a collectively harmful omission. Consider the following example. There are two candidates: Linda and Paul. According to sound evidence, Linda is the candidate who will best serve the common good. Paul is a very bad candidate; if he wins, there will be violations of human rights, worse economic opportunities, and so on. People have the following information: Most people who decided to vote will vote for Paul, and a small percentage of people who decided to vote will vote for Linda. Moreover, it is well known that people who decided not to vote represent a huge percentage of the total population; if they were to vote well, Linda would win. If the information provided by sound evidence is true,¹⁷ in these circumstances, not voting implies participating in a collectively harmful omission. This is not individually harmful because, as Brennan claims, each vote has negligible influence. However, in this case, abstention is certainly a collectively harmful omission.

Recall that Brennan argues that participating in a collectively harmful activity is morally wrong *only if* not participating imposes low personal costs compared to the consequences of that harmful activity. I agree with him, but go further by arguing that certain people must vote and vote well. This is because, for those in my example above, the personal costs of

¹⁶ Brennan admits that, in special circumstances, people could have a moral duty to vote, even though he does not clarify what these circumstances are; see *ibid.*, p. 66. My aim is to show that, in circumstances which are likely to occur in contemporary democracies, a duty to vote and vote well does arise.

¹⁷ The information provided by sound evidence *can* be false. Recall that sound evidence does not guarantee truths, but *probable* truths.

voting and voting well are low compared to the consequences of the collectively harmful omission, namely, violations of human rights, worse economic opportunities, and so on. Thus, in those circumstances, it is morally wrong for those people not to vote. Before saying what kind of people I refer to, I will say something about what voting and voting well requires.

Voting does not take a lot of time (even if we count waiting in line to vote) and, at least in countries where people are free to vote as they wish, it is not risky (unlike military service). Moreover, as Brennan points out, in order to vote well, people do not need to study economics and constitutional law. When Brennan discusses whether from his theory of voting ethics it follows that only those with Ph.D. degrees may vote, he claims that voters do not need to be experts on the issues they vote about. They only need to discover who the true experts are, and follow their opinions (as when one follows instructions from a doctor).¹⁸ Voters could ask different experts which candidate will probably best serve the common good, and evaluate whether there is agreement between them.

Since voting well implies voting for the candidate one believes will best serve the common good, one might object that voting well *could* require voting against some of one's interests. However, as Brennan says, since one's vote far from changes the result, it is not costly to vote against some of one's interests.

I now return to the issue of those who must vote and vote well. I divide these people into three groups, which I call "the responsible groups."

The first group consists of experts, who could vote well. It is morally wrong for these people not to vote, for they already have the necessary information to vote well. For these people, the personal costs of voting and voting well are very low.

The second group consists of people who lack expertise, but have the necessary information to vote well, because they know the opinions of experts. It is morally wrong for these people not to vote, because the personal costs of voting and voting well are also very low.

The third group consists of people who do not have the necessary information to vote well, but have the necessary ability to identify experts and dismiss pseudo-experts. These people could get the opinions of experts and evaluate whether there is agreement between them. Of course, this takes some time and effort (less than studying economics and constitutional law), but the personal costs are low compared to the consequences of the collectively harmful omission, namely, violations of human rights, worse economic opportunities, and so on. Therefore, it is morally wrong for these people not to vote.

Members of the responsible groups thus must vote and vote well. In contrast, it is morally permissible for certain people not to vote, including those who lack the necessary information to vote well, and those who lack the

¹⁸ Ibid., pp. 104-5.

necessary ability to identify experts and dismiss pseudo-experts. Perhaps these people do not have any kind of relevant information. Perhaps they have wrong information. In any event, all of these people are in the same situation. It is morally permissible for them not to vote, because the personal costs of learning how to get reliable information are so high: it takes a lot of time and effort. What is more, if Brennan is right, not voting is not only morally permissible for these people, it is also morally obligatory. If they vote, they will vote badly.¹⁹

b. It is morally irrelevant that not voting is an omission

Someone could argue that refraining from voting is never morally wrong because not voting is an omission rather than an action. Omissions cannot be morally wrong because, when one omits, one does nothing; only actions can be morally wrong. In other words, while voting can imply participating in a collectively harmful activity, not voting cannot imply participating in a collectively harmful omission.

However, the premise that omissions cannot be morally wrong seems to be false. If omissions can be morally right, for example, refraining from stealing, it seems that omissions can also be morally wrong because they cause harm. For instance, it seems that not nourishing one's young son is morally wrong. Not saving a stranger, if the personal costs of saving him are low, seems to be morally wrong as well. Thus, if one sees a person drowning in a swimming pool, and one is a very good swimmer, not saving this person seems to be morally wrong.

On the other hand, there are actions which cause harm, but are morally permissible. For example, imagine that one sells a person a knife, and one day the buyer becomes crazy and kills her husband with this knife. The first action of selling the knife is morally permissible. There are also actions which cause harm and are morally wrong, for example, killing a person with a knife.

Now, someone could claim that refraining from voting is never morally wrong because not voting is a *kind* of omission which is always morally permissible. This kind of omission is more similar to not nourishing poor African children than to not nourishing one's young son. Nevertheless, Brennan does not explain why not voting is a *kind* of omission which is always morally permissible.

This is a controversial issue, but there seem to be good reasons to think that, in my example, not voting is morally impermissible for members of the responsible groups. Not voting implies participating in a collectively harmful omission, which consists, for example, in not saving the population from violations of human rights, worse economic opportunities, and so on. If

¹⁹ For Brennan, if those people cannot realize that they are bad voters, they are morally excused if they vote badly, because "ought implies can." However, Brennan claims that most bad voters can know that they are bad voters; see *ibid.*, p. 90.

the responsible groups do not vote, they participate in this sort of collectively harmful omission. For these people, the personal costs of voting and voting well are low compared to the consequences of the collectively harmful omission. Therefore, it seems to be morally wrong for these people not to vote. They must vote and vote well. If they do not vote, it is as though many good swimmers saw many people drowning in a swimming pool and did not save them.²⁰

One difference between both examples is that, if one swimmer decides to dive into the water, he could save a couple of persons. In contrast, each vote has negligible influence, so one can save no person by voting. However, for Brennan, the negligible influence of each vote does not morally absolve the person who votes badly. This person is morally responsible because she participates in a harmful (or risky) activity, and because not participating costs little. It is irrelevant, Brennan claims, that her vote has negligible influence. This reasoning could also be applied to some non-voters. In my example, the person who does not vote participates in a collectively harmful omission, which consists, for example, in not saving the population from violations of human rights, worse economic opportunities, and so on. If it costs little for her to vote well, this person is morally responsible for not voting.

It might be objected that voting and voting well is not the only way to contribute to saving people from violations of human rights, worse economic opportunities, and so on. One could contribute to this by launching a campaign against Paul, for example, as in the case discussed above. Therefore, it is false that those people must vote and vote well.

However, this objection fails to distinguish between overriding and compensating. For example, the expert who does not vote participates in a collectively harmful omission, and this is morally wrong for him. He could launch a campaign against Paul, but this is a way to fight against the collectively harmful omission he is participating in; this does not override the morally wrong omission. It is as if the professional swimmer does not want to dive into the water because he is a little cold, and calls other professional swimmers to do the work he could do. In this case, not diving into the water is still morally wrong. The call could compensate for the effects of the omission, but that does not override the omission.

The situation of the expert who does not vote is similar to the situation of the expert who votes for Paul: both could launch campaigns against Paul. This could compensate for the harmful effects of the action or the omission, but this does not override them.

²⁰ It seems to be morally wrong for these swimmers not to save those people even if we assume that they were pushed into the swimming pool by others.

4. Conclusion

In his *The Ethics of Voting*, Brennan argues that (1) people do not have a moral duty to vote, and (2) if they vote, they must vote well. In this article I have argued that Brennan's argument in favor of (2) shows that in certain circumstances it is morally wrong for certain people not to vote. In certain circumstances, I claimed, not voting implies participating in a collectively harmful omission, and so, in these circumstances, certain people must vote and vote well. Nevertheless, the objection I presented should not conceal the clarity, originality, and sophistication of *The Ethics of Voting*. This significant contribution will surely enrich philosophical debates about citizens' moral duties in a democratic society.

Civic Virtue without Politics: Reflections on Jason Brennan's *The Ethics of Voting*

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1. Introduction

The 2012 U.S. presidential campaign was long on intervention and short on principle. No viable candidate stood for the U.S. Constitution. Friends of liberty were left wondering what to do: Should I vote for Ron Paul, even if he doesn't stand a chance? Should I abstain from voting, because I don't want to give legitimacy to a broken system? Should I vote for the least awful candidate? Jason Brennan's *The Ethics of Voting* addresses some of these questions.¹ His book offers flashes of brilliance that can go far in advancing liberty, though a few problems detract from the book's insight. Section 2 summarizes Brennan's argument, Section 3 highlights the book's strengths, Section 4 discusses weaknesses, and I offer a conclusion in Section 5.

2. Summary

The book opens with an outline of various arguments for the conclusion that voting is a duty (Chapter One). Brennan picks apart these theories, relying mostly on the concept of "extrapolitical civic virtue," by which the common good can be advanced outside of politics, and sometimes better so, through the division of labor and comparative advantage (Chapter Two). He then argues that voters have a duty to vote (a) for the common good and (b) with "sufficient epistemic justification" (Chapter Three), or to abstain from voting (Chapter Four). In Chapter Five, Brennan defines the common good (with delicious narrowness) as a combination of institutions—such as social order, shared ethical/social norms, rule of law, and markets—that are generally to everyone's advantage. He then discusses the ethics of buying and selling votes (Chapter Six), concluding that such action is acceptable, so long as it fulfills the criteria established in Chapter Three. Moving from the normative to the empirical, Brennan closes with some observations about voter behavior and concludes that the book's goal "has been to defend certain

¹ Jason Brennan, *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2011).

normative claims” rather than “behavior modification,” humbly recognizing that if “voters behave badly, we will need more than a philosophy book to fix that.”²

3. Strengths

The main contribution of *The Ethics of Voting* is its debunking of silly ideas on voting. Brennan lumps these into a “folk theory of voting,” which holds that it is a civic duty to vote and that it is wrong to buy and sell votes. In the tradition of great Public Choice economists, Brennan demolishes such romantic visions of politics. To the extent that his ideas catch on, Brennan will have done much to counter the dangers of analyzing politics with wishful fantasy rather than disciplined reality.

The book’s single greatest strength—and its single greatest potential contribution to liberty—comes from its strong case for an extrapolitical conception of civic virtue. Using a combination of common sense, Austrian School epistemology, and elementary opportunity-cost analysis, Brennan reminds us that there are many ways beyond the political realm to advance civic virtue, and that political goods can be produced directly *and* indirectly. In an economy where everybody produces political goods, we would all starve, because those who produce political goods require the services of others for clothing, food, transportation, artistic and intellectual production, etc. What is more, civic virtue can be advanced directly, but outside of politics: “In liberal societies, there are many ways to be a good citizen. Some of these ways are the stereotypical republican ones: voting well, campaigning, pushing for institutional improvements, or engaging in national, military or political service.” (I suggest below that many of these ways are in fact harmful to others). “But,” Brennan continues, “many activities stereotypically considered private, such as being a conscientious employee, making art, running a for-profit business, or pursuing scientific discoveries, can also be exercises of civic virtue. For many people, in fact, these are better ways to exercise civic virtue.”³ In the words of E. M. Forster, “[T]wo cheers for Democracy: one because it admits variety and two because it permits criticism. Two cheers are quite enough: there is no occasion to give three.”⁴ I’m not quite convinced that democracy quite deserves two cheers, but markets, comparative advantage, and the division of labor—as so deftly applied to civic virtue by Brennan—certainly deserve three. One is reminded of Deirdre McCloskey’s bourgeois virtues.⁵

² Ibid., p. 177.

³ Ibid., p. 44.

⁴ E. M. Forster, “What I Believe,” in E. M. Forster, *Two Cheers for Democracy* (New York: Harcourt Brace & Company, 1951), p. 70.

⁵ Deirdre McCloskey, *The Bourgeois Virtues: Ethics for an Age of Commerce* (Chicago, IL: University of Chicago Press, 2006).

There is perhaps nothing more grating to a political economist than the blatherings of those who do not understand Public Choice theory. Brennan, to his great credit, largely eschews such talk in favor of a vision of politics that actually makes sense. In that spirit, he gores the sacred cow of vote-selling and -buying, arguing that neither is wrong, so long as it does not lead to the violation of his basic enjoinder to vote well. I would have gone further than Brennan, by commodifying votes entirely—because, as I argue below, politics amounts to robbing Peter to buy Paul’s vote, so we may as well be honest about the transaction—but Brennan is to be commended for his case, narrow though it may be.

4. Weaknesses

My major concerns with Brennan’s book are the following: first, the philosopher’s over-emphasis on intention over outcome; second, problems with his duty argument; and third, a lingering over-emphasis on politics. In addition, I note two quibbles: a residual flavor of romance, and a hasty side-stepping of the “Smith-Mandeville” problem.

a. Intention or outcome?

Before I launch into my first concern, a caveat is in order. I am a political economist, not a professional philosopher, so my vision of the world is necessarily clouded by my *déformation professionnelle* (as is, of course, the author’s—although, to his great credit, he obviously has a deep and broad understanding of economics). Nevertheless, I found myself frequently puzzled by Brennan’s emphasis on intention over outcome, that is, his worry about good behavior for the wrong reasons. For example, Brennan defines “fortuitous voting” as voting “the right way for the wrong reasons” or voting “for what are in fact beneficial policies or candidates likely to enact beneficial policies, but [without] sufficient justification to believe that these policies or candidates are good.”⁶ Granted, fortuitous voting is, well, fortuitous, and could eventually lead to bad decisions, since it’s based on dumb luck. But, if *ex hypothesi*, it always provides good outcomes, then I see nothing wrong with it. In fact, we should all want *more* fortuitous voting, which is certainly preferable to bad outcomes based on good justifications—the proverbial road to hell is, after all, paved with good intentions. Likewise, Brennan dismissively writes that the “extrapolitical conception does not have the silly implication that anyone who promotes the common good has civic virtue,”⁷ as it requires benevolence and motivation.⁸ I beg to differ. What’s so silly

⁶ Brennan, *The Ethics of Voting*, p. 79.

⁷ *Ibid.*, p. 60.

⁸ *Ibid.*, p. 59.

about that? I am much more concerned with the good produced than with the underlying intention. A selfish banker produces more “common good” by greasing the wheels of commerce, if only for his own bottom line, than does a selfless poll worker. Brennan concludes that the “subject matter of morality is not just the rightness and wrongness of actions but also the goodness and badness of different motives.”⁹ We will have to agree to disagree on this issue.

b. Duty problems

I find the book’s main thesis—that we have a duty to vote well—problematic. Fortunately, I also find it to be a secondary claim, and vastly overshadowed by Brennan’s brilliant contribution to a theory of civic virtue without politics. Brennan goes too far, though, with his claim that “citizens ought to have maximal civic virtue and that they should be prepared to undertake great sacrifices for the common good.”¹⁰ It is not clear to me why civic virtue is a positive duty, as opposed to a negative duty of respecting the rights of others. This comes close to the free-rider theory of voting obligation, which Brennan so deftly dismisses in Chapter Two. It also has a most interesting flavor of an ancient conception of politics, that is, liberty understood as political participation over modern liberty as autonomy.¹¹

There is also a contradiction between the duty to abstain when one cannot vote well and the claim that it is acceptable to vote for the lesser of two evils even when both options are bad.¹² In fact, I would argue for abstention over good voting, because participation in elections can amount to “identifying oneself” with immoral policies.¹³ Brennan dismissively writes that “many people think that democracy is just a system in which citizens attempt to exploit one another.”¹⁴ Well, it, in fact, is just that. In the words of H. L. Mencken, “Government is a broker in pillage, and every election is a sort of advance auction in stolen goods.”¹⁵ I, for one, do not care to give

⁹ Ibid., p. 87.

¹⁰ Ibid., p. 61.

¹¹ See Benjamin Constant’s brilliant essay, “The Liberty of the Ancients Compared to the Liberty of the Moderns,” in *Constant: Political Writings*, ed. Biancamaria Fontana (New York: Cambridge University Press, 1988), pp. 309-26.

¹² Brennan, *The Ethics of Voting*, p. 76.

¹³ Ibid.

¹⁴ Ibid., p. 112.

¹⁵ H. L. Mencken, “Sham Battle,” in *On Politics: A Carnival of Buncombe*, ed. Malcolm Moos (Baltimore, MD: The Johns Hopkins University Press, 1996), p. 331.

legitimacy to the auction by participating in democracy, even by voting for the lesser of two evils.

Yet another problem here is the proposed need for “sufficient epistemic justification.”¹⁶ For example, Paul Krugman won a Nobel Prize in Economics well after he had abandoned sound economics in favor of populist quackery; presumably, though, he counts as an expert.¹⁷

c. *Democracy as sideshow*

Brennan is no uneducated fool, no pie-in-the-sky political philosopher living in a fantasy world of informed voters, noble politicians, and a neutral state. He goes very far in advancing liberty and Public Choice theory with his extrapolitical conception of civic virtue. I understand that this is a book about the ethics of *voting*. Still, the book has an unnerving overemphasis on politics over markets, and on citizens over consumers (or members of civil society). For example, Brennan writes that “[v]oting is the principal way that citizens influence the quality of government.”¹⁸ Is it really? What about lobbying, education, or whistleblowing?¹⁹

Brennan seems to assume that politics is (or can be) inherently good, rather than redistributive (or, more bluntly, confiscatory). I have my doubts, and fall back on Vincent Ostrom’s observation that

the very nature of government involves the legitimate use of force in ordering human relationships. The use of force in human relationships is of the nature of an evil. The use of instruments of evil as a necessary means to realize the advantage of ordered social relationships creates a fundamental moral dilemma that can be appropriately characterized as a Faustian bargain. A reasonable expectation, given the Faustian bargain, is that government will fail.²⁰

¹⁶ Brennan, *The Ethics of Voting*, p. 70.

¹⁷ For the poor reliability of experts, see David Levy and Sandra Peart, “Soviet Growth and American Textbooks: The Endogenous Past,” *Journal of Economic Behavior and Organization* 78 (April 2011), pp. 110-25; Friedrich Hayek, “The Use of Knowledge in Society,” *American Economic Review* 35, no. 4 (September 1945), pp. 519-30; and Friedrich Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason* (Indianapolis, IN: Liberty Fund, 1979).

¹⁸ Brennan, *The Ethics of Voting*, p. 3.

¹⁹ I guide the interested reader to F. A. Hayek’s essay, “The Intellectuals and Socialism,” *University of Chicago Law Review* (Spring 1949), pp. 417-33.

²⁰ Vincent Ostrom, “Why Governments Fail: An Inquiry into the Use of Instruments of Evil to Do Good,” in *The Theory of Public Choice – II*, ed. James M. Buchanan and Robert D. Tollison (Ann Arbor, MI: University of Michigan Press, 1984).

So, Brennan's argument that "anyone can have civic virtue, even if he lacks the ability to do politics" is refreshing in a world of classical philosophers and modern romantics, but somewhat frustrating in a post-*The Calculus of Consent*²¹ world. I would take Brennan's argument one step further and argue that anyone can have civic virtue, *especially* if he lacks the ability to do politics. The so-called "stereotypical republican" activities traditionally associated with civic virtue are, for the most part, damaging, if politics is primarily organized plunder.²²

Brennan raises the worry that vote-selling might amount to political prostitution.²³ Why worry about that, when all of politics is prostitution anyway? I wonder what Brennan's argument would look like if he doffed entirely his political philosopher's hat, if he shed entirely the classical vision of liberty as participation over autonomy, if he dropped completely the lingering atavism of noble politics. What if he started with, say, Murray Rothbard's assumption that "the state is a gang of thieves writ large" or Frédéric Bastiat's assessment that "the state is the great fiction through which everybody tries to live at the expense of everybody else"?²⁴ He might, in that case, be more sympathetic to proceduralist over substantive defenses of democracy.²⁵ I, for one, tend to be sympathetic with political scientist Russell Hardin's claim that democracy is a sideshow within constitutional coordination, or Friedrich Hayek's emphasis on democracy as a procedure for selecting leaders within the very narrow confines of constitutionally protected rule of law.²⁶ History has amply demonstrated that democracy is likely to lead to ugly outcomes. One is left with Alexis de Tocqueville's sad but prescient warning:

²¹ James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor, MI: University of Michigan Press, 1962).

²² See Frédéric Bastiat, *The Law* (Auburn, AL: Ludwig von Mises Institute, 2007).

²³ Brennan, *The Ethics of Voting*, p. 151.

²⁴ Murray Rothbard, "The State versus Liberty," accessed online at: <http://www.econlib.org/library/Bastiat/basEss5.html>; and Frédéric Bastiat, *Selected Essays on Political Economy*, accessed online at: <http://www.econlib.org/library/Bastiat/basEss5.html>, 5.20.

²⁵ Brennan, *The Ethics of Voting*, p. 115.

²⁶ See Russell Hardin, *Liberalism, Constitutionalism, and Democracy* (New York: Oxford University Press, 2003); and Friedrich Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960).

A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the public treasury with the result that a democracy always collapses over loose fiscal policy, always followed by a dictatorship. The average age of the world's greatest civilizations has been 200 years.²⁷

d. *Minor concerns*

For all his understanding of politics, and for his good contribution to Public Choice theory, Brennan can't help but retain a hint of romance when he writes about government; he may be a cynical lover, but he hasn't quite given up the courting. For example, I shuddered through the first 111 pages as he casually bandied about the terrifying expression "common good," with only a brief definition of it halfway through.²⁸ The explanation in Chapter Five is lovely, but I have been scarred by too many assertions, from dirigistes of the Left and the Right, that the "common" good involves wide-scale redistribution of income, massive government intervention in the economy, a ban on pornography, or anti-homosexual legislation. Likewise, the very notion that citizens might have a "debt to society" or that "society may want [somebody] to contribute to the common good" is vacuous and nonsensical—and surprising coming from a thinker with Brennan's understanding of politics and methodological individualism. To be sure, he tempers his claim by writing that he is "unsure whether citizens really do have debts to society, as opposed to particular people."²⁹ Brennan should not need reminding, however, that society is a mental construct—and nothing more. Society cannot act; society cannot have desires; society cannot be owed anything. Reification—even in Brennan's gentle, tempered manner—is dangerous and meaningless.

I also wonder whether Brennan dismisses a bit too hastily the "Mandeville-Smith" solution as applied to politics. Adam Smith famously writes in *The Wealth of Nations* of a common good emerging from private interest:

Every individual . . . generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By directing [an] industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many

²⁷ The quotation is actually apocryphal, and may be Alexander Fraser Tytler's, although it is commonly attributed to Tocqueville, accessed online at: http://en.wikiquote.org/wiki/Alexander_Fraser_Tytler.

²⁸ Brennan, *The Ethics of Voting*, p. 48.

²⁹ *Ibid.*, p. 49.

other cases, led by an invisible hand to promote an end which was no part of his intention . . . [In sum,] it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our necessities but of their advantages.³⁰

Bernard Mandeville took the argument one step further (if not chronologically) by arguing that private *vices* (rather than interests) could lead to public benefits.³¹ Brennan aptly points out that this works in the market, but he is much more skeptical about extending the invisible hand to politics, ostensibly because political decisions are neither voluntary nor internalized.³² While this is correct, I wonder whether the invisible hand might indeed apply to politics, if the scope of politics were severely restricted, say, to the limited and enumerated powers of the U.S. Constitution or to the “night-watchman” (minarchist) function of security.

5. Conclusion

Brennan is to be commended for his deep knowledge of both Public Choice and general economics, and for his important marginal contribution to this literature. The book’s weaknesses are comfortably outweighed by its contributions, especially in resolving so elegantly the question of extrapolitical civic virtue, and planting the seeds of debate on vote-selling and -buying.

Brennan does, however, leave us with an interesting Catch-22. His argument can be paraphrased as follows: Voters should vote for the common good or refrain from voting, and the common good involves a narrow set of institutions and norms that permit a commonly beneficial space. In other words, the common good amounts to “a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned.”³³ Paraphrasing even more, the common good can only be reached through a minarchist-libertarian government with extremely limited functions. If that is so, voting no longer

³⁰ Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A. S. Skinner (Indianapolis, IN: Liberty Fund, 1982 [1776]), IV.2 and I.2.

³¹ Bernard Mandeville, *The Fable of the Bees or Private Vices, Publick Benefits*, two vols., ed. F. B. Kaye (Indianapolis, IN: Liberty Fund, 1998 [1732]).

³² Brennan, *The Ethics of Voting*, pp. 124-27.

³³ Thomas Jefferson, First Inaugural Address, accessed online at: http://avalon.law.yale.edu/19th_century/jefinau1.asp.

involves redistribution or coercion, and amounts merely to selecting the officials who are most likely to discharge the government's limited functions efficiently and least likely to stray beyond their constitutional confines. In other words, if voters follow Brennan's dictates, voting becomes largely irrelevant, as it no longer entails social engineering, legalized plunder, and central planning.³⁴

³⁴ Special thanks to Joshua Hall for organizing this symposium, and the panel at the 2012 meeting of the Association of Private Enterprise Education (APEE). For feedback, thanks to my co-panelists Randy Holcombe and Ezequiel Spector. For feedback and editing, thanks to Sarah Duis, Kevin Regan, Victoria Hill, Emilie Houston, and Mickey Riley. Finally, thanks to Jason Brennan for his good-natured response to comments (and for writing the book). The usual disclaimer applies.

Replies to My Critics

Jason Brennan
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1. A Summary of *The Ethics of Voting*¹

Voting is a moral issue. Voters choose for everyone, not just themselves. Political decisions have high stakes, determining matters of poverty and prosperity, war and peace, injustice and justice. Political decisions are imposed upon innocent people—people who do not consent to the outcome of the election—through violence and threats of violence.

However, individual votes make almost no difference. You are more likely to win the Powerball lottery than cast a vote that changes the outcome of a congressional election. Don't fool yourself that you'll "change the mandate" either; political scientists say that "mandates" don't exist and are just a folk fiction.²

So, we're left with a puzzle. How *we* vote is clearly a big deal, morally speaking. Yet, how any one of us votes does not seem to matter at all. What, then, are our obligations, if any, with regard to voting?

In the U.S. and many other democracies, most people accept what I call the "folk theory of voting ethics." The folk theory holds:

- (1) *Prima facie*, each of us has a moral obligation to vote.
- (2) Civic virtue can only be exercised through political and quasi-political activities, such as voting, running for office, working for campaigns, community organizing, military service, or certain kinds of volunteer work.
- (3) Almost any sincere vote is morally acceptable, regardless of how much one knows, how much thought one puts into the decision, or whether one votes selfishly or altruistically.
- (4) It is inherently wrong to buy, trade, or sell votes.

¹ Jason Brennan, *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2011).

² Hans Noel, "Ten Things Political Scientists Know that You Don't," *The Forum* 8 (2010), pp. 1-19.

Not everybody accepts (1)-(4), but many people do. In fact, for many people living in modern democracies, (1)-(4) have the status of sacred doctrine.

The Ethics of Voting attacks this folk theory. I try to show that the best arguments for (1)-(4) fail. Against the folk theory, I argue for the following conclusions:

(1*) In general, there is no moral obligation to vote. (A duty to vote can arise in unusual circumstances, but most people will never have a duty to vote.)

(2*) Civic virtue can be exercised through private, non-political activities, such as making art, running or working for for-profit businesses, or pursuing scientific knowledge.

(3*) While you have no duty to vote, you have a duty to abstain rather than vote badly. You must vote well or not vote at all. It is wrong to vote badly. To vote well, one must vote for what one *justifiably* believes will promote the “common good,” by which I mean the right ends of government. Note that this is consistent with strategic voting, if one justifiably believes that strategic voting will promote the right ends of government.

(4*) It is not inherently wrong to buy, trade, or sell votes. If it is permissible for you to vote a particular way for free, then it’s permissible for you to vote that way for money.

(5) In light of the social-scientific literature on voter knowledge and behavior, the overwhelming majority of voters are bad voters who violate the moral duty described in (3*). Most voters deserve to be condemned, not praised, for voting.

Note that in this book, I do not argue that politically incompetent citizens should not have the right to vote.³ Rather, I argue that most people have a duty not to exercise their legal right to vote. I don’t have space to argue here for each of these conclusions, but I will provide a brief synopsis of the arguments I give in the book.

Why is there no duty to vote? I canvass all of the best arguments I can find or construct in favor of a duty to vote and show that they fail. Some arguments in favor of a duty to vote would work only if individual votes make a big difference, but it’s easy to show they do not. Other arguments are grounded in the idea that we should have civic virtue or should try to pay a

³ For an argument to that conclusion, see Jason Brennan, “The Right to a Competent Electorate,” *Philosophical Quarterly* 61 (2011), pp. 700-24.

“debt to society.” However, I show that even if we should exercise civic virtue or should pay such a debt, there are countless ways of doing so. We can exercise civic virtue or pay debts to society through private, non-political activity. Not only is voting nothing special, participating in politics is nothing special.

Why doesn't civic virtue require political engagement? Almost everyone defines civic virtue as the disposition and ability to promote the common good over purely private ends. This leaves open the question: *How* can one promote the common good? I then show that private, non-political activity is just as good a way of promoting the common good (as my intellectual opponents understand the common good) as public, political activity. If you want to make society or others better off, running a for-profit business is just as good as or better than voting or participating in politics.

Why shouldn't we vote badly? I argue that when a decision-making body imposes (through violence and threats of violence) high-stakes decisions (i.e., decisions that can rob people of life, liberty, or property, or significantly alter life prospects) upon innocent people, it owes them competence. I argue that individual voters have obligations not to participate in certain kinds of harmful or illicit risk-imposing collective activities. For an intuitive example of this, consider the following case. Imagine that you see ten sharpshooters simultaneously about to shoot an innocent child. No matter what you do, the child will die. Is it permissible for you to join in and fire the eleventh shot? Almost everyone intuitively responds that no, you must not participate, even though your shot makes no difference. It turns out that this intuition can be vindicated by most major moral theories, and if so, it can be used to explain why we shouldn't vote badly, even though individual votes make no difference.

Why is it sometimes permissible to buy, trade, or sell votes? The best arguments against buying, trading, and selling votes all have serious defects. Since there's no good case in favor of thinking that vote-buying and -selling are inherently wrong, we should conclude that these activities are not wrong.

Why think that most voters should not vote? My theory of voting ethics says that it's permissible to vote only if you vote for what you justifiably believe will promote the right ends of government. The social-scientific literature shows that most voters do not meet even low standards of epistemic justification, and so they are bad voters on my theory.

Before moving on, I'll briefly elaborate on what I take to be good and bad voting. I argue that voters must not only believe that they are voting in ways that promote the right ends of government, but that this belief must be *epistemically justified*. For a person to be epistemically justified in believing X, she must:

- (a) have sufficiently strong evidence that X;
- (b) not have strong evidence that not-X;

- (c) have strong grounds to think that she is not missing important evidence regarding X; and
- (d) evaluate the evidence by using reliable, rational thought processes.

Philosophers spend a lot of time debating the exact nature of epistemic justification and discussing the details of (a)-(d). None of their debates really matters for my theory, though. The important and uncontroversial point is that beliefs based on ignorance, wishful thinking, irrationality, absurd moral views, or cognitive bias are *unjustified*.

I think that voters owe the governed *competence* and *good faith*. As an analogy, think of a jury deciding a capital murder case. In this case, the jury has the power to deprive a defendant of life, liberty, and property, and has the power severely to modify the defendant's life prospects. The defendant does not consent to the outcome of the decision. The decision is imposed involuntarily, through violence and threats of violence.

What would it take for the jury competently to decide the case? They should form their beliefs about whether the defendant is guilty or not in a scientific way. This means that they must pay attention to the facts rather than ignore them. They must form their opinions rationally, in light of the evidence. They must take into account contrary evidence and also be aware of when needed evidence is missing. They must understand which side has the burden of proof and decide accordingly, and so on.

We all have a pretty good understanding of what it would take for a jury to decide a case in a rational, justified way. In *The Ethics of Voting*, I argue that individual voters must act like good jurors (even though their individual votes don't make a difference) or must otherwise abstain. Jurors have a *duty of care* or a *fiduciary duty* with regard to the defendant. They owe it to the defendant to make a competent, rational decision. I argue that voters owe the same kind of decision to those affected by electoral outcomes. Some examples of bad voters include:

- (e) Ignorant voters: voters who are unaware of the relevant facts.
- (f) Irrational voters: voters who have access to the relevant facts, but who process that information in a biased or irrational way.
- (g) Immoral voters: voters who vote on the basis of deplorable moral views, views that they cannot justifiably believe.

Note that my theory of voting ethics does *not* say that good voters must have *correct* beliefs about politics. Having the correct beliefs about the rights ends of government is neither necessary nor sufficient to be a good voter, just as having correct beliefs about guilt is neither necessary nor sufficient to be a good juror.

Why is being correct not sufficient? For the sake of argument, suppose that minimal-state libertarianism is true. Even if it's true, that doesn't mean that all minimal-state libertarians are justified in voting in ways that promote minimal-state libertarianism. After all, many minimal-state libertarians hold their beliefs irrationally. For instance, many minimal-state libertarians hold their beliefs because they were convinced by Ayn Rand's arguments. However, I think that Rand's arguments are of very poor philosophical quality and have been refuted.⁴ Even if her conclusions are correct, she has not given us good grounds to believe her conclusions. Libertarians who accept libertarianism on the basis of Rand's arguments get the right answer (we are supposing) for the wrong reason and hence are not justified. As an analogy, imagine that a person accidentally gets the correct answer to a math problem, after making a series of mathematical errors. This person has the right answer, but is not *justified* in believing that answer.

Why is being correct not necessary? It's possible to be justified in believing something that is false. This happens all the time in science. Sometimes, the evidence overwhelmingly favors a particular view, but that view turns out to be false. Consider again the example of a good jury. Suppose that the evidence overwhelmingly favors believing that the defendant is guilty, even though the defendant is not, in fact, guilty. In that case, when the jury finds the defendant guilty, it doesn't do anything blameworthy, even though by hypothesis it gets the wrong answer. Similarly, I argue that voters are permitted to vote for what is in fact a bad policy, provided they are *justified* in believing that it is the right policy to vote for.

All of this is meant to clarify what my theory of voting ethics holds. I have not actually argued here for any of my conclusions.

2. Reply to Randall Holcombe

Holcombe characterizes me as arguing that there is such a thing as the common good, but I don't tell you what it is, and voters must discover what the common good is and then vote for it.⁵ Actually, I'm not committed to either of those points. Unfortunately, Holcombe misunderstands my thesis, and so this renders irrelevant most of his criticisms.

⁴ See Robert Nozick, "On the Randian Argument," in Robert Nozick, *Socratic Puzzles* (Cambridge, MA: Harvard University Press, 1999); Michael Huemer, "Critique of the Objectivist Ethics," accessed online at: <http://home.sprynet.com/~owl/rand5.htm>; Michael Huemer, "Why I Am Not an Objectivist," accessed online at: <http://home.sprynet.com/~owl/rand.htm>. For a response to Nozick that defends Rand, see Douglas Rasmussen and Douglas Den Uyl, "Nozick on the Randian Argument," *Personalist* 59 (1978), pp. 184-205.

⁵ Randall G. Holcombe, "Do Voters Have a Duty to Promote the Common Good? A Comment on Brennan's *The Ethics of Voting*," *Reason Papers* 35, no. 1 (July 2013), pp. 17-25.

This misunderstanding is partly my fault. I sometimes write, “Voters must vote for what they justifiedly believe promotes the common good, or must otherwise abstain.” I explain in the book, however, that when talking about good and bad voting, by “the common good” I mean the same thing as “the right ends of government.” In earlier portions of the book, I argue against some civic republicans who hold a more substantive theory of the common good, and this seems to have tripped up Holcombe. In retrospect, I could have been clearer. Here is a clarification of my position:

- By default, you should not vote.
- In order for it to be morally permissible for you to vote, you need to pass a certain “test.” (Note that this test is a *necessary*, not a *sufficient*, condition.)
- The test is this: When you vote, you must be justified in believing: “Given how others are voting and given how strategic voting works, this policy or person for which I vote promotes the right ends of government.”

My theory maintains that a voter must be *justified* in believing that she is voting for something that promotes the rights ends of government; otherwise, she must abstain from voting.

As I show in the last chapter of my book, in light of the social science on voter knowledge, rationality, and behavior, almost every voter fails this “test.” Let’s reflect on just what that means for my argument. Even if it turns out that I, the author, have *no idea* what government really ought to do or even whether it should exist at all, even if it turns out that I have no clue what the rights ends of government are, I can show that most voters are bad voters.

Holcombe complains that I don’t give a theory of the right ends of government. He’s right—I don’t. But I don’t do so, because I don’t need to—it’s *irrelevant* to the thesis of the book. I argue that voters owe the government competent decision-making, and voters count as competent if they justifiedly believe something like: “This policy or candidate I vote for is the best way to promote the common good,” or “This policy or candidate I vote for is the best way to promote the rights ends of government.” I am defending a theory of voter competence, which doesn’t require me also to give a theory of justice. Similarly, in order to articulate a theory of what makes a physician or a physicist competent, I don’t need at the same time to explain the entire truth about medicine or physics.

Again, I’m not arguing that voters must vote for the *correct* ends of government. I am arguing that they must be *justified* in believing that they are voting for the correct ends of government. Similarly, for a doctor to act with proper care or to act competently, this doesn’t require that she always

administer the correct medicine. Instead, a good doctor must be justified in believing that she is administering the correct medicine. A good juror does not need to get the correct answer about guilt. Instead, she must be justified in thinking that she has the correct answer, and so on. That's how competence works.

Holcombe might object that there is no such thing as the "right ends of government," because all governments are unjustified. Perhaps he's right. But even if he were right, so what? My theory doesn't require there to be any right ends of government. I'm not arguing that voters must vote for what are in fact the right ends of government. Instead, I am arguing that voters owe the governed competent decision-making. For them to decide competently, they must be epistemically justified in thinking that whatever they want to impose on the governed is what they should impose. That's how competence works in general. Suppose that a physicist has overwhelming evidence that theory T is true. However, suppose that theory T is in fact false. The physicist acts competently by believing in T, teaching T in classes, etc., even though T is false.

This issue raises an interesting question: Is it possible for a person to have *justified* but *false* beliefs about the right ends of government? It would be surprising if that were not possible. After all, it's possible for a scientist to have justified but false beliefs about physics. It's possible for a physician to have justified but false beliefs about medicine. It's possible for an economist to have justified but false beliefs about economics, and so on. Presumably, then, a person could have justified but false beliefs about what governments should do.

Holcombe might insist that it's impossible for a statist to be justified in advocating statism, that is, it's impossible for a person to be justified in believing that states should exist and should do something rather than nothing. However, and I say this as an anarchist myself—that's really implausible. After all, the case for anarchism is rather tenuous and rests upon a lot of empirical speculation.

Holcombe makes a clear mistake when he writes:

Caplan says that such "irrationality" is rational, and justified in the mind of the voter by the fact that one vote will not alter the aggregate outcome of an election, and Brennan says that voters must be justified in believing that they are casting their votes to further the common good. Combining these arguments, irrational votes are justified (certainly, in the eyes of the irrational voters), and often are cast in opposition to the common good.⁶

⁶ Ibid., p. 19.

Holcombe does not appear to be familiar here with the concept of epistemic justification. Saying that “irrational votes are [epistemically] justified” is like saying “squares are not square.”

Bryan Caplan argues that many voters hold their beliefs about economics irrationally. If so, then it follows trivially that they are not justified in their beliefs about economics, and so my theory trivially implies that when these voters vote on economic issues, they are unjustified. The fact that they *believe* themselves to be good voters doesn’t make any difference. All that matters is whether they are in fact justified in their beliefs, and by hypothesis they are not. Nikolai Wenzel makes a similar mistake. He says, “Paul Krugman won a Nobel Prize in Economics well after he had abandoned sound economics in favor of populist quackery,” but that Krugman presumably counts as an expert.⁷ But if, as Wenzel says, Krugman is a quack, then trivially he lacks epistemic justification for the views about which he is a quack.

Holcombe’s minor quibble about fairness is also mistaken. In the section he cites, I am arguing against people who advocate democracy not because they think it has fair *outcomes*, but because they believe it is a *fair procedure*. What those people mean by “fair procedure” is exactly what Holcombe means by “unbiased.” Holcombe says, “Outcomes that are unbiased are not necessarily fair.”⁸ Yes, exactly. Fair procedures need not result in substantively fair outcomes, but the people whom I criticize in the passage Holcombe quotes are only interested in fair or unbiased procedures.

3. Reply to Ezequiel Spector

Spector correctly notes⁹ that one of my arguments against bad voting involves what I call the “Clean Hands Principle”:

One has a moral duty not to participate in a *collectively harmful activity*, provided there is no high morally significant cost to abstaining from participating.

A collectively harmful activity is a group activity that harms people, but in which individual inputs do not make much or any difference. For example, air pollution through the release of car exhaust fumes is a collectively harmful activity. Stupid, irrational, ignorant, or immoral voting can be other such activities.

⁷ Nikolai G. Wenzel, “Civic Virtue without Politics: Reflections on Jason Brennan’s *The Ethics of Voting*,” *Reason Papers* 35, no. 1 (July 2013), p. 39.

⁸ Holcombe, “Do Voters Have a Duty to Promote the Common Good?” p. 21.

⁹ Ezequiel Spector, “Review of Jason Brennan’s *The Ethics of Voting*,” *Reason Papers* 35, no. 1 (July 2013), pp. 30-32.

Spector intends to show that this principle could be used to justify an obligation to vote, at least if one is a competent voter. His argument is:

- (h) For some political experts, voting well is easy and imposes no high and morally significant costs.
- (i) If those people do not vote, they participate in the collectively harmful activity of “abstention by political experts.”
- (j) One has a moral duty not to participate in a collectively harmful activity, provided there is no high morally significant cost to abstaining.
- (k) Therefore, some political experts have a duty to vote well.

Spector and I dispute whether premise (i) is true.

Spector anticipates a possible objection to (i): Abstention isn’t an action or an activity; it is the *absence* of a certain kind of action. However, he points out, there is such a thing as wrongful omissions. For instance, it would be wrong for me not to feed my young son. It would be wrong for me not to grade my students’ papers. If I see a toddler drowning in a pool as I’m walking, it would be wrong not to reach down and save him.

Spector is right that we are sometimes blameworthy for omissions. But note that we are blameworthy only when there is a *pre-existing* moral obligation. If I omit to feed my son and he starves, I am blameworthy *because* I have a pre-existing duty to feed him. If I omit to feed the children who live at some randomly selected household in the U.S. and they starve, I am not blameworthy, because I have no pre-existing duty to feed them. Whether premise (i) in Spector’s argument is true depends upon whether abstention is a permissible or wrongful omission, which in turn depends on whether there is a duty to vote. Spector’s argument doesn’t *prove* that there is a duty to vote. Rather, it works *only if* there is a pre-existing duty to vote.

Spector says:

Now, someone could claim that refraining from voting is never morally wrong because not voting is a *kind* of omission which is always morally permissible. This kind of omission is more similar to not nourishing poor African children than to not nourishing one’s young son. Nevertheless, Brennan does not explain why not voting is a *kind* of omission which is always morally permissible.¹⁰

¹⁰ Ibid., p. 32.

Actually, I do explain why. Chapter Two (“Civic Virtue without Politics”) of *The Ethics of Voting* explains why abstention is *usually* the kind of omission that is morally permissible.

The best arguments for a duty to vote usually rely on ideas about reciprocity, benevolence, or civic virtue. Some try to argue that we each owe society a debt, and that we should repay that debt by voting. Others argue that we should try to help others, and so we should vote. Yet others argue that we have a duty to promote the common good, and so we should vote.

As a specific example, consider this argument, which I call the *Civic Virtue Argument*:

- (l) Each person should exercise civic virtue.
- (m) In order to exercise civic virtue, one must vote.
- (n) Therefore, one must vote.

In Chapter Two of *The Ethics of Voting*, I try to show that premise (m) is false. I’ll summarize briefly my counter-argument that civic virtue does not require voting:

- (o) Civic virtue is the disposition and ability to promote the common good. (Note that I get this definition of “civic virtue” from the people who advance the civic virtue argument, the people against whom I’m arguing.)
- (p) One can promote the common good without voting, and, in fact, without participating in politics at all. Voting well is at best merely one of many ways to promote the common good, and it’s not an especially good way of doing so. (Note again that in making this counter-argument, I use the definition of “the common good” that the people I’m criticizing accept.)
- (q) Therefore, it’s not the case that in order to exercise civic virtue, one must vote.

You may not like premise (o), but that doesn’t matter. The people who advance the Civic Virtue Argument accept (o), and so I grant them (o) for the sake of the argument. The important point is whether premise (p) is true, and I spend Chapter Two defending it.

I have similar counter-arguments against other arguments in favor of a duty to vote. I thus conclude at the end of Chapter Two:

Many arguments for voting rely upon the idea of “doing one’s part,” but they fail to recognize just how many different ways there are to do one’s part. In general, arguments for a duty to vote are based on

underlying duties of beneficence, fairness, or reciprocity, but these underlying duties can be discharged in ways other than by voting.¹¹

Perhaps my arguments for this conclusion are terrible. However, Spector is not here criticizing my arguments. He hasn't claimed to have discovered any holes in them; rather, his complaint is that I do "not explain why not voting is a *kind* of omission which is [usually] permissible." I am just pointing out here that I devote an entire chapter to this question, and as far as I can tell, Spector does not realize that Chapter Two was meant to address this very question.

4. Reply to Nikolai Wenzel

Wenzel has a number of substantive criticisms. I'll reply to some of them here.

a. Intentions and virtue

I claim that in order for a person to have civic virtue, she must be sufficiently motivated to promote the common good. If a person promotes the common good but doesn't care about it, then she doesn't have civic virtue. Wenzel thinks that this claim is implausible. Don't we just care about outcomes?

Well, sure, we care about outcomes. But when we're discussing what virtues are, intentions and motives matter. Imagine that the only reasons I feed my kids and treat them well are (1) so that my partner will have sex with me and (2) so that I avoid going to jail for child neglect. In that case, I *behave* well, but you wouldn't say that I have good parental virtues. Or suppose that I save a child from drowning, but the *only* reason I do so is to get a reward. Again, I behave well, but you wouldn't say that I have the virtue of benevolence. Or suppose that I refrain from murdering the rest of you, but the only reason I do so is to avoid punishment. Again, I behave well, but I don't have the virtue of justice.

Wenzel writes, "It is not clear to me why civic virtue is a positive duty, as opposed to a negative duty of respecting the rights of others."¹² Actually, I don't argue that we have any duty to have civic virtue. I give a theory of civic virtue in order to undermine other people's arguments for a duty to vote. I want to show that a concern for civic virtue does not lead to the conclusion that we have a duty to vote. As far as my book goes, however, I am agnostic as to whether civic virtue really is a virtue. Similarly, I give a theory of "paying a debt to society" in order to show that *if there were* such debts, we could pay them without participating in politics. I do this in order to undermine others' arguments for a duty to vote, and I remain agnostic as to whether there is such a thing as a debt to society.

¹¹ Brennan, *The Ethics of Voting*, p. 66.

¹² Wenzel, "Civic Virtue without Politics," p. 38.

b. Fortuitous voting

Suppose that in the coming election, the best choice is X. Suppose that Sally is completely crazy and forms her beliefs about politics in a deeply irrational way. However, suppose that as a matter of luck, she ends up picking X and votes accordingly. Sally is what I call a fortuitous voter. She votes for the right candidate or policy, but is unjustified in her beliefs about politics. It's just good luck that she gets the correct answer. In the book, I argue that fortuitous voting is wrong, even though, by hypothesis, fortuitous voters end up voting for the best candidate or policy.

Wenzel finds this puzzling. He says, “[I]f *ex hypothesi*, [fortuitous voting] always provides good outcomes, then I see nothing wrong with it.”¹³ Shouldn't we want more and more of it? Well, sure, in some sense, fortuitous voting makes things better. By hypothesis, it has good consequences, and so if people always and everywhere voted fortuitously, that would, by hypothesis, make the world a better place.

Imagine that you have asthma and go to your physician for treatment. Now imagine that your physician decides to treat your asthma as follows. She pulls out a book listing all major medications and randomly picks a medicine from the book. Fortuitously, she picks albuterol—the medicine you in fact need—rather than some other random medicine that treats heart disease or kidney problems. She then prescribes you albuterol. Now, by hypothesis, things have worked out well for you—you in fact got the medicine you needed. At the same time, though, the doctor pretty clearly violated her fiduciary duty or duty of care with regard to you. She decided in an incompetent way. She exposed you to undue risk. It just happens to have worked out this time.

The doctor acted badly. Voters who act like the doctor in this thought experiment also act badly. Of course, there's a difference between voters and doctors. Individual voters make little difference, while individual medical decisions do make a difference. In the book I explain why this difference doesn't matter, and none of the commentators here takes issue with this part of my argument.

c. On the value of democracy

Most readers revere democracy, and thus see my book as an attack on a sacred ideal. It's somewhat amusing, then, that when libertarian economists read it, they see it as taking democracy too seriously. Let me clarify my position on this issue. I do not think that democracy is good in itself. I do not revere democracy or have any special fondness for it. In fact, I am currently writing a book that argues against democracy.

In *The Ethics of Voting*, I do not discuss what the best form of government is or who should have the right to vote. Instead, I limit my focus

¹³ Ibid., p. 37.

to the ethical questions we face in contemporary democracies. My question is: Given that we live in democracies with the kinds of powers these democracies actually have, and given that we in fact have the legal right to vote, what, if anything, should we do about voting? Whether democracy should exist in the first place is a worthy question, but it's a question for a different book.

5. Reply to Bryan Caplan

Caplan asks two questions,¹⁴ to which I'll respond briefly. His first question is: Should libertarians be more inclined or less inclined to vote? Overall, I would argue that libertarians should be less inclined to vote. First, it's a mistake to think that voting is a duty, so any libertarian who votes out of a sense of duty makes a mistake. Second, even though libertarianism is correct, that doesn't mean that most libertarians are justified in advocating libertarianism. In general, I think that for any political view P, most people who believe P do so for bad reasons. That applies to libertarianism, too. There are powerful objections to libertarians, and many libertarians cannot defeat these objections. Also, many libertarians ground their views on terrible moral theories, such as Rand's.

Caplan might reasonably respond by asking whether the *smart* libertarians should feel more inclined to vote. I'd say that they have no duty to do so. That said, if they can organize a political faction that has a real chance at making a change, that would be morally praiseworthy. Of course, it's not the only praiseworthy thing they could do.

Caplan's second question is: How would I respond to the libertarian who thinks that voting is wrong *per se*? Some, like George Smith,¹⁵ argue that government is inherently evil, and so, by voting, we are participating in that evil. We are imposing our will upon other people through illicit means. Smith thinks that we should instead engage in "organized non-voting" as a kind of protest movement.

I'm fairly sympathetic to anarchism, and so I'm fairly sympathetic to Smith's argument. Let's assume for the sake of argument that anarchism is true and statism is false. Let's assume that all states or governments are illegitimate. Does that mean we should never vote? I'm not convinced, though I don't have space here to do justice to Smith's argument or to construct a full response to it.

As an empirical matter, I think that we are more or less stuck with interventionist governments for the long term. Protest movements will have only a limited effect. Given that we're stuck with government, it seems

¹⁴ Bryan Caplan, "Thoughts on Jason Brennan's *The Ethics of Voting*," *Reason Papers* 35, no. 1 (July 2013), p. 16.

¹⁵ See, e.g., George H. Smith, "In Defense of Rational Anarchism," accessed online at: <http://folk.uio.no/thomas/po/rational-anarchism.html>.

praiseworthy to me to help make governments better rather than worse. By analogy, I think that the faculty meetings we have at my university are useless and we should dispense with them altogether. However, suppose that's a pipe dream. Suppose that we're stuck having faculty meetings. If so, then trying to make the faculty meetings *less bad* seems praiseworthy, not wrong.

Imagine that Bob starts the International Hayek Party. Imagine that the International Hayek Party succeeds in transforming at least one Western country into a classical liberal polity of the sort Friedrich Hayek advocates. Would Smith or any other anarchist complain that Bob would act wrongly by participating in and perpetrating the great evil of the state? That seems implausible, even if states are unjust. It would be more plausible to say that Bob would be a hero who makes some part of the world much more just. We'd have a complaint against Bob only if he were simultaneously to *prevent* things from getting even *more* just.¹⁶ Taking a step in the right direction is a good thing.

¹⁶ I thank my four critics for taking the time to read and comment on *The Ethics of Voting*. I learned a lot from their reactions.

Symposium: Ayn Rand on Punishment

Ayn Rand and the Problem of Punishment

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1. Introduction

In 2008, I published a book called *The Problem of Punishment*.¹ Its goal is threefold: to explain what the problem of punishment is, to critically evaluate the various solutions that have been offered in response to the problem, and to defend the claim that none of the solutions to the problem is successful—the claim is that it is morally impermissible for the state to punish people for breaking the law. The book was intended to be comprehensive in its coverage of the many theories of punishment that constitute the enormous literature on this subject, but it does not include a discussion of Ayn Rand’s view on this topic. This omission should come as little surprise: as far as I can tell, Rand wrote very little about punishment and published even less. Still, I now see this feature of the book as a somewhat regrettable oversight. Although Rand seems to have said very little about punishment, what she did say suggests an interesting kind of view that is not currently represented in the literature on the subject. My goal in this article, then, is to provide a sort of brief appendix to the book by trying to tease out Rand’s theory of punishment and to subject it to critical evaluation. I will begin by making a few comments about punishment in general and a few comments about Rand in general, and will then reconstruct her position and present a few specific objections to it.

2. The Nature of Punishment

Let’s start with the question of what punishment is. Suppose that there is a law against robbing liquor stores and that the law is a just and reasonable one. Suppose also that there is a decision procedure for determining whether or not a given person has robbed a liquor store and that this decision procedure is itself a just and reasonable one. And suppose that

¹ David Boonin, *The Problem of Punishment* (Cambridge, UK: Cambridge University Press, 2008).

Larry has been found guilty of robbing a liquor store by means of this decision procedure. In that case, Larry is what I will call an offender. An offender is someone who has been found, by a just and reasonable decision procedure, to have violated a just and reasonable law.

Punishment involves the state's doing something to Larry because of the fact that Larry is an offender. Clear paradigmatic instances of punishment include the state's fining him, whipping him, putting him in prison, or executing him. We can therefore develop a satisfactory account of what punishment in general is by considering what properties these various practices have in common and what properties distinguish them from other practices that are not forms of punishment. I offer a fairly detailed analysis of this sort in Chapter 1 of my book, but for my purposes here the following brief remarks should be sufficient.

First, punishment is harmful. It is, in some way or other, bad for the person who is punished. If the state gave money to Larry, or a free vacation, or a pleasant massage, or a life-extending medical procedure, we would not say that the state had punished him. Second, the harmfulness of the act by which the state punishes Larry is not a merely foreseeable consequence of the act. Rather, the act is carried out, at least in part, in order to harm Larry. That this is so can be seen by comparing punitive and non-punitive practices that are otherwise comparably harmful. Suppose, for example, that Larry visits a national park, and that the state charges him an entry fee to get in. Suppose also that once Larry is in the park, he litters, and that the state imposes a fine on him for littering. Intuitively, it seems clear that the fee for entering the park is not a form of punishment and that the fine for littering in the park is a form of punishment. One difference between the two cases that helps to account for this judgment is that the state imposes a fine on Larry for littering in order to make him suffer a loss, but making him suffer a loss is not the point of charging him a few dollars for entering the park. The same is true of the difference between putting someone in prison because he has committed a crime and putting him under quarantine because he has contracted a contagious disease. Being deprived of freedom of movement is a significant harm. We put criminals in prison in order to impose this harm on them, but we do not put sick people under quarantine in order to impose harm on them. This is not to say that punishment involves intending harm as an end in itself. The harm involved may well be intended as a means to some further end, such as increasing social utility or producing a just distribution of welfare. The point remains, though, that the harm involved in an act of punishment is not merely a foreseen consequence of the act. We punish people in order to harm them.

Punishment thus involves, at the very least, intentionally harming a person because the person has been convicted of a crime. With this understanding of punishment in mind, we should be in a position to see what the problem of punishment is. Generally speaking, it is wrong to intentionally harm people. If the state were to treat a typical, ordinary citizen in the way that it treats offenders when it punishes them for breaking the law, it would be

clear that the state's behavior was immoral. If punishment is to be morally justified, then, there must be something about the fact that offenders have broken the law that renders it permissible to treat them in ways that it would not be permissible to treat non-offenders. But what exactly is it about this difference that renders such behavior permissible, and how exactly does it do this? This is the problem of punishment.

3. A Brief Sketch of Objectivism

Let me turn now to Ayn Rand's philosophy. I begin with two brief claims. First, Rand is not a utilitarian. Second, Rand is not a paternalist. These two claims are (I hope) entirely uncontroversial, but they are important nonetheless. They rule out the possibility that Rand could consistently endorse two of the most common solutions to the problem of punishment. She cannot argue that punishing Larry is permissible because it benefits society by deterring others from committing similar crimes. She also cannot argue that punishing Larry is permissible because it will help to reform and thus to benefit Larry himself.

Rand is, instead, an Objectivist. I don't have the time or the expertise to provide a detailed account of what this means here. Relying heavily on the analysis of Rand's ethics found in Tara Smith's book *Ayn Rand's Normative Ethics*,² let me briefly sketch the relevant basic points. First, ethics is concerned with good and bad, and these values arise from objective facts about nature. It is an objective fact about trees, for example, that their roots must have certain properties in order for the trees to be able to survive and flourish. Roots that have these properties are good roots. Roots that lack these properties are bad roots. More generally, to say that something is good or bad is to say that it is good or bad for a particular organism. A trait is good if it contributes to the survival and flourishing of that organism, bad if it runs counter to that end. The concepts of good and bad are unintelligible outside of this context.

Second, this analysis of good and bad applies to human beings and to human ethics as well. As Rand puts it, "the standard of value of the Objectivist ethics, the standard by which one judges what is good or evil—is man's life, or: that which is required for man's survival *qua* man."³ In order to determine which human traits are good, one must determine which traits are conducive to human survival and flourishing. Ethical norms are those norms the adherence to which best promotes the survival and flourishing of those who adhere to them.

Finally, while all of this may sound like a recipe for a kind of Machiavellian amorality, Rand argues, at least on the interpretation that I will be presupposing here, that the result of this kind of approach is the

² Tara Smith, *Ayn Rand's Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

³ Quoted in Smith, *Ayn Rand's Normative Ethics*, p. 28.

endorsement of a set of largely, though not entirely, familiar and traditional moral virtues. In the short term, for example, dishonesty may sometimes prove more beneficial than honesty. But in the long run, on this account, the deliberate cultivation of a disposition to behave honestly is more prudent. There is a natural connection, that is, between honest behavior and long-term flourishing. Similarly, there may at times be short-term benefits to acting unjustly, where justice involves treating people as they deserve to be treated, but there are even greater long-term benefits to being the sort of person who would not stoop to such a level even when he found himself in such circumstances. It is good that you live justly, that is, because it is good for you to live justly. Ethical norms are good to follow because they are good for the people who follow them.

4. Ayn Rand on Punishment

Having said a bit about Rand and a bit about punishment, we can now turn to the subject of Rand and punishment. Punishment connects bad behavior to bad consequences. Objectivism connects good behavior to good consequences. So how might an Objectivist moral theory be used to justify the practice of punishment?

The only extensive discussion of punishment in Rand's writings seems to be that contained in her letter to John Hospers, dated April 29, 1961 (see Appendix below).⁴ Strictly speaking, the letter addresses the question of how much punishment the state is justified in imposing on a particular person, rather than the question of what justifies the state in imposing such punishment in the first place. But we can try to infer an answer to the latter question from some of the remarks that Rand makes in answering the former. This is because at a few points in the letter, Rand refers to general principles in developing her answer, and we can ask how these general principles might be used to solve the problem of punishment. From what Rand says in the letter, there seem to be two possibilities.

One possibility is to look at what Rand says in the second paragraph of the letter when she identifies the principles that she says "should be the base of legal justice in determining punishments." In particular, she writes that "[t]he law should . . . impose restraints on the criminal, such as a jail sentence, *not* in order to reform him, but in order to make *him* bear the painful consequences of his action (or their equivalent) which he inflicted on his victims." Similarly, in the letter's final paragraph, she writes that "the principle by which a specific argument [about how much punishment is deserved] has to be guided is *retribution*, not *reform*. . . . When I say 'retribution,' I mean the point above, namely: the imposition of painful consequences proportionate to the injury caused by the criminal act. The purpose of the law is *not* to prevent a future offense, but to punish the one

⁴ Michael S. Berliner, ed., *Letters of Ayn Rand* (New York: Plume, 1997), pp. 544-63; excerpt on punishment in *ibid.*, pp. 558-60.

actually committed.” We might think, then, that Rand’s answer to the question of what justifies the state in punishing an offender is simply this: the state is justified in harming an offender because the offender, by virtue of being an offender, harmed his victims.

This response, however, would clearly be inadequate. It amounts to telling us what it is for the state to punish an offender, rather than what justifies the state in punishing him. The fact that the harm done to the offender is done in response to the offender’s wrongdoing is what makes the harm to the offender an instance of punishment, but what makes an act an act of punishment is not the same as what makes an act of punishment justified.

The other possibility is to look at Rand’s remark in the letter’s opening paragraph that “the basic principle that should guide one’s judgment in issues of justice is the law of causality: one should never attempt to evade or break the connection between cause and effect—one should never attempt to deprive a man of the consequences of his actions, good or evil.” This approach seems more promising. While the principle of retribution is explicitly presented as a principle for determining the magnitude of deserved punishment only, the law of causality is characterized as “the basic principle” governing judgments about “issues of justice” in general.

What might the law of causality help to show about the practice of punishment? The answer depends on who we apply it to. If we apply it to the offender, the law of causality might help to answer the question of how much punishment the offender deserves. We could say that the offender’s act is wrong to the extent that it violates the law of causality and that this justifies the claim that the deserved punishment must be proportionate to the offense. The pick-pocket deprives his victim of some of the consequences of his previous actions, to follow Rand’s example, but the murderer deprives his victim of much more. Looking at the law of causality from this angle, though, would only tell us about what was wrong with the offender’s behavior. By itself, it would tell us nothing about how we should behave in response to it. To show that a person deserves something is not to show that we are entitled to impose on him what he deserves.

Perhaps, then, we should instead apply the law of causality to ourselves. On this approach, our ensuring that offenders get their just deserts is one way that we ourselves respect the connection between good and bad actions and good and bad consequences. The law of causality connects bad actions to bad consequences. Punishing an offender for his bad actions is a means of securing this connection, and so our punishing an offender is justified by the demands that the law of causality makes on us. More explicitly, this understanding of Rand’s implicit argument for punishment can be formulated in terms of three premises. The first premise maintains that bad behavior is naturally connected to bad consequences. The second premise maintains that we should adhere to what Rand calls the law of causality. The third premise maintains that punishment involves the deliberate imposition of bad consequences on people for their bad behavior. The first two premises arise from Rand’s Objectivist moral philosophy. The third premise amounts

to a relatively uncontroversial definition of punishment. The conclusion is that people should be punished for their bad behavior. Since bad consequences naturally follow from bad behavior, and since we should respect the natural causal connection between the two, we should impose bad consequences on people for their bad behavior, which is just to say that we should punish them for it. This, in the end, strikes me as the most promising way of trying to extract a justification of punishment from Rand's remarks. The argument itself is an interesting one, distinct from the more familiar positions that dominate the literature.

5. Critique of Rand's View on Punishment

There are, however, two problems with Rand's argument for punishment. The first is that the argument as I have formulated it is not valid. Even if all of its premises are true, the conclusion does not follow from them. This can most easily be seen by looking first at a conclusion that does follow from the premises. This, in turn, can most easily be seen by looking at a few examples. Consider first what I will call *The Flourishing Entrepreneur*:

A brilliant, independent, hard-working entrepreneur exemplifies all of the Randian virtues to the highest degree. As a result, he is extremely successful, wealthy, and happy.

What does the law of causality entail about how we should treat the Flourishing Entrepreneur? The law of causality says that "one should never attempt to *evade* or *break* the connection between cause and effect—one should never attempt to *deprive* a man of the consequences of his actions, good or evil." The wealth that the entrepreneur has amassed comes to him as the natural consequence of his good behavior. The law of causality says that we should not actively interfere with such causal chains. As a result, the law of causality can help to justify the claim that it would be wrong to confiscate the wealth that the entrepreneur has earned.

Now consider the case of what I will call *The Not-So-Flourishing Loafer*:

A lazy, irresponsible loafer spends all of his time sitting on a street corner asking for handouts. As a result, he is extremely poor, unhealthy, and unhappy.

What does the law of causality entail about how we should treat the Not-So-Flourishing Loafer? The poverty that the loafer endures comes to him as the natural consequence of his bad behavior. The law of causality says that we should not actively interfere with such causal chains. As a result, the law of causality can help to justify the claim that it would be wrong to provide welfare payments to the loafer.

Now notice that in both cases, while the law of causality does tell us to refrain from actively interfering with the natural causal chain, it does not

require us actively to reinforce or support it. What follows, in effect, is simply that we should not tax the entrepreneur for his good behavior or support the loafer for his bad behavior. To do so, in either case, would be to deflect the natural consequences of a person's actions away from the person who has performed them. This much should be clear in the cases of the entrepreneur and the loafer, but the same is true in any case in which the law of causality is applied to our treatment of someone who has behaved badly. It applies just as forcefully to what I am taking here to be Rand's argument in defense of punishment. What follows from the law of causality and the fact that bad behavior is naturally connected to bad consequences, is not that we should punish people who have behaved badly, but simply that we should refrain from rewarding people who have behaved badly. From the fact that we should not reward such people, it clearly does not follow that we should punish them. We should not reward people simply for having red hair, for example, but it does not follow from this that we should punish people simply for having red hair. And so, as far as I can see, the law of causality that Rand appeals to in her letter to Hospers as "the basic principle" to govern our judgments about "issues of justice" is too weak to justify the practice of punishment.

Let's suppose, however, that I am wrong about this, and that Rand's law of causality can be interpreted, or simply revised, in such a way that it truly entails that we should punish people for their bad behavior and not simply that we should refrain from rewarding them for it. If that is the case, then a second problem arises. The problem is that the argument will now have implications that Rand would surely reject. This is because the law of causality treats good and bad actions symmetrically. As Rand puts it, "one should never attempt to deprive a man of the consequences of his actions, *good or evil*." The presumed symmetry of good and bad actions can be used to generate examples that run parallel to my first two cases and which produce unacceptable results.

Consider, for example, the case of what I will call *The Unlucky Entrepreneur*:

A brilliant, independent, hard-working entrepreneur exemplifies all of the Randian virtues to the highest degree. Due to a series of unfortunate events that were entirely beyond his control, however, he is extremely poor, unhealthy, and unhappy.

If the law of causality is strong enough to justify imposing the naturally connected negative consequences of a person's bad behavior on him in cases where he has been lucky enough to avoid them, then it must also be strong enough to justify imposing the naturally connected positive consequences of a person's good behavior on him in cases where he has been unlucky enough to miss out on them. This means that while it would be wrong to write welfare checks to the Lazy Loafer, it would not be wrong to write such checks to the

Unlucky Entrepreneur. Indeed, it would not simply not be wrong to write such checks, but positively wrong not to write them.

This is itself a result that Rand would surely be unwilling to accept, but the problem runs even deeper than this. In order to justify the practice of punishment, after all, we must justify more than simply offering the criminal the opportunity to suffer the bad consequences of his bad behavior if he so chooses, the way that a member of the clergy might offer one of his congregants the choice of voluntarily doing penance to atone for a sin. Rather, we must justify imposing those consequences on the offender whether the offender is willing to suffer them or not. If the law of causality is strong enough to justify imposing the bad consequences of the offender's bad actions on him whether he wants to accept them or not, then given the symmetry between good and bad, it must also be strong enough to justify imposing the good consequences of the Unlucky Entrepreneur's actions on him whether he wants to accept them or not. This implication is even more unacceptable.

Another kind of example runs in the opposite direction to the previous one, but produces the same kind of problematic result. Consider the case of what I will call *The Lucky Loafer*:

A lazy, irresponsible loafer spends all of his time sitting on a street corner asking for handouts. One day, a generous billionaire gives him a billion dollars.

If the law of causality is strong enough to justify imposing the naturally connected negative consequences of a person's bad behavior on him in cases where he has been lucky enough to avoid them, as in the case of a criminal who has successfully robbed a liquor store, then it must also be strong enough to justify imposing the naturally connected poverty on the loafer who has been lucky enough to avoid it. It would be right to confiscate the money from the Lucky Loafer, and wrong to fail to do so. But this result, too, is clearly unacceptable. Whether the loafer deserved the money or not, the billionaire surely had the right to give it to him if he wanted to do so, and since the billionaire did give the loafer the money, the loafer just as surely has the right to keep it.

In the end, then, the argument in defense of punishment that seems most plausibly to arise from Rand's letter to Hospers is impaled on the horns of a dilemma. If the law of causality is understood in the way that Rand plainly seems to state it, then it is too weak to do the job. The law as stated directs us to step back and allow the natural causal chain between good and bad actions and good and bad consequences to play itself out. This is enough to justify prohibiting us from rewarding people for their bad behavior, but it is not enough to justify punishing them for it. If, on the other hand, the law of causality is understood in a way that does render it strong enough to justify punishing people for their bad behavior, then it will be too strong because it will justify other claims that Rand is clearly committed to rejecting.

As a result of all of this, there seems to be no satisfactory route from Rand's law of causality—the “basic principle” governing judgments about “issues of justice”—to a solution to the problem of punishment. If I am right about this, then a defender of Rand's ethics is left with two options: develop a different way of getting from the Objectivist moral theory to the conclusion that punishment is justified, or reject the claim that it is permissible for the state to punish people for breaking the law. I myself would suggest pursuing the second option, but I'm not at all sure what Rand herself would have said.

Appendix:
Ayn Rand's April 29, 1969 Letter to John Hospers (Excerpt)

. . . I am glad that you agree with me on the issue of justice vs. mercy. It is an enormously important principle that embraces all of one's relationships with men: private, personal, public, social and political. But you say that you are not clear on what I would regard as the deserved, in specific cases. My answer is: the basic principle that should guide one's judgment in issues of justice is the law of causality: one should never attempt to evade or break the connection between cause and effect—one should never attempt to deprive a man of the consequences of his actions, good or evil. (One should not deprive a man of the values or benefits his actions have caused, such as expropriating a man's wealth for somebody else's benefit; and one should not deflect the disaster which his actions have caused, such as giving relief checks to a lazy, irresponsible loafer.)

But you ask me what is the punishment deserved by criminal actions. This is a technical, *legal* issue, which has to be answered by the philosophy of law. The law has to be guided by moral principles, but their application to specific cases is a special field of study. I can only indicate in a general way what principles should be the base of legal justice in determining punishments. The law should: a. correct the consequences of the crime in regard to the victim, whenever possible (such as recovering stolen property and returning it to the owner); b. impose restraints on the criminal, such as a jail sentence, *not* in order to reform him, but in order to make *him* bear the painful consequences of his action (or their equivalent) which he inflicted on his victims; c. make the punishment proportionate to the crime *in the full context of all the legally punishable crimes*.

This last point, I believe, is the question you are specifically interested in, when you write: “I find it difficult to say whether a man who has committed, e.g., armed robbery, deserves one year in jail, five years, ten years, or psychiatric therapy to keep him from repeating his offense.” The principle of justice on which the answer has to be based is contextual: the severity of the punishment must match the gravity of the crime, in the full context of the penal code. The punishment for pickpocketing cannot be the same as for murder; the punishment

for murder cannot be the same as for manslaughter, etc. It is an enormously complex issue, in which one must integrate the whole scale of legally defined crimes and mitigating circumstances, on the one hand—with a proportionately scaled series of punishments, on the other. Thus the punishment deserved by armed robbery would depend on its place in the scale which begins with the lightest misdemeanor and ends with murder.

What punishment is deserved by the two extremes of the scale *is* open to disagreement and discussion—but the principle by which a specific argument has to be guided is *retribution*, not *reform*. The issue of attempting to “reform” criminals is an entirely separate issue and a highly dubious one, even in the case of juvenile delinquents. At best, it might be a carefully limited adjunct of the penal code (and I doubt even that), *not* its primary, determining factor. When I say “retribution,” I mean the point above, namely: the imposition of painful consequences proportionate to the injury caused by the criminal act. The purpose of the law is *not* to prevent a future offense, but to punish the one actually committed. If there were a proved, demonstrated, scientific, objectively certain way of preventing future crimes (which does not exist), it would not justify the idea that the law should prevent future offenses and let the present one go unpunished. It would still be necessary to punish the actual crime. . . .

Ayn Rand on Punishment

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1. Introduction

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

2. What Punishment Is

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

a. Punishment as debt collection

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

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

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

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

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

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

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

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

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

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

⁶ *Ibid.*, pp. 286-87. Emphasis mine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Punishment, crime, and harm

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

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

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

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

¹⁵ *Ibid.*, pp. 127-32.

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁰ *Ibid.*, p. 173.

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

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

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

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

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

3. Reading the Rand-Hospers Letter Exchange

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

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

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

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

Boonin opens his discussion of the Letter as follows:

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

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

²³ For further discussion, see Appendix C below.

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

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

²⁶ *Ibid.*, p. 559.

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

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

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

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

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

²⁸ *Letters*, ed. Berliner, p. 559.

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

³⁰ *Ibid.*

4. Boonin's Cases

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

a. The passive interpretation of the principle of causality

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

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

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

³¹ *Ibid.*, pp. 63-66.

³² *Ibid.*, p. 63.

³³ *Ibid.*

³⁴ *Ibid.*, pp. 63-64.

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

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

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

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

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

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

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

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

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

Objectivism, pp. 285-86.

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

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

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

b. The active interpretation of the principle of causality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴³ See the references in note 37 above.

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

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

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

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

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

5. Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵¹ Peikoff, *Objectivism*, p. 283.

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

⁵³ See *ibid.*, p. 147.

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

Appendix B: Rights-Violations and the Trader Principle

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

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

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

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

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

Appendix C: Interpreting the Rand-Hospers Letter Exchange

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

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

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

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

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

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

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

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

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

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

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

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

⁵⁹ *Ibid.*, p. 559.

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

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

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

Articles

Hoppe's Derivation of Self-Ownership from Argumentation: Analysis and Critique

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1. Introduction

It is a common thought in philosophy that a person is a creature, whether human, Martian, or something else, who essentially has rights, liberties, and duties. It is another common thought in philosophy that a person is a creature who essentially has the capacity for rationality. Since rationality seems intimately connected with argumentation, a person is then seen as essentially having the capacity to argue. It seems natural, then, to look for a connection between these two essential aspects of personhood, namely, rights, liberties, and duties, on the one hand, and the capacity to argue, on the other. Advocates of “discourse ethics,” such as Karl-Otto Apel¹ and Jurgen Habermas,² propose ways in which we might try to forge this link, which lead them to conclusions favorable to social-democratic welfare states. Hans-Hermann Hoppe adapts their approach to libertarian ends.³ His “argumentation ethics” is an argument from the features of argumentative activity to the conclusion that each person has the moral rights to self-ownership, to acquire property in unowned resources by mixing her labor with them, and to exchange property with others by agreement. Hoppe claims to derive the second and third rights from the first, so the kernel of his argument is the part that leads to the conclusion that each person has the moral right to

¹ Karl-Otto Apel, *Towards a Transformation of Philosophy*, trans. Glyn Adey and David Frisby (London: Routledge and Kegan Paul, 1980).

² Jurgen Habermas, *Justification and Application*, trans. Ciaran Cronin (Cambridge, MA: MIT Press, 1993); Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996).

³ Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Auburn, AL: Ludwig von Mises Institute, 2010), p. 115, n. 116.

self-ownership, which he interprets as the right to the exclusive control over one's own body. It is this kernel of Hoppe's argument that I discuss.

Hoppe's argument has been criticized by a number of theorists, but the criticisms have been somewhat patchy, sometimes mistaken, and often doubtful. Hoppe's argument has been defended by others, but the defenses seem to add little, if anything, to what Hoppe has said himself. The critics and defenders seem to be talking past each other and the debate is mystifying. My aim is to rectify this by commenting on this debate only in passing, and offering a logical analysis and systematic critique of Hoppe's argument. I argue that Hoppe's argument fails comprehensively, and my analysis of the ways in which his argument fails should be helpful to the perennial philosophical project of understanding the connection between moral status and rational capacities.

Hoppe's aim is to prove that each person has the moral right to exclusive control over her own body. He seeks to achieve this by means of a pragmatic contradiction argument. Such an argument involves an analysis of a specific type of activity, *A*, which shows that, for some proposition, *p*, if an instance of *A* occurs, then *p* is true; that is, the truth of *p* is a necessary condition for the occurrence of an instance of *A*. The occurrence of an activity of type *A* guarantees the truth of *p*, whether or not this is known to anyone who engages in an activity of type *A*. In consequence, if a person, as part of performing an activity of type *A*, affirms a proposition inconsistent with *p*, then she commits a pragmatic contradiction. She need not *affirm* anything contradictory; the totality of her statements may be self-consistent. However, she says something which is false because it contradicts a proposition the truth of which is a necessary condition of what she is doing. Thus, the falsehood she utters may contingently be false (if it is a contingent fact that an instance of an activity of type *A* occurs).

Hoppe offers an analysis of argumentation according to which a necessary condition for argumentation to occur is that a specific moral proposition, *q*, is true. This analysis is provided by what I call "the mutual recognition argument," which provides the basis for Hoppe's pragmatic contradiction argument, according to which anyone who argues that *q* is not true commits a pragmatic contradiction because the fact of her arguing shows that *q* is true. From this Hoppe infers that *q* is rationally indisputable and is therefore true. Thus, the point of the mutual recognition argument is to show that *q* holds for argumentation; and the point of the pragmatic contradiction argument is to show that *q* holds universally, whether or not people are arguing. Hoppe identifies *q* as the principle that each person has the moral right to exclusive control over her own body. Thus is the universal right of self-ownership derived from an *a priori* analysis of argumentation.⁴

⁴ There is a question as to whether the right to exclusive control over one's own body includes the right to sell or dispose of one's body parts. We need not consider that question here, but for a positive answer see my "A Competitive Market in Human Organs," *Libertarian Papers* 2, no. 27 (2010), pp. 1-21.

In Section 2, I set out Hoppe's mutual recognition argument and I show, by means of three counter-examples, that it is invalid. In Section 3, I set out Hoppe's pragmatic contradiction argument and I show that it is invalid, that one of its premises is false, and that it fails to link up in the intended way with the mutual recognition argument. I offer concluding remarks in Section 4.

2. Mutual Recognition

It is important for the following discussion to make rudimentary distinctions between rights, liberties, authorities (or "powers," in Hohfeld's terminology⁵), and liabilities. If a person has a right to do something, then other people have a duty to let him do it or, failing that, to compensate him if they interfere with his right. Liberties, however, do not entail corresponding duties on others. If someone has a liberty to do something, he simply lacks a duty not to do that thing. This entails that others have no right that he not do it (for then he would have a duty not to do it), which means that he does not need others' permission to do it. However, others may still have a liberty, or an authority, which they may exercise to prevent him from doing it, in ways that do not violate his rights. For example, I have the *right* to my own books, so I can exclude other people from using them, and other people have a duty not to use them without my permission. But when I join a library with free membership, I acquire the *liberty* to use any of the books in that library. I do not acquire the right to use any of those books, since I am not permitted to exclude other library members from using them. Other library members have the same liberty as I do, so if one of them is reading a particular library book just when I want to read it, then my liberty to use that book is frustrated, though no right of mine has been violated and I am not due compensation from the person who is reading the book, even though his action is disadvantageous to me. My liberty to use the books in the library is granted to me by the library. But the library has the *authority* to annul this liberty. For example, if the library decides that it wants a more select class of members, it may terminate my membership and thereby my liberty to use its books. In contrast, if I had had a right to use the library's books, the library would have had a duty to let me use them, so it could not have terminated my membership. Thus, even while I have the liberty to use the library's books, I have also the *liability* to lose that liberty, at the library's discretion.⁶

Hoppe contends that the activity of argument is impossible unless its participants recognize that each has the right to exclusive control over his own body:

⁵ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, ed. Walter Wheeler Cook (New Haven, CT: Yale University Press, 1919).

⁶ For more careful and detailed discussion of these distinctions, see *ibid.*

In order to recognize . . . [the norms implied in argumentation], it is only necessary to call three interrelated facts to attention. First, that argumentation is not only a cognitive but also a practical affair. Second, that argumentation, as a form of action, implies the use of the scarce resource of one's body. And third, that argumentation is a conflict-free way of interacting. Not in the sense that there is always agreement on the things said, but in the sense that as long as argumentation is in progress it is always possible to agree at least on the fact that there is disagreement about the validity of what has been said. And this is to say nothing else than that a mutual recognition of each person's [right to] exclusive control over his own body must be presupposed as long as there is argumentation.

Hence . . . the norm implied in argumentation is that everybody has the right of exclusive control over his own body as his instrument of action and cognition Only as long as this right is recognized is it possible for someone to agree to what has been said in an argument and hence can what has been said be validated, or is it possible to say "no" and to agree only on the fact that there is disagreement.⁷

Hoppe's three premises, suitably interpreted, appear to be true. First, arguing is cognitive and is an activity (and is in that sense practical). Second, someone who argues with others is engaged in various actions, including those necessary to give expression to thoughts, such as talking or signing (or even singing). Even someone who argues with himself, purely mentally, is making use of his brain and is therefore utilizing his own body. The third premise is that argumentation is conflict-free in the sense that the participants can agree, even if all they can agree about is that there is disagreement. This premise is not true as it stands, since it is quite common for people to disagree about whether they disagree. It is not even true that arguers can agree about whether they are arguing, since they might be having an argument about that. Arguing *essentially* involves disagreement, but it is also essentially cooperative; there could be no arguing if the participants were not cooperating in arguing. Even if they disagree about whether they are cooperating in arguing, the fact that they are arguing shows that they are cooperating in arguing. This is, presumably, what Hoppe is getting at when he says that argument is conflict-free. So we have the following three true premises:

- (i) Arguing is both cognitive and practical;
- (ii) one who argues makes use of his own body;

⁷ Hoppe, *Theory of Socialism and Capitalism*, pp. 158-59.

- (iii) argumentation is conflict-free *in the sense* that the participants cooperate in arguing.

From these three premises Hoppe draws the following conclusion:

- (iv) When people are engaged in argumentation, each *ipso facto* recognizes that each has the moral right to exclusive control over his own body.

This is not so much an argument as a sketch of one, or a gesture at one, because Hoppe says little to explain the supposed link between the premises and the conclusion. The thought seems to be that if people use their bodies in cooperative activity, they must recognize each other's moral right to exclusive control over his own body. The reason Hoppe focuses on cooperation *in argumentation*, rather than cooperative activity in general, is that the pragmatic contradiction argument applies specifically to argumentation.⁸ Hoppe does nothing, though, to show why his thought linking cooperation and rights must be true. Since the validity of his mutual recognition argument depends upon this thought, it seems legitimate to complain that Hoppe has not made his case. However, we can do better than that. For we can see that Hoppe's thought is false, and thus that his mutual recognition argument is invalid, by constructing possible counter-examples in which (i)-(iii) are true while (iv) is false. Before we proceed with that, though, it will help to clarify Hoppe's argument if we consider two common objections which fail to identify counter-examples to it.

It has been objected that, as a matter of fact, people do engage in debate when they do not have the right to exclusive control over their own bodies, slaves being the most prominent example.⁹ This objection misunderstands the argument, as Hoppe correctly points out.¹⁰ The conclusion of the mutual recognition argument is that each person engaged in debate recognizes that each of the interlocutors has the *moral* right to exclusive control over his own body. This is not contradicted by the fact that people can

⁸ Ibid., pp. 155-56, n. 117.

⁹ David Friedman, "The Trouble with Hoppe," *Liberty* 2, no. 2 (November 1988), p. 44; Robert Murphy and Gene Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique," *Journal of Libertarian Studies* 20, no. 2 (2006), pp. 62-63 and n. 9; Douglas B. Rasmussen, "Arguing and Y-ing," *Liberty* 2, no. 2 (November 1988), pp. 51-52; David Ramsay Steele, "One Muddle After Another," *Liberty* 2, no. 2 (November 1988), p. 48; Ethan O. Waters, "Beyond Is and Nought," *Liberty* 2, no. 2 (November 1988), p. 47; Leland Yeager, "Raw Assertions," *Liberty* 2, no. 2 (November 1988), p. 46.

¹⁰ Hans-Hermann Hoppe, *The Economics and Ethics of Private Property*, 2nd ed. (Auburn, AL: Ludwig von Mises Institute, 2006), pp. 404 and 406.

engage in argument even when their moral rights are not reflected in legal rights. The parties to a debate may recognize that each has a particular moral right even while they recognize that one or other of them has that moral right violated.

It has also been objected that people who subscribe to non-libertarian ethics can argue with each other despite the fact that they *deny* that they, or their interlocutors, have the moral right to exclusive control over their own bodies.¹¹ However, as Hoppe also points out,¹² this is consistent with the conclusion of his argument. For his argument entails that these people contradict themselves: they are denying something which they recognize as true in denying it. It is a commonplace that people sometimes contradict themselves.

A counter-example to Hoppe's argument must show that people can argue without recognizing each other's moral right to exclusive control over his own body. I show this in the following three counter-examples. Although I will henceforward usually drop the qualification "moral," my talk of rights or liberties should always be understood to be about *moral* rights or liberties.

First, imagine a society in which there is a noble and serfs. Each person in this society believes that the noble has the right to exclusive control over his own body; that no serf has the right to exclusive control over his own body; and that the noble has, and exercises, extensive rights to control the use of the bodies of the serfs. For example, everyone agrees that the noble has the right to make each of his serfs work for a specified part of each week for the noble's benefit, during part of which time the serf is under the managerial control of the noble who tells him what to do and how to do it. It is also believed by everyone that each member of the society has the right to convene an open debate, to take place on the next Friday morning, in which anything may be put on the agenda, from metaphysics to politics to sexual practices. In this debate, any opinion may be ventured, endorsed, criticized, or denied by anyone. Thus, there is no bar on discussing whether the division into noble and serfs is natural or beneficial or right; indeed, the proposition that each person should be entitled to run his own life has sometimes come up for discussion, but, although some entertaining arguments for the proposition have been elaborated (sometimes by the noble), no one takes the proposition seriously because it seems, to both noble and serfs, to be plainly absurd. Furthermore, it is believed by all that everyone at the meeting has the right (not just the liberty) to speak at the meeting; someone who has been unable to get a word in edgewise has the right to prevent the meeting from finishing until he has had a chance to speak. During these debates, each person recognizes that he, as well as all of the other participants, has the right to use

¹¹ Friedman, "The Trouble with Hoppe"; Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique," pp. 60-61; Yeager, "Raw Assertions."

¹² Hoppe, *The Economics and Ethics of Private Property*, pp. 400-402 and 405.

his body in a way needed to make a contribution to the discussion. None of them, however, recognizes any serf as having the right to exclusive control over his own body; they all believe that the noble has extensive rights to control the use of his serfs' bodies. In short, the right to participate in the debate falls far short of a right to exclusive control over one's own body, and the participants in a debate may recognize that each participant has the former right without recognizing that each has the latter.¹³

Second, imagine a society similar to the one just discussed except that all of its members believe that the serfs have no right to speak in the noble's presence. The noble periodically convenes a debate which all of his serfs are instructed to attend, but everyone present believes that no serf has the liberty to speak in the debate until the noble grants him that liberty. Let us suppose that the noble begins the meeting by saying, "Until I adjourn this meeting, I grant each of you the liberty of expressing your views, whatever they may be." For the space of the debate, everyone present recognizes that everyone present has the *liberty* to use his body in a way necessary to speak in the debate. However, during the debate, no one recognizes any *right* of any serf to use his body in this way, since each knows that in a lively debate he might not be able to get a word in (other serfs exercising their liberty may prevent him from exercising his), and each believes that the noble can withdraw a serf's liberty to speak at any time. Everyone believes that the serfs are granted a temporary liberty to speak along with the liability that this liberty may be withdrawn at the noble's whim. For example, everyone present accepts that, if one of the serfs keeps straying off the topic being discussed or starts insulting some of the participants, the noble may take away from that serf the liberty of participating in the debate. In short, a liberty to participate in argument falls short of a right to do so, and the participants in a debate may recognize that each participant has the liberty without recognizing that each has the right.

From these two counter-examples it may seem that we have to pare back Hoppe's argument to the following. The three premises of his argument entail that people engaged in debate recognize that each person engaged in the debate has the liberty to control his body in the ways needed to participate in the debate, at least so long as he is participating in the debate. It might seem that this argument is valid because its conclusion is so weak that it is trivially true. However, the conclusion is not trivially true. It is false, as the third counter-example will show.

Suppose that, in the society envisioned in the second counter-example, one of the serfs present at the debate has had his liberty to speak rescinded. However, as the debate proceeds and touches on a matter of practical concern, the serf realizes that he has a suggestion to make that would

¹³ This point is made in an abstract way by Daniel Shapiro, "Review of *A Theory of Socialism and Capitalism* by Hans-Hermann Hoppe," *Reason Papers* 15 (Summer 1990), pp. 154-55.

be very much to the noble's advantage. Although he believes that he does not have the liberty to speak, he speaks anyway (people often do things they are not entitled to do). The noble is initially outraged but permits the serf to continue and listens to what he says because the noble can see that it might be important. This serf is participating in the debate even though no one who is participating in that debate (including the serf himself) recognizes his liberty to control his body in a way needed for that purpose. They are merely treating him *as if* he had the liberty to speak, because he has something interesting to say. With regard to the moral principle that accords that serf the liberty to speak, they *behave as if* it is true, but they do not *recognize it as true*. In fact, they hold it to be false.

Therefore, the fact that people are engaged in argumentation with each other does not imply that each of them recognizes that each of them has the right to exclusive control over his own body; it does not imply that each recognizes that each of them has the right to engage in debate; and it does not imply that each of them recognizes that each has the liberty to engage in debate. It does imply, however, that, for the space of the debate, each *behaves as if* each of the participants has the liberty to control his body in a way necessary for him to engage in debate. Similarly, the fact that a person engages in argument by himself implies that he *behaves as if* he had the liberty to control his body in the ways needed to do so; it does not imply that he recognizes that he has either the right or the liberty to do so. Given that Hoppe's conclusion—that participants in argument *ipso facto* recognize each other's right to exclusive control over his own body—is false, and that his premises, (i)-(iii), are true, his argument is invalid.

It might be objected that these counter-examples each involve a *stipulation* about what rights or liberties are recognized by the participants in debate. If Hoppe's argument is valid, then what is stipulated in these counter-examples is impossible because, if Hoppe is right, debate cannot occur unless the participants recognize each other's right to self-ownership. This objection does make a good point in that it draws attention to the fact that, in order to show an argument to be invalid, an intended counter-example to it must describe a *possible* situation. We can add that a situation that seems to us to be possible might not really be so, since its description may involve a latent contradiction. However, my three counter-examples do appear to be self-consistent, given the meaning of the terms employed. If they involve a latent contradiction, that needs to be shown. Hoppe's argument does not show it. It would be arbitrary and dogmatic to insist that the three counter-examples must involve a latent contradiction simply because they invalidate Hoppe's argument.

We noted above that Hoppe focuses on argumentation, rather than cooperative activity in general, because the next step of his argument, concerning pragmatic contradiction, applies to argumentation. Before we consider that step in Section 3, we can illustrate the generality of the conclusion at which we have arrived. Thus, consider the following argument:

- (v) Participating in a boxing match is both cognitive and practical (practical in that it aims at some end, for example, knocking out the opponent, and cognitive in that one must have some idea of what to do in order to achieve one's end).
- (vi) One who boxes makes use of his own body.
- (vii) Boxing is conflict-free *in the sense* that the participants cooperate in beating up each other within the confines of the Marquis of Queensberry rules.
- (viii) Therefore, the participants *behave as if* each has the liberty to engage in a boxing match, but they might not recognize that each has that liberty.

For example, one or both may know that one of them has escaped from prison and so is duty-bound to be somewhere else, and thus does not have the liberty to be boxing here. Consider, too, another argument:

- (ix) Participating in a boss-underling relationship is both cognitive and practical (practical in that it aims at some end—for the boss, getting a job done, for the underling, getting paid—and cognitive in that one participant gives directions and the other implements those directions).
- (x) Bosses and underlings make use of their own bodies in performing their roles.
- (xi) Employment is conflict-free *in the sense* that the participants cooperate in bossing and being bossed, paying and being paid.
- (xii) Therefore, the participants *behave as if* each has the liberty to perform his respective role, but they might not recognize that each has that liberty.

For example, the employee might be a doctor who has been banned from practicing his profession because of incompetence, and the employee, and perhaps the employer too, knows this.

The same can be said about any activity in which people voluntarily engage with each other; by engaging in that activity with others, each participant behaves as if each participant has the liberty to engage in that activity. The restriction to voluntary activities is essential (that is the significance of Hoppe's third premise). For example, someone who has been kidnapped might not behave as if his kidnappers have the liberty to kidnap him, even if the kidnappers behave as if they do have that liberty. However,

even in the case of kidnap, the victim may, for the sake of remaining intact, cooperate with the kidnappers until he can see a way to get free. In that case, although he was kidnapped against his will, once he is captive he *chooses* to cooperate with his kidnappers for the duration of the kidnap, and *to that extent* he *behaves as if* the kidnappers had the liberty to kidnap him. Thus, the insight in Hoppe's mutual recognition argument is only this: where people engage in an activity voluntarily, either by themselves or with others, they thereby behave as if all of the acknowledged participants in the activity have the liberty to engage in that activity, at least for as long as the activity lasts. But this is surely the height (or depth) of banality.

3. Pragmatic Contradiction

In this section I show that Hoppe's pragmatic contradiction argument fails, in part because it is invalid, in part because it has a false premise derived from Hoppe's mutual recognition argument, and in part because the two arguments fail to link up properly.

The (false) conclusion of Hoppe's (invalid) mutual recognition argument is that, when people are engaged in argumentation, each *ipso facto* recognizes that each has the moral right to exclusive control over her own body. Hoppe's intended means of getting from that conclusion to the conclusion that every person has the moral right to exclusive control over her own body is his argument from pragmatic contradiction, which he calls "practical contradiction,"¹⁴ or "performative contradiction"¹⁵:

[A]ny truth claim . . . must be raised and decided upon in the course of an argumentation. And since it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue), and it must be assumed that everyone knows what it means to claim something to be true (one cannot deny this statement without claiming its negation to be true), this has been aptly called "the a priori of communication and argumentation." . . .

[A]rgumentation is always an activity . . . [So], it follows that intersubjectively meaningful norms must exist—precisely those which make some action an argumentation—which have special cognitive status in that they are the practical preconditions of objectivity and truth.

Hence . . . norms must indeed be assumed to be justifiable as valid. It is simply impossible to argue otherwise, because the ability to argue so would in fact presuppose the validity of those norms which underlie any argumentation whatsoever [Thus],

¹⁴ Hoppe, *Theory of Socialism and Capitalism*, p. 162.

¹⁵ Hoppe, *The Economics and Ethics of Private Property*, pp. 405-6 and 413.

reason can claim to yield results in determining moral laws which can be shown to be valid a priori. . . .

[T]he ethics implied in argumentation . . . [is such that its] validity cannot be disputed, as disputing it would implicitly have to presuppose it.¹⁶

The steps of the argument appear to be as follows, where “*q*” stands in for the designation of a specific norm:

- (a) A necessary condition of argumentation is that *q* is true.
- (b) In order to decide a truth claim, one must argue.
- (c) Therefore, one can dispute the truth of *q*, only if *q* is true.
- (d) Therefore, anyone who disputes the truth of *q* is mistaken.
- (e) Therefore, *q* is true.

This argument is invalid. The first two inferences are valid: (c) follows from the conjunction of (a) and (b), and (d) follows from (c). Up until that point, the argument exemplifies a standard pragmatic contradiction argument. However, the inference from (d) to (e) is fallacious. All that the premises (a) and (b) tell us about *q* is that if someone argues, then *q* is true. This is consistent with its being the case that, if no one argues, *q* is false. In order to obtain (e) validly we need to add a premise, for example, that someone argues. Alternatively, we can leave the premises as they are and infer validly, “If someone argues, then *q* is true.” This would bring the argument back into the form of a valid pragmatic contradiction argument. Thus, whatever norm “*q*” represents, Hoppe’s pragmatic contradiction argument could show validly only that the norm holds when someone is arguing: the truth of the norm would be *conditional on argumentation taking place*. Of course, people are always arguing, so argumentation will be taking place so long as there are people; perhaps, then, this is not a fatal weakness in Hoppe’s case.

Hoppe’s argument is unsound also because one of its premises is false. Premise (b) has been challenged by the claim that we might know some things immediately, without argument, such as perceptual judgments or self-evident truths.¹⁷ However, something cannot count as rational knowledge (as opposed to the sort of knowledge that we may ascribe to animals or plants or machines, or even humans in unreflective mode) unless it has been subject to

¹⁶ Hoppe, *Theory of Socialism and Capitalism*, pp. 154-57.

¹⁷ Rasmussen, “Arguing and Y-ing,” p. 51.

critical evaluation, and such evaluation involves argument. Since (b) is about deciding truth claims, it is about rational knowledge. So, I take (b) to be true. Premise (a), however, is false. We saw in Section 2 that to argue with someone is to *treat her as if* she had the liberty to argue. What is the norm here? Is it that arguers have the liberty to argue? If so, (a) is false, because participants in argument need not recognize the truth of that norm: they need only *behave as if it is true*. Is the norm that arguers ought to treat each other as if they had the liberty to argue? A participant in argument need not recognize the truth even of that norm. For example, an error theorist about morality thinks that all moral propositions are false (and thus that the supposed norm is false) because moral propositions ascribe moral properties to things and, as it happens, things do not have moral properties, though, due to peculiarities of our cognitive equipment, things *appear* to us to have moral properties.¹⁸ The error theorist nevertheless often *behaves as if* specific moral principles are true, perhaps because doing so helps her to achieve her ends. In particular, when arguing, she will *behave as if it is true* that she ought to treat her interlocutors as if they had the liberty to argue, but she will *not recognize this norm as true*—she may regard it simply as a useful fiction. It seems that, whatever we take the norm of argumentation to be, (a) is false. As a consequence, the supposed pragmatic contradiction never materializes.

Furthermore, Hoppe's pragmatic contradiction argument would not have achieved his purpose even if both it and the mutual recognition argument had been sound. Suppose that the conclusion (e) of the pragmatic contradiction argument is true. What does (e) say? It depends on what "q" stands in for. The answer to that is given by the conclusion of Hoppe's mutual recognition argument, (iv), which we can rephrase as:

- (xiii) A norm that is recognized by the participants in argumentation is that each participant in argument has the moral right to exclusive control over her own body.

So, the norm identified by "q" is:

- (xiv) Each participant in argument has the moral right to exclusive control over her own body.

However, this falls short of Hoppe's intended conclusion, which is:

- (xv) Every person (whether engaged in argument or not) has the moral right to exclusive control over her own body.

¹⁸ For example, J. L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin, 1977), chap. 1; Richard Joyce, *The Myth of Morality* (Cambridge, UK: Cambridge University Press, 2001).

The failure here is due to the fact that, according to Hoppe's mutual recognition argument, the norm implied in argumentation has a *restriction within its content*: it assigns a right not to all people, but to those people, if any, who are participants in argument. However, the norm that Hoppe wants to derive is a different norm because it lacks that restriction within its content: it assigns a right to all people *simpliciter*.

Can this gap be bridged? One might try to get from (xiv) to (xv) by means of the following sub-argument:

People have a particular right in virtue of being participants in argument;

every person has the capacity to participate in argument;

so, every person has that particular right.

However, this sub-argument is invalid, for participants in argument might have the right in question *only because, and while, they are participating in argument*, in which case people who are only potentially participants in argument might not have that right.¹⁹ This would be similar to the way in which a tenant has the right to use a property only because, and while, she pays the rent. Hoppe responds to this objection with the following retort: "In the same way as the validity of a mathematical proof is not restricted to the moment of proving it, so is the validity of the libertarian property theory not limited to instances of argumentation."²⁰ But this retort is ineffective. It is true that, if a mathematical theorem is proven at a particular time, it is proven *simpliciter*; it is not proven to hold only at that time. It is also true that, if Hoppe had proved (xiv), he would have proved (xiv) *simpliciter*, whether anyone is arguing or not. But he would not thereby have proven (xv), because saying that (xiv) is true whether anyone is arguing or not, is not the same as saying that (xv) is true.

In short, Hoppe's pragmatic contradiction argument is invalid, because his premises entail that the norms of argumentation hold not absolutely, but only conditionally on the existence of argumentation. It is unsound also because it relies on the falsehood, implied by the conclusion of the mutual recognition argument, that arguers must recognize the truth of some norms. It was doomed anyway because any norms specific to argumentation assign moral status to people as participants in argument rather than to people as such.

¹⁹ Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic," pp. 56 and 58-59; Shapiro, "Review of *A Theory of Socialism and Capitalism*," p. 155; Waters, "Beyond Is and Nought," p. 47.

²⁰ Hoppe, *The Economics and Ethics of Private Property*, p. 406.

4. Conclusion

There can be few theorists who would deny that the moral status of persons, *qua* persons, is grounded in the capacities that make a creature a person; and there can be few theorists who would deny that one of these capacities is the capacity for argument. It has, however, proven difficult to show why or how a person's moral status depends upon the capacity to argue. Hoppe's attempt to derive a universal right to self-ownership from uncontroversial features of argumentation is not successful.

The mutual recognition argument is intended to show that debate implies mutual recognition of the right to exclusive control of one's own body. However, the argument is invalid. The most that is shown by the fact that people are engaged in debate is that, for as long as they are engaged in debate, the participants treat each other as if they had the liberty to engage in debate. That seems a banality.

The argument from pragmatic contradiction is intended to show that any norms essential to argument are binding on all people at all times. The argument is invalid because the premises concern norms that hold in debates, but the conclusion concerns norms that hold in all circumstances. The argument is unsound also because it presupposes that arguers must recognize the truth of norms, but, in fact, an arguer need only behave as if the relevant norms are true. Furthermore, the argument is parasitic on the mutual recognition argument, but fails to link up with that argument, because the norm that is the concern of the mutual recognition argument assigns moral status to people *qua* participants in argument, whereas the norm that is the concern of the pragmatic contradiction argument assigns moral status to people *qua* people.

The failure of Hoppe's arguments to achieve his aims seems comprehensive. We should, however, be able to learn lessons from the ways in which he fails. The first is that pragmatic contradiction arguments need to be treated cautiously. A pragmatic contradiction argument, recall, involves an analysis of a specific type of activity, *A*, which shows that the truth of some proposition, *p*, is a necessary condition of the occurrence of any instance of *A*. It also requires a premise to the effect that someone performs an activity of type *A* in which he asserts a proposition inconsistent with *p*. The person concerned is then guilty of a pragmatic contradiction, which shows that the proposition he asserted is false. As we noted in Section 3, a limitation of such arguments is that the truth of the proposition, *p*, is conditional upon the occurrence of an instance of the type of activity, *A*. One mistake that can be made is to overlook this limitation and assert *p* unconditionally. This is what Hoppe does when he assumes that the norms of argumentation would apply to other activities. The second kind of mistake is to proffer a faulty analysis of the type of activity, *A*. Hoppe makes this mistake as well. He claims that argumentation implies the mutual recognition by its participants of each other's right to exclusive control over his body, which we saw in Section 2 to be false. He also claims that argumentation implies that its participants

recognize the truth of some norms, which we saw in Section 3 to be false. The third kind of mistake is to affirm that someone is engaging in the type of activity, *A*, when he is not. This is a less common mistake, and one which we have not needed to discuss here.

The second lesson is that, although the *capacity* to argue may be central to moral status, *argumentation* seems too specialized an activity to be a ground for a universal moral status. The idea of cooperative activity in general might offer better prospects, since it seems that a creature can be a person only if he has, or had, or at least is capable of, interpersonal relations with other persons. The idea of mutual recognition of personhood seems to have some role to play here. However, the third lesson is that arguments invoking mutual recognition seem unlikely by themselves to yield conclusions about the truth of moral principles because, it seems, whatever can be explained by an agent's recognition of another's moral status can equally well be explained by the agent's *pretending* that the other has that moral status in order to interact with him in a way that serves the agent's purpose.

The Concept of Tradition: A Problem Out of MacIntyre

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“NATIONAL REVIEW . . . stands athwart history, yelling Stop.”
—William F. Buckley¹

1. Introduction

Tradition is one of those words whose sense, reference, and evaluative force depends on who uses it and why. The concept of tradition is conspicuous in contemporary debates, both among those who reject traditional marriage or education as well as among those who affirm it.² It is also central to Alasdair MacIntyre’s work both as an educator and a cultural critic, and an essential resource for the development of whatever answer his admirers may give to the question, “What is to be done?” Many a revolution has been spurred by the desire to restore a tradition that the pursuit of external goods such as wealth has corrupted, but it remains to be seen whether MacIntyre’s philosophy supports this sort of revolution or any other form of political practice.

MacIntyre, like Karl Marx, is proposing a philosophy of practice; the context of his philosophical investigations is the difficulty experienced by followers of Leon Trotsky in finding grounds for condemning Stalinism, and more broadly finding a point of purchase for their moral judgments in history.³ There is more to MacIntyre than the concept of tradition, but his turning away from the politics of the nation-state to that of the local

¹ William F. Buckley, “Our Mission Statement,” *National Review*, November 19, 1955, accessed online at: <http://www.nationalreview.com/articles/223549/our-mission-statement/william-f-buckley-jr>.

² On the rejection of historical marriage as a bad thing, see the references in David Blankenhorn, *The Future of Marriage* (New York: Encounter, 2007), pp. 161-63.

³ For MacIntyre’s Trotskyist background, see Paul Blackledge and Neil Davidson, eds., *Alasdair MacIntyre’s Engagement with Marxism* (Chicago, IL: Haymarket, 2009). On the need for a philosophy of practice, see especially *ibid.*, pp. 103, 422, and 424.

community does not help matters here. Such communities will have to make decisions concerning both their internal policies and their external relations, and in both cases the issue will arise concerning how much flexibility they can find in their governing traditions. Hence, MacIntyre's inability to answer questions of application would mean that his philosophy had failed. How much guidance MacIntyre, or any philosopher, is required to supply is a complicated question; the demand that social and political philosophy should translate immediately into a political program is unreasonable, but detached contemplation of our social and political life is not an option either. It would be a severe problem for MacIntyre's view if he ended up returning us to politics as usual.⁴

2. The Ambiguity of the Concept

As one commentator has put it, MacIntyre holds the following view:

We should steer a middle path between the conservatism of Edmund Burke, who exalts tradition over and against rationality, and the liberalism/radicalism of a Condorcet and other Enlightenment figures, who exalt abstract rationality over and against tradition.⁵

The question I am asking here is whether such a middle ground exists.⁶

Advocates of tradition argue that it is an inescapable part of our reasoning about both theoretical and practical matters. Yet the concept of tradition on MacIntyre's view suffers from an ambiguity, one that often appears in similar theorists, such as Cardinal John Henry Newman⁷ and, despite MacIntyre's hostility to them both, David Hume⁸ and Edmund Burke.⁹

⁴ I address this question further in my "Politics after MacIntyre," 2012, accessed online at: <http://philipdevine.wordpress.com/2012/02/01/politics-after-macintyre-2/>.

⁵ Thomas D. D'Andrea, *Tradition, Rationality, and Virtue* (Aldershot: Ashgate, 2006), p. 67.

⁶ My colleague Michael O'Neill has suggested that Robin George Collingwood, Georg Hegel, Marx, and Yves Simon can fill the gaps in MacIntyre's account of historical rationality. This suggestion needs to be spelled out.

⁷ On Newman, see Owen Chadwick, *From Bossuet to Newman*, 2nd ed. (Cambridge, MA: Cambridge University Press, 1987).

⁸ Julia Annas queries MacIntyre's rejection of Hume as a traitor to the Scottish tradition in her "MacIntyre on Traditions," *Philosophy and Public Affairs* 18, no. 4 (Autumn 1989), pp. 392ff., unfortunately relying too much on Hugh Trevor-Roper's hostile account of pre-Humean Scottish culture.

⁹ Even critics from the Left have faulted MacIntyre for undue hostility to Burke; see Jeffrey Stout, *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2003), p. 320, n. 25. For a briefer version of Stout's critique of MacIntyre, see his

In *Oedipus Rex* Laius, fearing that his son will displace him, has him exposed to the elements. Regardless of how powerful and ruthless fathers may be in suppressing their children, though, they always end up displaced.¹⁰ The same is true of the status quo, however abstractly considered, for no set of rules, however detailed, can provide for all possible conflicts. The open-texture of our concepts means that our rules will always require interpretation, and the clashing interests and outlooks that exist in any society imply that we will always face divergent interpretations of our inherited ideas. (An illuminating counter-example is the rules of chess; an illuminating counter-example to the counter-example is the rules for conducting chess tournaments.)

Some of these interpretations will be innovative or even radical. John Locke, while a key figure in the libertarian side of our tradition, can be interpreted as a social conservative,¹¹ but arguments drawn from his writings can also undermine his traditional views,¹² and thus make the prohibitions on suicide and infanticide that inform his political theory entirely arbitrary.¹³ In Newman, the true course of development of doctrine is discerned intuitively in a way that gives no guidance in cases of real doubt. In any case, a tradition could not guide its adherents if it did not also constrain them; if it did not rule out some possibilities it would be useless.

3. Understanding Tradition

MacIntyre draws on the thought of Thomas Kuhn and Imre Lakatos¹⁴ to define tradition as an element of an ongoing practice of inquiry, which

“Homeward Bound,” *Journal of Religion* 69, no. 2 (April 1989), pp. 220-32, where the point about Burke is at p. 228, n. 9. I am also indebted to an email exchange with Stout.

¹⁰ I owe this point to Todd Gitlin; see his *The Sixties* (Toronto: Bantam, 1987).

¹¹ As Thomas West shows in his Witherspoon Lecture, “Vindicating John Locke: How a Seventeenth-Century ‘Liberal’ Was Really a Social Conservative” (Family Research Council, 2001), accessed online at: <http://johnbalouziyeh.blogspot.com/2009/10/vindicating-john-locke.html>.

¹² As Thomas Pangle shows in his *Spirit of Modern Republicanism* (Chicago, IL: University of Chicago Press, 1988).

¹³ For a related discussion of the problems for Locke and the larger tradition, see Irfan Khawaja, “Review Essay: Edward Feser’s *Locke* and Eric Mack’s *John Locke*,” *Reason Papers* 32 (Fall 2010), pp. 155-71.

¹⁴ Christopher Stephen Lutz, *Tradition in the Ethics of Alasdair MacIntyre* (Lanham, MD: Lexington Books, 2009), pp. 47-60, and Tom Angier, “MacIntyre’s Understanding of Tradition” (unpublished 2010) discuss the relative roles of Thomas Kuhn and Imre Lakatos in understanding MacIntyre. The issue seems to be the extent to which the process of revising tradition can be governed by articulate standards.

might include large revisions of inherited theory and practice. Another model for understanding a tradition is that of a craft; crafts, like traditions, can develop or degenerate. And similar issues arise: Does Andy Warhol develop the visual arts, or does he represent their degeneration? (Even Warhol's admirers might draw the line at rural lawn sculpture.¹⁵)

Yet another model for tradition is a natural language, and so the possibility that a person might become an adherent of, or at least understand, two different traditions is analogous to the possibility of his becoming bilingual. The canons of religious orthodoxy, the rules of law, and the kinship structures that designate some forms of sexual relation as incestuous, are all analogous to the rules of grammar. We learn a tradition as we learn a language, that is, by authoritative teaching and by imitation of practice. In both cases, the two sometimes diverge. Ludwig Wittgenstein provides an enlightening picture of language, and hence also of the broader tradition carried along with it:

Our language can be seen as an ancient city: a maze of little streets and squares, of old and new houses, and of houses with additions made from various periods; and this surrounded by a multitude of new boroughs with straight regular streets and uniform houses.¹⁶

Our city includes not only the stable elements Wittgenstein mentions, but also regions under construction, zones of conflict, and burnt-out districts not yet rebuilt. It also includes regions in decline. As Simon Blackburn puts it, "To paraphrase Wittgenstein, when we start to abandon a way of thought, the lights do not go out one by one, but darkness falls gradually over the whole."¹⁷

MacIntyre's philosophy requires that we find a middle ground between ideas in Platonic heaven and entrenched social habits. Traditions in the relevant sense involve claims to truth, but they also must inform the lives of their adherents. They are historical-cultural facts as well as systems of belief, and they could do what they do for human beings were they otherwise. All of them have to be transmitted from generation to generation, and the process of doing so is emotionally fraught. Socrates, Plato, and Aristotle were ancient Greeks looking for a common human nature, with equal emphasis on both sides of this proposition. Thus, those features of our existence that liberals dismiss as accidents of birth, such as birth on a certain territory or from certain sorts of parents, retain their relevance.

¹⁵ Such sculpture is too tacky to be found even on the World Wide Web; a typical example depicts a young boy urinating and showing the crack in his buttocks.

¹⁶ Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (New York: Macmillan, 1953), para. 18.

¹⁷ Simon Blackburn, *Spreading the Word* (Oxford: Clarendon Press, 1984), p. 151.

In any event, we can distinguish two kinds of inquiry. One consists in the attempt of adherents of a tradition to understand it more deeply and apply it to problem situations. The other form of inquiry steps, at least to some extent, outside of the rival traditions and asks whether some tradition has exhausted itself and whether some other tradition can solve the resulting problems more adequately.

At this point in the argument, we can exclude some forms of radicalism. Some people claim that they can stand over and above the Western tradition and judge it as a whole to be a failure. (Such a claim is itself characteristically Western; Marx was never guilty of radicalism in this sense.) In MacIntyre's sage words, however,

[c]laims about hallucinations, illusion, distortion of thought, and the like can be made only from the standpoint of claims that the contrast can be clearly drawn between hallucinatory, illusory and distorted modes of perception or thought, on the one hand, and genuine perceptions of reality or rigorous or undistorted reflection and deliberation, on the other. Hence, to identify ideological distortion one must not be a victim of it oneself. The claim to a privileged exemption from such distortion seems to be presupposed when such distortion is identified in others.¹⁸

Yet our problems arise not from outside agitators, but within the practice of our society, and lead to disputes among those usually considered conservative.

What may be called the "integralist" impulse tries to rid a cultural tradition of extraneous elements, but at the risk of eliminating important truths. On the other hand, the "cafeteria" approach to intellectual issues, which picks and chooses among inherent ideas according to need or even mood, gives one every opportunity for adapting one's beliefs to one's purposes, even in the most cynical way.

4. MacIntyre's Contribution

As MacIntyre has observed, "traditions are defined retrospectively," often because some challenge makes their adherents aware that all of them, whatever their differences, are contributing to the same enterprise.¹⁹ Tradition is then further defined by granting authoritative status to some documents of the past, as the New Testament accorded authority to what Christians call the Old Testament and St. Thomas called Aristotle "the Philosopher";

¹⁸ Alasdair MacIntyre, "Ideology, Social Science, and Revolution," *Comparative Politics* 5 (1975), p. 22.

¹⁹ Alasdair MacIntyre, *God, Philosophy, Universities* (Lanham, MD: Rowman and Littlefield, 2009), p. 165.

contemporary scientific naturalists adduce Galileo and Charles Darwin and literary modernists look back to James Joyce and T. S. Eliot.

Tradition is a feature of a community that unites author and reader, but there is also a long-standing practice of “unorthodox” reading. In consequence, the most important issues for a tradition arise from disagreements among adherents of the tradition itself, who are at least presumed to be able to apply its governing concepts competently. When adherents of a tradition disagree, they look for core elements in the tradition immune to change in terms of which disputes on the periphery can be adjudicated. However, different adherents often find the core in different places, in which case we have two or more traditions where we previously had one—in other words, a schism. Two sorts of situation can be distinguished: A set of rules and principles fails to determine a result in some case, so that competent representatives of the same tradition reach different conclusions. And a tradition divides into two or more sub-traditions, which differ systematically in their conclusions. These two situations are but different sides of the same phenomenon.²⁰

MacIntyre’s most important contribution to this debate has been to forge a link between rationality and tradition. He points out that it is possible for a tradition to fail by its own standards, and thus encounter an incurable epistemological crisis. Adherents of such a tradition might discover that some other tradition better solves its problems than the tradition itself can do. Hence, he has hopes of avoiding relativism.

Reflective traditionalism admits the need for change while insisting on the demands of continuity—after all, Burke was a Whig, not a Tory. Yet Burkean traditionalism threatens to become an empty rhetorical form, casting “decent drapery” or a “politic veil” over the results of power politics, whatever they might be.²¹ A revision of Buckley’s quotation at the opening of this article that is sometimes proposed—“The dominant strain of conservative thought has stood athwart history, yelling ‘Slow Down!’”²²—keeps us on a slippery slope on which we might find ourselves, even that from Weimar to Adolf Hitler, albeit going down slowly. Standard conservative and progressive accounts of tradition lack the resources to offer us a change of direction.

Jeffrey Stout reads MacIntyre as demanding a highly structured tradition as the only alternative to conceptual and moral chaos:

²⁰ I am here indebted to conversations with Josef Velazquez.

²¹ Edmund Burke, *Reflections on the Revolution in France*, ed. Conor Cruise O’Brien (London: Penguin, 1986), pp. 103 and 171.

²² Dale Carpenter, “A Conservative Defense of *Romer v. Evans*,” *Indiana Law Journal* 76 (2001), p. 422.

Equally essential to the rationality of a practice, according to MacIntyre's account, is its embodiment in institutions that are capable of securing agreement on a doctrine of the human good (presumably by means of catechism directed at newcomers and a combination of magisterial suasion, discipline, and excommunication directed at dissidents).²³

Citing Susan Moller Okin's "incisive" critique of MacIntyre, Stout observes that feminism, though not a tradition in the sense of being defined by authoritative texts, is a tradition in the sense of being "a not yet completed narrative," an argument about the goods that constitute the tradition."²⁴

This argument, however, confuses traditions in general with the particular tradition MacIntyre has embraced or even with a relatively stringent version of that tradition. And it is false that feminism lacks an authoritative core. Just try defending a pro-life position on the abortion issue around contemporary "mainstream" feminists, and you will discover that the concept of heresy is alive and well.²⁵ This is not to say that the present situation among feminists is necessarily permanent; there are pro-life feminists²⁶ and they might prevail in subsequent discussions within the tradition. As Stout observes, "All discursive practices involve authority and deference to some extent. . . . The difference is a matter of how, when, and why someone defers or appeals to authority, not a matter of whether one does so at all."²⁷ Heresy, let us recall, is not just any error, but an error by a purported adherent of a tradition that puts him or her outside its boundaries. Even the most loosely structured traditions can make it clear that someone has committed heresy. All traditions have their canons of orthodoxy and their internal debates, including debates between hard-liners and soft-liners. Yet traditions behave

²³ Stout, *Democracy*, p. 136.

²⁴ *Ibid.*, p. 135, citing Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), p. 61.

²⁵ Patrice DiQuinzio, "Feminist Theory Reconfigured," *Reason Papers* 18 (Fall 1993), pp. 17-29, praises the "instability" of feminist theory, but does not meet the point made in the text.

²⁶ See, for example, Juli Loesch Wiley, "Why Feminists and Prolifers Need Each Other," *New Oxford Review* 60 (November 1993), pp. 9-14; Celia Wolf-Devine, "Abortion and the 'Feminine Voice,'" *Public Affairs Quarterly* 3, no. 3 (July 1989), pp. 81-97; and Mary Crane Derr, Rachel MacNair, and Linda Naranjo-Huebl, *Pro-Life Feminism: Yesterday and Today*, 2nd ed. (Bloomington, IN: Xlibris Corporation, 2006). The tradition is now represented by Feminists for Life of America, accessed online at: <http://www.feministsforlife.org/>. Feminists for Life publishes the *American Feminist*.

²⁷ Stout, *Democracy*, p. 212.

more like drops of mercury than like organisms, merging and splitting almost at will.

Appeal to tradition is frequently appeal to the confluence of more than one tradition. In one of the stronger appeals to tradition in contemporary political argument, same-sex marriage opponents find it incredible that people at so many different times and places, whose beliefs and ways of life are in so many respects so different, could all have been wrong in their understanding of a crucial human institution. Greco-Roman pederasts did not marry their boyfriends. That the emperor Nero is reported to have “married” Sporus (whom he had had castrated) as a man and Doryphorus as a woman shows nothing about what was considered healthy or normal even in imperial Rome. The moral of the story is that, as emperor, Nero could do—or thought he could do—whatever he wished.²⁸

Some traditionalists appeal to a sacred tradition going back to the origins of humanity and existing, often in distorted form, in all cultures.²⁹ But even this formulation gives us great liberty in distinguishing “sacred” tradition from its subsequent corruptions. There are aspects of “traditional marriage” that no one would now defend, such as use of daughters, and to a lesser extent of sons, as pawns in intra-familial politics. This practice persists in some communities, but is increasingly marginal even there.

Historically observable traditions change, or at least develop, often through an attempt to return to their origins. When we move from a more rigorous to a less rigorous rendering of the same tradition—say, from pre-Vatican II to post-Vatican II Roman Catholicism—there is both gain and loss. The advantages of a greater flexibility in dealing with the problems of human existence have been much celebrated, but the costs are increased confusion and, for any tradition faced with an aggressive cosmopolitan culture hostile to its understandings, the loss of the ability to resist externally generated pressure.³⁰

5. Development versus Degeneration

Some understandings of tradition, however, do not allow for the possibility of development.³¹ If we refuse the immobilist option, that is to say,

²⁸ See Suetonius, *Lives of the Twelve Caesars*, Nero, chaps. 28-29, accessed online at: http://penelope.uchicago.edu/Thayer/L/Roman/Texts/Suetonius/12Caesars/Nero*html.

²⁹ See Josef Pieper, *Tradition: Concept and Claim*, trans. E. Christian Kopff (Wilmington, DE: Intercollegiate Studies Institute, 2008), esp. chaps. 4 and 5.

³⁰ For an argument that raises this worry, see John T. Noonan, Jr., *A Church That Can and Cannot Change* (Notre Dame, IN: Notre Dame University Press, 2005).

³¹ For a contemporary example, see Pieper, *Tradition*, esp. chap. 2, p. 47.

that of resisting any change whatever, we face the urgent but difficult issue of distinguishing development from decadence. We cannot appeal to the verdict of history to resolve the question; as Jerome B. Schneewind puts it in a slightly different context, “If we must wait for it in order to know the solution to a problem, then that knowledge will have no role in the actual give and take of life.”³²

The American Revolution and the New Deal have been defended on traditionalist grounds. Even the French Revolution carried out the Bourbon tradition of the centralized absolute state: those of the revolutionaries’ decisions that Burke and his followers find most horrifying—the trial and execution of the king and the nationalization of the Church—followed English precedents. If before the modern period, the trial, as opposed to the murder, of a king was an unthinkable proceeding, credit or blame for the change must rest squarely on the shoulders of Oliver Cromwell.³³ Likewise, it was Henry VIII, not the Jacobins, who took the lead in placing the goods of the state in the possession of the nation (though, in practice, it was Henry VIII and his cronies who did this). Burke would have had no more sympathy with the radical Protestantism of the Puritans and their forebears than with the Enlightenment Deism of the French Revolutionaries.

There is a gap in MacIntyre’s account between the concept of a practice and the concept of a tradition. This gap is most evident in his *Three Rival Versions of Moral Enquiry*,³⁴ in which he moves from tradition as inherited practice to three broad intellectual traditions, in which not all “plain persons” participate or are even aware of being part of a tradition. Granted, we must be initiated into a practice before we reflect upon it. We still, however, have to show how practices combine to form a tradition—whether a cultural tradition like that of the Sioux or a civilization-wide tradition like that of the Enlightenment—capable of regulating practice. Such traditions have to go back either to creative figures immune to the normal dependence of human beings on their cultural past or else to some deity.

What is needed to fill this gap is a philosophical ecclesiology—a philosophical understanding of the sort of historically embodied community that sustains a particular tradition.³⁵ While attending to the historical data, the philosophical ecclesiologist will attempt to abstract conceptual and normative

³² Jerome B. Schneewind, “MacIntyre on the Indispensability of Traditions,” *Philosophy and Phenomenological Research* 51, no. 1 (March 1991), p. 168.

³³ Despite Michael Walzer, *Regicide and Revolution* (New York: Columbia University Press, 1992).

³⁴ Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame, IN: University of Notre Dame Press, 1990).

³⁵ I am indebted to the editors of *Reason Papers* for probing this issue.

principles from this data, examining such concepts as *schism*, *fidelity*, *fundamentalism*, and the distinction between *development* and *decadence*.³⁶

6. The American Legal and Political Tradition

Traditions are historical entities that have founders, and which sometimes come to an end. I solve the problem of individuating traditions by citing traditions that are articulately defended as such in the contemporary world. Here I consider among self-identified traditions those with which I to some degree identify. As examples of the sorts of considerations that are relevant, I make some judgments on controversial matters, which I could not fully justify without going too far afield. Readers who disagree with my judgments will have to make similar judgments of their own. Further inquiry would require the study of the survival and break-up of a variety of other traditions, both religious and secular.³⁷

I now offer a brief survey of the American legal and political tradition, whose outcome will support MacIntyre's claim that we live among ruins. In the early 1980s, MacIntyre identified himself with the American political tradition that combines procedural justice with republican virtue.³⁸ By 1987, however, his question had become "How to Be a North American," and Canadians and Mexicans, despite their very different political histories, were included in the community supporting the American tradition, along with the Founding Fathers, Southern rebels, African-Americans, Native Americans, and Japanese and other immigrants.³⁹ Though the social embodiment of a tradition need not be a nation-state, I do not see why North

³⁶ For a historian of religion who foregrounds the conceptual issues, see Bruce B. Lawrence, *Defenders of God* (Columbia, SC: University of South Carolina Press, 1995). Decadence, as I understand it, is a cultural phenomenon, that of a community that has lost the capacity to transmit itself, biologically and culturally.

³⁷ In addition to the examples considered here, see Walter Shurden, ed., *The Struggle for the Soul of the S[outhern] B[aptist] C[onvention]* (Macon, GA: Mercer University Press, 1993); Bradley J. Longfield, *The Presbyterian Controversy* (New York: Oxford University Press, 1991); Leszek Kolakowski, *Main Currents of Marxism*, trans. P. S. Falla (Oxford: Clarendon Press, 1978). On the Anglican Communion, see Stephen Bates, *A Church at War* (London: Tauris, 2004); R. R. Reno, *In the Ruins of the Church* (Grand Rapids, MI: Brazos, 2002), esp. Pt. II; and Ephraim Radner and Philip Turner, *The Fate of Communion* (Grand Rapids, MI: Eerdmans, 2006).

³⁸ See Alasdair MacIntyre, "The Idea of America," *London Review of Books* 2, no. 21 (November 6-19, 1980), p. 14; Alasdair MacIntyre, "Public Virtue," *London Review of Books* 4, no. 3 (February 18-March 3, 1982), p. 14. For these and the following reference I am indebted to Kelvin Knight.

³⁹ Alasdair MacIntyre, *How to Be a North American* (Washington, DC: Federation of State Humanities Councils, 1988).

America, as opposed to say Euro-America or the Western hemisphere, is a useful way of specifying the social embodiment of a tradition.

In any event, I here focus on the American *political* tradition and its important legal aspect, which is inevitably linked to the history of a particular nation-state. There are three major components of our political tradition: reliance on the U.S. Constitution as a legal document; the English-speaking liberal tradition founded by John Milton and Locke; and the “Judeo-Christian tradition,”⁴⁰ on which we rely, as we once relied on “mainstream” Protestantism, when we emphasize the need for cultural continuity and public virtue.

If we treat Anglo-American liberalism as a tradition of dealing with value conflict, in a complex relationship with the “civil religion” tradition of Jean-Jacques Rousseau, we can avoid the severity of MacIntyre’s judgment of contemporary moral discourse and political practice, and hence also the question concerning how, on MacIntyre’s showing, he could possibly write his books.⁴¹ Recall here the “catastrophe theory” defended in his *After Virtue*⁴²: “This time however the barbarians are not beyond the gates; they have already been governing us for quite some time.”⁴³

Neither MacIntyre nor anyone else, however, has found a way of bridging the gap between the Evangelical and the Enlightenment wings of the American tradition or addressing effectively the related conflict between the demand for a virtuous citizenry and our reliance on institutional checks and abstract rights to manage the corrupt nature of humanity. The libertarian side of our tradition limits the role of the state to maintaining public order, but relies on non-state communities to maintain the degree of virtue any functioning society requires. (In the case of a libertarian society, the most important social virtue is self-reliance.) The question is how to ensure that, when the state shrinks, sufficiently robust non-state communities arise.

Americans appeal to the law, and especially the Constitution, to resolve the ambiguities of our political tradition and make it possible for

⁴⁰ The phrase “Judeo-Christian tradition,” though out of favor, still has its defenders; for example, Wilfred McClay, “The Judeo-Christian Tradition and the Liberal Tradition in the American Republic,” in *Public Morality, Civic Virtue, and the Problem of Modern Liberalism*, ed. T. William Boxx and Gary M. Quinlivan (Grand Rapids, MI: Eerdmans, 2000), pp. 124-37. The most important polemic against this idea is Arthur A. Cohen, *The Myth of the Judeo-Christian Tradition* (New York: Harper and Row, 1970).

⁴¹ For this criticism, see Stout, “Homeward Bound,” who uses MacIntyre’s criticism of Herbert Marcuse against MacIntyre himself.

⁴² Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), chap. 1.

⁴³ *Ibid.*, p. 245. I am grateful to the editors of *Reason Papers* for probing this point.

adherents of divergent strands to live together. Even the least traditional elements in American society appeal to the Bill of Rights and the Fourteenth Amendment, which they sometimes seem to regard as the entire Constitution. No one thinks that the U.S. Supreme Court is infallible, however, even setting aside the notoriously fraught issue of abortion. John Rawls, for whom the Court embodies “public reason,”⁴⁴ finds some of its decisions “profoundly dismaying”⁴⁵ and would find some of its more recent decisions even more so. Apologies for Supreme Court decisions can be as divisive as criticisms of them. Mark Graber defends the 1857 *Dred Scott* decision, hitherto reprobated by Democrats and Republicans alike.⁴⁶ Yet if just any Supreme Court decision can be rejected, then constitutional jurisprudence is a game without rules. However, if whatever the Court decides to do can be provided with decent jurisprudential drapery, we are faced with the collapse of constitutional jurisprudence into power politics.

Nativist constitutional lawyers now argue that the provision of the Fourteenth Amendment conferring citizenship on “all persons born . . . in the United States” does not extend to the children of undocumented aliens, whom such jurists think of as akin to an invading army.⁴⁷ Authoritarian lawyers are prepared to argue that, as Richard Nixon once said, “When the President does it that means that it is not illegal.”⁴⁸ A horrifying example of this doctrine is provided by John Yoo, who believes that the president has a higher-law right to torture children when he deems that national security so requires.⁴⁹

⁴⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), Lect. VI, sec. 6.

⁴⁵ *Ibid.*, p. 359. Rawls’s examples are the campaign finance decisions *Buckley v. Valeo*, 424 U.S. 1 (1976) and its sequel *First National Bank v. Bellotti*, 435 U.S. 765 (1978).

⁴⁶ Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge, MA: Cambridge University Press, 2006); for a roster of critics of *Dred Scott* from every jurisprudential persuasion, see *ibid.*, pp. 14-16.

⁴⁷ See John Eastman, “From Feudalism to Consent: Rethinking Birthright Citizenship,” Heritage Foundation Legal Memorandum, March 30, 2006, accessed online at: <http://www.heritage.org/research/reports/2006/03/from-feudalism-to-consent-rethinking-birthright-citizenship>; and Lino A. Graglia, “Birthright Citizenship for the Children of Illegal Aliens: An Irrational Public Policy,” *Texas Review of Law and Politics* 14, no. 1 (Fall 2009), pp. 1-14. James C. Ho, “Defining ‘American,’” *The Green Bag*, 2nd ser. 9, no. 4 (Summer 2006), pp. 367ff., defends the received view.

⁴⁸ “Interview with David Frost” (May 19, 1977), printed in *The New York Times*, May 20, 1977, p. A16.

⁴⁹ In a debate with Doug Cassell, Chicago, 2006; see “John Yoo Says President Bush Can Legally Torture Children,” accessed online at: <http://www.youtube.com/watch?v=hZ01hN9l-BM>. The exchange went as follows:

A legal realist approach to such issues collapses not only the distinction between law and politics, but also that between politics and war. The only question then becomes: “Who gets to decide?” Moreover, issues like abortion, immigration, and war, as well as the use of judicial power to stigmatize certain moral and political positions as unconstitutional, all have to do with our relationship with outsiders, both within and without the boundaries of America. They engage the distinction between friends and enemies, and the sovereign power to draw the line between them.⁵⁰ Thus Carl Schmitt defends the Night of the Long Knives from a *legal* point of view⁵¹: “the act of the Leader was a genuine act of jurisdiction [*Gerichtsbarkheit*].”⁵²

It was the need to control payback violence that led to demands for the rule of law in the first place. We now observe the transformation of law into politics, of politics into war (the result of which is sometimes called “lawfare”), followed by the transformation of war into payback violence in the style of Rambo. This collapse of law into might has its correlates among elite scholars. Legal scholars across the jurisprudential spectrum now join the Critical Legal Studies movement⁵³ in holding that American law is an incoherent system, from which any position you please can be persuasively

“Cassel: If the president deems that he’s got to torture somebody, including by crushing the testicles of the person’s child, there is no law that can stop him? Yoo: No treaty. Cassel: Also no law by Congress—that is what you wrote in the August 2002 memo. Yoo: I think it depends on why the President thinks he needs to do that.”

⁵⁰ See Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago, IL: University of Chicago Press, 1996); Carl Schmitt, *Political Theology: Four Chapters on the Theory of Sovereignty*, trans. George Schwab (Chicago, IL: University of Chicago Press, 2005). For an account of Schmitt’s intellectual and political development, see Gopal Balakrishnan, *The Enemy* (London: Verso, 2000); for an account of the constitutional crises and controversies that shaped his work, see Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law* (Durham, NC: Duke University Press, 1997). I am indebted to the revival of interest in Schmitt led by the journal *Telos*; see Ellen Kennedy et al., “Special Section: Carl Schmitt and the Frankfurt School,” *Telos* 71 (Spring 1987), pp. 37-109; and Paul Picone et al., *Special Issue: Carl Schmitt: Enemy or Foe?* *Telos* 72 (Summer 1987). The discussion continues in *Telos* 73 (Fall 1987) and 74 (Winter 1987-1988).

⁵¹ For a good brief description of the Night of the Long Knives, see Richard J. Evans, *The Third Reich in Power* (New York: Penguin, 2005), pp. 31-41.

⁵² Carl Schmitt, “Der Führer schützt das Recht [The Leader Protects the Right],” *Deutsche Juristen-Zeitung* 15 (August 1934), pp. 945-50, accessed online at: <http://delete129a.blogspot.de/2007/09/aamasone-uebergesetzliche-staatsnotwehr-a-eine-deutsche-tradition/>.

⁵³ See Roberto Magnabeira Unger, *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press, 1986); and Duncan Kennedy, *A Critique of Adjudication* (Cambridge, MA: Harvard University Press, 1997).

supported.⁵⁴ Episodes such as the O. J. Simpson trial confirm the popular impression that American law is a farce, for many Americans rightly believed, before the verdict, both that Simpson was guilty and that he would get off.⁵⁵

The mutual tolerance that underlies the American constitutional order is not a transcendent requirement standing above all of our other beliefs. The reasons for holding that tolerance does not stand outside the other goods of social life are also reasons for holding that militancy is not a transcendent requirement either.⁵⁶ Hence, the survival of our traditions of political civility is an open question.

7. Religious Traditions and the Development of Doctrine

A tradition can die, as MacIntyre rightly insists, because it degenerates into inarticulate prejudices or because—as has happened with some forms of Islamic and Thomist thought—it ceases to support further inquiry.⁵⁷ In Islamic thought, the issue turns on the continued possibility of *ijtihad*, or individual interpretation.⁵⁸ When this happens, it becomes a treasured museum piece, which its supposed adherents ignore when it stands in the way of their important purposes. A tradition can also die because it loses its ability to harmonize the results reached by its adherents. Inquiry can mean anything from filling in tiny gaps to throwing the whole project into question (as MacIntyre does for some traditions).

Some traditions limit themselves to accumulated human wisdom, others claim divine revelation, and others, like Thomism, invoke a mixture of the two. Likewise, traditions sometimes speak about human nature and flourishing (and the requirements of justice among human beings), sometimes

⁵⁴ See Paul F. Campos, *Jurismania* (New York: Oxford University Press, 1998); Pierre Schlag, *Laying Down the Law* (New York: New York University Press, 1996); Steven D. Smith, *Law's Quandary* (Cambridge, MA: Harvard University Press, 2004); Paul F. Campos, Pierre Schlag, and Steven D. Smith, *Against the Law* (Durham, NC: Duke University Press, 1996). Louis Michael Seidman and Mark V. Tushnet, *Remnants of Belief* (New York: Oxford University Press, 1996), reach the same result from other political and jurisprudential premises.

⁵⁵ I owe this point to Robert Huguenor.

⁵⁶ This sentence is directed against Stanley Fish, e.g., *There's No Such Thing as Free Speech, and It's a Good Thing, Too* (Oxford: Oxford University Press, 1994), and Stanley Fish, "Mission Impossible: Settling the Just Bounds between Church and State," *Columbia Law Review* 97, no. 8 (December 1997), pp. 2255-2333.

⁵⁷ I owe this point to O'Neill.

⁵⁸ For detailed discussion, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, MA: Cambridge University Press, 2005); and Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950).

about divine revelation, and sometimes about both. The problems I have found for the concept of tradition arise for both its human and its divine aspects. I therefore now turn to religious traditions.

The two-sided character of the concept of religious tradition, as MacIntyre explains it, reflects the concept of God: “theistic belief has a double aspect, at once problematic and unproblematic. As the former, it invites ruthless and systematic questioning. As the latter it requires devoted and unquestioning obedience.”⁵⁹ Doctrines such as the Trinity are “to be piously believed and not impiously questioned,” as St. Columban puts it.⁶⁰ Against those people who claim a patent or copyright on God, we must maintain that He is greater than any conceptual and normative structure we may be able to formulate. Yet God also addresses us—or at least is believed to address us—with quite definite requirements of belief and practice. We see this tension at work in the endless dialogue between creative, and therefore dissident, Catholic theologians and the Church’s doctrinal watchdogs (and consequently the “police court” theology assessing the authority of various documents and the resulting limits on dissent). Catholic authority is now searching for a “hermeneutics of continuity,” which avoids *both* repudiation of Vatican II as heretical *and* the claim that the “spirit of Vatican II” authorizes limitless departures from past belief and practice,⁶¹ but it is not evident how this can be done.

We are not Platonic philosopher-kings (or -queens) creating institutions *de novo*. Hence, the advice a philosopher can give theologians and community leaders is limited. We need not only to reflect on our traditions, but also to live them, and this means that interaction with human experience in its many forms cannot be avoided. There is no algorithm to distinguish legitimate developments of a tradition from degenerations of it, but considerations drawn from the need of the adherents of a tradition to maintain and transmit it to future generations can at least provide persuasive arguments. The vitality of any tradition requires respectful attention to the convictions of one’s fellow adherents, both living and dead.

Martin Luther’s “humanist” opponents, such as Erasmus and Thomas More, were right to foresee that his theology entailed fragmentation—since his day, the extreme fragmentation—of Christendom. (Although Protestants do not view schism as gravely as do Catholics, even many Protestants find the present chaos disquieting.) There is something profoundly wrong, even apart from the issues of substance, about the way that

⁵⁹ Lutz, *Tradition*, p. 8.

⁶⁰ *Sermons of Columbanus*, Sermon I (Cork, Ireland: University College, 2004), accessed online at: www.ucc.ie/celt/published.

⁶¹ See Benedict XIV, “Christmas Message to the Roman Curia,” December 22, 2005, *Adoremus Bulletin* 13, no. 8 (November 2007), accessed online at: http://www.adoremus.org/1107BXVI_122205.html.

liberals in the Anglican Communion pursued the issues of the ordination of women and open homosexuals.

8. Conclusion

At this point, it is necessary to warn against the fundamentalist solution to the problem of fragmentation in tradition, namely, to find one authoritative source (the Pope, the Bible, or something else) and cleave to it through thick and thin. The identity, scope, interpretation, and methods of application of any authority all depend on the tradition in which the authority finds its place. This does not mean, as Liberal Protestants are accused of saying, that the Church wrote the Bible and can rewrite it.⁶² Neither the authorities themselves, nor the way they are customarily received, supports such a reading.

It will not do to take the *Zeitgeist* as our authority, since contemporary people disagree about all of the pertinent issues and many phenomena are both characteristically modern and horrible. If we were Germans living in 1930, “getting with it” would be the last thing any sane person would do. There is also the mishmash or worse that results when an individual favors whatever bits of tradition happen to favor his mood, inclinations, or political program and he puts the bits together; such phenomena can range from secular *bar mitzvahs* to Visigothic blessings of same-sex unions conducted by Anglican bishops. One wonders whether even the authors of such concoctions take the results seriously; the rest of us are under no obligation to do so. Even here the criterion is pragmatic and aesthetic. Some people end up taking very gravely what others regard as campy jokes or examples of guerilla theater. (I here deal with postmodern developments within pre-existing traditions, not with postmodernism or genealogy as traditions in their own right.⁶³)

One would like some way of knowing in advance the practical consequences of proposed innovations, but we inevitably judge by results in fact (in the Anglican case, high-profile secessions among its more traditional adherents and a loss of over one third of its membership).⁶⁴ For the rest, we need to return to the rough ground of moral, political, and religious argument.

⁶² I do not know of anyone who holds this view explicitly, though there are plenty of people who act as if they did.

⁶³ On which, see MacIntyre, *Three Rival Versions of Moral Enquiry*.

⁶⁴ I calculate the decline of membership from 1968, when the House of Bishops declined to take action against Bishop Pike for his unorthodox theological views. For details on membership, see “Episcopal Church Reports Lowest Membership in 70 Years,” 2001, accessed online at: <http://www.catholicnewsagency.com/news/episcopal-church-reports-lowest-membership-in-70-years/>; David Virtue, 2011, accessed online at:

Traditionalists need to defend their stances not only as venerable, but also as true or valuable in a way that can be recognized today. That long-standing elements of our traditions should not easily be set aside is an important consideration, but no more than that. Traditionalists about marriage, for example, cannot rely on the antiquity of heterosexual marriage alone, but will have to appeal also to our need for an institution making regular provision for the procreation and the rearing of the next generation, and to the danger that admitting rival forms of “marriage” will undermine this institution by inviting heterosexuals to regard their marriages as no more binding than gay relationships.⁶⁵

<http://www.virtueonline.org/portal/modules/news/article.php?storyid=15087#Tx9SmKXIN6E>; Richard Yeakley, Religion News Service, 2011, accessed online at:

http://www.usatoday.com/news/religion/2011-02-16-church_growth_15_ST_N.htm.

On the importance of 1968 for the Episcopalian Church, see Eric A. Badertscher, *The Measure of a Bishop: The Episcopi Vagantes, Apostolic Succession, and the Legitimacy of the Anglican “Continuing Church” Movement*, 1998, accessed online at: <http://anglicanhistory.org/essays/badertscher/chapter1.pdf>, chap. 1 n. 6, and accompanying text.

⁶⁵ This essay was read to a meeting of the International Society for MacIntyrean Enquiry at Providence College in July 2011. I am indebted to the participants at that meeting, especially my student Luis Pinto de Sa, and to an anonymous reader for their comments.

Discussion Notes

Tara Smith's *Ayn Rand's Normative Ethics*: A Positive Contribution to the Literature on Objectivism?

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1. Introduction

Reviews of Tara Smith's *Ayn Rand's Normative Ethics*,¹ written by Objectivists, have been very positive. I believe that this is unfortunate. Smith faithfully paraphrases much of what Rand wrote about normative ethics, but distorts Rand's philosophy on pretty much any issue on which she goes beyond simple paraphrasing of Rand's statements. In many cases she directly contradicts Rand's own statements while pretending to be presenting Rand's philosophy.

In this discussion note I will point out some of the issues on which Smith has seriously distorted Rand's views that other Objectivist reviewers have either missed or have not discussed adequately. The two reviews of Smith's book I will specifically address are Stephen Hicks's 2007 review in *Philosophy in Review*,² and Carrie-Ann Biondi's 2008 review in *Reason Papers*.³

2. Conflicts of Interests

Ayn Rand's most revolutionary contribution to interpersonal ethics is the principle that there are no conflicts of interests among rational men. This principle is central to the Objectivist concept of selfishness, and is one of the principles that readers of Rand have had the most trouble understanding. For

¹ Tara Smith, *Ayn Rand's Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

² Stephen Hicks, "Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *Philosophy in Review* 27, no. 5 (October 2007), pp. 377-79.

³ Carrie-Ann Biondi, "Review Essay: Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *Reason Papers* 30 (Fall 2008), pp. 91-105.

any book that purports to be a presentation of Rand's normative ethics, a crucial part of its task is to give an elaborate explanation and defense of Rand's no-conflicts-of-interests principle, filling in the details of Rand's own cursory discussion.⁴ In evaluating such a book, I don't think there's any question more important than how well it succeeds in explaining and defending this principle. *Ayn Rand's Normative Ethics* disgracefully fails in this task.

Smith devotes only an eight-page section to the subject of conflicts of interest. Her central argument in this section is:

[E]ven when a person's desires are rational, the proper benchmark for calculating gains and losses to interest is not what a person would like but what he actually has. Realism demands that effects on a person's interest be gauged against his actual situation rather than against a wished-for situation. . . . If a conflict means that as one person's interest advances, another's must suffer, that is not what transpires in everyday cases in which individuals compete for a good that only one of them can obtain. For failing to achieve a goal cannot be equated with suffering damage to one's present position. Being turned down for a job is not the equivalent of losing your business; being passed over for another lover is not the equivalent of having your present lover die.⁵

Not only is this a very bizarre and obviously fallacious argument, but it also directly contradicts Rand's definition of value as "that which one acts to gain and/or keep."⁶ Rand's view of value explicitly does include a person acting to gain what he doesn't already have. Smith's argument amounts to implicitly and arbitrarily defining "interest" as a subset of value, confined only to that which one already has and acts to keep; conceding that conflicts of values among rational men are possible; and then insisting that conflicts of interests, by definition, are not. This does trivially follow from Smith's implicit definition of interest, but it has no similarity at all to what Rand meant by her principle.

If Smith really believes that her argument is what Rand intended, this raises an obvious logical question: Why did Rand limit her principle to say that there are no conflicts of interests among *rational* men? If "the proper benchmark" for someone's interests is "what he actually has," then it trivially follows that conflicts of interests are *never* possible, no matter how rational or

⁴ Ayn Rand, "The 'Conflicts' of Men's Interests," in Ayn Rand, *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 50-56.

⁵ Tara Smith, *Ayn Rand's Normative Ethics*, pp. 40-41.

⁶ Ayn Rand, "The Objectivist Ethics," in Rand, *The Virtue of Selfishness*, p. 25.

irrational the people involved. Even for those completely unfamiliar with Rand's argument in "The 'Conflicts' of Men's Interests," this logical difficulty should be sufficient to prove that Smith is badly misrepresenting Rand's argument, but Smith never says anything to address it.

In the rest of the section, Smith proceeds to paraphrase Rand's discussion of the issue, adding nothing further to what Rand has already said, and without explicitly connecting it to her own statement above. But Rand's argument, which rejects the idea of conflicts of interests based on the four considerations of reality, context, responsibility, and effort, applies to all of men's values, including goals of gaining what one doesn't already have. If Smith's paraphrase of Rand is read in the context of her previous statement, limiting the argument to "the proper benchmark [of] what he actually has," it becomes meaningless and trivial. Rand's crucial and revolutionary insight turns in Smith's hands into a game played with arbitrary definitions.

3. The Status of Kindness

In the final chapter of the book, Smith discusses the implications of Rand's ethics for "certain conventional virtues," including kindness. "Kindness" is an imprecise term, but its meaning, as Smith uses it, is synonymous with the virtue of benevolence, as explained by David Kelley.⁷ Smith repeats without attribution a simplified version of some of Kelley's arguments about the egoistic justification for benevolence, but then concludes that benevolence (or kindness, as she calls it) is nonetheless not a virtue. Smith's argument against kindness being a virtue, is that it does not guide all of a rational egoist's actions at all times; it does not apply when dealing with people who have proven themselves unworthy of kindness, which disqualifies it from being a virtue.

Smith's argument is based on a definition of virtue very different from Rand's, and also very different from the definition Smith had used up to that point in the book. Rand's definition of virtue is: "Value is that which one acts to gain and/or keep—virtue is the act by which one gains and/or keeps it."⁸ Since Smith does recognize that kindness is a means for a rational egoist to gain and/or keep his values, it is a virtue by Rand's definition. In Smith's discussion of the nature of virtue early in the book,⁹ she cites and elaborates on Rand's definition, without ever suggesting that the concept of virtue should be limited to only a narrow subset of Rand's definition, namely, those principles guiding all of a rational egoist's actions at all times. Nor does Smith ever mention such a narrow alternative definition in the later chapters

⁷ David Kelley, *Unrugged Individualism: The Selfish Basis of Benevolence* (Poughkeepsie, NY: The Institute for Objectivist Studies, 1996).

⁸ Ayn Rand, "The Objectivist Ethics," p. 25.

⁹ Smith, *Ayn Rand's Normative Ethics*, pp. 48-52.

discussing specific virtues. She suddenly and implicitly brings up this new, narrow definition in the last chapter, with no attempt to defend it, and serving no purpose other than to give her an excuse for rejecting kindness as a virtue.

Not only is this narrow definition of virtue arbitrary and contradictory to Rand's statements, it is also contradictory to at least two of the specific virtues Smith has discussed earlier in the book. Productiveness doesn't guide a rational egoist's choices and actions during his leisure time. Justice doesn't guide a rational egoist's choices and actions that are not related to other people.¹⁰ If we were to apply Smith's newly introduced narrow definition of virtue, these two could not count as virtues, either.

Biondi¹¹ tries to defend the application of Smith's narrowed definition of virtue, specifically in relation to productiveness, by arguing that productiveness does in fact guide even a rational egoist's leisure-time activities, because of the importance of developing the character traits conducive to productiveness. While Biondi is certainly right to suggest that productiveness is relevant to one's actions at some times outside of the time one is engaged directly in productive work, it is very far-fetched to claim that it applies to all of one's leisure activities at all times. Also, exactly the same argument would apply equally strongly to kindness; when dealing with people who have proven themselves unworthy of kindness, kindness doesn't directly guide a rational egoist's actions, but one's actions may still be relevant to developing the character traits conducive to kindness, and so kindness can still be relevant. There simply is no defensible logic to Smith's narrowed definition of virtue, or to her selective application of it to reject kindness as a virtue.

Unrugged Individualism, by David Kelley, is the definitive treatment of benevolence from an Objectivist perspective, and is of obvious relevance to any discussion of whether benevolence is a virtue (whether the writer chooses to use the word "benevolence" or to avoid it). Smith must have been aware of Kelley's book, and repeats some of its arguments. However, she makes it a point not to mention Kelley; to use a different word for the same concept; and, when rejecting Kelley's main conclusion and denying that kindness is a virtue, not to make any attempt to engage his arguments. Given this, and given the obvious fallacies Smith commits, it appears that her agenda in this section is not to clarify and defend Rand's ethics, but rather to demonstrate her factional loyalty to the Ayn Rand Institute (ARI) by attacking Kelley's view without mentioning him.

¹⁰ In his review, Hicks suggests that Rand intended the virtue of justice to apply to a rational egoist's treatment of himself, not only of other people; see Hicks, "Review of Tara Smith's *Ayn Rand's Normative Ethics*," p. 379. I disagree, but debating that would be outside the scope of this discussion note. The relevant point here is that the virtue of justice, *as explained and defended by Smith*, only applies to one's relations to other people, and therefore does not guide all of one's choices and actions at all times.

¹¹ Biondi, "Review Essay," pp. 97-98.

4. Morality and Emergencies

The ethics of emergencies is a subject on which Tara Smith has a long track record of distorting Rand's views. In a previous book,¹² Smith cited Rand's essay "The Ethics of Emergencies"¹³ as discussing "the status of rights during emergencies," a statement that Smith couldn't possibly have written if she had actually read "The Ethics of Emergencies" with any attention. In *Ayn Rand's Normative Ethics*, Smith continues this record with a section¹⁴ in which she attributes to Rand the idea that morality becomes inapplicable in emergency situations. Both Hicks and Biondi are rightly critical of Smith's discussion of this subject,¹⁵ but neither one of them is anywhere near as harsh as Smith deserves.

Rand, in "The Ethics of Emergencies," discusses only one difference that emergencies can make in ethical considerations: in emergency situations, the scope of help one could appropriately offer to others is much greater than in normal situations. She says nothing to suggest that there is any other difference; and regarding this one difference, she clearly states, "This does not mean a double standard of morality; the standard and the basic principles remain the same, but their application to [specific cases] requires precise definitions."¹⁶ This obviously and directly contradicts Smith's position that moral principles become inapplicable in emergency situations.

Attempting to get around Rand's statements, Smith offers a distinction between two types of emergencies, "metaphysical emergencies" versus "natural emergencies":

An emergency is metaphysical when external conditions paralyze a person's means of survival. He is plunged into physical elements in which human beings cannot survive, for instance, such as a flood, fire, or mudslide. . . . In such an emergency, . . . [m]orality is inapplicable. . . . The second type of emergency, in contrast, arises within what are broadly normal circumstances. The person is on dry land, for instance, not confronting the power of a tidal wave, earthquake, bombing, or pistol. Within such normal conditions, life-

¹² Tara Smith, *Moral Rights and Political Freedom* (Lanham, MD: Rowman & Littlefield, 1995), p. 118, n. 12.

¹³ Ayn Rand, "The Ethics of Emergencies," in Rand, *The Virtue of Selfishness*, pp. 43-49.

¹⁴ Smith, *Ayn Rand's Normative Ethics*, pp. 95-99.

¹⁵ Hicks, "Review of Tara Smith's *Ayn Rand's Normative Ethics*," p. 379; Biondi, "Review Essay," pp. 100-104.

¹⁶ Rand, "The Ethics of Emergencies," p. 47.

threatening crises can nonetheless erupt. . . . It is in these natural emergencies, I think, that the basic principles of morality remain the same, as Rand says in the passage from “The Ethics of Emergencies,” but their application may deviate from the norm.¹⁷

I agree with Biondi that this distinction is confused and unclear. It is also directly contradicted by Rand’s own definition of emergency: “An emergency is an unchosen, unexpected event, limited in time, that creates conditions under which human survival is impossible—such as a flood, an earthquake, a fire, a shipwreck.”¹⁸ Rand’s definition clearly coincides with what Smith calls “metaphysical emergencies”; even if it were possible to make some sense of Smith’s concept of “natural emergency,” it would clearly have no referents in common with Rand’s concept of emergency. Rand’s definition comes immediately after her statement, quoted above, that “the standard and the basic principles remain the same”; Rand is saying that the standard and basic principles of morality remain the same *in emergencies as she defines them here*, that is, in the situations Smith has classified as “metaphysical emergencies”—the exact opposite of the position Smith is trying to attribute to Rand.

I also agree with Biondi that Smith confuses matters further by conflating emergencies with life under a dictatorship, which does not even remotely fit Rand’s definition of emergency. Smith provides two quotations that purport to show that Rand regarded morality as inapplicable to life under dictatorships, and uses these as alleged support for attributing to Rand her position on emergencies; even if these quotations actually supported Smith’s claims regarding Rand’s view of morality under dictatorships (which, as I discuss below, they don’t), they still wouldn’t be of any relevance to the issue of morality in emergencies.

The idea that morality becomes inapplicable in emergency situations makes no sense, has no basis in anything Rand said, and directly contradicts what Rand actually said on the subject. Smith’s discussion is a muddled attempt to twist Rand’s words to fit Smith’s own view.

5. Is Morality Ever Inapplicable?

Given that Rand clearly did hold that the principles of morality remain unchanged in emergencies, is there any basis for attributing to her the idea that there are *some* situations—such as life under a dictatorship, or a confrontation with armed thugs—in which morality becomes inapplicable? Both Hicks and Biondi agree that Smith provided such a basis. But did she?

The only evidence Smith presents for attributing this view to Rand consists of two quotations. The first is the statement from Galt’s speech that

¹⁷ Smith, *Ayn Rand’s Normative Ethics*, pp. 97-98.

¹⁸ Rand, “The Ethics of Emergencies,” p. 47.

“Force and mind are opposites; morality ends where a gun begins.” Smith takes this statement as saying—and Hicks takes it as at least ambiguously implying—that morality is inapplicable to a victim’s decision on how to act when subjected to force, from dictators or thugs. Consider, however, the context of that statement:

Do not open your mouth to tell me that your mind has convinced you of your right to force my mind. Force and mind are opposites; morality ends where a gun begins. When you declare that men are irrational animals and propose to treat them as such, you define thereby your own character and can no longer claim the sanction of reason¹⁹

Clearly, what Rand is saying here is that the *initiator* of force can make no claims to moral or rational justification. There is nothing in this statement to suggest that the *victim* of force, in deciding how to respond, cannot apply moral principles.

The second quotation Smith provides is a statement from the book *Ayn Rand Answers*, in which Rand appears to say that morality is inapplicable to life under dictatorships. Biondi agrees that this quotation supports Smith’s interpretation regarding morality under dictatorships. The quotation, however, suffers from the same problem as do all quotations of Rand’s statements published posthumously in works edited by ARI-affiliated editors, who have proven themselves to be highly unreliable, often changing Rand’s words. It is highly problematic to use any quotation, attributed to Rand in any book edited by such editors, as evidence for attributing to her any philosophical position.

In the specific case of *Ayn Rand Answers*, the problem is even worse. Robert Mayhew, in his introduction to the book, states that “some (but not much) of my editing aimed to clarify wording that, if left unaltered, might be taken to imply a viewpoint that she explicitly rejected in her written works.”²⁰ So we know that some of Rand’s statements in the book were not just changed, but specifically changed to imply different philosophical viewpoints from Rand’s original words. The quotation Smith cites is supposed to be from the Q&A period of “Of Living Death,” Rand’s 1968 Ford Hall Forum speech. However, when a tape of this speech was offered for sale during the 1980s by Second Renaissance Books, it included only the speech itself, not the Q&A period, so there is no way to check what Rand actually said in answer to that question. There is no way to know whether Rand said that morality is fully applicable to life under dictatorships, or whether Mayhew decided that this

¹⁹ Ayn Rand, *Atlas Shrugged*, 35th Anniversary ed. (New York: Signet, 1992), p. 949.

²⁰ Robert Mayhew, “Introduction,” in *Ayn Rand Answers: The Best of Her Q&A*, ed. Robert Mayhew (New York: New American Library, 2005), p. x.

“implies a viewpoint that she explicitly rejected in her written works”—and so changed the words to say the opposite.

If tapes of the Q&A period are ever released, and if we ever find out what Rand actually said, it would still be an off-the-cuff remark Rand made in response to a question, without time thoroughly to consider the question and formulate her words carefully. It would not be at all clear that Rand would have said the same thing if she had written about it in an essay.

In sum, *Ayn Rand Answers* is completely worthless as evidence for attributing philosophical positions to Rand, even more so than Rand’s posthumously published statements in other ARI-edited books. Smith’s claim that Rand believed that there exist some situations in which morality becomes inapplicable, has no basis at all.

6. Conclusion

In his review, Hicks notes “the sometimes unrecognizable portraits of Rand’s philosophy circulating in popular and academic publications.”²¹ I completely agree that this has been a serious problem in discussions of Rand’s philosophy; unfortunately, contrary to Hicks, Smith’s book only exacerbates the problem.

The three issues I discussed here are three of Smith’s most egregious misrepresentations of Rand; they are not the only ones. As long as the book is accepted as the definitive academic presentation of Rand’s normative ethics, non-Objectivist readers are likely to take Smith’s distorted presentation of Rand as if it were accurate. Worse, some of the positions that Smith attributes to Rand—most notably, the idea of morality as inapplicable in emergencies—make no sense. In all three of the issues I discuss here, and on several other issues, Smith uses obviously fallacious arguments in a context that implies that she is presenting Rand’s own arguments. The result is that, as long as readers take Smith’s book as an accurate presentation of Rand, it can only work to reduce Rand’s credibility as a philosopher.

If Rand’s philosophy is ever to be accurately understood by anyone other than Objectivists, and if she is ever to be given the respect she deserves in academia, it is crucial that the problems with Smith’s book be pointed out publicly, as I have tried to start doing.

²¹ Hicks, “Review of Tara Smith’s *Ayn Rand’s Normative Ethics*,” p. 378.

Response to Eyal Mozes, “Tara Smith’s *Ayn Rand’s Normative Ethics*: A Positive Contribution?”

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1. Introduction

In this discussion note, we respond to Eyal Mozes’s critique of Tara Smith’s *Ayn Rand’s Normative Ethics* via his criticism of Carrie-Ann Biondi’s review of that book in *Reason Papers*.¹ We take issue with Mozes’s discussion of Ayn Rand’s non-conflicts-of-interest principle (NCIP) along with his discussion of the nature of moral virtue. We end by taking issue with his inappropriately moralized conception of philosophical discourse. Since we agree with many (though not all) of Mozes’s claims about emergencies and the scope of morality, we leave those topics undiscussed.

2. Conflicts of Interest

Mozes offers two objections to Smith’s discussion of the NCIP:

For any book that purports to be a presentation of Rand’s normative ethics, a crucial part of its task is to give an elaborate explanation and defense of Rand’s no-conflicts-of-interest-principle, filling in the details of Rand’s own cursory discussion. In evaluating such a book, I don’t think there’s any question more important than how well it succeeds in explaining and defending this principle. *Ayn Rand’s Normative Ethics* disgracefully fails in this task.²

We reject every element of this criticism.

¹ Tara Smith, *Ayn Rand’s Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006), hereafter *ARNE*; Carrie-Ann Biondi, “Review Essay: Tara Smith’s *Ayn Rand’s Normative Ethics: The Virtuous Egoist*,” *Reason Papers* 30 (Fall 2008), pp. 91-105.

² Eyal Mozes, “Tara Smith’s *Ayn Rand’s Normative Ethics*: A Positive Contribution to the Literature on Objectivism?” *Reason Papers* 35, no. 1 (July 2013), pp. 124-25.

The NCIP is one of a set of “non-conflicts of X” principles within Objectivism.³ Some of these principles lack formal names, but each one of them is a recognizable (and in principle nameable) claim within the system. Each of these principles, including the NCIP, involves two assertions, one positive and one negative: (1) something, X, is claimed to have a nature such that (2) properly conceived, no genuine X conflicts with any other X. Applied to the NCIP, this claim becomes: (1*) rational interests have a nature such that (2*) no rational interest conflicts with any other rational interest. Applied to the NCIP, Mozes’s objection asserts that a discussion of (2*) is more important than a discussion of (1*). In other words, a discussion of the non-conflicts of rational interests is more important than a discussion of the nature of the interests themselves.

As we see it, (2*) is just a deductive implication of a worked-out version of (1*), and an exposition of (2*) is just an account of how (2*) applies to hard cases. So (1*) is where the philosophical action is. Given the difficulty of providing a worked-out version of (1*), an author would entirely be justified in writing a book that focused only on (1*), or even on selected aspects of (1*), leaving the elaboration and application of (2*) for another work, possibly a work by another author.

In order to understand the NCIP, we’re obliged first to understand the nature of the interests covered by the principle, and then to see that they don’t conflict, and why. On the Objectivist view, virtue is among our basic interests—the means to and realization of every interest.⁴ If NCIP is true, then, this is so in large part because of the nature of virtue. So an account of virtue will be a crucial part of any account of (1*).

This brings us to Smith’s book and to Mozes’s objection to it. Smith’s book focuses on the nature of virtue and the virtues, and leaves discussion of the NCIP to a relatively brief section. In doing so, the book focuses on (1*)-type issues with the intention of clarifying them as a precondition for subsequent discussion (not necessarily by Smith) of (2*)-type issues. We don’t dispute that the NCIP is a distinct, possibly even revolutionary claim. But it is distinct and revolutionary (if it is) because of the revolutionary claims it presupposes about the nature of rationality, rational interests, and virtue. The latter topics are conceptually prior to a discussion of

³ On the Objectivist view, no genuine axiom conflicts with any other genuine axiom, no true definition conflicts with any other true definition, no genuine moral principle conflicts with any other genuine moral principle, and no genuine right conflicts with any other right.

⁴ Strictly speaking, Rand says that the cardinal values and their corresponding virtues (rationality, productiveness, and pride) “are the means to and the realization of one’s ultimate value, one’s own life,” but since the other virtues are themselves aspects of rationality, the claim in the text stands. See Rand, “The Objectivist Ethics,” in Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet, 1964), pp. 27 and 28.

the NCIP. Since any piece of writing must omit discussion of something, it makes no sense to fault an author—as Mozes does—for failing to discuss a conceptually posterior subject in preference to its conceptually prior counterpart.

The only argument Mozes gives for the demand he makes of Smith is that people have in the past misunderstood Rand’s NCIP, leaving it in need of extensive clarification. That is true enough, but it does nothing to establish the legitimacy of his demand. If Rand’s readers are confused about the NCIP, one plausible explanation for their confusion is their failure to understand the nature of the interests it presupposes. In that case, there is no good reason for objecting to a book that tries to explain the nature of those interests, which is precisely what Smith’s book does.

Mozes accuses Smith of “disgrace” for her failure to discuss the NCIP in what he regards as an adequate way. In making this accusation, he seems to forget that he himself admits that the confusions at issue began with what he calls Ayn Rand’s “cursory discussion” of the principle. He is right to call it cursory. The direct argument for the NCIP takes all of three sentences in John Galt’s Speech in *Atlas Shrugged*.⁵ If it is a disgrace to expect understanding of the NCIP in eight pages of a book like Smith’s,⁶ why is it not a disgrace to expect understanding of the same principle in three sentences of a hyperbolic speech in a novel? But Rand expected just that.⁷ If Mozes is so eager to level moralized accusations for failures of exposition and understanding, perhaps he should begin with their source.

Mozes’s second objection asserts that to the extent that Smith does discuss the NCIP, her discussion offers a bizarre and fallacious argument that ultimately trivializes it. Once again, we disagree. The disagreement in this case turns on the proper interpretation of the five-sentence passage of *ARNE* that Mozes quotes:

[E]ven when a person’s desires are rational, the proper benchmark for calculating gains and losses to interest is not what a person would like but what he actually has. Realism demands that effects on a person’s interest be gauged against his actual situation rather than against a wished-for situation. . . . If a conflict means that as one person’s interest advances, another’s must suffer, that is not what

⁵ Ayn Rand, *Atlas Shrugged* (New York: Signet, 1957), p. 948.

⁶ Tara Smith, *ARNE*, pp. 38-46.

⁷ The first sentence of Rand’s essay “The ‘Conflicts’ of Men’s Interests” asserts: “Some students of Objectivism find it difficult to grasp the Objectivist principle that ‘there are no conflicts of interest among rational men’” (Rand, *The Virtue of Selfishness*, p. 57). The internal quotation comes from Galt’s Speech in *Atlas Shrugged*, p. 948. The implication seems to be that students of Objectivism should have been able to grasp the principle simply by reading Galt’s Speech.

transpires in everyday cases in which individuals compete for a good that only one of them can obtain. For failing to achieve a goal cannot be equated with suffering damage to one's present position. Being turned down for a job is not the equivalent of losing your business; being passed over for another lover is not the equivalent of having your present lover die.⁸

We see nothing bizarre or fallacious about the quoted passage. In fact, what Smith says in the passage is not an "argument" at all, but merely an observation: the passage says that a person cannot be said to lose in a transaction what he never had in the first place, so that it is wrong to claim that a person's interests are harmed when he fails to get from a transaction what he lacks but wishes to get from it. We agree with her, and do not see how Mozes has managed to interpret the passage so as to make the claims he makes about it.

Mozes goes on to claim that the quoted passage contradicts Rand's definition of "value" as "that which one acts to gain and/or keep."⁹ We see no contradiction here (or definition, for that matter). Smith is not denying that a value is something one acts to gain and/or keep. She is denying, correctly, that someone can lose what he never had, or be harmed by the failure to get something, where the failure to get the thing is described as a loss simply because the person expected to gain it in a transaction but failed to.

In order to make the issue more concrete, consider an example. Suppose that Karl, upon meeting Ayn for the very first time, dispenses with the formality of a greeting and demands that Ayn provide him with a home-cooked meal, which Karl goes on to describe in great detail. Suppose that Ayn refuses and walks away. Now suppose that Karl infers that the preceding exchange is an instance of the "conflict of man's interests": for after all, Karl's interest consisted in getting a free meal, whereas Ayn's interest consisted in rejecting Karl's demands. Since (Karl concludes) both interests could not be realized without subversion of the other, Karl and Ayn must have been involved in a "conflict of interests." And since Karl's interest was the one not realized in the exchange, he concludes that he is the one who "lost out" because of the exchange. Indeed, he concludes, people like him are generally the "losers" in exchanges *like* this.

Smith's observation identifies the fallacy in Karl's thinking. The fallacy consists in Karl's thinking that he had an entitlement to Ayn's labor or goods such that Ayn's failure to satisfy Karl's demand made Karl "lose out." But if Karl never had such an entitlement, Ayn's "failure" to satisfy Karl's demand is not what leaves him worse off. What leaves him worse off is his

⁸ Mozes, "Tara Smith's *Ayn Rand's Normative Ethics*," p. 125, citing Smith, *ARNE*, pp. 40-41.

⁹ Mozes, "Tara Smith's *Ayn Rand's Normative Ethics*," p. 125.

making the demand, which wasted time that might have been employed more profitably—for instance, in making a meal of his own. The source of the conflict here is Karl’s defective character, not Ayn.

Mozes’s misinterpretation of Smith’s claim obviates the need for a lengthy discussion of the “obvious logical question” he asks of her. We think it more obvious on purely textual grounds that Smith is aware of Rand’s restriction of the NCIP to rational persons (pursuing rational interests). Nothing that Smith says about the benchmark for gain/loss requires a denial of Rand’s restriction.

3. The Nature of Virtue

In her book, Smith offers a two-step argument regarding virtue and kindness, respectively. With respect to virtue, she asserts what we call the lifespan criterion of virtue¹⁰:

No positive trait counts as a virtue unless it (i) guides the agent’s every action across the length of a natural human lifespan, (ii) can be expressed in the agent’s every action across a natural human lifespan, and (thereby) (iii) promotes the agent’s good across a natural human lifespan.

Given this criterion, she argues that kindness, though conventionally regarded as a virtue, is not one, since it fails the lifespan criterion: kindness guides some actions but not others, can legitimately be expressed in some actions but not others, and sometimes promotes the agent’s good but not always. Mozes rejects both steps of Smith’s argument, that is, the lifespan criterion itself, and by implication its application to kindness. We agree with Smith on both counts.

Mozes says nothing about the underlying rationale for the lifespan criterion, but offers what he takes to be a counter-example to it. If we accept the lifespan criterion, he argues, we cannot account for the distinction between productiveness and leisure activity. It is obvious that productiveness is a virtue, but it is equally obvious that leisure activity is a need. Productiveness does not guide leisure activity (he claims), and leisure activity seems not to express productiveness. It therefore follows that productiveness fails the lifespan criterion. Having made this argument, however, Mozes qualifies it by conceding that productiveness applies to *some* cases of leisure activity, insisting that it is “very far-fetched” to think that it can apply to *all*.¹¹ His

¹⁰ The coinage is ours, not Smith’s, as is the precise wording of the formulation that follows. Both of us worked out a version of the lifespan criterion prior to and independently of reading Smith’s work, and were gratified to see that she had come, independently of us, to a similar conclusion.

¹¹ Mozes, “Tara Smith’s *Ayn Rand’s Normative Ethics*,” p. 127.

argument therefore turns entirely on those leisure activities that can in no sense be thought to be guided by or express productiveness. *Those* activities, whatever they are, are incompatible with the exercise of productiveness.

We disagree. On Rand's view, which we follow and which Smith seems to be following, "[p]roductive work is the central purpose of a rational man's life, the central value that integrates and determines the hierarchy of *all* his other values."¹² Productiveness, in turn, is the virtue that enables the agent to give productive work this central and privileged place across a lifespan. The essential interpretive (and philosophical) issue at stake here concerns the relation between productiveness (the virtue) and productive work (the activity). Must every instance of productiveness be an instance of productive work? Must a productive person *qua* productive always be working? Our answers to both questions are "no."

Let us begin by distinguishing productive work from leisure. A person engaged in productive work is by definition producing while so engaged. By contrast, a person at leisure is at rest from productive work, that is, not working while at leisure. The distinction here applies to actions or activities, not places. A person can be at his workplace but on break or doing nothing; if so, he's at leisure. The same person may be lying in bed, awake, because he insists on solving a work problem, or be doing the same while on vacation; if so, he's engaged in productive work. Conceived in this way, the distinction between productive work and leisure activity is exclusive. Either a given activity is a case of productive work *or* it is a case of leisure, but not both.

Productive work, however, is itself to be distinguished from productiveness. Productive work is an activity. Productiveness is a virtue—that is, a disposition to act a certain way by following a set of principles. One of these principles is recognition of the centrality of productive work to a good life. But another is recognition of the fact that a person cannot always be producing and remain alive, much less do so and produce *well*. Work itself requires stoppages whose purpose is regeneration not just of the capacity for further work, but of the capacity to keep work *central*. To keep productive work central to life, a person must on occasion stop—*fully* stop—producing. He must grasp the exclusive nature of productive work and leisure, and arrange the two sets of activities so that productive work remains central, while leisure contributes optimally to its centrality while retaining its identity as leisure. He must grasp that while work is central to life, it is not exhaustive; at the same time he must grasp that work is central as opposed to peripheral. The virtue of productiveness is the life-long disposition to strike this balance in precisely the right way. It is (among many other things) a life-long commitment to observing the mean between indolence and workaholism. But observance of that mean *demand*s that one engage in leisure that involves *no*

¹² Ayn Rand, "The Objectivist Ethics," in Rand, *The Virtue of Selfishness*, p. 27; our emphasis with Rand's own emphasis omitted.

work. To paraphrase an old proverb: All work and no play make Jack an unproductive person. The virtue of productiveness doesn't just tell Jack to work. It tells him, in the name of productive work itself, to *stop* working.¹³

Understood in this way, the virtue of productiveness can be expressed in leisure activity by *setting the terms* of leisure. At the most general level, the virtue of productiveness determines what kind of leisure is permissible, of what duration, how often, at what times, with what frequency, with what kind of people (if any), and at what sorts of places. It demands that leisure make a positive contribution to the agent's productive life, and thus guides the leisure activities themselves, ruling some in, and ruling others out. A person who fails to balance productive work and leisure in the relevant way—when doing so is in his control—violates the virtue of productiveness. He is not productive, regardless of his unit-output, because he has failed to put productive work in its proper place in his life. Put in summary form: A rational agent has a productive plan for his life as a whole, in which leisure is regarded as a subordinate part of this whole, and leisure's place in the whole is justified by the causal contribution it makes to the overall plan.

A musical analogy might help to convey this. Leisure, we might say, is analogous to a rest—a compositionally scheduled silence—in a piece of music. The placement, duration, and rationale of a rest arises from the contribution it makes to the music, and is integrated into the music in much the way that leisure is integrated into the productive life of a virtuous person. But it is the music that plays the determinative and integrative role in the piece, just as productive work does in the life of a productive person.¹⁴ A *life* of leisure is not a productive life any more than John Cage's *4' 33"* is a piece of music.

Or consider an example—sleep. A productive person has the need for a specific kind and amount of sleep: the right kind and amount is pleasant, and facilitates both health and productiveness; the wrong kind does the reverse. Furthermore, sleeping is a matter of volitionally formed habit and principle; people don't automatically do what's necessary to get the kind and amount of sleep they optimally need. On our view (and presumably Smith's), sleep gets its point and value from the contribution it makes to productiveness: we sleep to be productive, not the reverse. The requirements of productiveness set the terms for sleep, guiding the many decisions that need to be made about it: how much to get, when to go to bed and when to rise, with whom (if anyone) to

¹³ We assume here that leisure is a viable option for Jack; we acknowledge that in some cases of desperate poverty, it may not be. For an instructive picture of a productive person wholeheartedly at leisure, see the depiction of Howard Roark in Ayn Rand, *The Fountainhead* (New York: Signet, 1971), Part IV, chapter 9. On our view, what Dominique describes as Roark's cat-like relaxation in that chapter is not an instance of productive *work*, but is an instance of *productiveness* (p. 586).

¹⁴ It's worth noting that some pieces of music *end* with rests; perhaps a life should end the same way. Thanks to Ernest Bady for helping us to see this point.

sleep and under what conditions (e.g., where and how), how to handle the many obstacles to good sleep (from insomnia to noise), and why all of the preceding is the case. A person is not actively engaged in productive acts while asleep,¹⁵ but he makes *productive use of his time* if he acts consistently on good sleeping habits. And if productiveness can guide and be expressed in *sleep*, we think it can guide and express any leisure activity.¹⁶ Comparable claims cannot be made for kindness, contrary to Mozes's suggestion.

With these claims in hand, we can respond briefly to Mozes's other objections. He objects, firstly, that Smith rejects Rand's definition of virtue—"virtue is the act by which value is gained and/or kept"—which he seems to interpret to mean that literally every life-promoting act is a separate virtue. We would contest that the quoted claim is properly speaking a definition, but that point aside, Mozes's interpretation of the claim cannot be right. There is a clear difference between discrete life-promoting acts and standing traits of character of the sort that Smith (and everyone else, Rand included) calls virtues. The latter make a more fundamental contribution to survival than any given action. The *most* fundamental contribution is made by traits of character that meet the lifespan criterion. It therefore makes perfect sense to say that virtues are "means to and the realization of" the agent's life (as Rand does)¹⁷ because they persist as beneficial dispositions to act across the *whole* of the agent's lifespan.

4. Philosophical Debate and Moral Judgment

We cannot end our response to Mozes without objecting to the adverse moral judgments of Smith he makes throughout his essay. In his discussion note, he describes Smith as "pretending to be presenting" Rand's view, and as "disgracefully" failing to do so accurately. He asserts that she is playing a "game"; that she has plagiarized David Kelley's work on benevolence¹⁸; that her arguments are merely an "excuse" for partisanship;

¹⁵ Not even if he dreams about work during sleep. In that case, the work begins when the agent uses the dream for a productive purpose once awake.

¹⁶ Sleep is not, of course, a leisure *activity*, but on our view it helps to clarify the nature of leisure because like leisure, it involves work stoppage. For a view involving an instructive set of comparisons and contrasts with ours, see Josef Pieper, *Leisure: The Basis of Culture* (Indianapolis, IN: Liberty Fund, 1952).

¹⁷ Rand, "The Objectivist Ethics," in Rand, *The Virtue of Selfishness*, p. 27.

¹⁸ As editors of *Reason Papers*, we were, on reading this claim, initially inclined to demand its deletion. The textual evidence for Mozes's claim is not at all obvious to us, and David Kelley tells us in conversation that it is not obvious to him, either. Beyond this, an accusation of plagiarism is not appropriately made in passing while discussing a separate issue. Being parties to the controversy, however, we were reluctant to demand substantive alterations to a discussion piece critical of a review one of us had written. We therefore decided to publish Mozes's critique essentially as submitted.

that she has “a long record of distortion” of Rand’s views on emergencies; that her theorizing is a dishonest attempt to “twist” Rand’s words; and that her claims are not just false, but “egregious misrepresentations.” Every one of these claims implies that Smith’s arguments are not just mistaken, but immoral.

As it happens, both of us agree with Mozes as to the moral status of the Ayn Rand Institute (ARI). Like him, we regard ARI as a fundamentally immoral organization, and regard all of those associated with it, including Smith, as (in varying degree) complicitous in its immorality.¹⁹ We therefore have no objection to anyone’s passing adverse moral judgments on ARI as an institution, and have no objection to anyone’s passing adverse moral judgment on the individuals associated with it. It doesn’t follow from this, however, and isn’t true, that adverse moral judgments can be made about a particular piece of scholarship simply because the scholar is affiliated with ARI. We don’t think Mozes provides any evidence for his moral accusations against Smith’s book over and above the sheer fact of Smith’s affiliation with ARI.

We would insist that judgments about scholarship be tailored to the evidence for them. It follows that the merits of scholarship by ARI-affiliated scholars must be recognized for what they are on a case-by-case basis, rather than judged adversely simply because of its connection with ARI. “When one pronounces moral judgment,” Rand writes, “one must be prepared to answer ‘Why?’ and to prove one’s case—to oneself and to any rational inquirer.”²⁰ As it stands, we don’t think that Mozes has proven his case, whether to our satisfaction or to that of any other rational inquirer.²¹

¹⁹ The best statement of the reasons for this judgment were given by the late George Walsh in his “A Statement,” *The Intellectual Activist* 5, no. 3 (November 17, 1989), p. 731.

²⁰ Ayn Rand, “How Does One Lead a Rational Life in an Irrational Society?” in Rand, *The Virtue of Selfishness*, p. 84.

²¹ Thanks to Kate Herrick, David Kelley, Shawn Klein, and Will Thomas for helpful discussion.

Is It Necessary to Be Necessary?

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Gordon Barnes begins his article “Property and Progress” by stating, “According to Schmitz, the original appropriation of resources as property is necessary to prevent the tragedy of the commons.”¹ I welcome Barnes’s article. I am grateful for the chance to reflect on the methodological issue it raises. I also welcome the chance to add this clarifying discussion note.

I launched an ongoing series of essays roughly twenty-five years ago with an article that was published in 1990, called “When Is Original Appropriation *Required*?”² At the time, my answer to the title question was: Appropriation is required when leaving enough and as good for future generations is required, and when leaving resources in the commons would not leave enough and as good for future generations. Importantly, even then, what I meant by original appropriation was not the more specific idea of appropriating for private use, but more generally any way of removing resources from a state where they are subject to tragic degradation. The ecological and philosophical literatures that I was bringing together were innocent of each other at the time, so the article was news in its day. So far as I know, the central point is no longer regarded as controversial. In any case, I moved on. I haven’t changed my mind about the central point, but still, the article was an overture, not a grand finale. My aim here is to indicate how my thinking evolved from there.

Suppose we notice people driving on the right-hand side of the road, and ask what can be said on behalf of their doing that. We note that coordinating on a convention of driving on the right solves a problem. We then note that right-side driving is not necessary; people could just as well have solved the problem by driving on the left. Finally, we acknowledge that whether right-side driving is necessary is beside the point. A convention’s justification typically has nothing to do with whether the convention is necessary.

¹ Gordon Barnes, “Property and Progress,” *Reason Papers* 34, no. 2 (October 2012), p. 144.

² David Schmitz, “When Is Original Appropriation *Required*?” *The Monist* 73 (1990), pp. 504-18.

As Barnes stresses, nowhere do I defend the claim that appropriating resources as property is necessary in order to avoid commons tragedies. This has to be correct. To see why, let us start by asking: What would count as a proper counter-example to a claim of necessity? Here is a proper counter-example: Most shared kitchens are commons tragedies, yet roommates sometimes solve the problem, often without any of them asserting a right to exclude free-riding roommates. (There may even be literally open-access households that do not exclude complete strangers, and thus do not assert even a *communal* right to exclude.)

I have offered such counter-examples, and less prosaic ones too, in a series of articles, some of which Barnes cites. When I document in those articles the existence of functional communal regimes, my point is that communal management is justified in those cases. Why? Not because communal management is necessary, but because it solves the problem. Communal management, when it works, is still only one solution among many, but a solution need not be unique in order to count as a solution.

What does it take to justify an institution? In my “Justifying the State,” I distinguish emergent from teleological justification.³ A paradigm of an arrangement justified in terms of how it *emerged* is one to which the people involved consented to it. *Teleological* justification is justification in terms of whether an arrangement solves a problem. While much of my work on property institutions has been historical, all of it has been in the service of what I call teleological justification. So, I treat property institutions as solutions to the generic problem of establishing a fabric of mutual expectations that helps people to live together and trust each other enough to show up at the market with goods and services that other people want. Specifically, when property institutions are working, they secure our possessions well enough to make it safe for us to be a part of the community, and put us in a situation where the key to personal prosperity is to devise ever more effective ways of making the people around us better off. And when they are working, they are justified.⁴

Whether an institution solves a problem does not depend on whether it is necessary. Consider a simple mathematical truth about what it means for one variable to be a function of another: Whether y is a function of x does not depend on whether a change in x is necessary for a change in y . Philosophy made a vast mistake when it fell into the habit of assuming that necessary and sufficient conditions are where the action is.

By 1995, when I published *Rational Choice and Moral Agency*, I was touting “supporting” conditions as a more practically relevant concept for

³ David Schmidtz, “Justifying the State,” *Ethics* 101 (1990), pp. 89-102.

⁴ Or so I argue in my “Functional Property, Real Justice” (Keynote Address, European Liberal Forum, Berlin, Germany, November 15, 2009), available online at: <http://www.davidschmidtz.com/sites/default/files/articles/functionalproperty.pdf>.

philosophers studying teleological justification.⁵ A supporting condition is a condition sufficient in the absence of defeaters. *Elements of Justice*, published in 2006, treats theories as maps rather than as attempts at philosophical analysis, thereby putting even more distance between me and the idea that specifying necessary and sufficient conditions is the proper aim of philosophy.⁶ Especially when we are pondering the functionality of actual property institutions, we are pondering an empirical realm where it is rare, and in any case contingent, for a problem to have exactly one solution.

Accordingly, I assert in “The Institution of Property”⁷ and its sequel, “Reinventing the Commons,”⁸ and again in *Social Welfare and Individual Responsibility*: “Private property enables people (and gives them an incentive) to take responsibility for conserving scarce resources. It preserves resources under a wide variety of circumstances. It is the preeminent vehicle for turning negative-sum commons into positive-sum property regimes. However, it is not the only way.”⁹ Then, I prove with real cases that this is not the only way, discussing at length circumstances in which communal property institutions have solved the problem well enough.

Toward the end of his article, Barnes states, after quoting *Social Welfare and Individual Responsibility*:

By giving people control over resources, the institution of property gives people some control over their well-being. If they use their property to produce, then they will prosper, whereas if they do not use their property to produce, then they will not prosper. This control over one’s own prosperity encourages one to internalize responsibility for one’s own prosperity, and that, in turn, makes people more productive than they otherwise would be. No one would doubt that property often has this effect, but is there any reason to think that property is the *only* way to get people to internalize responsibility? Schmitz offers no argument for this supposition.¹⁰

⁵ David Schmitz, *Rational Choice and Moral Agency* (Princeton, NJ: Princeton University Press, 1995).

⁶ David Schmitz, *Elements of Justice* (New York: Cambridge University Press, 2006).

⁷ David Schmitz, “The Institution of Property,” *Social Philosophy & Policy* 11, no. 2 (1994), pp. 42-62.

⁸ David Schmitz and Elizabeth Willott, “Reinventing the Commons: An African Case Study,” *University of California at Davis Law Review* 36 (2003), pp. 203-32.

⁹ David Schmitz and Robert E. Goodin, *Social Welfare and Individual Responsibility: For and Against* (New York: Cambridge University Press, 1998), p. 46.

¹⁰ Barnes, “Property and Progress,” p. 149.

Barnes is putting it mildly when he says that I do not argue *for* this claim. My objective in proving that private property in particular is not the only way to internalize responsibility is to emphasize that being necessary is not necessary, and thus to be clear about what truly matters.

The justification of an institution does not turn on whether it is necessary. To show that an institution of property is solving a problem is to do what it takes—and all it takes—to offer a *supporting* condition for the institution. That is all a philosopher can do in the messy empirical world where justifications of real-world institutions stand or fall.

It Is Necessary to Be Relevant: Reply to Schmitz

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David Schmitz argues that a convention is justified if it solves a problem, and this does not require that the convention be necessary or that it be the only way to solve a problem.¹ However, I believe that this misrepresents the issues involved in the debate over private property. In order to demonstrate this, it will be necessary for me to restate my objection to Schmitz in another way. To that end, I will begin by introducing some new terms and concepts. This will require a brief digression, but I believe it will help to clarify the shape of the debate.

We need to distinguish two kinds of reasons for an action or policy, which I will call *contrastive reasons* and *noncontrastive reasons*. A contrastive reason for an action or policy, A, is a reason for doing A *rather than some alternative*, B. Thus, for example, the need for hydration would be a reason for drinking water *rather than drinking beer*. A noncontrastive reason is a reason for an action or policy, A, *simpliciter*, without any contrast with an alternative course of action. For example, a desire for an alcoholic beverage would be a noncontrastive reason to drink beer, but it would not be a *contrastive* reason to drink beer *rather than wine*. Of course, a desire for an alcoholic beverage would be a contrastive reason to drink beer *rather than water*. This example illustrates the fact that a reason can be a (good) contrastive reason with respect to one pair of alternatives, but not a good contrastive reason with respect to another, different pair of alternatives. In the example above, the desire for an alcoholic beverage is a good contrastive reason to drink beer *rather than water*, but it would not be a good contrastive reason to drink beer *rather than wine*. The reason for this should be clear. If one's only desire is to drink an alcoholic beverage, then that desire can be satisfied equally well by drinking beer or wine, so the desire to drink alcohol is not a good reason to perform one of these actions *rather than the other*. The desire to drink alcohol could be a good *noncontrastive reason* to drink beer, but not a good *contrastive reason* to drink beer *rather than wine*. We can capture the same basic point in terms of appropriate answers to questions

¹ David Schmitz, "Is It Necessary to Be Necessary?" *Reason Papers* 35, no. 1 (July 2013), pp. 141-44.

that I might ask you. If I ask you, “Why are you drinking beer?” then it would suffice to say, “I wanted an alcoholic beverage.” But if I ask you, “Why are you drinking beer *rather than wine*?” then it would *not* suffice to say, “I wanted an alcoholic beverage.” In order to give a good contrastive reason for drinking beer rather than wine, you would need to say something more here.

I trust that this is clear. Having made this distinction between contrastive and noncontrastive reasons, it is worth noting that, in one sense, it appears that all reasons are really contrastive reasons, *at least with respect to the appropriately specified pair of alternatives*. This is because any reason for doing A will be, *ipso facto*, a reason for doing A *rather than not doing A*. If we include omissions among the possible courses of action, then it follows that all reasons are contrastive reasons, at least with respect to their corresponding omissions.

In the context of any debate between two actions or policies, it is necessary to offer contrastive reasons that contrast the appropriate alternatives—the alternatives that are relevant in the context of the debate. An example will illustrate this point. Suppose that my wife and I own a painting that has been stored in our basement for some time, and I decide to bring it upstairs and hang it. There are two available spaces on the wall in our living room: one is above the fireplace and the other is above the couch. I decide to hang the painting above the fireplace. When my wife comes home and sees the painting, she asks me, “Why did you hang the painting over the fireplace rather than over the couch?” In reply, I say, “Hanging it over the fireplace is much better than leaving it in the basement, because hanging it over the fireplace makes it visible to our guests, rather than wasting it in the basement.” In this example, I have offered a contrastive reason, but it should be obvious that I have contrasted the wrong alternatives. I have given a reason for hanging the painting over the fireplace *rather than leaving it in the basement*, but in the context of this discussion with my wife, these are not the relevant alternatives. The relevant alternatives are hanging the painting over the fireplace and *hanging the painting over the couch*. Thus, my reply commits a fallacy of relevance. Here is another way to put the same point. Achieving the goal of displaying the painting for our guests might be a good reason for hanging the painting over the fireplace *rather than leaving it in the basement*, but it is not a good reason for hanging the painting over the fireplace *rather than hanging it over the couch*, and that is because either of these latter two alternatives will achieve the goal of displaying the painting for our guests.

Let’s state this in the language of contrastive and noncontrastive reasons: If I say that displaying the painting for our guests is a reason to hang it over the fireplace, without contrasting any specific alternative (except not doing so), then this would be a good *noncontrastive* reason for doing this. Likewise, if I say that displaying the painting for our guests is a reason to hang it over the fireplace *rather than leaving it in the basement*, then that would be a good *contrastive reason* for this action *relative to the alternative of leaving it in the basement*. However, if I say that displaying the painting

for our guests is a reason to hang it over the fireplace *rather than hanging it over the couch*, then that is simply false, since the goal that I have given as my sole reason for my action is a goal that could be achieved by either of the specified alternatives. I trust that this is all clear and uncontroversial.

When someone gives a reason for an action or policy that fails to contrast the relevant alternatives, then he has committed a fallacy. For lack of a better phrase, I will call this fallacy *the fallacy of irrelevant alternatives*. There are actually two ways in which the fallacy can be committed, or perhaps two ways of understanding the act of committing it. If two people are debating whether to adopt policy A or policy B, then in the context of that debate, what is called for is a contrastive reason for adopting policy A *rather than* B, or *vice versa*. To offer either a noncontrastive reason for one of these policies, or a contrastive reason that contrasts two *different* alternatives, like A and C, is to commit the fallacy of irrelevant alternatives. With all of that said, I can now restate my critique of Schmidtz in what I hope will be more helpful terms.

My principal objection to Schmidtz's defense of private property is that he commits the fallacy of irrelevant alternatives. In his first article on this subject, Schmidtz argues, at length, that the institution of private property is better than an unregulated commons.² In the process, he gives several reasons why private property is preferable to an unregulated commons. If the present debate over private property were a debate between the partisans of private property and the partisans of an unregulated commons, then this would be appropriate. However, that is not the current debate over private property. The current debate over private property is a debate between the partisans of private property and the partisans of some form of *common ownership*. In the context of this debate, to offer reasons to prefer private property to an unregulated commons is to commit the fallacy of irrelevant alternatives, as I have described it above. This is especially clear in Schmidtz's earliest article on this subject. However, the fallacy recurs in his more recent work as well. Many of Schmidtz's examples contrast a completely unregulated commons with the advent of private ownership, and the implied inference is that the improvement brought by private property over an unregulated commons justifies private property.³ This inference exemplifies the very same fallacy—the fallacy of irrelevant alternatives. This is what is wrong with Schmidtz's defense of private property.

² David Schmidtz, "When Is Original Appropriation Required?" *The Monist* (1990), pp. 504-18.

³ See especially David Schmidtz, "The Institution of Property," in David Schmidtz, *Person, Polis, Planet: Essays in Applied Philosophy* (Oxford: Oxford University Press, 2008), pp. 193-210. Schmidtz's examples in that article all compare cases of unregulated commons with the advent of private property.

In his response to my critique Schmidtz suggests, very subtly, that he never intended to defend *private* property as such, but only the removal of resources from the commons. It is difficult not to see this as a bait-and-switch tactic. If one discusses the problem of original appropriation and claims to be addressing that problem, then one's audience will assume that one is discussing the appropriation of *private property*. If that is not what Schmidtz intended, then he should have made that much clearer from the outset. Otherwise, his choice of terms tacitly suggests that he is defending the institution of *private* property. Be that as it may, I hope to have made it clear that if one wants a good defense of the institution of *private* property, one will not find it in the work of David Schmidtz.

Review Essays

Review Essay: Allan Gotthelf's *Teleology, First Principles, and Scientific Method in Aristotle's Biology*
and James G. Lennox and Robert Bolton's (ed.) *Being, Nature, and Life in Aristotle*

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Although readers of *Reason Papers* are no doubt familiar with Allan Gotthelf's extensive efforts aimed at a more widespread appreciation of Ayn Rand's philosophical thought, he is best known among historians of philosophy and science for his contributions to the understanding of Aristotle's biological works, which have shed much light on Aristotle's scientific methodology, epistemology, and metaphysics. Two new books allow us to take account of Gotthelf's contributions to Aristotelian studies. The first is a collection of Gotthelf's most important papers on Aristotle.¹ Although the papers were written independently, there is little superfluous repetition, and taken together they constitute a comprehensive and coherent account of Aristotle's biology and its philosophical significance. The second, which has its origin in a 2004 conference in Gotthelf's honor, is a collection of papers on Aristotle, most of which focus on themes that Gotthelf himself has discussed.² Some of the papers further his thought, taking it in new directions; others depart from Gotthelf in philosophically interesting ways.

Gotthelf believes that one of his most important contributions to Aristotelian studies lies in his account of teleology in the biological writings. For this he gives credit to Rand (p. viii) (who personally led Gotthelf to the study of Aristotle), for she had argued that scientific explanation must identify potentials inherent in natures. This was in contrast to the predominant empiricist strategy of taking explanation to be a matter of subsuming an

¹ Allan Gotthelf, *Teleology, First Principles, and Scientific Method in Aristotle's Biology* (Oxford: Oxford University Press, 2012).

² James G. Lennox and Robert Bolton, eds., *Being, Nature, and Life in Aristotle: Essays in Honor of Allan Gotthelf* (Cambridge: Cambridge University Press, 2010).

observed phenomenon to observed regularities. The second major contribution that Gotthelf understands himself to have made in the area of Aristotelian science is having worked with James Lennox to show how, appearances to the contrary, the explanations to which the biological treatises are intended to lead, and that Aristotle offers in a partial form, conform to the general structure of demonstration as laid out in Aristotle's *Posterior Analytics*. A crucial impetus behind all of Gotthelf's work in Aristotle's biology can be found in the pioneering work of David Balme, who set the example of closely reading the biological works with an eye to what Aristotle is actually up to within them, as opposed to reading them with an eye to seeing how they conform to common presumptions of what Aristotle is doing. Fittingly, Gotthelf's collection is dedicated to the memories of both Rand and Balme.

In the first essay of *Teleology*, "Aristotle's Conception of Final Causality," Gotthelf works through the interpretation of Aristotelian teleology with which he is most commonly associated: Aristotle's view is that in order to explain a feature of a natural substance, one must appeal to an "irreducible potency for form." On this account, the functioning or development of a biological organ, for example, cannot be explained on the basis of underlying material or chemical processes alone. Rather, one must appeal to the nature of the organic whole of which it is a part. This is not, as other scholars have suggested, a concession to the pragmatic aspects of explanation, or to the nature of the human mind and its dealings with the world; the potential being actualized is a feature of reality over and above the material constituents that underlie it. Gotthelf supports his reading with a close analysis of the relevant texts. This essay is essential reading, as it is the best defense of the traditional reading of Aristotle as positing irreducible biological natures.

The traditional interpretation of Aristotelian teleology is, however, more robust than that of Gotthelf, for it takes the actuality correlative to an irreducible potentiality to be something of value, a *good*. This might seem to be an unwarranted importing of normative notions into natural science, but, as Rand puts it, "every 'is' implies an 'ought.'"³ The ought dimension of things is found in the actuality; to say that a being or state is a natural actuality is to say that there ought to be that being or state toward which a nature is oriented. (For Rand, the relevant actuality for a human being is life itself; for Aristotle, it is living well, a full actualization of the relevant potentialities.) But when we call such a state or being good, are we saying anything more? Gotthelf says no. In effect, his Aristotle is an ethical reductionist, defining ethical terms on the basis of non-normative notions. Such a view, which has obvious repercussions for Aristotelian metaethics, has come under sustained (and, I think, justified) criticism from those who take Aristotle to hold that the attributes of the divine intellects in some sense manifest goodness over and above their being actual, and to take other actualities to be good insofar as

³ Ayn Rand, "The Objectivist Ethics," in Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1961), p. 19.

they approach the attributes of divinity. The second essay, “The Place of the Good in Aristotle’s Teleology,” presents Gotthelf’s forceful rejection of the traditional reading, in defense of his more minimalistic account of the interface between Aristotle’s metaethics and his biology.

There follows a series of essays that take aim at those interpretative strategies that bring Aristotelian biology in line with contemporary biology, by taking material interactions and movement to be sufficient for necessitating the actualization of biological form (even if, for pragmatic or psychological reasons, explanatory accounts must refer to natural potentials and forms). Gotthelf’s general response to these lines of interpretation is found in the volume’s third essay, “Understanding Aristotle’s Teleology.” Two more, “Teleology and Embryogenesis in Aristotle’s *Generation of Animals* II.6” and “What’s Teleology Got to Do With It? A Reinterpretation of Aristotle’s *Generation of Animals* V” (co-authored with Mariska Leunissen), present close readings of passages from *Generation of Animals*, which offers an account of conception and gestation that has sometimes been thought to support interpretations incompatible with the “strong irreducibility” that Gotthelf advocates. Gotthelf’s essays here do not constitute the last word, as Aristotle’s meaning is underdetermined by the text, but they are essential works for those seeking clarity in regard to Aristotle’s position concerning the irreducibility of biological form.

Another challenge to the interpretation of life in Aristotle as an actualization of an irreducible potential derives from Aristotle’s recognition of the phenomenon of spontaneous generation, a phenomenon thought to occur when a living being arises out of material constituents that happen to be disposed in an appropriate manner, even though no parent imparting form is present. Gotthelf subjects *Generation of Animals* 3.11 to a close reading and argues (*contra* Lennox) that even in the case of spontaneous generation there is an actualization of an irreducible potentiality, that which is found in “vital” heat. In the case of spontaneous generation, vital heat is not species-specific. Unlike other varieties of biological generation, the nature of being that results from that irreducible potential results from contextual factors.

The following chapters concern the underlying logical structure of scientific explanation in Aristotle. “First Principles in Aristotle’s *Parts of Animals*” argues that the *apodeixeis* (demonstrations) to which Aristotle refers in *Parts of Animals* 1 are, indeed, demonstrations that conform to the requirements of the *Posterior Analytics*. *Parts of Animals* has as its ultimate goal biological demonstrations that proceed from first principles concerning morphological parts, not the species to which those parts belong. Aristotle begins that work with a discussion of the general characteristics of each part, and then distinguishes their differences, with an eye to explaining those features, general and specific, that result from the essential features of those parts. Gotthelf convincingly shows how the sorts of explanations that are offered, such as the account given of why ruminants have multiple stomachs, conform to the formal requirements of canonical demonstration. This project is furthered in the next essay, “The Elephant’s Nose: Further Reflections on

the Axiomatic Structure of Biological Explanations in Aristotle,” in which Gotthelf shows how a particular explanation appeals to first principles that concern generic and analogical unities at various levels, a scheme more complicated than but not fundamentally different from that envisaged in the *Posterior Analytics*. (This result is confirmed by the evidence collected in Chapter 8, “Notes towards a Study of Substance and Essence in Aristotle’s *Parts of Animals* 2-4.”) Gotthelf’s attempt to reconcile the *Posterior Analytics* with Aristotle’s own biological practice has been the occasion for some words of caution,⁴ but his account is now generally accepted.

Another major methodological issue raised by *Parts of Animals* 1 concerns the role to be played by the successive division of generic kinds by their differentiae. Lennox has shown how it has a crucial role to play in a pre-explanatory stage of science, clarifying which features and facts require explaining.⁵ Gotthelf complements this by showing how division is at work within the very process of working through explanations. The differences within a genus are appealed to in accounting for the differences among those attributes that are to be explained. References to the generic differences ensure explanatory completeness.

“A Biological Provenance: Reflections on Montgomery Furth’s *Substance, Form, and Psyche: An Aristotelian Metaphysics*” is an appreciation of and retrospective essay on Furth’s groundbreaking work,⁶ among the first to emphasize the importance of biology for Aristotle’s metaphysics. Gotthelf cautions that the account of substance that Furth presents presupposes only rudimentary background knowledge in biology. The biological works offer a much more complex and sophisticated account of certain issues (such as that of the unity of definition) than that offered within the *Metaphysics*. Gotthelf suggests that Furth had missed opportunities to integrate the philosophical insights of Aristotle’s biological and metaphysical works. For example, Gotthelf suggests that his own irreducibility thesis is the key to understanding the metaphysical thesis of the unity of substantial form.

In showing how Aristotle aims at *explanation* of the features of *parts*, Gotthelf has done much to help jettison the once common consensus that Aristotle’s biological works have the *classification* of biological *kinds* as an ultimate or intermediate goal. One passage in *History of Animals* 1.6, in which Aristotle refers to *the megista genē* (very large—or highest—kinds)

⁴ See especially G. E. R. Lloyd, “The Theories and Practices of Demonstration,” in G. E. R. Lloyd, *Aristotelian Explorations* (Cambridge: Cambridge University Press, 1999), pp. 8-37.

⁵ James G. Lennox, “Divide and Explain: The *Posterior Analytics* in Practice,” in *Philosophical Issues in Aristotle’s Biology*, ed. Allan Gotthelf and James G. Lennox (Cambridge: Cambridge University Press, 1987), pp. 90-119.

⁶ Montgomery Furth, *Substance, Form, and Psyche: An Aristotelian Metaphysics* (Cambridge: Cambridge University Press, 1987).

seems, however, to support the attribution to Aristotle of a classificatory project. That passage is subjected to scrutiny in two chapters: “Data-Organization, Classification, and Kinds: The Place of the *History of Animals* in Aristotle’s Biological Enterprise” and “*History of Animals* I.6 490b7-491a6: Aristotle’s *megista genē*.” Gotthelf concedes that here Aristotle does seem to be grouping together kinds of organisms, as opposed to parts of organisms, but his appeal is to commonly recognized pretheoretical groupings. The establishment of such groups is not the aim of the treatise, and any such pretheoretical classification will need to be revised in light of a theoretical account of the varieties of faculties of soul.

Prior to a “coda,” “Aristotle as Scientist: A Proper Verdict,” which offers a nontechnical overview of Aristotle’s achievement in biology, the volume concludes with discussions of the impact Aristotle had on two other biologists. “*Historiae 1: Plantarum et Animalium*” asks whether the results Gotthelf and others have arrived at in their study of Aristotle’s biological writings can be applied to the botanical writings of Aristotle’s student and colleague Theophrastus. The verdict is that it can. In *Historia Plantarum*, Theophrastus lays out the differences among the kinds of plants. Like Aristotle, he does so with an eye to discovering and organizing a body of explanations of those differences. Both scientists left their project far from complete, but Aristotle made more progress than Theophrastus. “Darwin on Aristotle” considers Darwin’s letter to William Ogle, in which appears the famous line “Linnaeus and Cuvier have been my two gods, though in very different ways, but they were mere school-boys to old Aristotle” (p. 345). Recent scholars have suggested that because Darwin knew little of Aristotle, the letter offers polite words but no evidence of a real intellectual encounter with Aristotle’s biological writings. Gotthelf explores the implications of evidence within that letter to the effect that, in the few pages of Ogle’s translation of Aristotle that Darwin read prior to his death, Darwin recognized that Aristotle was on his way to a workable scheme of biological classification, and that Darwin approved of Aristotle’s attempts to explain the nature of biological parts on the basis of their function.

A full appreciation of Gotthelf’s achievement can be gained not only through close study of his own works, but also through those of other specialists in Aristotelian studies, who are both in debt to his work and take his lines of inquiry in new directions. *Being, Nature, and Life in Aristotle: Essays in Honor of Allan Gotthelf* collects the work of such Aristotle scholars. Although not all of the essays bear directly on the themes Gotthelf has explored, all of them are well worth study by those with an interest in Aristotle.

David Sedley’s “Teleology: Aristotelian and Platonic” follows Gotthelf in understanding final causation in Aristotle as a matter of the actualization of irreducible potentialities. He shows how this has an antecedent in the cosmological thought of Plato. For Plato, the purposiveness that gives direction to the actualization of these potentialities is found in the providential order within a divine intellect. Aristotle rejects this and,

accordingly, dispenses with the belief in cosmic creation. As noted above, Gotthelf downplays the importance of those passages in which Aristotle suggests that the actualization of living potentials are “good” insofar as they approach the characteristics of the divine. Sedley takes such language more seriously. Teleologically organized beings of different kinds strive for different actualizations; all are good, but the better ones more fully share in the characteristics of God. Sedley also differs from Gotthelf in regard to the scope of teleological structures in Aristotle. As Gotthelf interprets Aristotle, the self-perpetuating structures and order found in the world have their root in the individual potentialities for individual substances. Higher-level order, whether at the cosmic or the social levels, results from individuals’ pursuit of goals proper to them, alone. Sedley here defends the view he has argued for elsewhere,⁷ namely, that Aristotle takes teleological causation also to be at work globally, on a scale larger than that of the individual structure. Here too, Sedley suggests, Aristotle is following the lead of Plato.

In *Metaphysics* Z.17, Aristotle identifies substantial form as the cause of the fact that some matter constitutes a particular substance. The standard take is to identify biological form (as a biological principle) with substantial form (as a metaphysical principle). On this account, the biological explanation of why there is this particular biological substance is a more determinate form of the question “Why is there this substance?” Gotthelf’s approval of the main lines of Furth’s account of the central books of the *Metaphysics* suggests that he would be in agreement with this account. However, in “Biology and Metaphysics in Aristotle,” Robert Bolton suggests that such an account would violate Aristotle’s explicit strictures on the autonomy of the sciences. Each science explains different facts, and does so by means of different principles. Biology explains biological facts by means of appealing to biological form, and metaphysics explains ontological facts by means of appealing to substantial form. For this reason, Bolton takes substantial form to be a metaphysical principle, not a biological principle. The principle of biological coming-to-be is rather to be found in the formal motions of the progenitor’s seed, which serve as efficient cause. Does such an account of biological principles require revision of Gotthelf’s irreducible potential thesis? I suspect that it would, since Gotthelf takes teleological explanation to account for more than how certain biological features come to be; he also sees it as at work in explaining why a living thing *is* as it is, and why it does what it does. We have a choice between attributing to the *Metaphysics* a less strict application of the principle of the autonomy of the sciences than what is argued for in the *Posterior Analytics*, on the one hand,

⁷ David Sedley, “Is Aristotle’s Teleology Anthropocentric?” *Phronesis* 36 (1991), pp. 179-96; and David Sedley, “Metaphysics Λ 10,” in *Aristotle’s Metaphysics Lambda: Symposium Aristotelicum*, ed. Michael Frede and David Charles (Oxford: Oxford University Press, 2000), pp. 327-50.

and limiting the scope of biological teleological explanation (as Gotthelf has accounted for it), on the other.

Although there are points of disagreement, Gotthelf's thoughts on Aristotelian teleology, method, and explanation developed largely in tandem with those of James Lennox. To a certain extent, their work can be seen as collaborative. Lennox's "The Unity and Purpose of *On the Parts of Animals* 1" furthers Gotthelf's work in showing that *Parts of Animals* 1 is far from a hodgepodge of unrelated remarks; it is rather "a tightly integrated discussion" (p. 60). Lennox shows how Aristotle has his eye on showing how both his account of the varieties of causal explanation and his account of the necessity of nondichotomous division are to be put in the service of his account of biological methodology.

The strategy of looking to the biological works for ways to resolve metaphysical puzzles concerning substance is implicitly challenged by Alan Code's "An Aristotelian Puzzle about Definition: *Metaphysics* Z.12." Within that chapter Aristotle argues that if a definition is a principle of both the unity and the substantiality of a living substance, such a principle is to be found in the differentia expressed in a definition, taking the form genus + differentia. Code argues, though, that this is inconsistent with the conclusion of *Metaphysics* Z.17 that it is *form* that is the substance of a living thing. He suggests that *Metaphysics* Z.12 is a kind of *reductio* argument: If definition per genus and differentia expresses the substance of a living thing, then the substance will be differentia, which is a quality. However, substance cannot be quality. Hence, the conjunction of genus and differentia does not constitute the substance of a thing. The form of a living thing (i.e., its soul) is to be understood with reference to the genus; the differentia helps us to *classify* a living thing, but not to account metaphysically for its substantiality. Code's suggestion leaves untouched one of Gotthelf's major theses: that identification of basic differentiae has an explanatory as well as a classificatory function. On Gotthelf's view, the primary purpose of the identification of differentiae is to enable the biologist to explain derivative attributes of a thing. Whether the differentiae explain that thing's substantiality is another question altogether.

In "Unity of Definition in *Metaphysics* H.6 and Z.12," Mary Louise Gill too looks to the discussions within the central books of the *Metaphysics* concerning the unity of definition in order to clarify the interface between Aristotle's biology and metaphysics. However, she puts the pieces together in a very different way. *Metaphysics* H.6 reveals that Aristotle's central concern in considering the unity of definition is the question of the unity of matter and form. The differentiae, which, as Gotthelf has shown, are collected and collated in preparation for the explanatory project, are logically independent. Following Gotthelf, Gill argues that the goal of biological research is to show how their unity can be explained on the basis of a teleological account of the kind to which they belong, with reference to the way of life of organisms belonging to that kind. This cannot be done with reference to the genus alone, since the genus does not determine or exhaust the possible ways of life of the kinds subsumed under it. The analogy that Aristotle is drawing in H.6 is that

the formal characteristics of a living thing are likewise to be understood as resulting from the teleological organization of the matter that is unified by form; these characteristics too are neither already contained in nor entailed by the matter. Gill places great weight on Aristotle's insistence that hylomorphic substances are somehow (*pōs*) one (1045b21). The relation between genus and differentia is fundamentally different from that between matter and form. The genus as determined by the differentia constitutes a determinate essence, but matter retains certain properties that are not contained in its formal determination. This accounts for the instability and consequent mortality of living substances.

Gotthelf's essays concentrate on the ways in which the Aristotelian biologist will work toward the attainment of genus/differentia definitions, and the ways in which these are to ground the explanations of other features. Within the second book of the *Posterior Analytics*, however, Aristotle suggests that explanations themselves can ground definitions, or be understood as a form of explanation. Much ink has been spilled on reconciling these two accounts. Are definitions principles or explanations—or, as Pierre Pellegrin argues in "Definition in Aristotle's *Posterior Analytics*," both? Pellegrin shows how the *Posterior Analytics* is working with two somewhat independent notions of understanding, and very sensibly resists the temptation to account for this by asserting that different notions of demonstration stem from different phases of the development of Aristotle's thought. He does not, however, take the lead of W. D. Ross and others (including myself) in taking Aristotle to be distinguishing between two different kinds of defined things; rather, on Pellegrin's view, we are dealing with two different kinds of linguistic accounts by which essences are expressed.⁸

Aryeh Kosman's "Male and Female in Aristotle's *Generation of Animals*" follows Gotthelf's lead in subjecting the biological works to a close reading in order to reveal what Aristotle actually says, moving beyond traditional presuppositions concerning what Aristotle says. Aristotle's account of sexual reproduction is not that the mother provides the matter and the father provides the form of the organism. Rather, the form that the father

⁸ Perhaps I may be forgiven for using this review to point out that the account of 2.8 93a5-8 that Pellegrin ascribes to me, and severely criticizes, is not one that I have ever expressed or subscribed to. He quotes my translation of 93a5-6: "The account of this is that there is some cause, and it is either the same or different." This is a literal translation of the text that within my book I interpret as elliptical for "it is either the same as the thing caused or it is different from it"; see my *Explaining an Eclipse: Aristotle's Posterior Analytics 2.1-10* (Ann Arbor, MI: University of Michigan Press, 1996), p. 102, which is Pellegrin's understanding of the passage as well. We differ insofar as I follow Ross in taking Aristotle to be discussing *things*, so that the cause in question lies in the subject of the feature to be explained, while Pellegrin takes Aristotle to be discussing *propositions* about things, so that the causes are propositional principles and what is caused are derivative propositions.

provides is a *dunamis* (what Gotthelf would call an irreducible potential) for initiating those motions within the mother, by which she grows and bears their offspring. This brings Aristotle's account more in line with contemporary biology than does the traditional understanding of Aristotle.

In "*Metaphysics* Θ 7 and 8: Some Issues Concerning Actuality and Potentiality," David Charles wonders how Aristotle's notion of *dunamis* ("potentiality" or "capacity") can be correlative to both form and to the composite of form and matter. Is there a single notion of *dunamis* at work here? Charles argues that there are two notions. Within *Metaphysics* Θ it is the latter understanding (i.e., that the actualization of a *dunamis* is the form/matter composite) that is primary. Matter persists through the existence of the composite substance insofar as no change occurs that undermines the relevant potentiality for the composite. The actuality of the composite substance is to be understood teleologically. (Charles brackets the issue of how teleology is to be understood, a point on which he and Gotthelf have significant disagreement.) Other varieties of potentiality and actuality are to be understood as "abstractions" from this scheme.

In "Where Is the Activity? (An Aristotelian Worry about the Telic Status of *Energeia*)," Sarah Broadie offers a heterodox but philosophically fascinating account of what Aristotle means when he says that in the case of a transitive activity (such as fire heating a stone or a teacher teaching a student) the activity is located in the patient. Aristotle wishes to distance himself from the Platonic view that the teleology of an action is a matter of a thing's reaching for an end beyond that thing (such as a separate Form). The end of the action, and accordingly its ontological locus, is in the goal attained. Broadie's ideas here could profitably be integrated with Kosman's account of the father's activity in biological generation.

As noted above, Gotthelf's account of Aristotelian teleology restricts final causes to aspects of a thing within an organism itself. The order manifested by any whole of which the substances are parts is a kind of epiphenomenon that does not itself constitute a kind of final cause; it arises from the independent actions of substances. (Perhaps a parallel can be drawn to how, on Rand's view, civic order results from the "selfish" actions of individual citizens.) In "Political Community and the Highest Good," John Cooper argues that Aristotle's social and political philosophy is not to be interpreted along such lines. The citizens are parts of a social whole in a strong sense. It is not only the case that the *polis* ("city-state") provides the necessary preconditions for the virtuous activity of its members. Rather, their activity is necessarily communal activity, just as the action of an organ is to be properly understood as an action of a whole living organism.

One of these volumes offers a convenient way of accessing Gotthelf's key work. The other allows us to see how that work is being built upon in new and exciting directions. The community of Aristotle scholars owes its gratitude to Gotthelf and looks forward to the paths he has yet to take in the exploration of Aristotle's biological writings.

Review Essay: Sam Harris's *Free Will*

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1. Introduction

In philosophical discussion of the relation of mind and body, the most heated debate throughout the history of philosophy, which continues today as strong as ever, has been that of free will versus determinism. Sam Harris's *Free Will*¹ is a recent, highly acclaimed defense of determinism.

The case for free will is clear; it is a self-evident, directly perceived fact. Every reader of this article can directly perceive that the amount of mental effort he spends on considering and trying to understand it—and then whether he agrees with me or not—is under his own control. The same is true every time any one of us is engaged in any thought process of any difficulty or makes a decision of any significance in his actions.

In contrast, in reading the writings of determinists, it is often unclear just what their case is for accepting determinism. It is common for determinists to tout determinism as scientifically proven, or declare that we must accept determinism in order to be scientific, without ever stating precisely what evidence or arguments they believe they have in support of determinism. When their arguments are identified and examined, they always turn out to be very weak.²

Sam Harris's book demonstrates the worst qualities of writings by determinists. He writes in a supercilious tone, full of pronouncements declaring the case for determinism to be conclusive and declaring free will to be an illusion; but he never gives a clear statement of what precisely he thinks the basis is for accepting determinism, requiring the reader to piece together statements from various parts of the book to figure out just what Harris's case is. And when his case is identified and examined, it turns out not to consist of any actual evidence, but only of the dogmatic acceptance of certain philosophical premises about causality.

¹ Sam Harris, *Free Will* (New York: Free Press, 2012).

² For a survey and examination of the various arguments that have been used to support determinism, see Eyal Mozes, "Is There a Rational Basis for Determinism?" available online at: <https://sites.google.com/site/eyalmozesonobjectivism/determinism>.

Harris advocates determinism as part of a more general model of the universe, which involves two basic principles:

- (1) The universe is built out of physical particles whose movements are determined by their previous movements and their physical impact on each other. (A principle commonly referred to as *mechanism*.)
- (2) Human beings are complex systems of these physical particles, and causal laws governing those particles completely determine the actions of the system. (A principle commonly referred to as *reductionism*.)

The model of the universe based on these two principles was originated by the Greek atomists, and is associated in modern times with the physicist Pierre-Simon Laplace. It is held by Harris, Daniel Dennett,³ and many other contemporary determinists.

What is Harris's case for accepting this model, and for accepting determinism? The book's loose structure, and the fact that Harris leaves his central line of argument to implication and never states it explicitly, make his case difficult to identify, but when we piece together Harris's various statements, we find that his central line of argument consists of accepting two unstated, unsupported assumptions about the nature of causality. His two dogmas of causality are that it requires mechanism and determinism and that it is a relation between events.

Harris also presents two lines of alleged observational evidence for determinism:

- (1) The claim that introspective experience, when seen with "serious self-scrutiny," demonstrates that we do not control our actions.
- (2) The claim that the Libet experiments, and similar subsequent experiments, demonstrate that we do not control our actions.

When we examine these lines of evidence, however, we find that in both cases Harris twists the evidence to fit his pre-conceived assumptions about causality. In both cases, when the evidence is considered without such assumptions, it provides no support at all for Harris's claims.

³ See Daniel Dennett, *Freedom Evolves* (New York: Viking, 2003). For a detailed analysis of Dennett's defense of determinism, see my review of *Freedom Evolves* in *Navigator* (December 2003), available online at: http://www.atlassociety.org/daniel_dennett_freedom_evolve.

2. Harris's Two Dogmas of Causality

a. Causality as requiring mechanism and determinism

Harris's most basic reason for accepting determinism and the mechanist/reductionist model, is his assumption that causality requires it. This is an assumption that runs throughout Harris's discussion. He presents no argument to support this assumption, never states it explicitly, and it is not clear whether he is fully aware of it. However, the entire book is written with this assumption accepted as self-evident and unquestioned.

In stating the possible positions regarding free will and determinism, Harris's summary of the libertarian position is: "human agency must magically rise above the plane of physical causation."⁴ Harris provides no citation to any libertarian writers who describe human agency as "magical"; I very much doubt he can find even one. Even if such writers could be found, they are rare exceptions. What Harris is describing is not the libertarian view, but rather his own view: that any violation of reductionism would have to be magical, that is, be a violation of causality. He takes this idea for granted so completely that he states it not as an argument against libertarianism, but as an alleged summary of it.

A consequence of the assumption that causality requires determinism is that the only alternative to determinism is randomness. In his introduction, Harris writes: "Free will . . . cannot be made conceptually coherent. Either our wills are determined by prior causes and we are not responsible for them, or they are the product of chance and we are not responsible for them."⁵ Later, in a chapter titled "Cause and Effect,"⁶ he discusses the possibility that free will could be based on quantum indeterminism in brain processes; having correctly dismissed that possibility, he then believes he has refuted any possible alternative to determinism. Harris takes it as a given that the view actually held by libertarians—that our actions are neither determined by prior causes nor the product of random events, but are under our own control—is "magical," violates causality, and therefore requires no discussion. When he says that free will "cannot be made conceptually coherent," what he actually means is that free will cannot be made consistent with his first dogma of causality.

⁴ Harris, *Free Will*, pp. 15-16. Note that Harris is here following the common usage of referring to the view that rejects determinism and affirms the existence of free will as *libertarianism*. I regard the use of this term, with the potential confusion with the unrelated political meaning of the same word, as unfortunate, but since I don't know a better alternative, I will follow the same usage.

⁵ *Ibid.*, p. 5.

⁶ *Ibid.*, pp. 27-30.

b. The event-event model of causality

Harris's second basic assumption about causality is that causality is a relation between events. He assumes the law of causality to mean that for every event there has to be some prior event which is its cause.

An alternative view of causality not discussed by Harris, dating back to Aristotle, is that causality is a relationship not between one event and another, but between an entity and its actions: the way an entity acts, including the way it reacts to the actions of other entities, is a function of its nature. While it is often convenient to refer to some action as the "cause" of a subsequent action, such usage is derivative; primarily, an action's cause is the nature of the acting entity. For example, the motions of atoms or ions are caused by their mass, electric charge, etc., which determine how the forces operating on them affect their movement. If the nature of these entities were different, they would act differently in response to the same external forces.

In the case of living things—for example, the contraction of a muscle, caused by the nature of the animal's muscular and nervous systems—the action's direction and energy come from sources internal to the acting entity. This special type of entity causation is referred to as *agent causation*.

Entity causation and agent causation are compatible with determinism in specific cases; there are many entities whose nature allows only one possible action in any given situation. Whether an entity's nature is deterministic or not is a question that has to be answered based on the evidence. For inanimate objects (above the level of subatomic particles) and for vegetative biological processes (i.e., all processes in bacteria and plants, and those processes in an animal's body that do not involve consciousness), many deterministic laws have been discovered and verified by the scientific method, precisely predicting the actions of all of these entities given the situation. These verified deterministic laws, and the observations supporting these laws, are the evidence justifying the conclusion that such entities behave deterministically.

However, unlike the event-event model of causality, the entity-action model does not *a priori* mandate determinism. It does not forbid the nature of an entity from including the ability to weigh alternative courses of action and deliberate about them, and consequently the capacity for genuine choice; such entities also act in accordance with causality, not in any way in contradiction to it. Once we get rid of the assumption of event-event causality, the question of whether human nature includes this capacity becomes a question that has to be answered based on the evidence, not on *a priori* requirements of causality.⁷

Similarly to his first dogma, Harris assumes the event-event model of causality without ever presenting any argument to support it, or even stating it

⁷ For more discussion of the event-event model of causality, and its role as an unstated, unsupported assumption at the base of defenses of determinism, see my "Is There a Rational Basis for Determinism?"

explicitly. As we will see below, he accepts it so completely that it becomes a filter through which all experience is forced so as to fit his pre-conceived theories.

3. Harris's Analysis of Introspective Evidence

Harris's first line of alleged observational evidence for determinism is his claim that it is supported by introspective experience. He writes:

Seeming acts of volition merely arise spontaneously . . . and cannot be traced to a point of origin in our conscious minds. A moment or two of serious self-scrutiny, and you might observe that you no more decide the next thought you think than the next thought I write.⁸

The examples Harris presents in support of this claim are of two types: examples of arbitrary or frivolous decisions, and one example of a serious, consequential decision.

a. Examples of arbitrary or frivolous decisions

The bulk of Harris's examples to support his claim about introspective evidence, are examples of arbitrary, inconsequential, or frivolous decisions. As his first example of a human decision, Harris writes: "I generally start each day with a cup of coffee or tea—sometimes two. This morning, it was coffee (two). Why not tea?"⁹ As his final example, he offers us: "In fact, I will now perform an experiment in free will for all to see: I will write anything I want for the rest of this book. . . . I can be ungrammatical if I pleased. And if I want to put a rabbit in this sentence, I am free to do so."¹⁰

It is common practice for determinists, when providing examples of human choices, to use these types of examples. The implication of using such examples is that if free will exists at all, it can only be applicable to choices that are arbitrary and frivolous or of no consequence.

To libertarians, in contrast, such examples seem of little relevance. The significance of free will is in our ability to deliberate on the reasons for and against a decision; examples in which no deliberation is possible, because there is nothing to deliberate on, are a distraction from the relevant issue. In these types of arbitrary decisions, we also don't have a clear introspective experience of self-control, and free will cannot be regarded as a self-evident, clearly perceived fact. Free will is self-evident when we make decisions based on deliberation.

⁸ Harris, *Free Will*, p. 6.

⁹ *Ibid.*, p. 7.

¹⁰ *Ibid.*, p. 65.

When we make arbitrary decisions, in situations in which there is no reason for one choice rather than another, is our action in fact fully determined by prior causes? This is a question that cannot be answered either way by simple everyday observations or by any philosophical arguments; it would have to be answered by scientific experiment. The answer is unknown at this time (as I discuss below, the Libet experiments don't provide an answer), but we can expect it to be known eventually. If the answer turns out to be that such decisions are entirely the product of prior causes, I doubt that any libertarians would find that to be disturbing news.

The irrelevance of such examples is made even clearer by Ayn Rand's crucial insight that the center of free will is in man's ability to direct his mental focus.¹¹ Man's basic choice is in focusing his mind: whether to focus it, to what level, and what to focus it on. Man is free to keep his mind in full focus, to drift automatically without focus, or actively to evade and refuse to think. Man is also free to focus on all relevant facts and considerations, and make a deliberate, conscious effort to think of additional factors and find anything that might have been missed so far; to limit his thinking to the factors that he notices easily and think no further; or actively to refuse to consider some of the facts. All other choices man makes are results of this basic choice. Man does not directly make a free choice on what ideas to accept; his freedom consists in controlling what facts and arguments his mind focuses on, and this selection of facts and arguments determines what ideas he then accepts as truth. Man does not directly make a free choice on what action to take; his freedom consists in controlling which considerations relevant to his decision his mind focuses on, and this selection of facts and considerations determines his actions.¹²

Rand's insight provides a clear criterion for what kind of human choices are relevant to the issue. If the center of free will is in directing your mental focus, then it is relevant when your choice is based on some reason that you had to think about. Mental focus requires something to focus on. The choice to focus is not itself the result of deliberation; it is one of the pre-conditions for deliberation about one's more derivative choices, specifically about one's choice of action; another pre-condition for deliberation is the existence of considerations to deliberate about. In Harris's examples of decisions without reason, this second pre-condition is not met; whatever choice you make in focusing your thinking, in Harris's examples you cannot choose to focus it on facts relevant to the decision, since there are no such

¹¹ See Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), pp. 55-69.

¹² For a more detailed discussion of Rand's identification of mental focus as the center of free will, and of how this insight answers the remaining objections to free will that were not adequately answered before, see my "Is There a Rational Basis for Determinism?"

facts. This makes such decisions, and introspective experience that accompanies them, irrelevant to the question of free will.

b. A more serious example

Harris makes one more serious attempt to support his claims about introspective experience. He tells a hypothetical story of an overweight person who, after several half-hearted and failed attempts to go on a diet, finally commits himself seriously, successfully loses weight, and improves his life in various other ways. Harris then considers what would be the person's introspective view of the causes of this change, if he engaged in serious introspection:

If you pay attention to your inner life, you will see that the emergence of choices, efforts, and intentions is a fundamentally mysterious process. Yes, you can decide to go on a diet—and we know a lot about the variables that will enable you to stick to it—but you cannot know why you were finally able to adhere to this discipline when all your previous attempts failed. . . . Yes, you can do what you want—but you cannot account for the fact that your wants are effective in one case and not in another. . . . You wanted to lose weight for years. Then you *really* wanted to. What's the difference? Whatever it is, it's not a difference that *you* brought into being.¹³

Harris presents this as an account of introspective experience; but the experience he describes has no similarity at all to the actual experience of people who have made life-changing decisions of this kind. As it happens, I can speak to this issue from direct personal experience; I was overweight for many years as a child and a teenager, and then successfully lost weight. I can clearly remember the difference between talking about wanting to lose weight without any genuine commitment to doing something about it, and later focusing on the importance of losing weight and committing myself to the effort. There is nothing fundamentally mysterious, or mysterious at all, about the difference. Anyone who has ever made any important decision involving a serious effort can see this by examining his own experience.

Why does Harris make a claim about introspective experience that is so obviously contrary to fact? The reason becomes clear when we look at his statement two pages later:

Choices, efforts, intentions, and reasoning influence our behavior—but they are themselves part of a chain of causes that precede conscious awareness and over which we exert no ultimate control. My choices matter—and there are paths toward making wiser ones—

¹³ Harris, *Free Will*, p. 37.

but I cannot choose what I choose. And if it ever appears that I do—for instance, after going back and forth between two options—I do not *choose* to choose what I choose. There is a regress here that always ends in darkness. I must take a first step, or a last one, for reasons that are bound to remain inscrutable.¹⁴

This statement makes clear that Harris's claims are based not on introspective experience, but on what his view of causality requires. Harris assumes the event-event model of causality, requiring that any choice he makes must be caused by some prior event. He assumes *a priori* that agent causation cannot exist; therefore, if he experiences himself as the cause of his choice, without any event that acts as the cause, this experience cannot be accepted. His choice must have been caused by some prior event, and so the only experience he is willing to accept as an explanation is the experience of some prior event. If he can find a prior event in his experience, such as some prior choice, providing an explanation, then this event itself requires an explanation through some third, even earlier event. It is logically inevitable that this regress will end at some point, with some choice or thought or intention that he cannot explain by any prior event in his experience, making it by his assumptions "fundamentally mysterious" and "inscrutable."

Harris claims to have introspective evidence against free will. When his evidence is examined, however, we find that his "serious self-scrutiny" is merely the filtering of introspective experience so as to fit his philosophical dogmas.

4. The Libet Experiments

Benjamin Libet performed a series of experiments in the early 1980s, in which subjects were asked occasionally to move their hands at arbitrary intervals, and to note and report the time at which they made the decision to move their hand. An EEG measurement, taken during the experiment, showed that the brain waves preceding the hand movement started some fraction of a second before the time the subjects reported as the time they made the decision.¹⁵ Several other researchers have since conducted similar experiments, all following the same pattern: the subject is asked to make some arbitrary decision, noting and reporting the time at which he made the decision, and EEG or fMRI measurements detect the brain activity containing information about the decision some time before the subject reported making

¹⁴ Ibid., p. 39; internal footnote omitted.

¹⁵ Benjamin Libet, Curtis A. Gleason, Elwood W. Wright, and Dennis K. Pearl, "Time of Conscious Intention to Act in Relation to Onset of Cerebral Activity (Readiness-Potential): The Unconscious Initiation of a Freely Voluntary Act," *Brain* 106 (1983), pp. 623-42.

it.¹⁶ Harris, following several other determinists of the past few decades, trumpets these results as proof of determinism, allegedly demonstrating that decisions we apparently make by our free will are the result of neural processes that happen before we become conscious of the decision.

In fairness to Libet, it should be noted that he is not a determinist, and this is not his own interpretation of his results. Libet's own interpretation, rather, is that his results demonstrate that free will is purely negative. Libet's theory is that our actions are the result of urges created by neural processes that are outside our control, but that we are able consciously to override these urges and decline to act on them; this conscious "veto power" is Libet's view of free will. As I discuss below, Libet's interpretation does not follow from his experiments either, but it is not nearly as blatant a *non sequitur* as taking the results to be evidence of determinism.

The Libet experiments in fact do not have any interesting implications regarding free will, for two basic reasons. First, the experiments created a situation in which the subject's decision (at what time to move his hand) is necessarily arbitrary; there is no possible reason for the subject to move his hand at one time rather than another. The same is true for all of the later experiments that found similar results; all involve asking the subject to make a decision without any reason to regard one alternative as better than the others. As I discuss above, arbitrary decisions concerning options such as "Tea or coffee?" or "Should I put a rabbit in the sentence?" are irrelevant to understanding free will; the decisions studied in the Libet experiments, and in subsequent experiments, are an even more extreme case. Such situations are fundamentally different from real-life situations in which people make decisions, and it seems likely that that difference would completely change how free will operates. Even if these experiments proved anything about the decision-making process in the laboratory situations they created—situations in which a decision is completely arbitrary, without reasons—it would be impossible to draw any conclusions from that about the decision-making process in real-life situations, in which a person makes a decision by considering reasons for and against a course of action.¹⁷

Second, the Libet experiments don't prove anything even about the decision-making process in the laboratory situation they created; both the determinist interpretation of the experiments and Libet's own interpretation ignore the fact that perception takes time. Libet asked subjects to report the time at which they decided to move their hands, with accuracy down to a fraction of a second, by watching a clock-face with a fast-moving dot, and noting the position of the dot at the moment they made the decision. But the

¹⁶ Harris, *Free Will*, p. 73, nn. 3 and 4, provides references to several such experiments.

¹⁷ David Kelley makes this point in the Q&A period of his lecture series *The Nature of Free Will*, presented at the Portland Institute, 1986.

perception of the clock-face—like all visual perception—is a process that takes time; it is therefore likely that the dot position reported by the subjects was the position not at the moment they became conscious of the decision, but some fraction of a second later. Furthermore, generally when we intentionally perform a movement, we monitor that movement with our vision, and so our visual processes when intentionally performing a movement (such as the hand-movement performed in the experiment) will naturally be alert to the moment at which the movement occurs, which will be some fraction of a second after the movement is consciously initiated. This again makes it likely that the dot's position on the clock-face, perceived by the subject as being at the same time he became conscious of the decision, was in fact at a time some fraction of a second later. Daniel Dennett makes this point in his *Freedom Evolves*.¹⁸ Given the fact that Harris is clearly familiar with Dennett's book, citing it several times, and given the central importance Harris claims to attach to the Libet experiments, it would be natural to expect him to address Dennett's analysis of these experiments. However, Harris never addresses Dennett's arguments on this—indeed, never even acknowledges them.

The same problem applies to all but one of the later experiments: all of these experiments relied on visual cues to help the subjects note when they made their conscious decision, and it is thus very likely that the time reported by the subjects was some fraction of a second later than the time they actually became conscious of their decision. (The only exception is one experiment in which the delay measured was several seconds, which cannot be explained by delay in perception.¹⁹ This experiment was similar to all of the other ones in that the subjects were asked to make an arbitrary decision with no reasons, and so the previous point still fully applies.)

It is very doubtful whether anyone has ever been convinced of the truth of determinism by Libet's results; the fallacies are too obvious. Those who cite the Libet experiments or later similar experiments as support for determinism, are taking them as confirmation for a view they have accepted *a priori*. Harris's discussion of the experiments makes clear that that is precisely what he is doing. After describing the experiments, Harris writes:

These findings are difficult to reconcile with the sense that we are the conscious authors of our actions. One fact now seems indisputable: Some moments before you are aware of what you will do next—a time in which you subjectively appear to have complete freedom to

¹⁸ Daniel Dennett, *Freedom Evolves*, pp. 227-42. While in general I have a very low opinion of *Freedom Evolves*, the section on the Libet experiments is the one section of the book that contains useful and interesting information. The fact that Dennett is himself an avid advocate of determinism, but took the time to discuss and expose the problems with bad arguments presented in support of his own position, is the one aspect of his book that deserves respect.

¹⁹ Cited by Harris, *Free Will*, p, 73, n. 3.

behave however you please—your brain has already determined what you will do. . . . There will always be some delay between the first neurophysiological events that kindle my next conscious thought and the thought itself.

However, he then adds:

And even if there weren't—even if all mental states were truly coincident with their underlying brain states—I cannot decide what I will next think or intend until a thought or intention arises.²⁰

Having cited Libet's results as evidence for determinism, Harris then admits that these results are not actually relevant to his advocacy of determinism, and that he would have stuck to the same view had Libet's results been the opposite.

Describing Libet's interpretation of his own results, as consistent with a form of free will which is purely negative, Harris writes: "This suggestion has always seemed absurd on its face—for surely the neural events that inhibit a planned action arise unconsciously as well."²¹ In rejecting Libet's alternative interpretation, which is equally consistent with the experimental results, Harris admits that his claim that all neural processes underlying human choices are controlled by unconscious causes, is not based on the experimental results; it is based on his *a priori* conviction that this is "surely" the case and that any suggestion it might not be is "absurd on its face."

Harris's alleged experimental evidence for determinism thus turns out to be the same as his introspective evidence; it does not actually provide any support for determinism, except to interpreters who have already accepted Harris's pre-conceived assumptions.

5. Conclusion

Harris repeatedly heaps scorn on anyone who would disagree with determinism, and blatantly uses arguments from intimidation. In a chapter on the political implications of the debate, Harris states that the defense of free will is motivated by the "religious fetish of individualism," which leads political conservatives to want to give people credit for their achievements, and writes:

[O]ne gets the distinct sense that if certain conservatives were asked why they weren't born with club feet or orphaned before the age of

²⁰ Ibid., p. 9.

²¹ Ibid., p. 73, n. 2.

five, they would not hesitate to take credit for these accomplishments.²²

In his introduction, Harris describes a gruesome murder, claims that the murderers had no freedom to choose not to commit this murder, and then writes: “There is simply no intellectually respectable position from which to deny this.”²³

After describing the idea of compatibilism,²⁴ Harris writes:

Today, the only philosophically respectable way to endorse free will is to be a compatibilist—because we know that determinism, in every sense relevant to human behavior, is true.²⁵

Harris is evidently hoping that the fear of being labeled “philosophically [un]respectable” would dissuade readers from too closely examining just what case he has presented for his claim that “we know” determinism to be true.

When we do examine Harris’s case, as remarked above, it does not consist of any scientific evidence or logical arguments, but only of the dogmatic acceptance of certain philosophical premises about the nature of causality. Both Harris’s alleged introspective evidence and his alleged experimental evidence turn out to be merely the filtering of observation in order to fit his *a priori* beliefs. Harris’s defense of determinism is an emperor who turns out not to be wearing any clothes.

²² Ibid., pp. 61 and 62.

²³ Ibid., p. 4.

²⁴ Compatibilism is the idea, advocated by Dennett and rejected by Harris, that people should continue to use the concept of free will, but redefine it so that it no longer involves choice among several possible alternatives, and can thus be made compatible with determinism.

²⁵ Harris, *Free Will*, p. 16.

The History of Cinema and America's Role in It:
Review Essay of Douglas Gomery and Clara Pafort-
Overduin's *Movie History: A Survey*

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The book under review is an expanded and updated new edition of a book that was originally published a decade ago.¹ The authors, Douglas Gomery and Carla Pafort-Overduin, have written a clear, comprehensive, and compelling history of cinema that is wonderfully useful as a reference text for philosophy and film courses, and as a main text for history of film courses. The book has some problems, however, which I will explore after I summarize its contents.

The first section of the book (Chapters One through Five) discusses the silent era (1895-1925). The first chapter appropriately explores the earliest era of film, looking at the basic innovations. These innovations included magic lanterns (such as the 1861 patented kinematoscope), George Eastman's celluloid-based film, the Lumiere brothers' cameras and projectors, and Edison's early crucial role in spreading the new technology. The authors also review the early era of film distribution and exhibition, through channels such as Vaudeville, fairs, and the nickelodeon.

In Chapters Two and Three, Gomery and Pafort-Overduin discuss the early success of Hollywood, from the rise of the major studios and special venues ("picture palaces," or large movie theaters) in 1917. They note a point to which I will return in due course, namely, that from roughly 1920 to 1950, the major Hollywood studios not only produced America's films, but distributed and exhibited them (in their own movie theaters) as well.

In fact, as the book explains, Hollywood came to dominate the worldwide market for motion pictures because of a number of key innovations. First, Hollywood early on came up with an audience pleaser: the feature length film (i.e., one about two hours long). This rapidly replaced the Vaudeville theater ten-minute shorts by around 1910.

Second, motion-picture producers quickly learned that audiences were drawn to certain actors—the "movie stars"—who could bring in the

¹ Douglas Gomery and Clara Pafort-Overduin, *Movie History: A Survey*, 2nd ed. (New York: Routledge, 2011).

largest audiences. This is known colloquially as the “Star System.” The star system was in fact a surprising discovery: It might seem that any group of talented actors could make a film as well as any other group (and so sell the same number of tickets), but experience quickly showed that this wasn’t the case. So, for example, one of the earliest super-stars, Mary Pickford, saw her *per week* salary rise from \$100 in 1909, to \$175 in 1910, then \$1,000 in 1914, \$2,000 in 1915, \$10,000 in 1916, and hit an astounding \$15,000 in 1917.

Third, Hollywood developed the studio system. The public’s appetite for new feature films was exploding, and only by organizing film production into centers—with filming done “out of order” and then edited into proper sequence, as well as being done in large lots with sets and props that could be reused endlessly—could this burgeoning market for film be satisfied. In effect, the authors recognize that the film industry *industrialized*, using the division of labor and “factory” approaches to ramp up production (as industries had done since the industrial revolution started 150 years earlier). However, there was much more to the studio system than what the authors note, a point upon which I will return at the end of this review.

Fourth, the Hollywood film industry rapidly explored and then exploited worldwide distribution. It was from its youth an industry geared toward globalization. As the authors note, World War I (WWI) curtailed film production in France and Italy, so by the end of the war Hollywood was shipping its product throughout Europe and the rest of the world. By the 1920s Hollywood was by far the largest producer and distributor in the world. This global reach was only fortified by the coming of sound movies.

Fifth, the studio producers soon grasped the fact that cinema—unlike, say, the peep-show—is a social art form. It is typically best appreciated while viewed in a group setting. The development of large, comfortable, even opulent theaters soon followed, equipped with air-conditioning, well-appointed auditoriums utilizing large screens, readily available food and drinks, and luxurious décor. So, for example, after Paramount bought out the Balaban and Katz chain of movie palaces, by 1931 two million people a day on average attended Paramount movie screenings (p. 51). This is remarkable, considering that the population of the time was only about 124 million (many of whom were young children), that Paramount was only one of a five major studios, and that the American economy was mired in an economic depression.

Finally, sixth, by 1921, Hollywood producers had developed a popular narrative style that proved to be readily understandable and enduringly popular with audiences both at home and abroad. The authors call this the “Classical Hollywood Narrative Style,” and give an especially nice explanation of it in Chapter Three. Of special value is their observation that this narrative style moved cinema distinctly away from the style common in the presentation of theatrical plays.

Also in Chapter Three the authors review the directorial style of crucial early American directors (D. W. Griffith, Cecil B. DeMille, John Ford, King Vidor, William Wellman, Raoul Walsh, and Frank Borzage), some

European émigré directors (Ernst Lubitsch and F. W. Murnau), as well as important early movie stars (such as Charlie Chaplin and Buster Keaton).

Chapter Four discusses the international film industry of the same era (essentially, the first two decades of the twentieth century). The authors give us nice surveys of Swedish Realist Cinema, French Experimentalist cinema (including Cubist film, Dadaist film, and Surrealist film), and also French Impressionist cinema (including discussions of the early French directors Abel Gance, Marcel L'Herbier, Louis Delluc, and Germaine Dulac). They also review in some detail German Expressionist cinema, including the rise of the largest German production and distribution company, UFA (the Universum Film AG), and important early German directors (Ernst Lubitsch, Fritz Lang, F. W. Murnau, and G. W. Pabst).

Chapter Five covers the early history of Soviet film. While Russia had a nascent film industry prior to the Communist revolution of 1917, it was very small. With the Communist takeover, film came in for special scrutiny. V. I. Lenin stated at the outset of his regime's reign that, "Of all the arts, for us [the new Soviet government] the cinema is the most important."²

And indeed, the Communist regime moved quickly to nationalize and control the industry. It created propaganda films with inter-titles minimized (because of the widespread illiteracy and large number of languages spoken in the country) and the narrative burden put upon the visual elements. A new venue—the agitation-propaganda trains ("agit trains") toured the country presenting lectures, theatrical shows, and these propaganda movies. After the nation fell into economic crisis, the Soviet government allowed Hollywood films to be imported again, and a few small independent studios were allowed. This latitude ended when Stalin consolidated power (around 1934).

The authors cover in detail both the styles of early Soviet cinema (notably, constructivism and Soviet montage) as well as the major early Soviet directors, including Lev Kuleshov, Dziga Vertov, Esther Shub, V. I. Pudovkin, and Alexander Dovzhenko. They appropriately give the most attention to the greatest early Soviet director, Sergei Eisenstein. They review his most important movies, *Strike* (1925), *The Battleship Potemkin* (1925), *Ten Days That Shook the World* (1928), and *The General Line* (1929).

In the second section of the book (Chapters Six through Eight), Gomery and Pafort-Overduin cover what they term the Hollywood studio era (1928-1950). In Chapter Six, the authors recount the coming of sound to cinema. A number of approaches to recording sound were tried, starting as early as 1907, but it was only by the mid-1920s that there were two viable sound technologies—one invented by the American Telephone and Telegraph Company, the other by General Electric Laboratories (in conjunction with the Radio Corporation of America). Between 1926 and 1930, Hollywood completely converted to "talkies"—cinema with sound.

² Cited in *ibid.*, p. 114.

This consolidated the business success of the major studios, both within the domestic market and abroad. The five major studios at this point were Paramount, Loew's/Metro-Goldwyn-Meyer (MGM), Fox (later Twentieth Century Fox), Warner Brothers, and Radio-Keith-Orpheum (RKO). The major studios were "vertically integrated": they produced, distributed, and exhibited their products in their own theaters. There were five "minor" studios—Universal, Columbia, United Artists, Monogram, and Republic—bringing the total number of Hollywood studios to ten.

The authors cover, in considerable detail, the major movies and actors who were responsible for the rapid increase in movie attendance during the 1930s and 1940s. They also recount the adjustments the industry made in order to survive the two major socio-economic shocks of that period, namely, the Great Depression and World War II (WWII).

In Chapter Seven, the authors discuss what they call the "first golden age" of Hollywood movies. The Classical Hollywood Narrative had to be modified to accommodate sound. With the coming of sound, not only were many of the old genres (westerns, swashbucklers, war films, dramas, comedies, horror films, and science fiction) enhanced, but new ones emerged, including the gangster film and film noir, and most significantly the musical (a type of movie not possible before the coming of sound).

The authors review many of the major films in each of the genres during this period. The authors also review the major industry figures of Hollywood in the era, including: producers (such as Sam Goldwyn and David O. Selznick); cinematographers (such as Gregg Toland, James Wong Howe, and Ernest Haller); costume designers (such as the legendary Edith Head); film editors (such as MGM's Margaret Both); scriptwriters; and film composers (especially Bernard Herrman). But the authors devote the bulk of the discussion to the great directors of the period: Howard Hawks, John Ford, Frank Capra, Alfred Hitchcock, Fritz Lang, Ernst Lubitsch, Billy Wilder, and the difficult but brilliant Orson Welles. They finish by discussing the rise of color and the U.S. Supreme Court ruling that forced the Five Majors to sell off their theater chains.

In Chapter Eight, the authors review the developments in the foreign industries during this period. They cover notable French directors (Rene Clair, Jean Vigo, Jean Renoir, and Marcel Carne) and major British cinema figures (producers Alexander Korda and Michael Balcon, directors Alfred Hitchcock and Noel Coward, and actors Gracie Fields and George Formby). They then briefly discuss the German film industry, which was under Nazi control by 1933, and began at that point to produce purely entertainment and propaganda movies until the end of the war.

Gomery and Pafort-Overduin discuss in more detail the Italian film industry of the era. Benito Mussolini set up a complex of studio buildings, Cinecittà, which functioned as a heavily subsidized alternative to Hollywood. Cinecittà churned out many films, hitting thirty feature films in 1933, then sixty in 1938, ninety in 1941, and three hundred a year from 1942 to 1944, all under fascist control. From 1945 until the 1950s, there was a flourishing of

Italian films, with first-rate directors such as Roberto Rossellini, Luchino Visconti, and Vittorio De Sica. Their approach to film came to be called Neo-Realism.

In the third section of the book (Chapters Nine through Twelve), the authors take up what they call the Television Era (1950-1977). In Chapter Nine, Gomery and Pafort-Overduin talk about the changes wrought to the American film industry in the 1950s. The studios had to deal with the rise of television (by 1957, most American homes had one or more TV sets), at a time when the federal government had disallowed their being able to exhibit their own films. It also had to adjust to the increasing move of middle-class American families to the suburbs. That these changes were challenging, indeed, to the movie industry is proven by the ticket sales: by the 1960s ticket sales were only half of what they were during WWII, and thousands of movie theaters closed.

The authors add that another change the studios had to deal with was the new explosion of technologies in wide-screen color cinematography. The studios, losing audience share to TV (in which they were banned from being involved), moved to tempt audiences back by visual presentation that TV could never match. The authors discuss the new color technologies (Cinemascope, VistaVision, Panavision, etc.), the decision of the studios to allow their past films to be shown on TV, and the effects that such changes had on the various Hollywood studios during this period.

Chapter Ten continues the discussion of the changes that Hollywood experienced in the 1950s and 1960s, focusing particularly on the great directors of the period: Alfred Hitchcock, Howard Hawks, Sidney Lumet, Franklin Schaffner, Stanley Kubrick, Otto Preminger, John Huston, Stanley Kramer, John Ford, Anthony Mann, Budd Boetticher, Sergio Leone, Fritz Lang, Sam Fuller, Don Siegel, Vincente Minelli, Frank Tashlin, and Douglas Sirk. The authors also cover the coming of the “blockbuster” in the 1970s, with the work of the new directors Francis Ford Coppola (though curiously omitting his interesting piece *The Conversation*), Steven Spielberg, and George Lucas.

In Chapter Eleven, Gomery and Pafort-Overduin review the European “art cinema” of the time. This includes the French New Wave cinema created by directors such as Alain Resnais, Francois Truffaut, and Jean-Luc Godard. Also discussed is the New German Cinema due to directors such as Rainer Werner Fassbinder, Wim Wenders, and Werner Herzog. Then there were directors who worked outside of the “new wave” movements, including Jacques Tati, Robert Bresson, the extremely important Ingmar Bergman, Luis Bunuel, Federico Fellini, Michelangelo Antonioni, and Bernardo Bertolucci.

In Chapter Twelve, the authors review—again, with admirable scope—the alternative film industries in the Soviet Union, Eastern Europe, South America, Australia, and Japan. They cover the work of: Andrei Tarkovsky in the Soviet Union; Andrzej Wajda, Andrzej Muk, Jerzy Skolimowski, and Roman Polanski in Poland; Milos Forman, Vera Chytilova,

and Jiri Menzel in Czechoslovakia; Zoltan Fabri, Andras Kovacs, and Miklos Jancso in Hungary; and Dusan Vukotic, Alexander Petrovic, Zivojn Pavlovic, and Dusan Makavejev in Yugoslavia. They also cover Latin American films (with special focus on Argentinian director Leopoldo Torre Nilsson), Australian cinema (including the work of directors Bruce Beresford, Peter Weir, George Miller, and Gillian Armstrong), and conclude with a review of the major Japanese directors (Akira Kurosawa, Kenji Mizoguchi, and Yasujiro Ozu).

In the fourth (and final) section of the book (Chapters Thirteen and Fourteen), Gomery and Pafort-Overduin cover what they term the “video to digital era” (1977-2010). In Chapter Thirteen, the authors survey recent world cinema, focusing on China (including the work of directors Chen Kaige, Zhang Yimou, and Zhang Yang) and Hong Kong (including the major Hong Kong studios—Shaw Brothers, MP&GI, and Golden Harvest Film Company—along with directors and stars Bruce Lee, Jackie Chan, John Woo, and Wong Kar-Wai). After a brief discussion of the Danish director Lars von Trier and the Dogme 95 approach to film, the authors discuss in more detail the Indian film industry. India has produced about 800 films annually in twenty-two different languages since the 1980s, and the authors discuss the directors Manmohan Desai, Raj Kapoor, Sanjay Leela Bhansali, and Karan Johar. They also discuss the losses in ticket sales experienced especially by Hong Kong and India due to the rise of the VCR and the ease of watching recent films at home.

In Chapter Fourteen, the authors conclude by discussing the most recent trends in the six major Hollywood studios (Universal, Disney, Paramount, Sony Entertainment, Warner Bros., and Twentieth Century Fox), and how they are adjusting to the home video (DVD) distribution channel. They conclude by reviewing independent filmmaking and the endurance of the Classical Hollywood Narrative Style.

Gomery and Pafort-Overduin have produced a compendium of cinematic history that is extremely factually accurate. The only minor factual error I noted in the book was the statement that (the regrettably underrated) actor Steve McQueen got his start in the TV series “Have Gun—Will Travel.” In fact, “Have Gun—Will Travel” starred (the also underrated) actor Richard Boone. McQueen’s early TV series was “Wanted: Dead or Alive” (1958-1961).

More worrisome than who is in this comprehensive history is who is left out. I am puzzled that the authors spend a fair amount of space on the relatively obscure French director Jean Vigo, but barely even mention—much less discuss in the lavish detail they accord Steven Spielberg—the truly great director Sir David Lean.

Lean (1908-1991) was a man of cinematic parts. He was a screenwriter, film editor, director, and producer. He directed an astonishing number of fine films, including: *Great Expectations* (1946), *Oliver Twist* (1948), *The Passionate Friends* (1949), *The Sound Barrier* (1952), *Hobson’s Choice* (1954), *Summertime* (1955), the amazing *The Bridge on the River*

Kwai (1957), the superb *Lawrence of Arabia* (1962), the excellent *Doctor Zhivago* (1965), *Ryan's Daughter* (1970), and *A Passage to India* (1984).

Of these, *The Bridge on the River Kwai*, *Lawrence of Arabia*, and *Doctor Zhivago* surely rank among the greatest movies ever made. Lean has an amazing ability to make a movie work on every level from the sensory (the level of visual power and musical score), to the literary (the level of character development, plot, story line, and dialogue), to the philosophic (the level of ideas explored). He has more movies in the British Film Institute's list of the 100 greatest British films ever made than any other filmmaker (with seven of his films making the list).

Many of Lean's films starred one of the greatest actors of all time, Alec Guinness—not mentioned in the book.

Part of the problem here is that the authors don't distinguish as clearly as they ought between cinema as an art and as a medium of entertainment. Ironically, this distinction was recognized early on in Hollywood: the first Academy Awards in 1929 gave *Sunrise* the top award for "Unique and Artistic Production," and the film *Wings* won for "Outstanding Picture, Production." Unfortunately (in my view at least), starting the next year and continuing to today, the two categories were fused into the "Best Picture" award.

By a movie's having "high artistic merit" I mean that it is rich in its literary quality and deep in its philosophic content. Artistic quality encompasses, among other features, how interesting the dialogue is, how vivid and realistic the characters are, how important the story is, how accurate the history is, and how deep the philosophic insights or how stimulating the intellectual challenge is in the film. Films high in entertainment value tend to be ones that work primarily on the sensory level.

The point here is that some directors (such as George Lucas and even Steven Spielberg) tend to create great entertainment films, but less so films of great artistic achievement. Other directors (such as Orson Welles) tend to create films of great artistic achievement, but of limited entertainment value (at least as reflected in ticket sales). Lean could accomplish both to a very rare degree.

Please note that I am in no way denigrating film as entertainment. The great power of cinema to entertain is nothing short of a blessing for people worldwide. Providing amusement and diversion for audiences is a valuable service—especially for pre-literate or illiterate audiences—and considering how inexpensively the service has traditionally been rendered, it is all the more praiseworthy.

Moreover, producing highly entertaining movies is no easy matter. Remember the amazement you felt upon first seeing *Star Wars* or *Raiders of the Lost Ark* for the first time, and compare it to the feeling you had watching the countless boring, bland, and insipid "entertainment" films you have seen, and you can readily appreciate the talents of the Lucases and Spielbergs.

But we equally need to appreciate that the qualities of being generally entertaining and artistically compelling are separate qualities. A film

can be highly entertaining but devoid of artistic quality, can be high in artistic quality but devoid of entertainment value, or it can (on rare occasions) be high in both.

Of course, a film can also be (on not so rare occasions) devoid of both. Such movies are often called by movie critics “bombs” or “turkeys.”

However, the most regrettable feature of the Gomery and Pafort-Overduin book lies in its presentation as fact what are in truth ideological claims, and questionable ones at that.

The two most important such ideological positions (both I suspect shared by many if not most film scholars) are, first, a positive view of the use of governmental protectionism to “help” national film industries, and second, a negative view of the Hollywood studio system. Both of these views are interrelated, and both are worth critically examining.

Gomery and Pafort-Overduin make it clear repeatedly that they favor other countries protecting their own film industries. Here are just a few quotations that illustrate this support:

Other countries had to struggle, not simply to please their native fans, but to somehow “better” Hollywood which had become the de facto world standard. Hollywood by international control defined the state of world cinema. From this economic power base, Hollywood would define appropriate standards of film style, form and content. In chapter after chapter of film history we shall see the effects of the Hollywood international distribution monopoly.

For example, prior to the war, Germany had been a leader in standing against Hollywood imports. Even after losing the First World War, the German film industry held off Hollywood until 1923. That year German films held a 60 percent market share, the USA 25 percent and the rest of the world 15 percent. Then Adolph Zukor began to pressure the German government to open its market place; German exhibitors backed Zukor. In a year, the change was remarkable. German producers’ share of the market dropped to less than half the exhibition market share—all lost to Hollywood. (p. 45)

During the 1920s the only other European national film industry that could compete with Hollywood was found in Germany. Even before the rise of Adolph Hitler, the federal government supported a German film industry to provide films that could woo audiences away from Hollywood. German films were popular amongst German audiences and the German film industry flourished until 1926 when its most noted filmmakers (Ernst Lubitsch, Fritz Lang and F.W. Murnau) left for Hollywood. (p. 99)

The recovery of the Soviet film industry was made possible with the profits made on the distribution of foreign films. Lenin’s long-term goal was to dominate screens all across the vast nation. But that

would not happen until three years after Lenin's death in January 1924. (p. 115)

But as Italians re-took control of their government [at the end of WWII], they passed laws to support native movie production. . . . Taxes on Hollywood imports created a pool of monies to support native filmmaking. In addition, a quota effectively reserved 25 percent of screen time in Italian theaters for native films. Hollywood imports fell by 50 percent, and Italy began to reclaim its native screens. Italian producers could draw on this fund, which the government regularly augmented. Italy, more than Germany or Great Britain, effectively subsidized its native film industry, guaranteeing Hollywood would be kept in check. (pp. 216-17)

In 1970 the Australian Parliament established the Australian Film Development Office to allocate governmental funds to provide assistance to film . . . producers. There was simply no way to compete with Hollywood unless the national government helped. (p. 341)

Still, unlike Europe, Indian films held a 93 percent share of the total number of local screenings. Hollywood always was a very minor player in India because the national government protected native production. (p. 379)

But I doubt that most economists would agree with the authors that protectionism helps any industry in the long term, or the consumers even in the short term.

Consider by analogy the American auto industry. The U.S. had an early advantage in the development of automobiles (specifically, early exploitation of the factory system, ready availability of oil, and so on). However, this didn't stop other countries in the world, especially Japan, Germany, England, and (later) South Korea, from developing their own auto industries, which proved to be well able to compete with American—so much so that by the 1970s the American automakers were demanding and receiving protection from the Evil Foreigners. During the time they received the protection, the quality of American cars stagnated and the American consumer was worse off. Only the pressure of competition forced the American automakers to improve the quality of their products.

So one question to put to Gomery and Pafort-Overduin is whether it might not well be the case that the attempts by various governments—especially the French, German, and Italian ones—to protect their “authentic” home film industries from the pressure of American competition had the unintended negative effect of in fact *retarding* their development. The foreign flicks of decades past were often “artsy” in the worst sense of the word: talky, hard to follow, pretentious, with crude cinematography and other technical

features, and accordingly with limited appeal. Over the last decade or two in particular, foreign movies have improved dramatically in production value, and now compete quite effectively in the global marketplace. Could it be that allowing directors to pursue only their own preferences in filmmaking without having to consider the audience's preferences was in fact not good for either the audiences or the directors themselves?

Indeed, the authors seem inadvertently to concede this point themselves in the first quotation above, since they acknowledge that theater owners in Germany in the 1920s *supported* Hollywood's efforts to open up the German film market. The exhibitors surely wouldn't have done this if they thought the public didn't want so many Hollywood movies.

Moreover, countries such as Japan and Hong Kong—which did not so strongly protect their national film industries—nevertheless developed cinema that have succeeded quite well commercially.

Another question the authors might have considered is whether the strong governmental involvement with the national film industry in such a country as Germany might not have facilitated the takeover of that industry by the government later.

As to the second ideological position that informs the book, the authors certainly hold that the Hollywood film industry prior to the 1948 U.S. Supreme Court ruling was a monopoly that deserved to be broken up. A number of quotations illustrate this:

The coming of sound solidified Hollywood's control over the world market and moved the United States into the studio era in which filmmaking, film distribution, and film exhibition were dominated by five corporations. They ruled Hollywood during the 1930s and 1940s and operated around the world as fully integrated business enterprises. The Big Five owned the most important movie theaters in the United States. By controlling picture palaces in all of America's downtowns, they took in three-quarters of the average box-office take. Only after they granted their own theaters first-run and soaked up as much of the box-office grosses as possible, did they point smaller, independently owned theaters to scramble for the remaining bookings, sometimes months, or even years, after a film's premiere. (p. 143)

In 1938 Hollywood behaved as a monopolist that would last forever. As a result the US government sued the theater-owning Hollywood studios for anti-trust violations and in 1948 the US Supreme Court ruled that [the five major studios] must sell their theaters. Through the 1930s and 1940s these five major studios owned the USA and determined which film played first, for how long, and in which theaters. Until 1948 the Five divided up the USA into lucrative territories and made sure that movies were first shown in their theaters. (p. 192)

The antitrust case against the eight major Hollywood studios had its origins in the administration of President Franklin D. Roosevelt (1933-1945) but only came to a final conclusion in May 1948. In Roosevelt's second term (1936-1940), he turned to enforcement of existing antitrust laws to help bring the USA out of the Great Depression. Independent exhibitors had long complained of Hollywood's domination of film exhibition in the USA. Get Hollywood out of the theater business, they argued, return control of theaters to hometown merchants, and the producers would begin making good, clean, family movies. In July 1938 President Roosevelt ordered his Department of Justice to initiate an antitrust suit charging [the studios] with multiple violations of the antitrust laws. Hollywood lined up the best lawyers for what turned out to be a ten-year struggle.

Each side maneuvered for advantage. In 1940, the government and the major companies seemed to have come to an agreement. Both signed a consent decree which lasted three years. The government backed off from prosecution; the eight major Hollywood studios promised to eliminate certain abuses of power, and take to arbitration more fairly disputes between the major studios and independent exhibitors. But with the prosperity of the war years, Hollywood grew too rich, too brazen. Independent exhibitors saw millions of dollars flow directly to Hollywood-owned theaters, away from their own box-offices. The independents complained loudly and bitterly and the government re-opened the case. Hollywood felt confident it could win a court battle, but Hollywood was wrong. . . .

Consequently, in 1949, after all possible appeals had been exhausted and all extensions granted, RKO and Paramount agreed to sell their theaters. Warner Bros. and Twentieth Century-Fox stalled, hoping for a return to the prior status quo, but eventually spun off their theater chains in the early 1950s. Loew's, the parent corporation of MGM, struggled and resisted at every turn. Final divorcement was not reached until March of 1959 (pp. 236-37)

Once the Supreme Court ruled against the Hollywood majors in May of 1948, the FCC declared the major Hollywood companies ineligible for the prized television licenses because they were part of a convicted industrial trust. Hollywood's dream of ownership and direct control of television never materialized. The motion picture industry had to seek other ways to deal with a world of suburbanites staying home to have families and watch television. (p. 238)

Gomery and Pafort-Overduin seem to take it as obvious that the Five Majors were a monopoly colluding to harm the consumer, and that their federally forced divestiture of their distribution and exhibition arms was good for the

film industry, the cinema as art form, and the film-watching public. However, the only bit of evidence they offer for these huge claims is that right after the forced divestiture, one of the minors was able to cut a deal with movie star Jimmy Stewart to do the (hardly classic) Western *Winchester '73* (1950) because it could book the film in major theaters.

Again, let me probe their perspective here a bit. First, just because the Supreme Court ruled in favor of independent theater owners hardly makes it right. The U.S. Supreme Court has not infrequently issued arguably bad rulings—most notoriously the 1857 *Dred Scott* decision.

Second, what definition of “monopoly” is (and was) being employed in this case? A monopoly implies that one company illegitimately comes to dominate a market. But how can *ten* companies, all competing for ticket sales in a tight economy—none colluding in setting prices, stopping new companies from forming, hiring new actors, devising new genres, opening their own theater chains, and so on—be considered a monopoly?

Third, there are legitimate monopolies. In particular, natural monopolies are clearly morally (and often legally) permissible. In a natural monopoly, a company comes to dominate a market simply because it produces such a superior or generally useful product that the consumers voluntarily come to adopt it universally. One thinks here of Microsoft, whose operating system caught the public’s favor (though it was not necessarily superior to the alternative systems offered by Apple and others), and was pursued for years by the federal Justice Department on anti-trust allegations. Might it not be the case that the Five Majors simply had happened upon the key innovations first, and would have in time lost market share naturally?

Fourth, the authors never consider whether the Hollywood studio control over the major movie theaters would have been altered or even dissipated with the wave of suburbanization that occurred after WWII. For that matter, the authors—who themselves note that ticket sales during this period plummeted by half—never consider whether the studios would have built movie theaters in the suburbs as well, if the government had allowed the majors to keep their exhibition channel.

Finally, and most importantly from the view of cinematic art, in depriving the Five Majors of their right to derive downstream income from their own movies in their own theaters, could it be the case that the Supreme Court as an unintended negative consequence really hurt the artistic quality of American cinema? Let’s see if I can first offer evidence for this supposition, and then suggest a plausible explanation for it.

Below I have a table of the American Film Institute’s (AFI’s) list of top 100 American films, based upon such features as critical recognition, popularity over time, historical importance, and cultural significance. I have listed the films identified in the 1998 list and the update from 2007 (with a decade of new films that qualified, thus pushing some of the old ones off the list). I break them down by decade, and give the average U.S. population and Gross Domestic Product (GDP) figures for each.

Decade	AFI films	American population average (millions)	American GDP average in billions of 2005 dollars
1910-1919	<i>The Birth of a Nation</i> (1915) <i>Intolerance</i> (1916)	99.1	n/a
1920-1929	<i>The Gold Rush</i> (1925) <i>The General</i> (1927) <i>Sunrise</i> (1927) <i>The Jazz Singer</i> (1927)	114.6	n/a
1930-1939	<i>All Quiet on the Western Front</i> (1930) <i>Frankenstein</i> (1931) <i>City Lights</i> (1931) <i>King Kong</i> (1933) <i>Duck Soup</i> (1933) <i>It Happened One Night</i> (1934) <i>A Night at the Opera</i> (1935) <i>Mutiny on the Bounty</i> (1935) <i>Swing Time</i> (1936) <i>Modern Times</i> (1936) <i>Snow White and the Seven Dwarfs</i> (1937) <i>Bringing Up Baby</i> (1938) <i>Gone With the Wind</i> (1939) <i>Mr. Smith Goes to Washington</i> (1939) <i>Stagecoach</i> (1939) <i>The Wizard of Oz</i> (1939) <i>Wuthering Heights</i> (1939)	127.7	898
1940-1949	<i>Fantasia</i> (1940) <i>The Grapes of Wrath</i> (1940) <i>The Philadelphia Story</i> (1940) <i>Citizen Kane</i> (1941) <i>The Maltese Falcon</i> (1941) <i>Sullivan's Travels</i> (1941) <i>Casablanca</i> (1942) <i>Yankee Doodle Dandy</i> (1942) <i>Double Indemnity</i> (1944) <i>The Best Years of Our Lives</i> (1946)	141.8	1,736

Reason Papers Vol. 35, no. 1

	<i>It's a Wonderful Life</i> (1946) <i>The Treasure of Sierra Madre</i> (1948) <i>The Third Man</i> (1949)		
1950-1959	<i>All About Eve</i> (1950) <i>Sunset Boulevard</i> (1950) <i>An American in Paris</i> (1951) <i>A Place in the Sun</i> (1951) <i>A Streetcar Named Desire</i> (1951) <i>The African Queen</i> (1951) <i>12 Angry Men</i> (1951) <i>High Noon</i> (1952) <i>Singin' in the Rain</i> (1952) <i>From Here to Eternity</i> (1953) <i>Shane</i> (1953) <i>On the Waterfront</i> (1954) <i>Rear Window</i> (1954) <i>Rebel Without a Cause</i> (1955) <i>Giant</i> (1956) <i>The Searchers</i> (1956) <i>The Bridge on the River Kwai</i> (1957) <i>Vertigo</i> (1958) <i>Ben-Hur</i> (1959) <i>North by Northwest</i> (1959) <i>Some Like it Hot</i> (1959)	165.3	2,441
1960-1969	<i>Psycho</i> (1960) <i>Spartacus</i> (1960) <i>The Apartment</i> (1960) <i>West Side Story</i> (1961) <i>Lawrence of Arabia</i> (1962) <i>The Manchurian Candidate</i> (1962) <i>To Kill a Mockingbird</i> (1962) <i>Dr. Strangelove</i> (1964) <i>My Fair Lady</i> (1964) <i>Doctor Zhivago</i> (1965) <i>The Sound of Music</i> (1965) <i>Who's Afraid of Virginia Woolf</i> (1966) <i>Bonnie and Clyde</i> (1967) <i>Guess Who's Coming to Dinner</i> (1967) <i>In the Heat of the Night</i> (1967) <i>The Graduate</i> (1967) <i>2001: A Space Odyssey</i> (1968) <i>Butch Cassidy and the Sundance</i>	191.3	3,558

Reason Papers Vol. 35, no. 1

	<i>Kid</i> (1969) <i>Easy Rider</i> (1969) <i>Midnight Cowboy</i> (1969) <i>The Wild Bunch</i> (1969)		
1970- 1979	<i>Patton</i> (1970) <i>M.A.S.H.</i> (1970) <i>A Clockwork Orange</i> (1971) <i>The French Connection</i> (1971) <i>The Last Picture Show</i> (1971) <i>Cabaret</i> (1972) <i>The Godfather</i> (1972) <i>American Graffiti</i> (1973) <i>Chinatown</i> (1974) <i>The Godfather Part II</i> (1974) <i>Jaws</i> (1975) <i>Nashville</i> (1975) <i>One Flew Over the Cuckoo's Nest</i> (1975) <i>All the President's Men</i> (1976) <i>Network</i> (1976) <i>Rocky</i> (1976) <i>Taxi Driver</i> (1976) <i>Annie Hall</i> (1977) <i>Close Encounters of the Third Kind</i> (1977) <i>Star Wars</i> (1977) <i>Deer Hunter</i> (1978) <i>Apocalypse Now</i> (1979)	214.9	5,053
1980- 1989	<i>Raging Bull</i> (1980) <i>Raiders of the Lost Ark</i> (1981) <i>Blade Runner</i> (1982) <i>E.T. the Extra-Terrestrial</i> (1982) <i>Tootsie</i> (1982) <i>Sophie's Choice</i> (1982) <i>Amadeus</i> (1984) <i>Platoon</i> (1986) <i>Do the Right Thing</i> (1989)	237.6	6,791
1990- 1999	<i>Dances with Wolves</i> (1990) <i>Goodfellas</i> (1990) <i>The Silence of the Lambs</i> (1991) <i>Unforgiven</i> (1992) <i>Schindler's List</i> (1993) <i>Forrest Gump</i> (1994) <i>The Shawshank Redemption</i> (1994)	265.1	9,235

	<i>Pulp Fiction</i> (1994) <i>Toy Story</i> (1995) <i>Fargo</i> (1996) <i>Titanic</i> (1997) <i>Saving Private Ryan</i> (1998) <i>The Sixth Sense</i> (1999)		
2000-2007	<i>The Lord of the Rings: The Fellowship of the Ring</i> (2001)	290.3	12,228

What does this table show? It shows that while the three decades with the most AFI top-rated movies were the 1950s (with twenty), the 1960s (with twenty-two), and the 1970s (with twenty-two), they did not produce many more top films than the 1930s (with seventeen) did under the so-called monopolistic studio system. And during the 1930s, the American economy was in the worst economic depression in history, as opposed to the economic booms experienced during the 1950s-1960s, and had a much smaller population.

Furthermore, the 1980s produced only nine AFI top-rated films, and the 1990s only thirteen, while the 1940s produced thirteen. Again, this is amazing, because during the 1940s, America was in the deepest war it had seen since movies were invented, with 17 million men under arms and an economy focused on war production.

Remember that many or even most of the movies in the early 1950s were at least planned and partially developed while the old Hollywood studio system was in place. For example, MGM did not finally separate itself from its theaters until 1959, so the two greatest musicals of the 1950s, *Singin' in the Rain* and *An American in Paris* were really produced under the old studio system.

Moreover, the 1930s produced almost twice the number of AFI top-rated films as did the 1980s, when the U.S. had nearly twice the population and had 7.5 times the GDP. The 1930s produced more AFI top-rated movies than the number produced in the 1990s, and eighteen times the number from 2001-2007.

Additionally, if one looks at the list of the AFI top-rated movies during the 1970s through the turn of the twenty-first century, they seem to have many more films one would term as mainly entertainment (such as *Star Wars*, *Close Encounters of the Third Kind*, *Raiders of the Lost Ark*, or *Jaws*) or mainly culturally resonant to people of a certain age (such as *The Graduate*, *American Graffiti*, or *Easy Rider*).

In short, it certainly appears that Hollywood under the supposed studio monopoly system produced more of the greatest films per capita than in the decades since the system was ended. This is all the more remarkable when you consider the impediments the film industry faced during this period: the Depression and then WWII, the comparatively primitive technology compared

especially to the last two decades, and the fact that there was a greater degree of restriction on what could be said and shown than in more recent times.

What Gomery and Pavort-Overduin don't comment upon is the advantages the Hollywood system had, advantages that help to explain the quality of films the system produced. Let me point to just two.

Start with the fact that during the studio-system era, since the studios made money from the exhibition of the films they produced, they could afford to take more chances with new actors, directors, and genres, as well as more artistic movies. The extra income from downstream sources (ticket sales, concession sales, etc.) allowed the studios to amortize the risk over a broader income stream than in later decades. In the modern era, studios primarily make money from the production of the movie itself, so the pressure is there to produce "blockbusters," which often tend to be purely entertainment comic-book movies or endless sequels of past blockbusters.

Moreover, because the profit from distribution and exhibition was so great, the studios could work to find and develop much more new talent. The studios sent talent scouts to all of the regional and college playhouses around the country looking for new actors, and every studio had an acting school where new talent could be trained. Again, this seems different from today, where new actors seem mainly to be relatives of existing popular actors.

I am not saying that Gomery and Pavort-Overduin's ideological claims are not defensible, but simply that they should have been supported with real evidence, or at least qualified as hypothetical, and not merely taken as axiomatic.

However, despite these flaws, the book remains a valuable survey text well worth adoption.

Afterwords

Do the Top 1% Deserve Their Pay Packages?—And Why?

Joseph S. Fulda

It is difficult not to be sympathetic with the view of the various and varied Occupy movements and with their single common theme that the wealthiest 1% of Americans, and, indeed, the world—as this is not only the single largest mass American movement since protesters effectively forced Lyndon B. Johnson not to seek reelection for the U.S. presidency, but also a movement without national borders—have it all, at least financially speaking, whereas the rest of us have increasingly less.

Libertarians often offer abstract arguments to the effect that massive inequality is a necessary part of free enterprise, that an unequal distribution of talents must necessarily result in an unequal distribution of rewards, and that, in the long run, this very inequality benefits the least well-off. Such arguments might well do in less gut-wrenching times, but in times that “try men’s soul’s,”¹ to use Thomas Paine’s phrase, and where short-run survival is often at issue and *the* issue, these arguments will not only fall on deaf ears, but actually do the conservative-libertarian movement serious and long-lasting damage—as the Tea Party seems to understand in its attempts, at times, to make common cause with the Occupiers. Therefore, and also because these abstract arguments are quite well known, we will steer completely clear of them here, instead concentrating on three arguments that if less tried-and-true are also far more appropriate to the times.

We begin by asking a counterfactual question. What if all Chairmen and CEOs of for-profit corporations were paid no more than \$200,000—and by this I mean *in toto*: salary, bonuses, stock options, deferred compensation, retirement contributions, and all other perquisites combined? In short, they would receive absolutely no astronomical pay packages whatsoever. What then? I submit that no sane person would ever agree to take on those jobs. This is not because such jobs require a so-called 24/7 commitment, for the truth is that many minimum-wage workers or near-minimum-wage workers

¹ Thomas Paine, *The American Crisis*, in *The Life and Major Writings of Thomas Paine*, ed. Philip S. Foner (New York: Carol Publishing Group, 1993), chap. I, p. 50.

work just as many hours, perhaps more, often at more than one grueling job, than your typical top 1%-er.

There are two rather obvious reasons why, without those astronomical pay packages, people would have to be drafted into the top leadership positions of for-profit corporations. Both, believe it or not, relate to precisely the concerns that motivate the motley Occupy movements. The first requirement of a Chairman or CEO is to do right by his stockholders. This can only be done by meeting the competition head-on. What does this, in turn, require? It all too often requires gut-wrenching business decisions which have nothing *whatsoever* to do with the records of service that employees of the firm have compiled. It means, instead, that if a division is unprofitable and does not appear likely to regain profitability, because the good or service it provides has fallen out of vogue, sometimes merely because of the whims of consumers (“pet rocks” of yesteryear come to mind), then notwithstanding the excellence of perhaps every single employee in the division, it will have to be shuttered, sometimes within one day. It also means that if a division is merely *becoming* unprofitable, although its goods and services are much in demand, because another company produces the same good or service much more inexpensively in parts of the world where business regulations are virtually unknown, competition will force the company’s top leaders, once again, either to close the division or, in the alternative, ship it to parts of the world where the results for almost all of its American—or European, for that matter—employees of many years’ standing are just the same—namely, the unemployment line.

I aver that no sane Chairman or CEO enjoys making these gut-wrenching business decisions, which have nothing at all to do with justice or just deserts, but rather with the product or service being offered or with a merger or acquisition which, however efficient, must necessarily result in layoffs so as to avoid duplication and *be* more efficient. Those astronomical pay packages—the lavish parties, the mansions, the yachts, the private jets, and the like—are there as a salve, a balm, intended to distract their recipients from the suffering they are causing so that they can do what they must do for the company’s remote owners—the stockholders—without themselves falling apart.

But there is also another and equally important reason for those astronomical pay packages that should also resonate with those supportive of the restive Occupy movements. While considerable scrutiny of the business practices of publicly traded corporations is not only reasonable but mandatory, given the ubiquitous urge of those entrusted with the capital of (very) remote owners to defraud those very owners (a problem known as “the agency problem” in brief, and “the agent-principal problem” in full), the similar scrutiny applied to the personal lives of corporate titans is utterly unwarranted and yet just as pervasive. This sort of intrusiveness by the press, the paparazzi, and increasingly the public-at-large via the Internet would simply not be tolerated for anything like the \$200,000 total annual pay package posited at the start of this piece. Again, something is needed to distract the

corporate titans from the unwanted, unwarranted, and intrusive attention they are wont to attract. This is the second purpose they are, and need to be, allowed their lavish parties, mansions, yachts, and private jets.

Take all of this away, and no one will wish to serve at company helms—and large corporations will die. Does this matter to the modern economy? Indeed, it does. Here's why. It *is* true that most new jobs originate from small businesses, most enterprises altogether are small, and that these drive the economy—but it is always the hope of the owners to go big, and perhaps even to go public with an initial public offering (IPO). Furthermore, even small enterprises rely heavily on larger suppliers and large communications, computer, and transportation networks. Finally, the chain and franchise are critical parts of the American economic landscape, the former because it is generally less expensive for consumers, the latter because although one cannot take one's franchise outlets public, one *can* become quite well off, as one franchise owner explained to me, by competing with himself rather than others and owning multiple franchise outlets in the same general area. Thus, the large, publicly traded corporation in all of its varieties is a critical feature of the economy. Take them all away and we'll be back to a subsistence economy in which only family farms, very small outfits which rely on only small-scale local production, and small craftsmen and artisans can survive—as in medieval times. Even the run-of-the-mill small business in today's economy must have the communications, computer, and transportation networks that have largely evolved privately; the same goes for power sources, but these are not usually private. At any rate, reversion to the subsistence economy of medieval times is not a very attractive prospect, to say the least. It may *seem* "romantic," but neither Americans nor Europeans are too happy when communication, power, and computer lines go down and transportation becomes almost impossible, as has happened in many of the natural disasters that beset various parts of the more-industrialized world during the early twenty-first century.

Finally, it is essential to revisit a third reason for those pay packages only adumbrated thus far: the agency problem. The agency problem exists everywhere—from the small shop where, on occasion, the manager acts contrary to the wishes, and sometimes the interests, of the principal, the owner, to large, publicly traded firms, where the top executives all too often sell out their stockholders for their own interests. As stockholders are very remote from the scene, owners *in absentia*, structuring the pay package of top executives appropriately is key. The trouble, of course, is that, in the words of John Marshall, "human nature, black as it is"² (or, at least, can be), nothing will truly work. Pay top executives a straight salary, and there is simply no incentive to keep stock prices high. Pay them with stock options and there is plenty of incentive to artificially, that is, by *artifice*, inflate stock prices. Pay

² John Marshall, "The Virginia Ratifying Convention," in *The Debate on the Constitution, Part Two* (New York: Library of America, 1993), p. 740.

them with bonuses and there are both this last incentive and no incentive in bad times to make gut-wrenching decisions. Pay bonuses in bad times, too, though, and the disadvantages of a straight salary reappear. As there is no real solution to the agency problem, that is, to the defects of human nature this side of the Redemption, nothing truly works and large firms must simply settle for some combination of the above forms of incentive, and others besides, to compensate their top executives. Even so, many of them end up doing time in penal institutions, some for serious crimes they really did do and for which they simply must be held accountable. When temptations are ubiquitous and are coupled with the not inconsiderable threat of long terms in the federal penitentiary system, one has yet a third reason for those astronomical pay packages.

Thus far, we discussed only corporate moguls, giving at first two, and ultimately three, reasons for their outsized pay packages: the need for gut-wrenching business decisions which have nothing whatsoever to do with any conception of just deserts, the continual intrusion on their personal lives which has nothing to do with how ably they perform their fiduciary duties, and “the agency problem.”

Do these arguments apply to others in the top one percent—some there with extraordinary levels of compensation and some without? We will now examine celebrities, CEOs or Executive Directors of not-for-profit organizations, and high elected or appointed political figures. However, we will consider not only these three arguments, but also one contrary one.

First, let us examine celebrities. While they don’t face the need to lay off many people at a pin drop and there is no agency problem, they face not continual but continuous intrusion on their personal lives. It is common to say that celebrities feel “entitled” and thus often act badly—“train wrecks,” in the common parlance. Maybe sometimes, but, on the whole, I don’t buy into this myth. Rather, just as relationships (normally, but by no means always, illicit) do not flourish properly underground, they also cannot flourish under that strange combination of microscope and telescope to which celebrity relationships are routinely subjected. In other words, the media, both “professional” and lay in the Internet age, are in large part responsible for *creating* “train wrecks” by their obsessional focus on the few performers and athletes who make it big. I put the word “professional” in scare quotation marks, because pandering is anything but constructive and professional; it is destructive and unprofessional. Celebrities, then, we would argue deserve their outsized pay packages not merely because of their outsized talents, but also both as compensation for the scrutiny and for the nearly inevitable toll it takes on their personal lives.

Second, let us examine heads of not-for-profit organizations. In an interesting article, Karen Selick argues, “There’s no such thing as a nonprofit organization.”³ She points out that “every single employee of a nonprofit

³ Karen Selick, “There’s No Such Thing as a Nonprofit Organization,” *Ideas on Liberty* (June 2003), pp. 35-37.

institution is actually a ‘profit center’ in himself.”⁴ The evidence she adduces for her argument that nonprofit enterprises are, in reality, run for the benefit of their employees—the rhetoric to the contrary notwithstanding—is impressive. In a table taken from the January 2002 issue of the *Fraser Forum*, there is a comparison of the wages of employees in thirteen job classifications in Canada’s hospital sector (unionized, but nonprofit) and hotel sector (unionized, but for-profit). The wages of the hospital workers ranged from 9% to 39% higher, with a median premium of 17%. As Selick is quick to point out, not one of the hospital job classifications required *any* specific medical knowledge. All of them were rather ordinary blue-collar and white-collar jobs. In view of this evidence—carefully indicated in the distinction between the vernacular term “nonprofit” and the correct, legal term “not-for-profit,” the latter indicating *purpose* with the former merely indicating putative *function*—and the near-total absence of scrutiny of the personal lives of those who run these enterprises (with the exception of politicians who double-dip), the sole remaining argument is “the agency problem.” While there is certainly an agency problem for tax-exempt institutions which receive tax-deductible contributions, there are ways for donors to ensure that their funding is used wisely, as I have discussed at length elsewhere.⁵ In any event, and again with the exception of politicians who double-dip, whatever agency problem remains hardly ever results in substantial prison sentences, probably because the amounts of money at issue are relatively small. Thus, they do *not* deserve the high pay packages that they typically do not get.

Finally, let us examine political officials. While high elected and appointed political officials face extraordinarily harsh scrutiny and there is most certainly an agency problem when they act contrary to the wishes, and often the interests, of those they represent, and while a good number of elected politicians and a small number of appointed officials end up indicted, tried, convicted, and sentenced for good cause, none of this persuades me that their pay packages ought to be raised. On the contrary, they ought to be reduced at the federal level to the average that can be obtained from a study of comparable offices of the several states, so that as with the states, many of these jobs become effectively part-time. Not all conservatives with an oftentimes libertarian bent agree. Listen to one eminent dissenter, who says, “Because a well-ordered polity is a prerequisite for . . . excellence, the political vocation is good and the estate of government is grand,”⁶ and “[the United States] should express renewed appreciation for the ennobling

⁴ *Ibid.*, p. 35.

⁵ Joseph S. Fulda, “In Defense of Charity and Philanthropy,” *Business and Society Review* 104, no. 2 (Summer 1999), pp. 179-189; see esp. p. 188, nn. 14 and 15.

⁶ George F. Will, *Statecraft As Soulcraft* (New York: Simon and Schuster, 1983), p. 27.

functions of government.”⁷ The writer, the lone commentator who normally remains above the rough-and-tumble of the political fray and concentrates largely on ideas, is George F. Will, who intends in his work at issue to make an extensive case for “a reassertion of the grandeur of politics.”⁸

I would imagine that Will might find the absolutely incredible perquisites of the United States Congress justified, at least were that body to act with the deliberate care for which he makes an extensive argument. To which this author responds, simply, “But it won’t.”

Another two points can also be made. First, although neither elected nor appointed officials have outsized pay packages while serving in office, the so-called “revolving door” by which former officials become lobbyists or “of counsel” to prestigious law firms or collect big on the lecture circuit after serving in office, compensates them more than adequately for the scrutiny, intrusiveness, and risk of prosecution they face—as they see it. There is certainly a grave shortage of statesmen, but no shortage of aspirants for political office. This last point leads me to the second point I wish to add, namely, that the revolving-door situation is unhealthy for the body politic. The best way to ensure *de facto* term limits, since *de jure* term limits are about as unlikely as can be, is to keep those salaries *very* low and the jobs *part-time*.

As it is, the United States Senate, to take one example, has been called a “rich man’s club”; increasing salaries will only increase the already formidable advantages of incumbency. Of course, it is not wealth *per se* that is objectionable. What makes the matter problematic is that the free-enterprise system is *not particularly good for already wealthy individuals*; rather, it is best for those who *aspire* to become wealthy, the small entrepreneurs who, as previously noted, drive the economy. This explains, in part, why so many billionaires oppose measures that they once might well have supported, but which now threaten their standing.

⁷ Ibid., p. 24.

⁸ Ibid., p. 26.

Toward a Thick Libertarianism

Joseph S. Fulda

From one perspective, this article will consider the question of why conservatism and liberalism each has so many adherents, while libertarianism has merely a dedicated few. From another perspective, this article will consider the question, “What is wrong with libertarianism?”—wrong, that is, *not* in the sense of “incorrect,” but in the sense of being seemingly completely incapable of generating a significant following, despite the devotion and single-minded advocacy of its small cadre of faithful and well-credentialed followers.

There is no general agreement, much less a clear consensus, on what liberalism and conservatism actually mean. Notwithstanding this intellectual disarray, there is broad agreement that both of these movements have economic, political, social, and moral components—not so libertarianism. In the words of one staunch and radical libertarian:

Libertarianism is a political theory that asks only one question: under what conditions is the use of force justified? It responds with only one answer: in retaliation against the prior use or threat of force or fraud against persons or justly owned property. . . . Initiatory force against innocent people or their rightfully owned property is strictly prohibited by law. The libertarian axiom is “thou shalt not aggress against non-aggressors.”¹

Libertarianism is thus to its supporters (myself among them), a thin and narrow doctrine. It has a single axiom and everything else its adherents believe more-or-less follows from it. It has no social or moral component, beyond its eusocial and moral axiom. It speaks only of law, not of ethics. Is it any wonder that such a doctrine, a doctrine with just *one* idea, has not gained and by itself seems most unlikely ever to gain traction, let alone a mass following?

¹ Walter Block, “Blackmail *Is* Private Justice: A Reply to Brown,” *University of British Columbia Law Review* 34 (2000-2001), p. 11. This article is not endorsed; there are *other* ethical problems with blackmail, and more than one.

I wish to offer here a fuller, thicker, and more attractive variety of libertarianism, one that entirely subsumes the one axiom, but that also has two others, with these latter two about *ethics*, not *law*. To the libertarian, after all, while the law, if discovered and intuited correctly, can provide guidance on matters of right and wrong, it is not and cannot *ever* be dispositive; rather, ethics is what is dispositive. There are two ethical rules, in addition to the legal rule barring the initiation of force and fraud, that are of paramount importance.

Before I discuss these two rules, I need to digress to one of the least understood and, I will argue, misunderstood concepts commonly thought to be a character trait, namely, the concept of humility.

Humility is often taken to mean self-effacement and sometimes even self-deprecation or self-abnegation, but if humility means anything at all, it cannot mean something that a person can in any way announce of himself. No number of self-deprecating remarks, self-effacing remarks, and the like can possibly indicate true humility. If those remarks are false, one has instead a person with low self-esteem; this is not humility. If those remarks are true, we have what Diogenes was looking for—namely, an honest man—but honesty is not humility and, in the case of knowledge of one's own lack of knowledge, it is in no small part a cognitive trait, not a character trait.

Likewise, the ability to say truthfully and frequently “I don't know” or “I'm not sure” is, again, not humility. Given the vast reservoir of knowledge and the near-total inability of any single person to drink particularly deeply from even a small portion of it, such admissions are, once again, merely an indication of honesty and, also, self-awareness. Neither honesty nor self-awareness, both of which are extraordinarily valuable in themselves, can possibly be humility, not only because both of them have different words to describe them, words that refer to very different concepts, but also because both of these valuable character traits are, indeed, capable of self-announcement. A few dozen hours alone with someone in an experimental setting, in which no behavior other than that which is merely verbal is possible, suffice to disclose these qualities.

So, what then is humility and why should it be of concern to the libertarian? The answer has to do with those two ethical rules I alluded to above. The first rule is: No one speaks for anyone else, except with agency. The second rule is: No one speaks between two persons, except with the agency of one or the permission of both. The first rule has many manifestations, among them, for example, authors' moral rights. The second rule is perhaps best summed up this way: no third parties. I would argue that adherence to these two rules is the best definition of humility, and deviation from them on a regular basis is the best definition of arrogance. (As for the self-deprecating remarks, they're normally merely how a person *presents* rather than *who he is*.) A person who never *presumes* to speak for another without agency and who, likewise, never *presumes* to intervene between two parties except with the agency of one or with the permission of both (except obviously when force or fraud has been initiated and an emergency therefore

exists) is a humble man. A man who regularly does either or both is an arrogant man, for, in the first case, he has arrogated to himself the right to speak for another and similarly, in the second case, he has arrogated to himself the right to speak between others. Notice that a few dozen hours with someone in which nothing but verbal behavior is possible cannot truly disclose whether a person will or will not presume to speak for others or between others: That has to be observed directly. One can observe, of course, whether and how one speaks *of* others in isolation, but unless the interlocutor knows one of those others, the speaker cannot really (attempt to) speak *for* another, much less *between* others. The experimental setting precludes that entirely. (Needless to say, if the interlocutor *does* know some of those others, the experimental setting is ruined.)

Now why is *any* of this discussion important to the libertarian? First, and most obviously, this is because these two rules are the *ethical extension* of non-interventionism that forms the bedrock principle of libertarianism. Second, and much less obviously, this is important because the failure to abide by these ethical principles normally backfires or misfires in much the same way that all intervention backfires or misfires. Third, and perhaps still less obviously, because the failure to abide by these ethical principles will frequently result, if not sooner than later, in forcible intervention by or on behalf of the party wrongfully spoken for or the parties wrongfully spoken between. If there's anything at all that a libertarian must come to understand, it's that "You don't speak for me!" and "Stay out of it!" cannot apply *only* to the state—the single worst offender and most arrogant entity in the history of man—but also and *of paramount importance to each and every single one of us as we go about our daily lives*.

The core principle has already been suggested by the present author briefly in print:

In one of his finest and most enduring articles,² Leonard E. Read, one of the twentieth-century's strongest and proudest voices for freedom, elaborated on a remark by Tolstoy to the effect that when men do things in councils that they would not and could not do in their own name, there lies the beginning of all troubles. I would like to suggest here that the opposite is also true, that when men do things in councils that they would have no problem, ethical or otherwise, in doing in everyday life, the fact that they act in concert makes no difference, ethically or otherwise.³

² Leonard E. Read, "On That Day Began Lies," *Essays on Liberty*, Vol. I (Irvington-on-Hudson, NY: Foundation for Economic Education, 1952), pp. 231-52, originally issued as a pamphlet in 1949. An abridged and edited version appears under the same title in *The Freeman* 48 (May 1998), pp. 263-71.

³ Joseph S. Fulda, "The Package Deal and Microsoft," *Economic Affairs* 25, no. 3 (September 2005), pp. 58-59.

In *that* piece, the author was writing about things that would *not* present an ethical problem in everyday life, whereas in this essay, the subject is precisely the opposite, namely, things that virtually *always* present just such a problem.

Libertarians also understandably appreciate deeply the freedom of the press, because only the Fourth Estate is powerful and courageous enough to check the worst depredations of the state. However, they must also come to understand that its undeniable power and courage in acting as a check on the arrogant state has made it itself *the second-most arrogant entity in the history of man*. Whenever, for example, there is a problem in a marriage, far from obeying the injunction “Stay out of it!” the press, like the Serpent of yore, exacerbates tensions mightily, causing significant damage to the marriage—far more than the parties themselves could ever even begin to manage, with the couple left to pick up the pieces all by themselves. Even more arrogant still, the press often comes *between* people *without* problems, creating them out of whole cloth, that is, out of rumor and innuendo. This is truly unforgivable, but also just an everyday press occurrence.

A libertarianism which confines itself to the narrow politico-legal sphere and which therefore lacks an ethical dimension is a very thin reed on which to hang one’s hat, for which reason so few have—and, unless the situation changes, so few will. “You don’t speak for me!” and “Stay out of it!” are *universal* principles applicable to state, press, and *each and every one of us* alike.

Romantic Realism and Moral Value: Spielberg's *Lincoln* and Hooper's *Les Misérables*

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Spielberg's *Lincoln*¹

Stephen Spielberg's *Lincoln* focuses several times on the president's fascination with Shakespeare, with apt references to *King Lear* and *Hamlet*. Lincoln was, indeed, an admirer of William Shakespeare, but this is appropriate in another way: as a film, *Lincoln* is history gilded and poetized just as Shakespeare's history plays are. Real events are altered, exaggerated, or downplayed, to highlight deeper, thematic truths. There's nothing wrong with this—it's just what history movies *ought* to do, in my opinion. But viewers must keep in mind that the screen isn't the literal truth. Drama originated in religious ritual, and it retains its ritualistic and dogmatic traits in some respects.

That fact was brought home to me last night [November 17, 2012] as my wife and I heard members of the audience in a theater in Orlando, Florida, quietly reciting aloud to themselves along with Daniel Day Lewis's performance of the Second Inaugural—"With malice toward none, with charity for all," muttered people around me. It was a gooseflesh-inducing moment.

The danger of mythologizing history, though, is that your text must be good enough to capture that deeper truth. And *Lincoln* fails on this at times. This is especially the case in the scene in which the president ruminates on Euclid and first principles. Speaking to two young clerks, he tries to draw a deeper constitutional lesson from Euclid's axiom that things equal to the same thing are equal to each other. This is the basis for all understanding of geometry, he says. "It's true because it works," and this is the same kind of self-evident truth that the U.S. Constitution is based upon. Now, Lincoln did believe that the Constitution was rooted in the Declaration's principle of

¹ A slightly different version of this piece appears on Timothy Sandefur's blog *Freespace*, November 18, 2012, accessed online at: <http://sandefur.typepad.com/freespace/2012/11/spielbergs-lincoln.html>.

equality, and this is drawn from a real statement of Lincoln's, but the original statement is far more accurate and profound:

One would start with great confidence that he could convince any sane child that the simpler propositions of Euclid are true; but, nevertheless, he would fail, utterly, with one who should deny the definitions and axioms. The principles of Jefferson are the definitions and axioms of free society.

And yet they are denied and evaded, with no small show of success.

One dashinglly calls them "glittering generalities"; another bluntly calls them "self evident lies"; and still others insidiously argue that they apply only to "superior races."

These expressions, differing in form, are identical in object and effect—the supplanting the principles of free government, and restoring those of classification, caste, and legitimacy. They would delight a convocation of crowned heads, plotting against the people. They are the van-guard—the miners, and sappers—of returning despotism.²

Lincoln, who had an exceptionally strong grasp of logic, was not trying to draw some untenable connection between mathematical and racial equality, but to illustrate a valid point about epistemology and principle. Spielberg's version transforms it into a jumble of hazy concepts that sounds like Old Abe is just trying to show off that he's heard of a Greek geometer. Nor would the real Lincoln *ever* have said "it's true because it works." Such a pragmatic definition of truth is wildly anachronistic (it was formulated only later in the nineteenth century) and is counter to Lincoln's classical-liberal belief in natural rights. Had he believed that something that works is true, he would hardly have opposed slavery, fought to preserve the union, or sought the permanent end of slavery as a condition of peace.

Other parts, too, are more syrup than peaches; Spielberg has a hard time not turning his more sentimental films into scene after scene of resolute monologues and softly climactic music. The opening scene, especially, in which soldiers quote the Gettysburg Address to the president's face, is way over the top. It should have been rendered in iambic pentameter, or not at all.

But more common are scenes that are profoundly effective. Lincoln's explanation for why the Emancipation Proclamation isn't enough is precise, credible, real, and beautifully delivered. And the very best moment—a conversation in the White House kitchen between Lincoln and Thaddeus Stevens (Tommy Lee Jones) reaches through the screen to touch contemporary events in a very direct way. Stevens insists on radical

² Abraham Lincoln, "Letter to Henry L. Pierce and Others," April 6, 1859, accessed online at: <http://www.abrahamlincolnonline.org/lincoln/speeches/pierce.htm>.

reconstruction: strip the southerners of all their land; redistribute it to the slaves; bring the traitors to justice. Damn what people will think; it's the right thing to do. And he's right, of course. Everyone in the audience knows it. Everyone knows that the southerners who began this war to perpetuate the inhuman institution of endless servile bondage deserve to reap the bitter harvest of such cruelty. And Stevens knows that the people generally won't have the stomach for it if justice is delayed. The people are tired of war and if allowed to do so they will capitulate or neglect the demands of justice. Their internal compasses will go awry. Yes, answers Lincoln, but the compass won't tell you of all the terrible things that stand in the way. The straight lines of justice are simply not enough. Man must be dealt with gently, though firmly—not commanded to do right.

This scene—which I have paraphrased only clumsily—ties together our current Middle East crisis with the experiences of past generations by highlighting what Lincoln called “timeless truths, applicable to all men and all times.” And it highlights the really tragic situation of Civil War America—a tragedy truly worthy of a Shakespearean script: that mercy to the one meant cruelty to the other. Lincoln, in his (uncompleted) Reconstruction policy, made the same compromise America's first founders made: In order to gain the support of white Americans, the demands of justice for the slaves would again be pushed to the bottom of the pile of priorities. Later in the film, when Lincoln tells General Ulysses S. Grant that there should be no hangings at the war's end, one cannot resist thinking that in fact there *were* hangings. Hundreds and hundreds of them. Only it was black Americans, not their white persecutors, who swung from vengeful ropes.

Would Stevens's policy have been better? Set up a post-war tribunal on human rights abuses? Redistribute the plantation lands to the freedmen? I honestly don't know. “All experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.” That's doubly true when the justice to be done is someone else's. We often have little stomach for justice. Lincoln wisely knew that, but Stevens was also right that justice delayed is justice denied—and that delay only worsens the inevitable reckoning. The end of Reconstruction was probably inevitable. But it also doomed the black race to another century of slavery by another name. In that sense, the Confederacy won the Civil War.

Lincoln does not dwell too deeply on these perplexities. The audience could probably stand that no better than the nation could have stood a real Reconstruction. But it touches on them in some moving moments, and that is enough. Though at times maudlin, and though it is not as good as *Amistad*, *Lincoln* is an evocative and touching experience, vivid and real while still idealistic and sincere.

Behind us in the theater sat a black woman. At the end of every profound utterance or scene she would say, “Oh! Yes!” or things to that effect. At first, it was a bit annoying. But then I paused to think of how crucial this experience is for America. Citizens have been too long alienated from our

fundamental principles and the greatest spokesmen for those principles. Thomas Jefferson, John Adams, and even George Washington have had their clay feet paraded around on exhibition every day for decades, now. The same is true with Lincoln, who is unjustly portrayed as a racist and a dictator in various fashionably radical quarters. To sit in the old Confederacy in an integrated theater audience, and hear my fellow citizens cheer on Lincoln's demands that just equality be added to our Constitution is, indeed, a moment like *Henry V's* St. Crispin's Day speech—or like Athena establishing justice in the *Oresteia* at a performance in ancient Athens—when we together reach back through the drama to what connects us as citizens. This is our civic ritual, to worship together the fundamental article of our Constitutional creed. Nobody articulated that creed better than Lincoln:

The doctrine of self government is right—absolutely and eternally right—but it has no just application, as here attempted. Or perhaps I should rather say that whether it has such just application depends upon whether a negro is not or is a man. If he is not a man, why in that case, he who is a man may, as a matter of self-government, do just as he pleases with him. But if the negro is a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern himself? When the white man governs himself that is self-government; but when he governs himself, and also governs another man, that is more than self-government—that is despotism. If the negro is a man, why then my ancient faith teaches me that “all men are created equal”; and that there can be no moral right in connection with one man's making a slave of another. . . . I say this is the leading principle—the sheet anchor of American republicanism.³

Hooper's *Les Miserables*⁴

The new *Les Miserables*, directed by Tom Hooper, is a breathtaking achievement. It captures the full sweep and grandeur of Victor Hugo's novel. It convincingly translates a production originally written for the stage into a motion-picture production (often a difficult thing to do). The directing is brilliant—a perfect combination of realism and romanticism that gives real

³ Abraham Lincoln, “Peoria Speech,” October 16, 1854, accessed online at: <http://www.nps.gov/liho/historyculture/peoriaspeech.htm>.

⁴ A slightly different version of this piece appears on Timothy Sandefur's blog *Freespace*, December 27, 2012, accessed online at: <http://sandefur.typepad.com/freespace/2012/12/les-miserables.html>.

life to Hugo's message. And the performances are stunning. It would be an injustice if Anne Hathaway does not get the Oscar for her performance as Fantine.⁵ Her "I Dreamed a Dream" is one of the most amazing things I have ever seen in any movie, ever. No, the movie isn't perfect—Russell Crowe's singing is a bit weak (though his acting is fine) and there are some scenes that do not quite succeed (Marius's return home is very short and difficult to follow), but the flaws are miniscule in a film that otherwise is positively stunning.

Les Misérables is one of the greatest achievements of nineteenth-century romantic literature, that is, a literature about values and moral choices. It is about whether people can change, what it means to remain loyal to your values in the face of overwhelming odds, what it means to redeem yourself after you and your forefathers have committed terrible wrongs. It's a novel about the interactions of justice and mercy, about revolution and transcending your past. It is one of the great masterpieces of a kind of art rarely seen today—an art that takes values seriously, and in which the characters take themselves and their ideas seriously. The musical, and this film, manage to convey that kind of idealism without a trace of the sarcasm, self-deprecation, shrugging, or ridicule that is typical of today's cinema. It believes in itself in the way that each of us ought to believe in ourselves, and that, when we work hard enough, we sometimes manage to deserve. It has not learned the skill of derogating its own highest values.

Unsurprisingly, the critics—all much too sophisticated to believe in things—are falling all over themselves to sneer and roll their eyes.⁶ The *Huffington Post*'s critic, who has never read the novel and proudly declares that he won't, calls it "the kind of middlebrow melodrama that passes for profound on Broadway."⁷ He never quite tells us why a story about the most important parts of living—one's dedication to those high values that make life worthwhile—is anything *short* of profound. He just ridicules the "wrung out" feeling the audience experiences as being "the point." I guess that's his way of saying that we should *not* take things like admiration, longing, joy, love, and redemption too seriously. *The Arizona Republic*'s

⁵ Hathaway was awarded the Oscar for her performance as Fantine; accessed online at: <http://www.imdb.com/name/nm0004266/awards>.

⁶ Stanley Fish is an exception; see his "'Les Misérables' and Irony," *The New York Times*, January 28, 2013, accessed online at: <http://opinionator.blogs.nytimes.com/2013/01/28/les-miserables-and-irony/>, which is discussed by Timothy Sandefur, "Stanley Fish on *Les Misérables*," *Freespace*, February 14, 2013, accessed online at: <http://sandefur.typepad.com/freespace/2013/02/stanley-fish-on-les-miserables.html>.

⁷ Marshall Fine, "Movie Review: *Les Misérables*," *The Huffington Post*, December 26, 2012, accessed online at: http://www.huffingtonpost.com/marshall-fine/movie-review-iles-miserab_b_2365324.html.

reviewer is even more snide. He at least recognizes that the story is one of “humanity and depravity” and “law and its trickier cousin, justice.” But . . . well, that’s fine *if you go for that sort of thing*: “How much you enjoy the film is going to depend greatly on your capacity for having these ideas pounded against your head, time and again.”⁸ Notice that the alleged flaw in the film is that it is about truly crucial values, and treats them as crucial. I guess we’re supposed to prefer small, petty, and pointless, to enormous, idealistic, and important.

Hugo is not dated today because there is nothing so radical as the art of ideas, an art that contemporary intellectuals do their best to shove under the couch. In a world where critics praise the trivial, the bizarre, the nihilistic, the anti-life, and the plainly stupid, I am happy to cast my lot in with the moviegoers who still know how to cry at tragedy and celebrate triumph.

I suppose there will always be people who *can* bring themselves to scoff, for whatever reason, at the profundity and seriousness of *Les Misérables*. But to do so in the face of *these* performances is especially shameful. Hathaway’s Fantine is something like I have never seen in a film. And when artists like Victor Hugo, Claude-Michel Schönberg, Tom Hooper, and Anne Hathaway are able to express the universal human commitments that the audience members rightly take with such seriousness—to give those values a voice and an expression that will stay with them for the rest of their lives, which people will leave the theater thinking about for days and years afterwards—when a group of artists is able personally to touch the hearts of millions of people, for the right reasons, and to give them the gift of expressing something true and genuine and to make their hearts soar—that is what truly *great* art aspires to. And it is something that deserves our thanks and praise—not sneering by ants too tiny to recognize the sculpture on the base of which they crawl.

To Hell with small critics with small ideas. *Les Misérables* is a superlative accomplishment. If “high brow” means to look down, I will stay with the “middle brows” who can still enjoy looking up. Hugo’s novel, and this faithful adaptation of it, are about the Most Important Things. Ignore the critics and see it.

⁸ Bill Goodykoontz, “Les Misérables, 3 Stars,” *The Arizona Republic*, December 24, 2012, accessed online at: http://www.azcentral.com/thingstodo/movies/articles/20121220les-miserables-review-goodykoontz.html?nlick_check=1.

Film and Propaganda: The Lessons of the Nazi Film Industry

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One of the most philosophically fascinating uses of cinema is as a vehicle for propaganda. Granted, all mass media—books, television, music, newspaper, radio, the Internet—can be used for propaganda, that is, as tools for getting a message (anything from a specific idea to a general ideology) broadly accepted in a target audience. But, it has been argued¹ that film—as opposed to literature, the plastic arts, music, and the other performing arts—has a unique power as a tool for propaganda.

In this article I want to explore in more detail just what propaganda is, why it is morally problematic, and why film is uniquely suited for it. I will review an excellent old documentary on the use of cinema to propagandize—Erwin Leiser's *Germany Awake!*²—and will use it as a springboard for some broader thoughts.

Leiser was an eminent German film historian. His film explores the Nazi Party's systemic exploitation of film to create in the German people both the emotional attitudes and the particular beliefs that would make them maximally supportive of the Nazi agenda. This documentary first aired on German television more than a half-century ago, and is readily available³ from a remarkable company, International Historical Films (IHF).

The estimable IHF makes major historical films from the past available on DVD. Any serious student of propagandistic cinema will find a

¹ See, for example, Gary Jason, "Review of Leni Riefenstahl's *Triumph of the Will*," *Liberty* (April 2007), pp. 50 and 52.

² *Germany Awake!* directed by Erwin Leiser (Erwin Leiser Film Produktion, 1968). A précis of and complete crew and casting for this and every other movie cited in this article can be found on the extremely useful International Movie Database, accessed online at: <http://www.imdb.com>.

³ The website for International Historical Films can be accessed online at: <http://www.ihffilm.com>.

treasure trove of specimens available from this company, including classics of American, British, Nazi, and Communist (especially Soviet) propaganda.

Let me first offer a bit of background regarding the history of Nazi film. During the 1920s, Germany had developed one of the world's most sophisticated and successful film industries. After Adolf Hitler became Chancellor (in 1933), Joseph Goebbels—Hitler's Minister of Propaganda—moved swiftly to take control of the German film industry.⁴ That same year, Goebbels set up the Reich Chamber of Film as the agency for purging the film industry of “undesirables” and guiding the production of “useful” movies. As the Nazis took control in 1933, about 1,500 industry players fled, including major producers (such as Erich Pommer, head of Germany's largest studio, UFA), eminent directors (such as Fritz Lang, Robert Siodmak, Douglas Sirk, and Billy Wilder) and star actors (such as Marlene Dietrich and Peter Lorre). It is worth noting that apparently Goebbels offered Fritz Lang—director of one of the greatest silent films in history, *Metropolis*—the job of head of the Nazi propaganda film unit, but Lang emigrated instead.

In 1936, Goebbels—who had earlier forced journalists into a division of his Propaganda Ministry—outlawed film criticism, and replaced it with “film observation” in which the journalist could only describe films, not critique them. Also in that year, the Nazis effectively banned foreign films, and by 1937 had nationalized the film industry entirely. At that point, the Nazi film industry had two major (and reinforcing) goals: first, to provide the German public with entertainment that was at least consistent with (and preferably supportive of) the Nazi *weltanschauung* (“worldview”); and second, to produce outright propaganda movies to create public support for their agenda.

Indeed, Goebbels set up a Nazi film school⁵ to instruct people in the film industry how to make films harmonious with Nazi ideology, and forced everyone remaining in the industry to take classes there. The Nazis also had master censors (called “National Film Dramaturgists”) review every aspect of any film project from inception to release. And while the Nazis never nationalized the distribution channel (i.e., the theaters in which films were shown), they tightly regulated it. For example, theaters were required to show a newsreel and a documentary at every regular film showing. In 1941, when Germany declared war against the U.S.A., German theaters were forbidden to show any American movies—whether new or old.

It is important to note that while we usually think of Nazi filmmaking as primarily an exercise in propagandizing, in fact it was primarily focused on the creation of entertainment, because with the cutting off of foreign film

⁴ See http://www.Wikipedia.org/Cinema_of_Germany, which has a concise and accurate overview of this period in the section “1933-1945 Nazi Germany.”

⁵ See the article “Nazi Cinema,” accessed online at: <http://www.bbgerman.com/nazi-cinema>.

together with (after 1943) the increasingly bad war news and amount of enemy bombing, the public needed entertainment. Indeed, something like a billion tickets sold in Germany in both 1943 and 1944. During the thirteen years of the Third Reich, about 1,150 feature films were produced in Germany, or about ninety a year on average (although, again, more were made after the foreign film ban than before). Such a production level is amazing, when one thinks of the size of the country at the time (a little under 80 million citizens in 1939) and of the increasingly difficult wartime conditions of production. Of these, only about one-sixth were outright propaganda pieces. Nazi entertainment movies tended to be light musicals and war romance movies, or a combination of the two, such as *Great Love (Die grosse Liebe)* (1942).

Leiser's film provides a good overview of the clever use of film by the Nazis to promote their agenda. The documentary reviews the major Nazi propaganda films, grouped by the various specific goals the Nazis were trying to promote.

Leiser also begins the film by noting that both Hitler and Goebbels recognized the power of film as a mechanism of propaganda. Goebbels was heavily influenced by V. I. Lenin in this (as in other matters), citing Sergei Eisenstein's *The Battleship "Potemkin"* (1925)—scenes from which Leiser includes in his documentary—as the finest propaganda film ever made. Lenin had said, "Of all the arts, film is the most important to us [i.e., the communists]." ⁶ Goebbels obviously concurred.

Leiser notes that Goebbels's view was that the most effective propaganda movies were precisely those that were also entertaining. Leiser gives us an early illustration of this in *Dawn (Morgenrot)* (1933). This was the first film Hitler saw after becoming Chancellor, and remained one of his favorites. In the film, which is set during World War I (WWI), a German sub is sunk, and the ten men aboard face the fact that there are only eight diving suits. The crew decides that since they cannot all live, they will all stay to die together. Dialogue lines such as "I could die ten deaths for Germany—a hundred!" and "We Germans may not know much about living. But dying . . . that we certainly can do," serve to inculcate patriotism and a willingness to sacrifice for one's fellow soldiers. Leiser notes that this film was made before the Nazis took power, and one realizes this when the mother of one of the sub's crew expresses sympathy for the families of the British sailors who died—a sentiment that the Nazi Chamber of Film would never have permitted to be included in a movie.

⁶ V. I. Lenin, "Directives on the Film Business," accessed online at: <http://www.marxists.org/archive/lenin/works/1922/jan/17.htm>.

Leiser then reviews the most influential of the Nazi propaganda films, tying them in with the goals the regime was advancing. His documentary briefly covers twenty-six such films.

Consider first the early struggle by the Nazi Party against the Communist Party for the support of German workers. (One needs to remember here that “Nazi” abbreviates the “National *Socialist* German Workers Party.”) Two films that were designed as vehicles to convince workers that they should shift support from the Communist to the Nazi Party were *Hans Westmar* (1933) and *Hitler Youth Quex* (*Hitlerjunge Quex*) (1933).

Hans Westmar portrays (from the Nazi perspective) the early Nazi struggle to win worker support from the Communist Party to the new, “better” form of socialism represented by the Nazis. The film takes place in the late 1920s, and is loosely based on the life of Storm Trooper Horst Wessel, who besides preaching to German workers about Nazism as the proper socialism, participated in street fighting against and assassinations of German Communists before being killed in turn by them shortly before the film appeared. In the film, the protagonist is portrayed as more of a martyred street proselytizer preaching working class solidarity rather than the thug he was in reality, because Goebbels wanted to emphasize the role the Nazis were supposed to play—now that they were in power—in “unifying” Germany. (In the movie, Westmar is killed by the communists not in retaliation for his own crimes, but because they were angry that he was successful in winning elections for the Nazi candidates.)

The film—of which Leiser’s documentary only gives us a few scenes—starts with Westmar coming to Weimar-era Berlin, and seeing communists marching through the city, singing their unpatriotic anthem, *The Internationale*. Their leader is a Jew, portrayed in gross caricature, and the Berlin Westmar meets is one with “cultural promiscuity”—such as jazz performed by black and (what we are to suppose are) Jewish musicians. There is a scene-dissolve into pictures of WWI German soldiers and their graves.

This movie was aimed (among other things) at reinforcing the classic Nazi take on the Weimar Republic: a “dissolute” government that allowed “foreign” and “degenerate” cultural influences to corrupt the innately “good,” “healthy” German culture. At the end of the film, we see the Jewish communist who incited the violence against Westmark flee the scene, but we see one of the communists—a good German worker—give the Nazi salute.

Hitler Youth Quex (also entitled *Our Flags Lead Us Forward*) was based on the novel of the same name by Karl Aloy Schenzinger, a book that sold about a half-million copies between 1932 when it was published and 1945 when the regime collapsed. The book (and thus the film) is loosely based on a real figure, Herbert Norkus, whose nickname, “Quex”—short for the German word quicksilver—is an allusion to his quickness at obeying orders.

The studio subtitled the film “A film about the sacrificial spirit of German youth”—a prophetic title, given the number of young Germans later to die in battle. It tells the story of a boy, Heini Volker—clearly meant to symbolize German youth—torn between his father, an old-line Communist,

and the charismatic leader of the local Hitler Youth. Heini grows up in a working-class section of Berlin during the depression. Heini's father makes him attend a communist youth camp, but the boy is shocked by the morals of the group (which allows booze and sex, something unknown to the Nazis, the viewer is thereby led to believe), and he runs away. Fortuitously, he encounters a Hitler Youth camp, and is drawn in by the participants' manifest nationalism, clean-living, and camaraderie. The story focuses on the wonderful things he learns in the organization, and his martyrdom at the hands of the jealous and zealous communists, who (in the scene Leiser's documentary shows) beat him to death for distributing Nazi flyers.

Leiser next considers a couple of films dealing with the Nazi relationship with the Communists, a relationship that changed back and forth during the reign of the regime. The first is the *Frisians in Peril (Friesenot)* (1935). This film was set on the Volga River, and is about a village overrun by the Bolsheviks. The film was pulled from distribution when the German-Soviet non-aggression pact (the Molotov-Von Ribbentrop Pact) was signed in 1939, but re-released under a new title in 1941 with the invasion of Russia.

The film is a paragon of hypocrisy, portraying in bathetic detail the oppression of the Christian Germans by the godless Bolsheviks—even as the Nazis were themselves suppressing religion and pushing dissenting ministers into concentration camps. In one of the scenes Leiser shows us, a Bolshevik tells a village elder, "There is no longer a God in Russia!"

However, this was again really a backhanded compliment by the National Socialists to the international ones. After all, when Hitler (to Stalin's utter amazement) invaded Russia, Stalin appealed to the Russians on purely nationalistic grounds (fight for Mother Russia!) even though Marxist ideology disparaged nationalistic sentiment (preferring class identification instead).

Next is the film *Bismarck* (1940), released during the period when Soviet Russia and Nazi Germany, with their non-aggression pact, were busily dividing Poland between themselves. The movie shows Otto Von Bismarck as a brave patriot and lonely genius who acts only for the good of the German nation—the image Hitler had of himself, of course. In the movie, Bismarck is shown as explaining that the temporary Russian alliance will "free our hands."

However, Leiser then shows us a clip of a German newsreel from 1941 announcing that the German high command discovered a plot between London and Moscow, treacherously aimed at Germany, "forcing" the Germans to fight. The propaganda machine rapidly changed direction as needed.

Leiser returns to the use of movies to prepare young men for battle. After seeing a few more scenes from *Quex*, he shows us some of *D III 88* (1939), in which an officer lectures his men about putting aside the personal goals and feelings to commit themselves completely to the war machine. The movie is about the rescue of two young pilots by an older pilot flying an old plane with registration number "D III 88."

Another goal of Nazi propaganda was to demean democracy. For example, in *My Son, the Minister (Mein Sohn, der Herr Minister)* (1937), a

cynical French minister lectures his replacement about “swimming in the parliamentary system.” The young naïve replacement calls the Parliament “the most sublime product of democracy,” to the obvious derision of the older minister. He tells the young man that France will solve the economic recession by filling the country with retired ministers (all drawing 50,000 francs a year), and end its unemployment problem by establishing committees to discuss the problem. The Nazis meant to contrast the impotence of democracies to solve economic problems of the 1930s with the seeming ability of the Nazis to do so.

Of course, an overarching goal of the Nazi propaganda machine was to reinforce the historical narrative (its official myth, so to speak) that the party used to justify its rise to and then its authoritarian control of power. According to the story—let’s call it the “Nazi Historical Narrative,” or the NHN—the Nazis took over because near the end of WWI, a weak and treacherous parliament, pressured by a communist revolution (the “November Revolution”), sold out the German military. This gave rise to a corrupt, feckless, and “degenerate” democratic regime (the Weimar Republic), which the righteously indignant people dumped for the security and prosperity they knew the Nazis would bring.

The NHN was, naturally, duplicitous to the core. To simplify the complicated history greatly, the German military essentially ran the German war effort in WWI, but as the war drew to a close in mid-1918, the German alliance was losing. The military, which had resisted negotiating for peace, suddenly turned power over to the parliament in late 1918, in essence creating a weak democratic government and telling the leaders that the war was lost. As the weak parliamentary government took power, it faced a nascent revolution from the left. By January 1919, the German Communist Party was attempting a revolt. The result of this turmoil was the Weimar Republic, along with the “Stab in the Back Legend” promulgated by the Nazis to the effect that the soldiers could have won WWI, but were betrayed by a combination of weak liberal democrats and communist revolutionaries. The Nazis won power in the early thirties, and didn’t relinquish it until the bitter end.

Leiser shows us a number of scenes from several films that advanced and reinforced the NHN. There is the aforementioned film *D III 88*, where we see a scene in which an aviator decries having to fight on after the politicians have sold out him and his fellow.

The film that most directly pushed the NHN was *For Merit (Pour le Merite)* (1938), meant overtly to be the official story of how the German Air Force struggled between the end of WWI and Hitler’s rise to power in 1933. It not-so-covertly pushed the Stabbed in the Back Legend specifically, and the NHN in general. The protagonist of the movie is an aviator named Prank, the winner of Germany’s highest military award in WWI, the Pour le Merite (colloquially called the “Blue Max”). The award—which wasn’t a medal in the usual sense, but rather a symbol of acceptance into a prestigious military order—originated in the mid-eighteenth century and was given until the end of WWI. It was especially coveted by German pilots during WWI.

At the outset of the film, the war hero Prank (along with his other comrades) is forced into civilian work, because the Treaty of Versailles forced Germany to shut down its air force (which had been powerfully effective in WWI). He decides patriotically to open a fighter school with the help of his comrades, utilizing an old fighter plane left over from the war. Leftists—perfidious pacifists intent on keeping Germany impotent—burn the fighter plane, and when Prank fights them he is arrested for inciting violence and put on trial. Although he is let go, he leaves the country out of hatred for its weak and unpatriotic democratic government. When Hitler comes to power (and reinstates the draft), Prank—in a later scene in the documentary—returns to become the Colonel of a squadron (named after Baron von Richthofen, the famous WWI ace fighter pilot).

The scenes we see are powerful. In one, the hero Prank gives a speech about how detestable the government is, and what a miracle it would be if men can be found to overthrow it. Another scene shows two ex-soldiers each recognizing the secret Nazi pin the other carries, smiling at each other when they do.

In another scene, Prank—during his trial—rails against democracy, saying to the judges that he doesn't care what they do to him, though they should spare his comrades, who acted under his orders. He shouts, "We must rebuild the German state with a front-line soldier's ideas." This is of course meant to point to Hitler, and the film openly celebrates the Nazi decision to rebuild the military, impose the draft, and rebuild the air force under General Hermann Goering.

Another vehicle for pushing the NHN was *Venus on Trial* (*Venus vor Gericht*) (1941), which portrayed the Weimar Republic as a cesspool of "sin and chaos." Scenes show Orthodox Jews milling around, scantily clad dancers dancing "decadently" to jazz (again, played by black musicians), newspapers with headlines about sensational crimes and suicides, one headline noting that the Nazis are growing in numbers.

In another scene, we see a German sculptor (of neo-classical statues, the embodiment of Nazi taste in art) who is visited by a debt collector to seize his belongings. When the debt collector discovers that the sculptor is a member of the Nazi party, he says to the sculptor that he can find nothing to seize, and the men exchange Nazi salutes. The film also pushes the idea that modern art is "Jewish" art, and "degenerate." Some of the statues featured in the film as examples of "degenerate" art and shown in a contemporaneous Nazi-organized exhibition of this sort of art, were ironically recently uncovered,⁷ buried in Berlin.

⁷ Daniel Rauchwerger, "Berlin Displays pre-WWII 'Degenerate' Art," *Haaretz*, November 10, 2010, accessed online at: <http://www.haaretz.com/print-edition/news/berlin-displays-pre-wwii-degenerate-art-1.323857>.

Finally, Leiser shows us a few scenes from *Refugees (Fluchtlinge)* (1933). The movie was produced before the Nazis came to power, and was released the year they did. Like *Morgenrot*, while it was not a product of the Goebbels-controlled film industry, it had themes the Nazis embraced, and was the first film to which they awarded the state prize. The movie is about the plight of the Volga German refugees at the hands of the Russian Communists in 1928 Manchuria. The Communists are shown as vicious and racist toward the German refugees (remember, the film was made six years before the Nazi-Soviet Pact). The German refugees are saved by a strong, blond, decisive German leader. He rails against the Weimar Republic, calling it “November Germany” in allusion to the November Revolution. He rescues the villagers after getting their unquestioning obedience. This was clearly meant to get the audience to view Hitler in those terms.

Next, Leiser shows us scenes from a movie—*Homecoming (Heimkehr)* (1941)—intended (as was *Refugees* and *Frisians in Peril*) to promote the Nazi goal of repatriation of all foreign Germans, but in the case of *Homecoming*, also to promote their specific claim that the Polish persecution of Germans was the cause of Germany’s invasion of Poland. In one scene, we see a young German woman pursued by Poles, throwing stones at her. A repulsive man jumps out, grabs her, and tears off her necklace. The vicious crowd then stones her to death.

In another scene, we see innocent ethnic Germans languishing in a Polish prison camp, with one young woman saying, “At home in Germany, they’re no longer weak. They’re very concerned about us.” She asks with pathos why they shouldn’t be allowed to return home, and how nice it will be to have only Germans as neighbors. She says, “When you enter a store, you won’t hear Yiddish or Polish.” Why, even the birds will sing in German! The scene ends with the prisoners singing a patriotic song. In the next scene from the film, we see the triumphant return of the Germans into Germany, passing a huge poster of Hitler. In light of what the Germans did to Poland during the war, these scenes are beyond ironic—they are literally stomach-turning.

Next, Leiser shows us movies intended to give German citizens good feelings about combat, and cover up the ugly side of war. He shows us a scene from *Bismarck*, in which a key battle from the earlier Austro-Prussian war is shown as a “chess match,” with no fighting troops even visible.

In the film *Victory in the West (Sieg im Westen)* (1941), the German war-machine is shown as invincible. In one scene, we see Nazi soldiers at a checkpoint, as the announcer intones, “The German soldier stands on the Swiss border. Tomorrow the war is history.”

Again, in the film *Stukas* (1941), we get “the Nazi airman’s view of war,” in which the enemy is only a small target barely visible on the Stuka bomb sites. As jolly Stuka pilots cheerfully dive to bomb the enemy, they sing their song: “They strike with their claws, the opponent right in the heart, we are the black Hussars of the sky. The Stukas, the Stukas, the Stukas.” The cheerful ditty ends with “To England, to England, till England is defeated.”

Alas for the Stukas, it never was.

Then there is the strange flick, *The Crew of the Dora* (*Bestzung Dora*) (1943). The movie concerns a love triangle involving two Luftwaffe crew and a pretty young lady that gets resolved when the men fight together as a team. In the scene Leiser shows us, one of the men promises the young lady that they can settle in the East after the war. (The movie was canned the year after its release as the Russians advanced on the Eastern front.)

Leiser also shows us some scenes from a war film, *Request-Concert* (*Wunschkonzert*) (1940). The plot of the movie involves a common Nazi trope: the individual sacrifices himself for his comrades. In the film, a soldier shows his fellow soldiers the way back to safety by playing a church organ during the battle. He saves them, but pays with his life.

Leiser turns next to the Nazi propaganda directed at creating anti-Semitism—or more exactly, intensifying the anti-Semitism that was historically a strong force in German society—starting at the time Jews were being made to wear Stars of David patches and being deported to the concentration camps. He picks probably the most effective such movie, *Jew Suss* (*Jud Suss*) (1940), based loosely on the life of a Jew, Joseph Suss Oppenheimer, in the Court of Duke Karl Alexander of Wurttemberg during the eighteenth century. The grossness of the stereotyping and the viciousness of the attack make the film almost painful to watch. The Jewish characters were all played by non-Jewish Germans, who had to be certified as such.

This film was arguably the most perniciously powerful of the four major anti-Semitic propaganda movies produced under the Nazi regime, the other three being *The Rothschilds* (*Die Rothschilds*) (1940), *The Eternal Jew* (*Der ewige Jude*) (1940), and *Robert and Bertram* (*Robert und Bertram*) (1939). It was inarguably the most popular—indeed, it was a blockbuster, selling twenty million tickets. It was shown repeatedly to the police, concentration camp guards, and SS troops.

No doubt its success was in great measure due to the work done by its skillful director, Veit Harlan, who, like the other talented director who worked with the Nazis, Leni Riefenstahl, was tainted by his work. Indeed, after the war, he had the dubious distinction of being the only film director ever accused of crimes against humanity. After three trials, he was given a light sentence, when he persuaded the judges that the film was really dictated by the party and he tried to “moderate” its portrayal of the Jews.⁸ In viewing the film today, one wonders what it is exactly he “moderated.”

I won’t review the plot in detail, as it is well discussed elsewhere.⁹ Essentially, it is about a profligate Duke who can’t get all of the money he

⁸ The case of these two directors, so obviously talented and so inclined to work with the Nazis, who then faced stigmatization after the war, are explored in two excellent documentaries: *Harlan: In the Shadow of Jew Suss*, directed by Felix Moeller (Blueprint Film 2008) and *The Wonderful, Horrible Life of Leni Riefenstahl*, directed by Ray Müller (Arte 1993).

⁹ See, for example, the Wikipedia article on Jud Suss, accessed online at:

wants from the governing council, and so borrows it from the avaricious, devious, lecherous, and ambitious money-lender (Joseph Suss Oppenheimer). Suss seduces the Duke by loaning him fabulous jewels and money to do such things as open an opera, but insists on the Duke's eliminating the ban on Jews in the city. When the Duke complies, Suss shaves off his beard and comes to the city. The film portrays this as the mistake that leads to all of the subsequent trouble.

Once he is an insider, Suss controls the Duke and uses the power selfishly—corrupting the Duke by procuring women for him, getting the power to tax, and then grinding the people for ever more onerous taxes. He makes the Duke and himself rich, and gets the Duke to allow Jews generally to enter the city, allowing them to prosper at the expense of non-Jews.

The plot also involves Suss's lust for a gentile girl, Dorotea, whom he eventually seduces under the promise to free her husband. Dorotea drowns herself out of shame at her "defilement." Goebbels pushed Harlan to let his wife, the Swedish beauty Kristina Soderbaum—who played the ideal Aryan heartthrob in a number of films—portray Dorotea. (Remember that the Nuremberg Laws prohibited the "racial pollution" of Aryan blood.) Suss is tried for treason, theft, and for having sex with a Christian woman. He is executed, and the Jews are expelled from the city, as a citizen intones, "May the citizens of other states never forget this lesson."

As testament to the power of the film, after the war, the West German government tried to destroy all copies of it. To this day, the film cannot legally be purchased or screened in Germany and Austria. Sales of the DVD are also prohibited in France and Italy.

The scenes Leiser shows us give the flavor of all this. In one, two Jewish men talk about the Duke's initial visit with Suss, rightly speculating that it is to borrow money. One of them says that Suss should give it to the Duke, "so we can take, take, take."

In the next scene, we see the Duke gape at Suss's cabinet full of opulent jewelry, as he gets drawn into Suss's scheme. When Suss's employee asks him whether he really will cut off his beard and dress like a gentile to get into the Duke's city, Suss says, "I open the gate for all of you to enter. You'll wear velvet and silks, maybe tomorrow, maybe the day after."

Of course, when the Nazis talked about making Germany "Jewish free," they didn't mean to expel the Jews, but to kill them. This required acclimatizing the public with the idea of the state murder of targeted groups. A crucial propaganda film for advancing this campaign was the melodrama *I Accuse (Ich klage an)* (1941).

This film is about a doctor's decision to help his wife—who is suffering from advanced multiple sclerosis—to die by giving her an overdose of an unspecified drug. He is put on trial; at trial he argues that the suffering

[http://en.wikipedia.org/wiki/Jud_Süß_\(1940_film\)](http://en.wikipedia.org/wiki/Jud_Süß_(1940_film)).

have a right to die, and accuses his critics of being cruel for trying to stop assisted suicides in these cases. The Nazis, of course, deliberately obscured the differences between allowing the ill to commit suicide or allowing doctors to help them do it, on the one hand, and euthanasia, on the other (the involuntary killing of patients deemed terminally ill and incapable of choice), along with eugenic programs to kill those deemed not having lives worth living, such as (from the Nazi view) the mentally ill or mentally deficient, or people deemed to be deformed—and from there, to groups deemed to be racially inferior.

The scenes we see show the doctor administering the lethal dose to his wife, who dies in his arms while saying, “I feel so peaceful, so happy.” As the narrator reminds us, while the Nazis did indeed start with the terminally ill, they moved on from there to target the mentally deficient and the mentally ill, and from there to political enemies and ethnic groups they took to be inferior.

We also see the discussion among the jurors at the end of the trial about whether allowing doctors to assist suicide for those in great pain is morally permissible, and one of the doctors reminds the other jurors that this shouldn’t be forced, “But if a patient asks a doctor for death as a last favor, it should be permitted.” When another asks whether a doctor by himself should have the power to commit euthanasia, the first replies, no, “There should be commissions, panels of doctors.” (Death panels, so to speak.) Another draws the conclusion that it should be decided by the state who to kill, by passing laws governing these panels.

Leiser then returns to the theme of the justification of the war against the British. He contrasts a German film, *The Higher Order (Der höhere Befehl)* (1935), which celebrates the Anglo-Prussian alliance against Napoleon with the propaganda film *The Rothchilds*, which portrays the Duke of Wellington as a dissolute womanizer and a fickle ally. The Prussians are presented as the real victors at Waterloo.

In *Uncle Kruger (Ohm Kruger)* (1941), we see the British maltreating the Boers (the Dutch settlers in South Africa) during the Boer War. The British high command is shown frankly saying that the war is all about increasing its empire, and that they need to set up concentration camps to separate the women and children from the men. Regarding concentration camps, the Germans never showed their own in any of their movies, but several of their films show the British concentration camps in the Boer War. In one scene, we see Boer women and children file grimly into the camp. We see a woman complain about the rotten meat they are forced to eat. When a British doctor expresses sympathy, a British officer (who strongly resembles Winston Churchill) berates him and threatens to send him to the front. When one of the women shouts at the officer that he is a butcher, he draws his pistol and shoots her dead. Leiser points out that this scene is very similar to a key scene from the Soviet propaganda movie *The Battleship “Potemkin.”*

Leiser also shows us scenes from a movie based upon the life of the brutal German colonialist Karl Peters. In the eponymous propaganda bioflick,

Carl Peters (1941), we see Peters explaining to the German Parliament (the Reichstag) that Germany needs colonies, just like Britain's. He shouts at the politicians, "Did you ever realize that when the world's lands were divided and distributed, the German nation from the fifteenth century onward remained empty-handed? Germany needs colonies!" The crowd applauds, while the feckless parliament is angry. He adds, "I brought you East Africa, but we need more. . . . We can't conquer from our desks, but only with men who are strong and confident and don't become cowards when confronted by England."

In 1897, after a hearing in the Reichstag, the real Karl Peters was dishonorably discharged from his post as Imperial High Commissioner in East Africa for brutality, including the execution of his concubine as well as a servant with whom she was having an affair. Hitler rehabilitated Peters in the year after taking power. In a chilling scene in the movie pertaining to this, we see Peters confronted by a member of the Reichstag for hanging people without a trial. Peters stands with arms crossed, in a posture very reminiscent of Hitler when delivering a tirade, and says, "If I wouldn't have hung two blacks as a warning then a rebellion in England would have erupted! And then hundreds of German farmers would have been massacred."

Leiser notes that during the entire Nazi reign, not one movie appeared showing Hitler or having an actor portraying him. Instead, the Nazi propaganda machine used prior historical figures to portray Hitler favorably. For example, from the bio flick *Bismarck*, the parliamentary opponents of Bismarck's use of power are shown as mere dreamers or worse, one of whom says, "We are the proud people of poets and philosophers." To this Bismarck replies, "Don't you see the irony in 'poets and philosophers'? While you dream, others are dividing up the world."

In *The Great King* (*Der grosse Konig*) (1942), directed by Viet Harlan, the historical Frederic the Great is portrayed as a precursor of Hitler, portraying the relation between Frederic and his generals in the way that Hitler saw his own relationship with his high command: a soaring military genius, pressed by timid generals who want to sue for peace. He takes command back from the short-sighted weaklings.

The narrator makes a fascinating point following these scenes, reading from Goebbels's diaries: watching this film made Hitler believe in his own infallibility. Hitler's major military moves were arguably a big reason for his country's losing the war. If so, this all brings new meaning to the old saying, "Don't fall for your own propaganda."

The film made nearest in time to the end of the war was *Kolberg* (1945), another Veit Harlan film. Unlike earlier historical war films, this movie portrayed a famous battle in bloody detail—Napoleon's forces trying to take a Prussian city. And the message it pushed—which Leiser conveys in several scenes—is one of resisting to the last. For example, in one scene, a general is talking to a towns person, to whom he says that they will have to surrender. The man—meant to typify the solid, patriotic, ordinary German—replies, "You weren't born in Kolberg. You were ordered here. But we grew

up here. We know every store, every corner, every house. We won't give up. Even if we have to dig with our fingernails to hold on to our town, we won't let go. They'll have to hack off our hands or beat us to death, one by one." The message is clear: fight until the end. "Burial in ruins rather than surrender" is a message that cost the lives of God only knows how many Germans.

Leiser ends this admirable documentary by showing clips from the musical war-romance *Great Love*, in which the lead actress sings "It's not the end of the world" along with her audience of German soldiers. The documentary goes silent as scenes of the devastation in Germany appear, with shots of a German soldier—a proper, blond Aryan one—shaking his bowed head.

Let me make a few critical points about Leiser's documentary. First, there are—to be honest—continuity problems in places, where it is unclear which film is being shown or what propaganda theme exactly is being advanced. A better organization of the material presented—say, by message being conveyed and in order of importance—would have been easier to follow.

Moreover, given the short length of the film (only eighty-five minutes), his attempt to cover the thirteen years of Nazi propaganda and to discuss twenty-six feature films inevitably results in a certain shallowness. In some cases we may see only a brief scene of a movie, with no discussion of its plot or historical subject.

Conversely, there are some movies one would want to have been included, such as *Robert and Bertram* (1939). This was a perfect example of Goebbels's notion of propaganda being disguised in an entertainment movie. The film is (on the surface) a light-hearted musical comedy starring two actors who somewhat resemble Laurel and Hardy. The characters are shown as lovable, charmingly crooked rogues, but the targets of their con games are grotesquely and malignantly stereotyped Jews. In addition, he could have contrasted it with *The Eternal Jew*, which was overt—not to say blatant—propaganda and it was a box-office flop.

The documentary's shallowness is pardonable (if problematic), when one remembers that Leiser's documentary is just a quick overview of a deep subject, not a systematic exploration of it. Fair enough. I should note as well that he also authored a book on the subject, which of course goes more deeply into the subject.¹⁰

However, more disappointing to me was the lack of any serious analysis of the key concept of "propaganda." This is a very tricky term, so that some conceptual analysis is in order here. What exactly is propaganda? Is it inherently bad? Is film a particularly effective vehicle for the dissemination of propaganda? If so, why?

¹⁰ Erwin Leiser, *Nazi Cinema* (New York: Macmillan Publishing Co., 1974).

Let's start with the notion of propaganda itself. To begin with, it involves deliberation—the propagandist intends to convey a message. This point is not made clearly enough in Leiser's documentary.

Consider his discussion of *Morgenrot*. Granted, the film effectively pushed the attitude that a “good German” is one who faces death well and selflessly. Now, set aside for the moment the stubborn fact that, generally speaking, throughout most of human history, that attitude—selflessness and courage in the face of death—has traditionally been considered virtuous. Given how many millions of “good” Germans the Nazis led to death—not to mention how many more millions of good non-Germans the Nazis led the “good” Germans to slaughter—that was arguably a bad attitude to promote.

But was it Nazi propaganda, or for that matter, any propaganda at all? It was a privately produced film, made before the Nazi party held power. The filmmakers don't seem to have been Nazi sympathizers. Of the two directors, one—Vernon Sewell—was a British director who went on to make numerous films in Britain up through 1971. The other director was the Austrian Gustav Ucicky, who was hired by UFA Film Company in 1929. While during the war period he directed several propaganda pictures, it seems to have been out of a desire to keep working, and Ucicky kept working in the industry after the war. Indeed, *Morgenrot* was awarded Best Foreign Film for 1933 by an American film organization, the National Board of Review of Motion Pictures.¹¹

To put the point provocatively, if I do a film that portrays, say, blue-collar workers in a very positive light, and the communists show it to their followers, and proclaim loudly how wonderful it is, does that make me a communist propagandist? Surely not. At a minimum, the promulgation or propagation of a belief (attitude, desire, goal, value, or whatever) by a film (or any other medium) is propaganda only if it is intentional on the part of its creators to further the promulgation of that belief.

More exactly, even if the creator of a film (or again, any other medium) created it to promulgate a belief that happens to be part of the agenda or ideology of some group G, we can rightly say that the creator created propaganda, but *not* that his film was G propaganda, unless the film's creator was a member of G or was at least supportive of most of G's agenda (a “fellow traveler,” as the phrase goes).

More troublesome is this: What *bad* message, exactly, is presented in the clips from *Morgenrot* that Leiser shows us? Is courage bad? Or selflessness? Or solidarity with one's fellow fighters? Isn't propaganda the propagation of false, indeed, perniciously false beliefs?

The problem here is in part one of linguistic evolution. In times past, “propaganda” had the neutral meaning of simply disseminating information to further an idea or cause (religion, ideology, or the like). In fact, the term comes from the Church's Sacred Congregation for Propagating the Faith. But

¹¹ See <http://www.nbrmp.org/about/history>.

after the twentieth century, “propaganda” has come to have the connotation of propagating an idea or idea-complex by manipulative, mendacious means.

There is another connotation to the meaning of “propaganda” that Leiser’s documentary mentions. It notes that Goebbels felt that the most effective propaganda film was entertainment film, presumably because people were unaware that they were being fed a message, and so less apt to fight it. Some have made the distinction between “overt” and “covert” propaganda here.¹² Is there a morally relevant difference between the two?

In order to get around the various connotations of “propaganda,” I will use the neutral term “marketing” to mean the intentional attempt to get some audience (be it people generally, or a specific target group) to comply with the desires of the marketer (or the marketer’s employer). Marketing involves conveying a message, and thus necessarily involves a medium: oral presentation, magazines, newspapers, fliers, posters, books, music, Internet pages/sites, radio shows, television shows, and movies.

We can distinguish between two main kinds of marketing, depending upon just what it is that the marketer is trying to get the audience to accept. Economic marketing (i.e., advertising and sales) aims at getting the audience to buy some product (i.e., some good or service). Advertising aimed at getting you to buy a certain brand of car is an example of economic marketing.

Epistemic marketing is marketing aimed at getting the audience to accept a belief or set of beliefs. That can be the marketing of a belief, theory, cause, religion, political institution (such as a government), political ideology, or social/ethical value system. You can market, for example, the belief that the world will end soon, the theory of anthropogenic global warming, the cause of Irish home rule, the Catholic religion, communism, or natural-rights ethics.

The marketer may be working solely for himself/herself, or working as an agent for some other person, group, or organization. As I see it, marketing of any sort ranges on a scale from the perfectly good (or moral, or “clean”) to the perfectly evil (or immoral, or “dirty”).

Moreover, I think that the criteria by which we judge the ethical status of any marketing are fairly clear, at least in general terms. Borrowing from business ethics, the criteria include at least the following six major factors. I will list these, and illustrate with cases from economic marketing.

Transparency of intention: Other things being equal, the more the marketer makes it clear to the target audience that his message is intended to make them do or believe what the employer wishes, the more ethical the marketing. A salesman who says, “Hi, I sell Fords and I want to try to convince you that the car for you is on this lot!” is perfectly transparent. Subliminal advertising (such as when specific products are placed in the hands

¹² The nice survey in Wikipedia (under “propaganda”) makes this distinction; see <http://en.wikipedia.org/wiki/Propaganda>.

of famous actors in the movies) is perfectly opaque, and accordingly ethically dubious.

Rationality of audience: Other things being equal, we expect marketers to direct their messages to audiences capable of understanding them and making rational choices. A salesman trying to sell a Ford to a normally educated adult customer is targeting the rational. An insurance salesman trying to sell an annuity to a patient suffering from advanced Alzheimer's disease in a dementia care facility would be targeting the clearly *non compos mentis*, and the sales pitch is accordingly unethical.

Logicity of appeal: Other things being equal, we expect marketers to avoid sophistry. A salesman selling a Ford by adumbrating its major qualities is perfectly logical. A salesman who employs a false analogy, such as comparing his minivan with (say) another company's SUV, is being sophistical, and accordingly the marketing is unethical.

Avoidance of emotional manipulation: Emotional manipulation usually involves the irrelevant association of products with emotions. So a doctor who tries to convince a patient to give up smoking by showing him the statistics on smoking and lung cancer is not manipulative. A marketer who pushes a brand of vodka by merely associating it in picture ads with models in bikinis is being manipulative, making the marketing ethically dubious.

Truthfulness of message: Other things being equal, we expect marketers not to employ fraud, misrepresentation, or lies in selling their product. A salesman who tells the customer that the car has 50,000 miles on it, when it does, is being truthful. One who makes the same claim but in fact himself turned back the odometer reading from 150,000 to 50,000 miles is committing fraud, so that the marketing is accordingly immoral.

Legitimacy of product: Other things being equal, we expect a marketer to be selling an ethical product. A salesman trying to sell a Ford is selling something *prima facie* ethical to sell. A hit-man trying to convince a jealous husband to employ him to kill the other's unfaithful wife and her lover is inducing an angry person to participate in murder, so that the marketing would accordingly be evil.

No doubt there is a lot of disagreement about what sorts of things are immoral products, but that is tangential to the point here. The point is that these criteria enable us to explain more specifically what was profoundly wicked about the Nazi propaganda movies (or any malevolent propaganda, for that matter).

For example, Goebbels's preference for using entertainment film in order to propagate Nazi ideology shows that he did not want transparency, and a film like *Die Grosse Liebe* is unethical for that reason. A film like *Hitler Youth Quex* is profoundly evil for (among other reasons) targeting young boys to adopt an ideology, before they are rationally equipped to think through the reasons for and against it.

Then again, a film like *Uncle Kruger* is morally repellant for its illogical analogy between the concentration camps the British had during the Boer War (which held about 100,000 people, and were meant to stop terrorist

attacks; they certainly were not extermination camps), with the Germans' own concentration camps (which were specifically designed to exterminate mass numbers of people—11 million in all).

From the angle of the criterion of truthfulness, films such as *D III 88* and *For Merit* were morally disgusting for perpetuating the “stabbed in the back” myth. A film like *I Accuse* is immoral for (among other reasons) the fact that it promotes a morally repugnant “product,” namely, the state killing of people the state regards as having no value. *I Accuse* is also morally repellent for its illogical analogy between suicide (which is voluntary) and state organized euthanasia (which is not).

Not only do these criteria help to explain which films constitute propaganda in the perfectly correct pejorative sense (i.e., evil epistemic marketing), but they help to explain why film is so susceptible to being a medium for propaganda.

Consider first transparency. Film can hide epistemic messages especially easily, for just the reason Goebbels had in mind. You can hide the message in an entertainment movie. Film—unlike the printed text—is inherently an observational medium. The viewer passively receives images, and rarely critically evaluates those images.

Again, consider the criterion of rationality of the audience. Movies are powerfully effective at communicating with children, most especially children who are too young or too uneducated to read critically. Precisely because of its observational nature, movies are especially effective at illogical persuasion. No careful logical reasoning is presented in film, and worse, while being bombarded by rapidly changing images and sounds, the mind cannot critically follow complex arguments.

Next consider truthfulness. Since film is observational at its core, it has an inherent verisimilitude. Seeing is believing, as we rightly so say. For example, in *Bismarck*, the viewer *sees* Bismarck saying that this treaty with the Russians will help the Germans to find time to prepare for war, and so one is inclined to think that it actually happened that way.

Of course, the magic spell cast by a successful propaganda movie can be blocked or undone by countervailing information. A film that presents a false narrative can be rebutted by critical reviews, discussion in classrooms, and news stories, and it can be lampooned in satirical send-ups (parodies). For this reason, authoritarian regimes typically marry propaganda with the state control of education and censorship (or outright control) of the news media.

The power of film as a tool for propaganda is real, as both Lenin and Goebbels well understood, and is amply demonstrated in this valuable documentary. Spelling out precisely why this is so, however, is philosophically quite tricky. I have tried to advance the investigation in this article, but I realize that there remains a great deal more to be said.

