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HOBBS'S "JUST MAN"

JOEL KIDDER*

Syracuse University

The names of just and unjust, when they are attributed to men, signify one thing; and when they are attributed to actions, another. When they are attributed to men, they signify conformity, or inconformity of manners to reason. But when they are attributed to actions, they signify the conformity, or inconformity to reason, not of manners, or manner of life, but of particular actions. A just man therefore, is he that taketh all the care he can, that his actions may all be just: and an unjust man, is he that neglecteth it. . . . Therefore a righteous man, does not lose that title, by one, or a few unjust actions, that proceed from sudden passion, or mistake of things, or persons: nor does an unrighteous man, lose his character, for such actions, as he does, or forbears to do, for fear: because his will is not framed by the justice, but by the apparent benefit of what he is to do.¹

IT IS PERHAPS NATURAL enough that an author who has been discussing the nature of just conduct should say at least a few words about the character of persons who, with fair consistency (no one is perfect!), do or do not manifest it. After all, many of his readers would be accustomed to treatments of this topic in which the order of discussion would be reversed and in which such an order would be held to reflect the true order of knowledge: first explain what a just man is, and then you can define a just act as the sort he would be likely to perform. This is not Hobbes's own order of priorities, but he can be expected to anticipate the disappointment of his readership if he says nothing at all about what a just man is, or if the little he does say seems to violate either educated common sense or the constraints of his own system. In what follows, I hope to show that what he says does a good job of satisfying each of these requirements, once we penetrate the puzzles generated by his characteristic brevity. I think it will become apparent that understanding what Hobbes can and does mean by a "just man" is worthwhile for understanding his system as a whole.

Hobbes's discussion of what a just man is occurs in the eleventh of sixteen chapters in Part One, titled "Of Man." Earlier in this part Hobbes has pursued and developed the thesis that a human being is a self-maintaining machine, a machine that maintains itself principally by moving toward and acquiring things it likes (which evidently must, for the most part, help it to survive and flourish) and by moving away from and avoiding things that it does not like (which equally evidently must, on the whole, be contributory to its destruction). It differs from the simplest beings of this sort in the extent of its *prudence*, or foresight, an acquired knowledge of the causes and effects of those states of affairs that include the objects of its desires and aversions.

The practical side of prudence is a transitivity of desire, so that the organism desires what it sees to be the causes of what it already wants and develops aversion to conditions that tend to bring about whatever it is already averse to. (Under the heading of "deliberation," Hobbes discusses what happens when the organism discovers a state of affairs that includes both an object of desire and one of aversion, perhaps connected causally. His solution to the difficulties of such an organism requires that some desires and aversions are stronger than others and that likes combine by addition, unlikes by subtraction.)

Human organisms transcend those of all other species in their application of this power of prudence principally because of their possession of language, which makes it possible to keep track of very long and involved chains of cause and effect. This power makes it possible for some human beings to engage in science, that is, the discovery of true universal conditional statements about causal connections, with which to anticipate experience all the more efficiently. The general practical aim of prudence is to achieve desired satisfaction (and the avoidance of aversive states) now and in the future, to the greatest possible extent—a condition known as felicity.

Another name for the transitivity of desire (Hobbes's name for it) is the *love of power*, the desire for any "present means to a future apparent good." Other human beings are my *equals* in that their objects of desire and aversion are similar to and commensurate with my own, as are their *natural powers* (the ones they do not have to acquire). Since among these equal powers is the potential for prudence, other people tend to want all the same sorts of power that I want. (Hobbes does not discuss the question whether

human beings have a sort of herd instinct that makes them naturally wish to be in one another's company, although he manages to mention sex, rather quickly, in connection with the family. He does not really discuss what might be the instinctual, or rock-bottom, desires and aversions of *human* beings. He evidently does not think it is important, for his theoretical purposes, what they are. What does matter is that these desires and aversions are for basically similar objects and that the world is not perfectly generous in providing these objects whenever they are wanted.

We human beings are in profound and nearly irremediable trouble with one another and would remain so even if we turned out to possess far more sympathy and fellow feeling than Hobbes bothers to attribute to us. The trouble is that, even if nature happened to provide everyone in a certain vicinity with all of the basic goods they happened to need for the moment, they would still want power, and the more each understood, the more power each would want. We are in trouble with one another because we understand our similarity in needs and powers and the stepmotherliness of the world. Because we understand our similarity in prudence to one another, we anticipate one another's pursuit of power, and it is clear to all of us that we want power over each other. The very knowledge of the similarity of another's lot with my own, which might make it possible for me to feel sorry for him if he were to get something to which he is strongly averse, will also make me want to anticipate and dominate him so that he could not arrange for me to get it instead!

In this miserable condition we fear one another and we attempt various strategies such as preemptive strikes and permanent intimidation. But killing others does not solve anything (since more are constantly being produced through the family relation that Hobbes mentions all too briefly). And, of course, the very commensurateness of our prudence and other powers makes permanent intimidation a hopeless illusion.

But here our power of language can come to our rescue. When we see how hopeless we are, the more each of us tries to anticipate and eliminate competitors, we realize that we need to arrive at a consensus, which language will enable us to formulate and negotiate. This will be an agreement concerning the permissible limits of competitive behavior. There are various sorts of competitive, or competition-anticipating, behavior that would be advantageous for each man to forgo in exchange for assurance that each of the others

would also forgo them: killing, for example. Each man *ought* to enter into and remain in such an agreement if he can. (He ought to, evidently, in that if he were perfectly prudent all the time he *would naturally* do so and never do anything incompatible or inharmonious with doing so; one owes it to oneself to be as prudent as one can.) The use of language to make such an agreement, and to promise to keep it, is called *covenanting* or *contracting*, and the resulting agreement is a *covenant* or *contract*. *Justice* of actions is the keeping of covenants once they have been made—a ticklish business until there is an arbitrator to settle disputes about who has, and who has not, acted justly and a policeman-jailer-executioner to apprehend and inflict planned nastiness on those who have not.

Thus, for Hobbes, a just man is a rationally prudent man. He has reflected on the most ubiquitous causes of his felicity or misery when in the company of others. Part of what it means to say that he is rationally prudent is that he has for a fixed aim this very felicity, or the ongoing satisfaction of as many of his most importunate desires as possible; additionally, “rationally prudent” means that when reason shows him that something is a necessary condition for this felicity, he wants that necessary condition to obtain. A third component of the meaning of “rational” in such contexts is that reason does a fairly good job. The rationally prudent man is not hopelessly stupid. When in the company of others, therefore, he desires peace with them and desires, as well, that the necessary conditions for peaceful living obtain. One of these conditions is that men must keep the covenants that they make with one another to escape from the condition of war. Therefore, the rationally prudent man wants to behave justly when other men do and wishes that he were in a position to behave so even when he is not. He will take all the care he can in this matter.

This description is consistent with the quoted passage with which I began. There is one puzzle, however. At the end of this passage Hobbes explains that an unjust man who occasionally keeps his word from, say, fear of the magistrate, is not a just man “because his will is not framed by the justice, but by the apparent benefit of what he is to do.” Notice, it is not simply because of the inconsistency of his covenant-conforming behavior that he is an unjust man. We can imagine that such behavior on his part is exceptionless. Suppose he suffers from a systematic fear that the police are watching him all the time. He would often break his word, ex-

cept that he fears instant arrest followed by certain punishment. He is not a just man, even so, for his motive is wrong: his will is not framed by justice, but by simple fear of those in authority.

Now this evidently accords well enough with common conceptions of a just person. Someone is not a just person because he would cheat others if he dared, except that he is Caspar Milquetoast. But what about the requirements of Hobbes's system? Are not rationally prudent men driven by nothing but fear and hope? Indeed, are not fear and hope often indistinguishable, as the wording of the quoted passage suggests: fear of losing the advantage that I hope for, or hope of avoiding the calamity that I fear? And what other motives are there for Hobbes? Is not the man whose will is framed by justice fearful of losing a great advantage in his relation to others, an advantage he may expect to lose, or suffer a serious chance of losing, if he violates his covenant? Of course, perhaps all Hobbes means here is that the just man and the systematically deluded unjust man fear somewhat different things. But we would like to know more about the difference.

THE MOTIVE OF JUST ACTS

That which gives to human actions the relish of justice, is a certain nobleness or gallantness of courage, rarely found, by which a man scorns to be beholden for the contentment of his life, to fraud, or breach of promise. This justice of manners is that which is meant, where justice is called a virtue; and injustice a vice. [Pt. I, chap. 15, p. 123.]

Here we receive a definite indication of a motive of just conduct other than fear: the opposite in fact, for do not courageous men either have no fear or act against the fear they have? The gallant man of virtue clearly differs from the timid deludate. But does he not equally differ from the man of rational prudence? One is calculative of gains and losses large and small, the other is *scornful*. He scorns to be beholden *for the contentments of living*, to fraud. (Does this include even the contentment of continuing to live?)

Hobbes tells us that such men are rarely found; is this his excuse for not having introduced us to them earlier? I will try to show that he has prepared us for this introduction in his earlier discussion of manners (in chapter 11), and we must shortly turn to that discussion in order to elucidate a certain repeated and evidently crucial phrase, "the manner of justice." But first let us try to get clearer

about this motive of *scornfulness*: What is it that the brave and gallant man scorns in the injustice of others and would scorn in himself if he were to break his word?

THE CONSEQUENCE OF BREAKING COVENANTS

... injury or injustice in the controversies of the world is somewhat like to that which in the disputations of scholars is called absurdity. For as it is there called an absurdity to contradict what one maintained in the beginning, so in the world it is called injustice and injury voluntarily to undo that which from the beginning he had voluntarily done. [Pt. 1, chap. 14, p. 109]

We know, as Hobbes does, that the scholar is contemptuous of absurd speech in others and embarrassed by it in his own case. Generally, it is an indication of a lack of power. Everyone wants power, and particularly the power to understand whatever one has a reason for understanding. And, moreover, one wants the power to express what one understands and to cause others to share one's understanding. To contradict oneself or to utter something that turns out to be irrelevant, or uninterpretable, in the context of what one earlier said is therefore shameful. One is unable to fit the later words to the earlier ones appropriately. One loses honor in that one loses the willingness of others to attend to or believe what one says. On Hobbes's account, one's mortification here is an expression of anxiety about further consequences, but the object of the anxiety can be very vague. One may not know exactly what people will do if they stop taking one's words seriously, but it is a bad sign. Besides, it is directly unpleasant to discover the lack of a power in oneself that one thought one had. To be sure, one would not discover *this* if one had deliberately digressed or obfuscated, but the reaction of scholarly (or other) peers to such behavior will likely be even worse: the response to perverted taste will be even harsher than the preceding response: behold, he even lacks the power to *desire* what is fitting or needful!

Thus, for Hobbesian reasons, or just because we have our own conviction that speaking clearly, consistently, and relevantly *is* one of the fitting and needful things, we *might* resist digressing or obfuscating just to get something we want (a grant, perhaps), or to avoid something unpleasant (such as the enmity of one who disagrees). (And we are not necessarily violating the spirit of Hobbes-

ian thinking in deciding that some things *just are* fitting or needful, for felicity must have constituents or components, not just propaedeutics.)

Now, just as consequential speech consists in fitting later utterances to earlier ones that anticipated or constrained them, so keeping a covenant consists in fitting a subsequent act to an earlier speech that anticipated and constrained it. In making a covenant I said *that*, or *implied that*, one of my actions by and by would be of a certain sort. But then I go on to act in a manner that is dispersive or inconsequential. Presumably, when I said I would do this I meant to and wanted to, but then I failed to understand something—something about my nature or about how much authority or power I had. Or perhaps I did not mean what I said; but then I failed to desire what is fitting or needful. The others will stop taking me seriously either way, and that will probably have bad consequences, even if I do not find it directly and simply unpleasant itself.

This, or something like it, must be rock-bottom in *contempt for*, rather than resentment or mistrust of, those who break their word: they are considered weak or disordered. And it goes without saying that one does not want to be weak or disordered. Still, it is a big rough world out there, replete with distractions and consolations.

The force of words being, as I have formerly noted, too weak to hold men to the performance of their covenants, there are in man's nature but two imaginable helps to strengthen it. And those are either a fear of the consequence of breaking their word, or a glory or pride in appearing not to need to break it. This latter is a generosity too rarely found to be presumed on, especially in the pursuers of wealth, command, and sensual pleasure—which are the greatest part of mankind. The passion to be reckoned upon is fear. [Pt. 1, chap. 14, p. 117]

The glory of not having to appear to break one's word (and why not, all the more, the glory of really not having to break it?) is a motive too rarely strong to be presumed on in the fashioning of civil society. Hence, the features of the Hobbesian system with which all students of *Leviathan* are familiar. The just man may perhaps be welcome in the just society, but he is not its foundation, unless his generosity or love of glory is the same thing as rational prudence!

THE MAN OF SCORN

Let us review the motives from which a man in civil society might keep his word. They are apparently three:

1. He fears that he will be punished by the sovereign for breaking his word.

2. He fears being plunged into the state of war or being partially plunged into it by the reactions that his injustice induces in his neighbors.

3. He scorns those who do this and would not wish to be himself an object of his own scorn.

Hobbes himself distinguishes from just men those whose sole motive is (1), and we have seconded the distinction. We have seen the difficulty of considering someone a just man if his motivation does not include (3), and those in whom (3) is a strong enough motive to resist temptation (including, most especially, the temptation not to be taken advantage of) have been characterized as very rare and not the building blocks of a just social order. If we ask who are the foundations of a just social order, the answer seems to be a blend of people whose motives are (1) or (2) or people with a blend of the motives (1) and (2). People whose ruling motive is (3) are perhaps only ornaments of such a society. But could they be unwelcome there?

Let us suppose that a very brave man, accustomed to the state of nature, comes to town. He is scornful of those who break their word and has demonstrated a capacity to endure danger, hardship, and serious loss to avoid breaking his own. Still, his habits from the frontier are such that he does not give his word very often and stoutly resists the doctrine that things like silence or geographical location imply covenants he has not uttered. He is drinking rotgut in the Harmony Saloon when the sheriff ambles through the swinging doors. One can imagine several conversations, not all of them harmonious! Here is a man whom Hobbes might not be prepared to regard as very rational or very prudent. Will he call such a man *just*? Can one be virtuous without the virtue of rational prudence? This man may consider himself peaceable enough; after all, he doesn't go around picking fights. He may be puzzled by the edginess or downright hostility of his new-found neighbors. But they will not accord him the title of "peacekeeper" until he promises to keep all the laws and recognize all the authorities that *their* covenant has made, and Hobbes is their philosopher.

So then, a just man must agree with his neighbors about what his covenants are or about how the question will be settled in particular cases. Suppose our man says, "I promise to keep all your laws and recognize all your authorities until I leave town." Then they buy him a drink. But leaving town means returning to the state of nature, an irrational act! Perhaps some of the more erudite citizens press the arguments of *Leviathan* on him, insisting that these arguments prove he should stay. At length, appearing somewhat browbeaten he says, "Okay, I promise to stay." Applause and another round of drinks! Now all doubts as to the soundness of his citizenship are allayed, but he may only have been tired of arguing, not rationally convinced. He may not be prudent now or ever, although he *will* keep his word to act from now on "the way prudent people do." We must suppose he will do this to the best of his ability, which is all we can ask of anyone.

Lastly, let us suppose that he *is* rationally prudent. He does desire his own felicity, and whatever is necessary to it, and he does see what is necessary to it. He is as rational as Hobbes could wish, evidently, *except* that, because of the strength of his courage and scorn, he never needs to "draw upon" either fear of the police or rehearsals of the evils of the war of each against all others, in order to always be sufficiently motivated to behave justly. Can Hobbes be at peace with such a picture? I think he can. Later I will argue that he should.

MIXED MOTIVES

It is possible to get the impression from a certain reading of Hobbes that the motivation of rational people (while they are being rational) is monolithic: they act only for the sake of their own best interest. Other motives are for inferior states of consciousness, in which anger, fatigue, or strong passion snap the chain of argument from the identification of one's own felicity to submission to the sovereign. One can imagine Hobbes's finest citizens in their best moments, conning the proof and responding to nothing else! One can, perhaps, but one need not:

By manners I mean not here decency of behavior—as how one should salute another, or how a man should wash his mouth or pick his teeth before company, and such other points of the *small morals*—but those qualities of mankind that concern their living together in peace and unity. [Pt. 1, chap. 11, p. 79]

There is more than one quality of men that has to do with their living together in peace and unity. Some examples are "love of ease," "love of arts," and "love of praise." These are *positive* examples; that is, they are traits that dispose those who have them to behave peaceably and to hope or wish that others will, also. Their tendency need not be perfectly in this direction; perhaps any of them as a monomania or obsession might cause trouble, and it isn't clear that any combination of those he lists would be jointly sufficient to accomplish good citizenship. There are also some strongly negative ones, such as the usual sort of glory seeking, and perhaps there are many ambiguous ones, as well ("pusillanimity" seems to me a mixed bag).

What are "manners"? They are all sorts of dispositions to behave that are being considered with a view to the question whether they cooperate or do not cooperate with the behavior patterns required by rational prudence. The point for our purposes is simply that even the most cooperative ones are *distinct* from rational prudence. From another slightly different perspective, they may all be part of the *composition* of felicity. There are, or there is no reason why there cannot be, as many of these motives in the Hobbesian as in any other scheme of psychology. People can be as complicated as we need to think of them as being. No reason appears why the man we have imagined above could not always keep the third law of nature, acting always from his manner of justice, and do so even while appreciating the prudent rationality of doing so.

VIRTUOUS MANNERS

The truly just man is rare. He acts from a motive distinct from rational prudence but conformable to its dictates. But, I have argued, it seems unlikely that he *would* act in consistent conformity with some of its less-obvious dictates for Hobbes to call him "just," unless he were somehow aware of those dictates. Thus, it might be thought he must partake of rational prudence in some measure. If we examine the argument of the preceeding two sections, it will be evident that the just man need not independently *deduce* the need for his own obedience to civil law or the sovereign, as long as he can be got to swear that he *will* obey them. That is, in terms of the specification of "rational prudence" in the first section, the just man could be to a certain degree "*stupid*," so long as he is avowedly *loyal* to the civil authority. So long as we make

Hobbes's convenient assumption that the civil laws that the just man promises to obey "contain" (or adequately reflect) the laws of nature (pt. 2, chap. 26, p. 227), and so long as he is aware of what those civil laws specify for his conduct and that of others, he *knows enough* to be just.

But suppose that he is more fully rational than this and has deduced everything that Hobbes claims a fully rational man would deduce? Is his pride and scorn now in some sense superfluous or redundant motivation? I think not. In a well-constructed and well-governed civil society, the just conduct of the just man is *overdetermined*. But even so, there is no reason to dispute or question the authenticity or efficacy of the rare component in its motivation. And in less-optimal circumstances it can be crucial. If some of the civil laws are silly, or if the current sovereign is not everything a sovereign should be, those with the manner of justice may play a key role in fending off the return of the state of nature. And *in* the state of nature, those who have the manner of justice may be the nuclei around which a civil society begins to crystalize. Those with the manner of justice are dependable at the margin where others are not. In critical situations they are the ones who are chosen to be the peacemakers, the negotiators, those who are accepted in place of hostages, and so on. Hobbes underestimates their significance for his system. They make escaping from the state of nature a far more plausible outcome than it appears to be without them.

More generally, Hobbes's moral and political theory would be more subtle and complete, and appear less grotesque, if he introduced other virtuous manners (let them be as rare as he likes), which he easily could do. Consider, for example, the manner of "gratitude" or the manner of "complacency," virtues that correlate, respectively, with the fourth and fifth laws of nature. These are civilizing and harmonizing tendencies whose importance for rational prudence he argues, but whose distinctness he fails to discuss, although nothing would be more likely to be thrown in his face by someone who finds him a repulsive thinker who makes people uglier than the best of them are!

When one considers the importance of Hobbes's theory of virtue for the rest of his theory, it is a great pity that he does not expand his hints and tangential remarks into a full chapter entitled, perhaps, "Of Moral Philosophy," in which he could more clearly expound his own definition of that science as "the science of virtue and vice," (pt. 1, chap. 15, p. 132) and his explicit identification (in

the same place) of the moral virtues with the laws of nature. This would have saved him much grotesque, if pitifully serious, lampooning of his real views.

APPENDIX

Following a suggestion by Henry Sidgwick,² we may divide ethical theories into theories of obligation, which tell us what we must or should do, and theories of virtue, which tell us what a good person is. Given this division, philosophers generally discuss Hobbes as if his were wholly a theory of obligation and not one of virtue. The point of this paper has been that, in the course of his discussion of justice, Hobbes discloses a theory of virtue, a theory that he might and should have developed and systematically connected to his theory of obligation. Not only would doing this have given his theory a greater completeness and system, but it would have spared him from the impression that (like Machiavelli) he is either an immoralist or not really talking about morality. In my paper I have attempted the beginnings of such a development and connection, but, because of the characteristic terseness of Hobbes's own remarks, I can only offer a sketch, together with a reiterated regret that he did not offer more on this subject; for the little he does say is interesting and illuminating and contributes to ruling out certain standard clichés about his philosophy, clichés customarily grouped under the heading of *psychological egoism*.

Cliché number one: Hobbes holds that all a man ever wants is what is (in) his (own greatest) interest. This position is adequately exploded by Butler, who points out that to desire one's interest is to desire that some more particular desire or desires should be satisfied. But Butler must, I think, incorrectly attribute such a view to Hobbes.³ Look at Hobbes's definition of felicity: "Continual success in obtaining those things which a man from time to time desireth, that is to say continual prospering, is that men call felicity" (pt. 1, chap. 6, p. 50). Men, possessing (through the power of speech, evidently) the conceptual power to think of something as fancy as "felicity" or "prosperity" naturally *want* it because of all the *other* things they see that they want, *and will want*, from time to time.

Cliché number two: Hobbes is a *psychological* (egoistic) *hedonist*; that is, he holds that all a man ever wants is his own greatest pleasure or happiness. The same sorts of considerations ought to dispose of this one that disposed of the first cliché: to

desire one's happiness is to desire that one's desires be satisfied, a desire that makes no sense unless one has at least one other desire. Moreover, Hobbes nowhere says that pleasure or happiness (each, his own) is what all men always and only want. Many remarks throughout *Leviathan* make it abundantly clear that on his view they want all sorts of things.

Cliché number three: Hobbes holds that all a man ever wants is the continued optimal expression of his own powers, or, in materialistic terms, the maximal continued opportunity for all possible motions of his limbs. But this will not do either. Evidently Hobbes thinks, as anyone does, that *most* of the time I move my limbs to *get* things—things like strawberry jam, for example. But then, why not things like the safety of my children from a tyrant or the advancement of learning?

It is important here to distinguish Hobbes the philosopher from Hobbes the polemical reformer of political passions. He tended to combine labors by exaggerating certain features of his thought to his contemporaries. Now that he belongs safely to the ages, and fashions in passions have changed, it is necessary for us to distinguish unavoidable characterizations of his system of thought as a whole from falsifiable exaggerations of it, by him, to gain the attention of his contemporaries or to counteract certain sources of their obsessions. What Hobbes the philosopher propounds is an expanding structure of desires and aversions in each person, correlative with the expansion of that person's knowledge of causal connections. But the continued expansion of this structure in its middle portions does not require—indeed, cannot sustain—the extirpation of its foundational and peripheral points. It is like the web of a spider that will collapse if all of its connections to various twigs and leaves are cut.

Now it is plain that people, taken as they are, want all sorts of things not plausibly characterized as states of themselves, or as motions, or powers of moving, their limbs. For example, they often want their children to be safe and happy after they themselves are dead, and some of them want promising scholars unknown to them to attend universities. Hobbes the philosopher is not committed to denying any of this, even if Hobbes the polemicist, and counter-polemicist, is attempting to convince his contemporaries that, in Mary Midgley's marvelous phrase, they are *showing off*^a and grabbing for power and illusory security when, as they have for the three centuries preceding, they invade, torture, and slaughter each other and subvert, or scheme to subvert, their governments, for the

sake of all that is pure and wonderful and holy. But when he is not striving to strip those around him of homicidal (and suicidal) ideologies, which operate by not assigning enough value to one's own skin, Hobbes admits such commonplaces as that men can be made miserable by things that are done to others than themselves. Thus, for example, he refers to "those by whose condemnation a man falls into misery, as of a father, wife, or benefactor" (pt. 1, chap. 14, p. 116).

Let us now consider a more interesting and challenging thesis, namely, that Hobbes holds that what always has *top priority* with any man is the continuation of his own vital and voluntary motions. This is much more difficult to refute as an interpretation of Hobbes's philosophical psychology, and it is far more illuminating to reflect on than those just considered above. After all, it would make sense if the spider that tends the web mentioned above were programmed to sever the connection to any *one* twig or leaf, if occasionally this will save the whole web. But this thesis is open to a standard objection: Hobbes is an *ethical* egoist. He holds that *if* men were fully rational they *would* always prefer the continuation of their own vital and voluntary motions to things that are likely to result in their severe restriction or termination. And the claim that this is the top *rational* priority provides all of the force of the claim that men *ought* to keep this end in view and act accordingly. But this ethical claim is otiose and puzzling if men always do *in fact* put this first. Why tell a man that he ought, say, to sacrifice his father for his sovereign if he is all set to do it anyway? Why write *Leviathan* if there is no variance between the *actual* priorities? And if one has noticed such a variance, or thinks one has, hasn't one noticed a distinction?

Fine, some will say, it is just because Hobbes is both a psychological and an ethical egoist that he is inconsistent! But, in the first place, there are degrees of ingression of inconsistency: do not tell me that a philosophical writer *is* inconsistent in some of his words or speeches; show me that, for reasons that are central to his philosophical system, he *has to be*. I think I am showing, without extravagance, that Hobbes does not have to be. Besides that, in the second place, *you* need to show *me* in which of his words or speeches it is *clear* that Hobbes is committing himself to psychological *instead of* ethical egoism. Slipperiness about *expressing* this distinction is notorious in theories of human nature, not just with Hobbes. (It is as if we thought that when the spider is a human spider it helps to

remind it, from time to time, of its fixed programming.)

One final point. Because it has been customary to offer and defend alternative versions of Hobbes's theory of obligation, some of my readers might expect me to do much more in this regard than I have done. But it is not possible to do everything in an article, and that is not what this article is about. Aside from the remarks I have already made in expounding his theory of virtue, I shall remain silent from a reason of principle as well as from caution: what I am offering is a new way of *testing* rival interpretations. Any view of these matters must square with what Hobbes says about virtue rather than ignore it, as has previously been done. An attempt on my part to expound a view, other than what has been *extracted* from me for my own limited expository purposes, would conflict with my overall intention. For it would tempt a reader with his own favorite interpretation of Hobbesian obligation to attack mine instead of applying to his own what Hobbes says about virtue.

To sum up, the test is this: A virtue is a personally variable trait that makes it easier than it otherwise might be for the person who has that trait to do what it is rational for him to do. It is supplementary to, and therefore not identical with, prudence or rational foresight, which is the only personal quality whose presence is *analytically* tied to its being easier than otherwise to do what is rational (or, what one ought). Virtues might be connected to the exercise of rationality in at least two ways: they might be independent intellectual traits that support prudence and make it more effective, or they might be emotional traits that substitute for, offset, or attenuate others that are more troublesome. The virtue of justice is evidently one of these latter. Because virtues are manners—that is, traits whose strength varies from one individual to another—we may single out for differential admiration those who have them, and, if we are not among those people, we may envy them, for it is easier for them, than it is for us, to live well.

*I wish to thank the editor of *Reason Papers* and his referee for their helpful comments concerning this paper.

1. Thomas Hobbes, *Leviathan* (New York: Everyman Editors, 1950). All page references in the text are to this edition.

2. Henry Sidgwick, *Outlines of the History of Ethics for English Readers* (London: Macmillan, 1954), pp. 1-11.

3. Joseph Butler, *Five Sermons Preached at the Rolls Chapel* (Indianapolis: Bobbs Merrill, 1950), pp. 12-13.

4. Mary Midgley, *Beast and Man: The Roots of Human Nature* (Ithaca, N.Y.: Cornell University Press, 1978), p. 123.

FOUR KINDS OF EQUALITY

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MY MAIN TASK here will be to distinguish, not four doctrines of equality, but four sorts of doctrine, the first constituting contentions about what actually *is* the case, the other three prescribing what ideally *ought* to be. But in bringing out the connections and, more important, the lack of connections between these four sorts of egalitarianism, I shall also indicate where there is a promise of support for, or a threat to, liberty.

EQUALITY IN POTENTIAL

The first of these four refers usually to potentialities, which are then said or assumed to be the same, or at any rate equal, in the beginning. But, particularly in interpreting material presented by professing social scientists, we need to notice that there are parallel doctrines about the equality of all cultures or subcultures, and especially about the equal adequacy of all languages or dialects.¹

In earlier days the typical claim was that all individual human beings start with equal potentialities, although, to be fair, we also need to notice that most spokespersons have been willing, if not always eager, to concede the existence of relatively minute minorities of both the quite exceptionally handicapped and the extraordinarily well-endowed. In seeking a specimen of the typical claim, incautiously unqualified, there is no call to hark back so far as the France of the later 1700s. For it appears that—in those not so distant days when you could have your Model T in any color you liked, just so long as black was your beautiful—the *Encyclopaedia of the Social Sciences* laid it on the line: “at birth human infants, regardless of heredity, are as equal as Fords.”²

In our own later, more sociologically minded and collectivist times, it is common to assert, or rather to assume: not a person-to-person equality between individuals, but an average equality between groups. Indeed, it appears to be among professing social scientists the established norm, not the deviant exception, to offer evidence of average differences in the achievement of the offspring

of various social and racial classes as by itself sufficient to show corresponding inequalities of average opportunity—a form of argument that quietly takes for granted the absence between members and the offspring of members of the classes thus compared of any relevant antecedent average differences, whether purely genetic or partly or wholly conditioned by the previous environment. Insofar as this assumption is completely general, made about absolutely any classes (quite regardless of the criteria by which their membership is to be specified) then, it should be immediately obvious, it necessarily requires, or collapses into, the original contention that all the individuals concerned are in all relevant aspects themselves equal one to another.

As an example of the assertion of a would-be factual average equality, consider what the U.S. Department of Labor made so bold as to rule in 1965: "Intelligence potential is distributed among Negro infants in the same proportion and pattern as among Icelanders or Chinese, or any other groups. . . . There is absolutely no question of any genetic differential." For the same sort of equality—not stated, but assumed to obtain between socially as opposed to racially stipulated classes—take the following much too quick movement of thought. It is one that became wearisomely familiar in Britain during the late great crusade to destroy, at least within the public system, all grammar (selective) as opposed to comprehensive (neighborhood) schools. With rasping indignation we were first told that, for instance, in 1973, 59 percent of the children in grammar schools came from "white-collar" homes, although children from such homes constituted only 38 percent of the relevant population cohorts, or that in the period 1968-69 only 28 percent of university students were sons or daughters of manual workers, whereas 60 percent of the working population in that year were manually employed. Confronted with figures of this kind we were expected to conclude, forthwith and without any further reason given, that such findings "rightly brought into doubt the 11-plus examination and the tripartite education system. . . which results from it."³

Let us here discount the obvious trades union, job-protection interest that professional social scientists are bound to have in maximizing the scope and importance of environmental as against genetic determination: I have already had my say about this elsewhere.⁴ We can certainly say now that the chief reason for insisting, in the teeth of evidence, that there actually *is* some general equality

of potentiality, is the belief that this is necessarily presupposed by cherished prescriptions for what ideally *ought* to be. There are even those, including some paid to know better, who appear to construe the claim "that all men are created equal" in the Declaration of Independence, as not merely presupposing but directly constituting the contention that "at birth human infants, regardless of heredity, are as equal as Fords." A second glance at the text reveals that Mr. Jefferson, not unaware of his own egregious talents, glossed this crucial clause as a claim not of fact but of right: "that they are endowed . . . with certain unalienable rights."

This is not, I trust, an occasion when it has to be argued yet again that Hume's Law is, because necessarily true, true—that is, that no purely neutral and detached description of what it is supposed actually *is* the case can by itself entail any committed prescription of what ideally *ought* to be. It is nevertheless relevant to point out here that this principle—so offensive, it seems, to many of our contemporary radicals—generates one of the two independently decisive reasons why immoral conclusions about the propriety of giving advantages or disadvantages to individuals upon grounds of racial group membership cannot validly be deduced from premises stating only that certain racial groups are on average in their natural endowments either superior or inferior to other racial groups. (The second independently decisive reason is that nothing whatever about the particular characteristics of any one particular member of any group follows from any general statement about the average of that group: you may be either a dwarf or a giant or neither and yet still happen to belong to some group that is on average either very tall or very short or neither.)

Hume's Law, however, covers only logical presupposition, logical incompatibility, and entailment. It still leaves open the possibilities of both weaker connections and more tractable conflicts. For instance: although there would be no contradiction in believing in the enormous importance of political liberty while still conceding to B. F. Skinner that by nature we are all the creatures of largely impersonal external forces, your position could not but be uncomfortable. Again, there is no formal contradiction between this commitment to the value of political liberty and an admission that at birth all human beings are substantially identical. Nevertheless, the fact, if it were a fact, could scarcely fail to rob that ideal of much of its charm.

DEMOCRATIC EQUALITY

The first of our three different ideals of equality is often seen as a secularized version of something thought to be common to all the three main traditions of Mosaic theism: the doctrine that all souls are of equal value in the eyes of God. It was this democratic equality that was, very rightly, being demanded and conceded when in 1964 the U.S. Supreme Court struck down a sentence for contempt against Mary Hamilton, a black. She had refused to answer the public prosecutor of Alabama when he called her Mary and not, as he would have had she been white, Miss Hamilton.⁵

The general principle of which this was one particular application is best approached through Kant on "The Formula of the End in Itself." After taking "rational nature"—or, as we should be more likely to say, personality—as "something *whose existence has in itself an absolute value*," his Categorical Imperative becomes: "*Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.*"⁶

We cannot, of course, accept Kant's formulations. Yet they do have a large part of the heart of the matter in them. One sufficient reason why they cannot be accepted as they stand was urged by an early, admiring critic. It is, strictly, incoherent to speak of "ends in themselves." There can no more be "ends in themselves" unrelated to the person whose ends they are than there can be sisters in themselves, unrelated to any siblings of whom they are the sisters.⁷ But it remains that Kant was seized of the crucial importance of the facts: that we are all able to, and cannot but, form ends for ourselves and that, in giving to ourselves or to others our reasons for acting thus but not thus, we are, however irrational those reasons, rational beings.

From those surely defining truths about our human nature, nothing can be immediately deduced about how such creatures as we ought to treat one another. However, to borrow another characteristic concept from Kant, "as legislating members of the Kingdom of Ends," we ourselves can lay it down that all such rational agents are to be respected in their pursuit of their own chosen ends, or, in favorite words of a much more recent generation, their doings of their own things. Indeed, and the true heart of the matter, we cannot avoid making this universal and a quasi-legislative claim if we once say or assume that, being such agents, we ourselves possess these moral rights.⁸

The secret is that the notion of reciprocity is essential to that of a moral if not of a legal right. So, if people are implicitly or explicitly to presuppose that they themselves, when they are doing no harm to others, are not merely able but entitled to act without interference, then it follows necessarily from this, their own presupposition, that all other similar agents must possess these same "normative resources."⁹ Wherever I claim that I have a moral right—indicating, as I must, the ground of that claim—there I necessarily allow, by that token, to everyone else who satisfies the same condition that same moral right.¹⁰

The notion of equality here enters essentially, because no one can consistently claim such universal human rights for himself except insofar as he at the same time concedes to others the same rights, the same liberties. The content of such rights cannot but in consequence be the same for all. For the universal human rights and liberties of one person must end when, and only when, these would conflict with another person's corresponding rights and liberties. The 1945 Turkish constitution provides an agreeably unhackneyed illustration: "Every Turk is born free and lives free. He has liberty to do anything which does not harm other persons. The natural right of the individual to liberty is limited only by the liberties enjoyed by his fellow citizens." The practice presents every kind of problem. The principle is luminous.

Our first ideal of equality, therefore, does not in any way threaten liberty. Instead, it imperatively requires the maximum, equally for all. It also, surely, requires some minimum of what too many people nowadays simply and wrongly identify with liberty—democracy. It demands, that is to say, at least the permanent possibility of in due season voting the scoundrels out, which is, I think, the substantial cash value of talk of government by consent. This demand is not based on any false and silly doctrine that majorities are always or usually right. Collections of potentially rational agents can be in their decisions as prejudiced, ill-informed, perverse, and—in a word—(actually) irrational as their individual members! The point, rather, is precisely that the decisions should be their decisions. This just is what it is to respect people as choosers and pursuers of their own ends. It was put, simply yet magnificently, by the russet-coated Colonel Rainborough during the Putney Debates on the New Model Army: "Really I think that the poorest he that is in England hath a life to live as the greatest he; and therefore truly, Sir, I think it is clear, that every man that is

to live under a government ought first by his own consent to put himself under that government; and I do believe that the poorest man in England is not at all bound to that government that he hath not had a voice to put himself under."¹¹

Besides some minimum of consent to government, the same ideal clearly calls for limitations on what government does. Since the object is equal liberty for all, and the maximum for everyone, it cannot accept the doctrine of total popular sovereignty—that anything and everything goes, provided only that it is supported by a majority. It was indeed a main part of the political wisdom of the makers of the U.S. Constitution, dedicated as they were to this ideal, to be almost obsessively aware of the danger that majorities in sovereign assemblies will exploit and oppress minorities and will restrict their liberties.¹² That is why they created, as American conservatives love to say, not a democracy but a republic. That is the reason for most of the entrenchments, above all the entrenchment of the amendments known collectively as the Bill of Rights. It is also the reason why many in Britain who hold to the same ideal have recently begun to debate the idea of writing the previously unwritten constitution or in some other way entrenching a similar Bill of Rights. We speak, with feeling and reason, of the present sovereignty of the House of Commons as elective despotism, adding perhaps that—thanks to an electoral system giving most unequal value to the various votes cast, especially those cast for third-party candidates—no government since World War II has come into office with even the slimmest majority support in the previous general election.

EQUALITY OF OPPORTUNITY

The second ideal of equality is always called equality of opportunity, although a far better description is "fair and open competition for scarce opportunities."¹³ This is what was known to the great French Revolution of 1789 as *la carrière ouverte aux talents*, and for most of those revolutionaries it was to be applied primarily, if not perhaps exclusively, to public service appointments. The aim of the exercise always was that the scarce opportunities in question—opportunities to command armies, to become civil servants, or whatever else—should be awarded as prizes to the winners in a fair and open competition—a competition, that is, from which no one is excluded on any irrelevant grounds and in which the

organizers treat the contestants equally and without partisan prejudice. Thus, in Article VI of the *Declaration of the Rights of Man and of the Citizen* we read: "The law...should be the same to all...and all being equal in its sight, are equally eligible to all honors, places and employments, *according to their different abilities, without any other distinction than that created by their virtue and talents*" (emphasis added).

That proclamation should make it clear from the beginning that giving a fair and equal chance to all competitors does not mean ensuring that in fact every competitor is as likely to succeed as every other. Organizers are not by the ground rules of natural justice bound either to offset by handicapping or otherwise to neutralize every actual competitive edge making success in fact more likely or even certain. Whereas every advantage can be argued to be, not every advantage can be an unfair advantage. Nor will it do—notwithstanding that nowadays it is all too often done—to construe "treating all potential contestants equally" as "making their actual chances of success equal."

It is a paradoxical truth that the fact that the probabilities of winning are for this lot many times those for that lot, is no proof at all that either had, in the appropriate sense, less than an equal chance. Indeed, if any confrontation is so arranged that all possible alternative outcomes are equiprobable, then what we have must be either a lottery or some other game of chance. In a perfect competition, the winners necessarily have to be the best performers. And, were the outcome in any such perfect competition to turn out to be a dead heat between all the participants, then that would make it impotent to determine the allocation of scarce opportunities—or, indeed, of scarce anything else.

These fundamental points once taken, it becomes obvious that there can be no purchase for the application of this second ideal of equality save where there are among the potential contestants some actual inequalities—actual inequalities that are also allowed to be both relevant and legitimate. This observation cannot, of course, be made to yield any conclusions about which in particular may and which may not be admitted as legitimate or relevant. Yet, it does throw a somewhat sick light on one favorite move in a much-commended article by Bernard Williams. For "The Idea of Equality" contends "that a system of allocation will fall short of equality of opportunity if the allocation of the good in question in fact works out unequally or disproportionately between different sec-

tions of society; if the unsuccessful sections are under a disadvantage which could be removed by further reform or social action.”¹⁴

Against the first clause quoted, before the proviso, a single, short, sharp word of objection is at this stage sufficient. It is that the distinction between opportunity and outcome has been collapsed, even by a philosopher, in a manner yet more gross and scandalous. “Surely,” that even more scandalous argument went, “we could always define ‘real chance’ in such a way that if two members of a society have the same real chance to achieve equality of economic welfare, then their actual economic welfare level will be the same.”¹⁵ Yes indeed, we cannot but agree, nothing easier; nor more arbitrary; nor more obscurantist.

The fresh interest in this Williams contention lies for us in the proviso: “if the unsuccessful sections are under a disadvantage which could be removed by further reform and social action.” Without exception, every feature that in fact differentiates one identifiable human being from another must in principle, if not yet—or ever—in practice, be alterable. Whatever is in fact determined by the environment theoretically could be altered by changing that. With appropriate alterations, the same applies to genetic constitutions and to their results. Science fiction can easily imagine a society in which all the babies come identical, as products of cloning. It is a situation that, as has been remarked previously, too many professing social scientists and practicing social engineers are inclined to assume obtains already. As for an identity of upbringing, visionaries from Plato onward have dreamed, or had nightmares, of a world in which all (or at least all members of one special caste) would immediately from birth be raised in one single uniform environment.

Williams himself proceeds: “In these circumstances, where everything about a person is controllable, equality of opportunity and absolute equality seems to coincide; and this itself illustrates something about the notion of equality of opportunity.”¹⁶ Certainly, after the semicolon, the final statement is true. Yet what the speculation illustrates is, not the ultimate coincidence of equality of opportunity with absolute equality (otherwise, equality of outcome or equality of condition), but the truth of what was being urged earlier about the purchase needed for any application of our second ideal—that there have to be actual competitive edges not put down as unfair.

If there are to be scarce opportunities, and if these are to go to

the winners of competitions, then some competitors have to enjoy competitive advantages and some have to suffer competitive disadvantages; furthermore, some of these advantages and disadvantages have to be authentically and legitimately theirs. So the truth is not that these two ideals must in the end coincide but that they are, on the contrary, ultimately incompatible. This is so because, insofar as the outcomes are to be made the same for all regardless, there can be not only no incentive to compete but no scarce opportunities for which to struggle. The hypothesis requires that the attractions of anything that is inherently and incorrigibly scarce must be artificially offset by corresponding repulsions. Otherwise, there will emerge or remain that most obvious and infamous of evils, inequality.

The extent of the threat to liberty from this second ideal of equality depends both upon the stage or stages in the human life-cycle at which the various recommended competitions for scarce opportunities are to be held and upon which possible competitive advantages it is proposed to nullify or prevent "by further reform or social action." Such recommendations and proposals have in fact covered almost all the possibilities between two extremes. Suppose, at one end of the scale, that it is proposed, in a nonsocialist country, that all but only public appointments must by law be filled by open and general competition—without any restricting of candidacies to those of some particular parentage, race, or region. Suppose, too, that the actual competitors, who will (except in the case of competitions for educational opportunities) presumably be at least into their teens if not fully adult, troop up to the start-line. Suppose, finally, that every capacity or incapacity, every disposition or indisposition, that could in fact further or impede their candidacies is allowed to be legitimately theirs: allowed to be, that is, a part or consequence of "their different abilities . . . created by their virtue and talents." Then I can see no threat here to the liberties demanded by the first ideal of equality. In these understandings, at any rate, there is no inconsistency between the first and the second elements in the triune motto of the successive French republics.

But, if we were to follow Williams to the opposite end of the scale, it would be an altogether different story. For, proceeding from the first passage quoted, he goes on to argue "that one is not really offering equality of opportunity to Smith and Jones if one contents oneself with applying the same criteria to Smith as affected by favourable conditions and to Jones as affected by un-

favourable but curable conditions.”¹⁷ So, Williams infers, curable competitive disadvantages—and presumably, by the same token, removable advantages—do not truly characterize or legitimately belong to those actual or potential competitors to whom they—what shall we say?—apply. He therefore delivers an Olympian ruling: “Their identity, for these purposes, does not include their curable environment, which is itself unequal and a contributor of inequality.” Next, referring to his own stunningly high-handed proceedings, he comments: “This abstraction of persons in themselves from unequal environments is a way if not of regarding them as equal, at least of moving recognizably in that direction.”¹⁸

It is only after extending this approach, as consistency demands, to cover also alterable genetic constitutions that Williams begins to display a slight anxiety about the presuppositions thus revealed: “Here we might think that our notion of personal identity itself was beginning to give way; we might well wonder *who were* the people whose advantages were being discussed in this way. . . . if one reached this stage of affairs, the individuals would be regarded as in all respects equal in themselves—for in themselves they would be, as it were, pure subjects or bearers of predicates, everything about them, including their genetic inheritance, being regarded as a fortuitous and changeable characteristic.”¹⁹

I cannot afford to say much more here about this view of the nature of man. I am, however, the less reluctant to refrain since I have pursued the topic elsewhere—with reference not only to Williams but also to John Rawls and Stuart Hampshire.²⁰ What does have to be said is that some view of this sort is in one way or another presupposed by all those who present as the supreme imperative of (social) justice the imposition of what Williams calls “absolute equality” and what we shall be distinguishing as the third of three fundamentally different ideals. Because, their argument has to run, no individual human beings can be either entitled to or responsible for any of their differentiating characteristics, there cannot then be any deserts or entitlements other than whatever necessarily equal rights can be grounded in the essential and defining characteristics of humanity.

We have seen already that to follow Williams to the end would be to eliminate all those competitive advantages or disadvantages that alone make competition at all possible as a method of determining the allocation of what is scarce. It remains only to emphasize what the steps along this road are steps toward: namely, both the aboli-

tion of the family as an institution for the production and upbringing of children, and the removal of all relevant choice in all the periods up till the arrival of the competitors at the start-lines, both from parents and from their offspring. No doubt this is all pretty far removed from either Williams's present intentions or even those of the *enragés* and *ultras* of his party. Nevertheless, the full Williams program just is a program for a most total and, of course, totalitarian transformation. His specifications of perfect competition are, as we have argued, in any case incompatible with the occurrence of any actual competition at all. They also require that all "competitors" (shall we think of them, naughtily, as Cambridge competitors?) be, if not in all respects, then at least in all relevant respects, identical. And how is this to be achieved if not by first producing every successive generation of monozygotic, same-sex siblings, each from its single big-batch cloning, and then insisting, from the moment of perhaps not exactly birth, upon the most rigorously uniform, state-monopolistic, unstreamed, unsettled, comprehensive upbringing? In this, of course, there must be no substantial options anywhere for anyone, lest the consequent choices, if they turned out to be made in different senses, give rise to those most unspeakable and excruciating of evils, diversity and inequality.

ABSOLUTE EQUALITY

The third of our three sorts of ideal was indicated by Williams in speaking of "absolute equality." Since this demands that all goods be distributed equally—all goods, that is, and not necessarily only those that are in some narrow interpretation recognized as economic—it is better characterized as equality of outcome or equality of result. In the later stages of the great French Revolution, aspirations of this kind found their first major activist spokesman in Gracchus Babeuf, the inspirer and leader of *The Conspiracy of the Equals*.²¹ But today, notwithstanding that they appear to have gripped many, if not most, of our political intellectuals, it is remarkable and perhaps significant that it is very rare to find such ideals rationalized and articulated systematically. Indeed, this remarkable fact is one excellent reason for suspecting that this Procrustean and bureaucratic objective of an enforced equality of condition is not so much the disinterested dream of independent well-wishers of the human race as it is the main plank in the justifying

and uniting ideology of “the new class” of its would-be enforcers.²²

At this point someone is likely to protest that I am erecting a strawperson. No one, they will say, actually advocates complete equality, in all directions: scarcely anyone insists that there must be no incentive income differentials whatsoever (only, in real terms, ever fewer and smaller!); while no one at all suggests seriously that the law should enforce sexual equality in the new, but immediately intelligible, second sense of ensuring that everyone is to have as much as everyone else. To this the reply is (and it is a reply that has wider application) that the contention that equality is for you a value, that you cherish it as good in itself irrespective of consequences, is not refuted either by the fact that you are not committed to making people equal in every respect or by the fact that in those respects where you do advocate more, you nevertheless eschew complete equality.

Of these two objections the first may show only that it is equality in some certain directions that is for you the value. You might, for instance, in fact value equality in income or wealth, without your also valuing equality in natural gifts, and in consequence urging that the better-endowed must be taxed in order to provide for the compensation of the less genetically fortunate. So far the advocates of such genetic inheritance taxes have in fact been few: most mentions of ideas of this kind have occurred in satire. But note that those who pick and choose their outcome egalitarianisms need to take a lot of care to ensure that the rationale for their several inclusions or exclusions includes and excludes all and only those dimensions of outcome equality and inequality that they do themselves wish to include or to exclude. I have myself yet to meet any such rationale making halfway plausible provision for the consistent exclusion of all and only what most of our present Procrustean are (at any rate so far) in fact proposing to exclude.

The second objection—that our alleged outcome egalitarians are not advocating a complete and perfect equality—shows at most that for them it is not an infeasible or the sole good. In that case, the reason why they do not advocate it complete and perfect will, presumably, be that they expect always to have to make trade-offs against some other value or values. Consider, for instance, a statement in the final political testament of one widely regarded as the very model of a modern social-democrat: “the argument for more equality is based not on any direct material gain to the poor, but on

the claims of natural and social justice. And the question is: do these claims conflict with the need for incentives?"²³ Or, again, consider David Donnison's devout profession of devotion to "equalizing policies" and his expression of revulsion against any "inequalities of earnings": these, we were told, are tolerable to him only, if at all, where required "to keep the economy moving."²⁴ Donnison, sometime second in command and later successor to Richard Titmuss as professor of social administration at the London School of Economics, appointed to his present rather conspicuously unequal Whitehall job by a Labor Minister of Health and Social Security, had a couple of years earlier been picked by one leading journal of "the new class" as the most suitable spokesperson for its and his ideology of compulsory equalization.²⁵

It is, therefore, altogether wrong to say: "Extremes are not worth discussing. Perfect equality is not conceivable, let alone workable."²⁶ If talk about equality makes sense, then this entails that equality, complete and unqualified, is conceivable. More to the present practical point, wherever equality is a value but not the sole value, extremes cannot but claim our attention. For it is precisely the extremes that the trading off is trading off between.

A second point to get straight is that equality is essentially relative. No egalitarian can be, as such, concerned with anyone's absolute position on any scale of anything. No one is cherishing equality as a value save insofar as the fact that someone has or is going to have something is for them a reason, perhaps *the* reason, why someone else should have either the same or some equivalent—and this regardless of where any of the parties involved either are or will be on any absolute scale. To want someone or everyone either to attain or to be given some specified minimum, or to be in general concerned for the raising of minima, is by no means essentially and necessarily egalitarian. Egalitarianism begins when and only when the aim is to diminish or, we hope, to collapse the gaps between aboves and belows. It is indeed this defining involvement with the relativities rather than (or even at the expense of) the absolutes of value that those of us who are not this kind of egalitarian find so alien and so repulsive in those who are.

One immediate consequence, usually neglected, is that those who do not accept equality as a value are not necessarily, and by that token, lovers of inequality. These dissidents may be, and very often are, rejecting egalitarianism in part because it seems to them perverse to attend above all, as they see it, not to first-order goods

and the maximization thereof, but instead to second-order questions about who has more or less of these than another has. It is, therefore, although understandably tempting, wrong to label all those who do not recognize equality as a value, or who oppose policies premised thereon, inegalitarians. Brian Walden thus lapsed from his normal high standards of fairness and accuracy when he recently described certain dedicated and strenuous opponents of progressive Procrusteanism as "Jacobins of inequality." One might as well argue that anyone repudiating the classical utilitarian thesis that the supreme good is the greatest happiness of the greatest number must be, by that rejection, committed to cherishing as the only alternative the maximum misery of the maximum number.

A second immediate and often overlooked consequence—a consequence far more important and for that reason frequently with malicious intent suppressed or denied—is that Procrustean policies for producing (relative) equalities neither entail nor are entailed by safety-net policies for maintaining or raising (absolute) minima. It surely ought to be, yet apparently is not, obvious that a desire to maintain some (relative or absolute) floor level below which no citizen ever has to fall is neither the same as, nor otherwise necessarily linked with, a desire to fix a ceiling screwed hard down as near as may be to that floor. In fact, of course, as no one venturing to hold or to express opinions on these topics has any business not to know, almost all of us who are opposed to Procrustean state-monopoly provision of health, education, and welfare services are just as firmly committed to safety-net policies, whether in the form of comprehensive, Friedmanite negative income tax schemes, or whether through various continuing state provisions from which eventually and ideally almost everyone would in fact be able and willing to contract out in favor of their own personally preferred private arrangements.

Even when all appropriate allowance has been made for the severity of the temptation to intentional misrepresentation (which must be suffered by persons increasingly aware of their own intellectual and moral bankruptcy) we have still to recognize also that socialists and social-democrats do sometimes find it extremely hard to get hold of these (to others) obvious distinctions. We may well, for instance, dismiss as nothing but a sanctimonious slanderer the publicly prominent Procrustean who wrote to me in a private letter: "It *is* arguable that bad housing, squalor, pollution, ignorance etc.

are 'good'. But unless you are prepared to argue that case you must be an egalitarian" (emphasis and punctuation in original).

But no similar interpretation is possible with the contributors to the recent inquest volume *Labour and Equality*, who were, presumably, addressing primarily their fellow Fabians.²⁷ One after another complains of a betrayal by the last administration of its and their egalitarian objectives, giving as grounds such irrelevant but sobering facts as that there was between 1974 and 1977 an average 7 per cent fall in British standards of living. Yet no one appears eager or even willing to give due discredit for Procrustean achievement to a sadistic and boorish chancellor who began his term by both increasing the higher rates of income tax to record levels and imposing some further, albeit not all the previously threatened, confiscatory taxes on capital. Certainly he did not add to these particular rates and taxes in any of many later budgets. But, since the pound halved in value during his five-year term, just keeping the rates and the thresholds steady in money terms must have produced an equalizing effect increasing step by step with inflation, an effect further supplemented in the years of same-sum rather than percentage inflationary pay increases.

The third main thing to notice about our third ideal of equality is that, for almost all its most prominent enthusiasts, equality of outcome is not a personal ideal to be pursued by individual persuasion and sometimes sacrificial example but a political or administrative policy to be enforced by the full power of an ever growing state machine. This is the reason why I refer to it as Procrustean—an intentionally offensive description that would be quite inept if applied to the self-imposed equalities of some such strictly voluntary organization as an Israeli kibbutz. The same fact carries interesting implications.

In the first place it provides, I believe, the main reason why the Procrustians like to describe their efforts as directed toward the achievement of social justice. (That some explanation is required must occur to anyone who has ever asked himself what other non-social sorts people have it in mind to dismiss in speaking so glibly, and so fashionably, not of justice but of *social* justice; and who has reflected that if all justice is, as it has been traditionally defined to be, a matter of allowing to each his own several and often various deserts and entitlements, then justice scarcely can be construed as demanding the same for all and equal.)

The appeal of this description is that it provides an answer to the

objector who asks by what right the Procrustean is laboring to enforce his ideal upon other people—a challenge that loses none of its force when, as is usually the case, that Procrustean is both rather conspicuously underdeprived and equally conspicuously reluctant to start by imposing his own ideal first upon himself. The answer, if once the description is permitted to pass, is direct and decisive. Everyone must agree that it is the proper business of the public power to enforce justice.

But, like everything else possessing any kind of value or attraction, this move has a price. Its price is the implication that anyone either obtaining or holding more than the going national average (or should it be, what is still at this time very substantially less, the going international average?) is either making or holding on to unjust acquisitions. Indeed he is, not to put too fine a point on it, either stealing or holding on to stolen property. Nor will it do to meet this much too rarely pressed counter-objection with some expression of willingness, when the next socialist chancellor gets into No. 11 Downing Street, to pay his still more steeply progressive and confiscatory taxes.²⁸ Those few prominent Procrusteanes with whom I happen to be acquainted are not (to do them justice!) people who would in any ordinary and undisputed context either steal or even temporarily hang on to stolen property. So I can only interpret their well-sustained refusal to accept the present challenge as a tacit admission of the truth that social justice, construed as either a strict or a modified equality of outcome, is no more truly justice than People's Democracy is truly democracy.

It remains finally to say something about the implications for liberty of this third, Procrustean ideal of equality. The conflict here is irreconcilable and all-pervasive.

The conflict arises directly whenever it is proposed that the state should extort money by force in order to finance suitably uniform and usually state-monopoly provision of services in health, education, welfare, or whatever else. Where my money is thus taken from me, I am thereby deprived of my freedom to allocate that money as I would see fit; and wherever there is monopoly, I am robbed of any chance to choose between rival suppliers. This simple point was well put recently by the sometime holder of an ultra-safe socialist parliamentary seat: "if the social wage bites into the individual's wage... the individual wage earner will lose some of the freedom which he would otherwise have enjoyed.... A society in which 50 percent of the gross domestic product is spent by the

state may be healthier, better educated, or more equal than a society in which the state spends only 30 percent of GDP. But it will also be less free, and it is humbug to deny the fact."²⁹

The fundamental conflict arises more indirectly in another way. If and insofar as anyone wants to impose and maintain any sharply defined pattern of distribution (whether fiercely egalitarian or whatever else), he has first to establish a socialist state, in which there are no privately controlled holdings of capital and in which wages, prices, and all other incomes and expenditures are centrally determined. But all theory, and what is by now a very substantial amount of drearily homogeneous experience, shows, first, that the total political and economic centralism of a socialist order is in practice incompatible with the maintenance of the basic liberties definitionally essential to a free and democratic society and hence, second, that economic pluralism is a contingently necessary (but not, of course, a sufficient) condition of political pluralism.

It is, surely, no mere quirk of history that, among all the now very many (as near as makes no matter) fully socialist countries, there is not one where opposition parties are allowed to organize and to contest elections. In Poland, for instance, I have myself heard all too experienced students of political geography ask, "Where is there a socialist democracy?" They give themselves the wry answer, "On the moon."

Certainly the Institute of Marxism-Leninism in Moscow is happy to recognize that, in a favorite Soviet phrase, "it is indeed no accident." For in 1971, with their own high hopes for Chile and for France most particularly in mind, they sketched a program for achieving, through "United Front" or "Broad Left" tactics, irreversible Communist domination: "Having once acquired political power, the working class implements the liquidation of the private ownership of the means of production. . . . As a result, under socialism, there remains no ground for the existence of any opposition parties counter-balancing the Communist Party."

That very model of a modern social democrat, the author of that well-nicknamed *Epistle to the Costa Ricans*, made a similar point with equal emphasis: "A mixed economy is essential. . . . complete state collectivism is without question incompatible with liberty and democracy."³⁰ Unfortunately, he gave no indication either there or elsewhere of the point, if any, at which he himself would have to leave a party, and especially high ministerial office in a party, committed by its constitution to "the public ownership of all the means

of production, distribution, and exchange," and a party in practice insisting relentlessly on ever more and never less state ownership and control of everything—except, of course, its own owners, the labor unions. So it is to be presumed that Crosland was, for whatever reasons, at one with

...the virtuous young lady of Kent
 Who said that she knew what it meant
 When men took her to dine
 Gave her cocktails and wine;
 She knew what it meant—but she went.

*I thank the Liberty Fund of Indianapolis for commissioning this paper for a conference on Liberty and Equality held in Oxford in April 1980.

1. See, for instance, D. Swift, "What Is the Environment?" in K. Richardson and D. Spears, eds., *Race, Culture and Intelligence* (Harmondsworth and Baltimore: Penguin, 1972), p. 156, and P. Trudgill, *Accent, Dialect and School* (London: Edward Arnold, 1975), chap. 2. Compare A. G. N. Flew, *Sociology, Equality and Education* (London and New York: Macmillan, Barnes & Noble, 1976).

2. F. A. Hayek, *New Studies in Philosophy, Politics, Economics, and the History of Ideas* (London and Chicago: Routledge & Kegan Paul, University of Chicago Press, 1978), p. 290.

3. F. Field, *Unequal Britain* (London: Arrow, 1973), p. 17.

4. Flew, *Sociology, Equality and Education*, chap. 4.

5. J. R. Pole, *The Pursuit of Equality in American History* (Berkeley and Los Angeles: University of California Press, 1978), pp. 340-41.

6. I. Kant, *Groundwork of the Metaphysics of Morals*, in *The Moral Law*, trans. H. J. Paton (London: Hutchinson, 1948), pp. 90, 91 (emphasis in original).

7. A. Schopenhauer, *On the Basis of Morality*, trans. E. F. J. Payne (Indianapolis and New York: Bobbs-Merrill, 1965), p. 95.

8. A. Gewirth, *Moral Rationality* (Lawrence: University of Kansas, 1972), p. 20.

9. S. Benn, "Human Rights—For Whom and for What?" in E. Kamenka and A. E.-S. Tay, eds., *Human Rights* (London: Edward Arnold, 1978), p. 64.

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11. C. H. Firth, ed., *The Clarke Papers* (London: Clarendon, for the Camden Society, 1891), vol. 1, p. 301.

12. E. Vieira, "Rights and the American Constitution," *Georgia Law Review* 13 (1980).

13. D. A. Lloyd-Thomas, "Competitive Equality of Opportunity," *Mind* 86 (1977).

14. B. Williams, "The Idea of Equality," in *Problems of the Self* (Cambridge: Cambridge University Press, 1973), p. 245.

15. L. Ericsson, *Justice in the Distribution of Economic Resources* (Stockholm: Almquist and Wiksell, 1976), p. 130 (scare quotes added).

16. Williams, "Idea of Equality," p. 247.

17. *Ibid.*, pp. 245-46.

18. *Ibid.*, p. 246.

19. *Ibid.*, pp. 246-47; emphasis in original.

20. A. G. N. Flew, "Who Are the Equals?" *Philosophia* 9 (1980). An improved version appeared later as chapter 4 in *The Politics of Procrustes* (Buffalo, N.Y.: Prometheus Books, 1981).
21. J. L. Talmon, *The Origins of Totalitarian Democracy* (London: Secker and Warburg, 1952), pt. 3.
22. R. Nisbet, "The Fatal Ambivalence," *Encounter*, Dec. 1976. Compare Flew, *Politics of Procrustes*, *passim*.
23. C. A. R. Crosland; *Social Democracy in Europe* (London: Fabian Society, 1975), p. 6.
24. D. Donnison, *Observer*, Feb. 12, 1978.
25. *New Society*, Nov. 20, 1975.
26. H. Stretton, *Capitalism, Socialism and the Environment* (Cambridge: Cambridge University Press, 1976).
27. P. Townsend and N. Bosanquet, *Labour and Equality: A Fabian Study of Labour in Power, 1974-79* (London: Heinemann, 1980).
28. Stretton, *Capitalism, Socialism and the Environment*, p. vii.
29. H. Marquand, "Inquest on a Movement," *Encounter*, July 1979, p. 10. For a further spelling out, compare A. Seldon, *Charge* (London: Temple Smith, 1977), and R. Harris and A. Seldon, *Over-ruled on Welfare* (London: Institute for Economic Affairs, 1979). For social democracy in its fullest, Swedish development, see P. Huntford, *The New Totalitarians* (London: Allen Lane, 1971).
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U.S. IMMIGRATION: A SEARCH FOR PRINCIPLES AND PREDICTIONS

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FOR SOME TIME NOW the United States has been receiving a wave of immigration that is comparable in magnitude to that prior to the First World War. What difference there is between the two periods relates mainly to areas of origin. Whereas the turn-of-the-century immigrants were mainly Europeans, today they are more likely to come from the Philippines, Korea, Cuba, and, most of all, Mexico.

The agencies charged with enforcing immigration laws appear to be failing under the strain. The Immigration and Naturalization Service is reportedly undermanned, mismanaged, and suffering from low morale.¹ The biggest challenge is the new phenomenon of large-scale clandestine entry. Estimates of foreigners living illegally in the United States range up to twelve million and more. Most of them are Mexicans. The Border Patrol estimates that for each illegal immigrant apprehended, there are two who succeed. Some authorities believe that the ratio is closer to five-to-one.

There are certainly many anguishing stories being reported as a unique human drama unfolds. And surely nobody would deny that here we have one of the most urgent problems of the 1980s and one that demands particularly serious reflection by those who profess to uphold the principles of liberty. Of the most serious questions, consider the following: At what point do immigrants have the right to close the door on other immigrants? Should immigration be controlled according to the criterion of the desirable growth of the national income (GNP)? Or is the main test the ability of a nation state to culturally absorb large numbers of new visitors?

THE EVOLUTION OF IMMIGRATION LAWS

Before attempting some answers, it will be useful to review the relevant facts. America's laws on entry over the last century have vacillated notoriously, reflecting the nation's schizophrenia about

immigration in a country forged by immigrants. In the earlier part of the nineteenth century, what legislation was passed was actually designed to make it easier for the newcomers. By the 1880s, however, Americans were alarmed by an influx of Chinese and banned them in 1882 under laws that were to last for more than 60 years. Between 1900 and 1910, America let in about nine million other immigrants, but in the 1920s it restricted immigration by the imposition of national-origin quotas that had a Western European bias. In 1965 the quotas were removed, having come to be regarded as racist.

The present law is a complex bundle of special dispensations and exemptions, but on one aspect it is consistent: it encourages family reunification. Young children and parents of any U.S. citizen can enter in unlimited numbers. Other relatives have to go on a waiting list. Apart from this, the law can also be said to be uniform in that it treats each nation equally, providing no more than 20,000 preference visas a year for any one country. But in this case the consistency in policy seems to be a doubtful virtue. After all, what is the point of treating Luxembourg as if it were as populous as India?

Of all the separate classes of immigrants, that of the refugee has been the most clumsily handled. Until recently, refugees admitted into the United States were restricted almost exclusively to persons fleeing from Communist governments. Those trying to escape from right-wing regimes were typically prevented by severe legal barriers. Although the regulations have been restrictive, however, various attorneys general have had to devise ad hoc solutions to meet such crises as the flight of refugees from Hungary in the fifties, from Cuba in the sixties, and from Vietnam in the seventies.

In 1979 the Refugee Act removed the anti-Communist bias and increased to 50,000 the quota of refugees allowed in. Yet the 120,000 Cubans in the recent past, together with the 15,000 Haitians, seem to have overwhelmed even this latest piece of legislation.

The recent Select Commission appointed by Congress has presided over a debate about correct policy concerning refugees, illegal aliens, and other immigrants. Issues have included the question of amnesty for most illegal aliens who already live and work in the United States, new legislation against hiring other illegal aliens, a ceiling of about 750,000 people a year, and, the most controversial of all, an identity card or data bank system legitimating all citizens and legal alien residents permitted to work in the United States.

THE SEARCH FOR PRINCIPLES

What then is the basis for a consistent and well-principled policy on immigration? Many observers believe that the major consideration is the U.S. economy. In Mexico, 46 percent of the population is under 15 years of age, while in the United States the proportion is 25 percent. The age group 15-29 in Mexico is expected to grow from 15 million in 1980 to 30 million by the end of the century. In contrast, this same age group in the United States is expected to fall from its present figure of about 30.5 million to just under 26 million by 1995. Such demographic trends, it is widely believed, have serious implications for the future of the U.S. economy. The argument is that without the immigration of young workers there can be expected a substantial shortage of them in the near future.

Those, too, who believe that economic growth is a function of population growth will be impressed by the fact that the current rate of natural increase in the United States is a mere 0.6 percent compared with 3.45 percent in Mexico. So while the population of Mexico is expected to double in 20 years (and to reach nearly 122 million in total by the end of the century) the U.S. population is expected to increase by a mere 21 percent. A more liberal immigration policy, therefore, so runs the argument, would make up for America's lagging *total* population growth and would consequently help maintain economic growth to the benefit of all.

This kind of argument has strong overtones of mercantilism, especially in its tendency to judge everything by its effect on the size of population and the GNP. But if these were the major targets for a country, it would mean that one of its best policies (if it could get away with it) would be simply to annex territory. America's GNP, for instance, would rise in even more striking fashion if Mexico were simply taken over! For the classical liberal, of course, the trouble with such mercantilist reasoning is that all individuals are regarded as component parts of a larger entity called *The State*. Meanwhile, there are problems with the argument even on its own terms. For instance, if the growth of an economy really is a simple function of population growth, then Mexico has nothing to fear in the future. As its population grows, so will its economy and so will opportunities for employment. The pressure of its citizens to emigrate can therefore be expected automatically to contract. Yet the same advocates of liberal immigration into the United States use the economic growth argument to justify their proposals and to

champion the cause of present low-income Mexicans.

The Principle of Liberty

We come now to the more crucial issue of the principle of liberty and how *it* can be applied to the sensitive question of immigration. According to John Stuart Mill's version of the basic idea of freedom, to be found in his essay *On Liberty* (1859), there is one simple principle that justifies compulsion or legal penalties:

That principle is, that 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. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

At first sight, at least, such a doctrine, when applied to the immigration problem, suggests that it would be quite consistent for governments to put constraints on immigrants, but only on the grounds that other (resident) individuals will be harmed. On further scrutiny, however, the notion of "harm" seems too vague. Some might argue that the only kind of "harm to others" that is consistent with the notion of (negative) liberty is that harm which impedes the freedom of others; the only meaningful form of coercion is "coercion to prevent coercion." But even then we need to know more precisely what constitutes "coercion."

More important, we should reconsider the part of Mill's quotation where he refers to the "power . . . exercised over any member of a civilized community." Since immigrants are not members of the community, this seems to preclude a straightforward application of his principle. The question, in Mill's terms, then becomes: Under what circumstances should immigrants be permitted to *become* members of the community? Clearly, Mill's apparently simple formula is insufficient, so we have to undertake a deeper search for basic criteria.

It will be contended here that what has been neglected hitherto has been an adequate exploration of the principle of property. Since many, if not most, libertarians profess a belief in this principle as well as in liberty, the point will become more relevant as we proceed.

Consider the following scenario: It is possible in many parts of the world for an individual or individuals to purchase territory. Suppose that five Scotsmen buy an island and incorporate it in a joint company in which each of them is allocated an equal share.

This transaction is consistent with both liberty *and* private property. The essence of private property is the power of exclusion. These five shareholders, therefore, will have the power to exclude any outsiders from entering their island and from participating in the jointly owned property. Of course, it is also consistent with the principles of private property that the terms of agreement can include provisions to allow others to *purchase* entry into the corporation. Among these provisions would be the stipulation of the required majority to approve transferability of shares. In the case of private companies, the agreement of *all* present members is sometimes required. In other words, the voting rule here is one of unanimity; but that need not always be so.

The libertarian might object that the parallel between private governments and societies is false. But the purpose of the illustration has been to prompt him or her to consider the principle of private property *simultaneously* with the principle of liberty. If one upholds both principles, one should ask whether there are any elements of property principles in the very notion of the term *society*. Since property is defined as the power to exclude, there may be lurking around in many people's minds the idea that, because the state is collective property (the collective simply being the individual members in joint association), the unconditional right of immigrants to enter may not exist. And notice that the right to exclude from property is not based on inhumane antisocial feeling. Its chief purpose is to construct proper incentives without which markets would hardly exist and economic development would not take place.

That private property serves to provide inducements to owners to add value to their assets and, in general, to be productive is not a trivial issue. The legitimacy or justification of powers of exclusion can better be seen after such private development has occurred. Thus, in our example, suppose the five people occupy an island that was relatively barren. Following upon ownership, the island is slowly made habitable by the hard work and investment of the owners. From self-imposed levies they may eventually provide, for instance, roads, dock facilities, and cultivatable land. To allow others at this stage to enter the island and take advantage of the new facilities free of charge would violate private property principles.

Clearly, the agreement of our Scotsmen to occupy and develop an island must contain some elements of a social as well as an

economic contract. It is always possible that typical members may never want to sign away their right to associate with, or hire, whomever they wish. They may take the view that such an unwaived right should take priority over any "harm" that admission of an outsider might cause among their fellow citizens. But if this is the case, all that is being argued here is that the concept of property might simultaneously, and inconsistently, be in the process of erosion. The economist, at least, sees a way of reconciliation between liberty and property so that both might coexist (under constraints). The members need not sign away the right of association with outsiders in an absolute sense if the condition is laid down that the costs imposed by the immigrant are paid by the member, by the immigrant, or by both. Of course, it is quite likely that the social contract would make an exception for family members.

In the real world there is, in fact, considerable hostility to the idea of the free immigration of large numbers of relatively poor individuals. One fear is that they are likely to take advantage of publicly provided goods and "welfare state" benefits at taxpayers' expense. There is, nevertheless, considerable misunderstanding here. Since usually the immigrants are young workers, then, provided they soon gain entry into the work force, they immediately *become* taxpayers and begin to contribute toward publicly provided goods. Immigrants present their new host countries with the benefits of the power to tax them. Since their expected working life is longer than average, this is a significant point. And especially at a time when the indigenous population is aging, such an influx of new workers at the base of the age pyramid will do much to maintain the conventional redistribution from young to old (retired) members of society.

If it is felt that the expected taxes are still insufficient to purchase entry into the country, then it is up to existing residents to propose additional prices or levies. The point is that under a system of private property there must be *some* price that can be reached where reconciliation is achieved.

The Principle of Equity

No doubt many will object to an apparent unfairness of imposing extra taxation upon immigrants who already are poorer than existing residents. Without wishing to deny their case, it is simply being emphasized here that such objections may have nothing to do with arguments about the principles of liberty or property. In fact,

the issue of "unfairness" belongs to another category, namely, the accepted principles of equity. For existing residents to forgo charging the economic price of entry into a country implies an opportunity cost. Undertaking it is equivalent to making a gift. Such donations, of course, need not automatically be disqualified. That is, one can respect the principle of property, which is the power to exclude, at the same time as deciding to spend some of the fruits of it in the form of voluntary donations. With respect to poor people living abroad, the "donation" can be in the form of conventional transfers or in the granting of legal rights to immigrate and share the benefits of the collective capital created by the "donors."

Such attitudes are indeed often recognized in national endeavors to provide aid to undeveloped countries. And in view of the oft-repeated allegations that such aid eventually benefits the nonpoor and the bureaucracies of such countries, the alternative of providing more liberal immigration laws that allow in more low-income people might seem a more feasible way of aiding the "target individuals." It is not just the immigrant who is at issue. He (she) may make remittances to relatives in the home country. We can therefore be sure that such funds find a direct way to poor individuals and avoid the losses inherent in political transfers from one government to another.

Questions of "cultural assimilation" will next be raised. Return to our example of the five Scotsmen owners of our island. They may well object to the potential entry of, say, ten Indians to their island because of what they fear will be an unwanted change in the "Scottishness," that is, the whole cultural environment, within their territory. Some would argue that at this level it is numbers that count. Small minorities of immigrants are not such a threat to cultural traditions as are large minorities. Those who make this kind of argument would normally want to abandon the usual 50-percent majority voting in such instances and to resort to higher majority rules and even to referenda.

In the case of the United States, it would be difficult to contend that there is one homogeneous culture (like "Scottishness"). America is almost *the* land of (heterogeneous) immigrants. Indeed, it is her special achievement to have created a country where cultural divergences can coexist. So we return again to the consideration of "equity."

One unique American complication occurs here. Consider the likely future effects of liberal immigration policies on U.S. blacks.

Hitherto, their relative income position in society has improved whenever immigration laws have been tightened. Judging from the past, if entry is limited severely in the next two decades, American blacks are likely to enjoy a further improvement. Because of differential fertility rates, there will be relatively more blacks between 15 and 29 years of age in the coming decade—just at the time of a decrease in the white population in this age group. Consequently, the relative demand for the employment of young blacks will increase—and this will be in considerable contrast to their present situation. (Currently, up to 40 percent of black teenagers are unemployed.)

Some strong upholders of “equity” will not be inhibited by such considerations. So long as most would-be immigrants from, say, Mexico have significantly lower incomes than the poorest of American blacks, the duty of the United States, it will be argued, is unambiguous. It should favor the poorest of the poor regardless of the accident of birth and location. Other advocates of the principle of “equity,” including Adam Smith (who respected the similar principle known in the eighteenth century as “beneficence”), would qualify it with a “distance factor.” This means that one’s charitable disposition should descend in intensity the further one moves from a given geographic center. Thus, to Adam Smith, an individual’s concern for his immediate family should be stronger than for his neighbors, and concern for the latter will outweigh that for people in other parts of his country. The needs of his countrymen, in turn, will carry more weight than those of foreigners.

So a clear consensus on whether Americans should have a strict or a liberal immigration policy will not be easy. But the main objective here is to place most of the problem in the category of “equity” and to distinguish this from the issues of “liberty” and “property.”

UNION OPPOSITION

Our discussion has been conducted in the normative terms of “what should be.” The economist is more likely to want to dwell upon the positive economics of “what will be” under given realistic circumstances. These circumstances include recognition that individual self-interest operates in the political as well as the private environment. And the political expression of self-interest is usually manifested in pressure groups that have incentives to lobby govern-

ments. Labor unions, for instance, can be expected to support strict immigration laws with the aim of protecting the job security of their members. It is not surprising, therefore, to find them strongly backing sanctions against employers of illegal entrants. Union philosophy is usually reflected in the sentiment of the current Labor Department secretary. To cite one example, when Ray Marshall was secretary he observed: "I am convinced that we are sowing the seed of future civil-rights struggles, and we would be better off if we were to confront the issue now." The assumption is that immigration causes serious unemployment. Thus, the secretary of labor in the Carter administration and the commissioner of the Immigration and Naturalization Service in the Ford administration both attributed the unemployment of 2 million to 3 million Americans to illegal aliens.²

The fallacy in the argument that immigration causes long-run unemployment is, of course, the mistaken belief that there is a fixed number of jobs in the economy. In fact, after a temporary lag, the extent of employment generally increases with increased immigration. During the lag, many workers are reported as statistically unemployed while they are engaged in job search. Much of the short-term situation, then, can be characterized as voluntary unemployment. Short-term increases in the labor turnover also follow immigration surges. These can similarly be described as stemming from voluntary quits as new workers are learning about available occupations.

But if immigration has no serious long-run consequences for unemployment, it may have an effect on relative wages. It is more likely to be this threat that unions are most sensitive to. The immigration of workers of a given standard and type of skill (and with little savings) reduces the marginal product of native workers in the same class and raises the marginal product of capital. One can predict that unions will resist such an outcome by using their combined political voting strengths to oppose, selectively, the kind of immigration that carries the most potential danger to their members.

These considerations bring to the fore another type of private property that is entwined with the immigration problem—what can be called the private property in the vote. Since the basic constitution has predetermined such property along with the basic ground rules of democracy, the libertarian is presented with another type

of constraint when searching for a consistent stand on the immigration question.

Such considerations might, at first sight, explain the Reagan administration's apparently tough new policy. Only a slight increase in the number of immigrants is to be permitted (from Canada and Mexico). Beyond this, a ten-year waiting period is now required for permanent resident status for illegal aliens already in the country, and severe penalties are to be imposed upon employers who hire workers knowing them to be illegal aliens. So far, however, it has not been made clear how the tighter enforcement of the immigration law is to be accomplished in practice. The Reagan administration has evidently accepted some of the advice of the Select Commission on Immigration and Refugee Policy (SCIRP) which reported in February 1981. This body recommended civil penalties against employers who knowingly employ illegal aliens. But again, no clear mechanism was stipulated through which employers could verify a worker's legal status. No serious enquiry was made whether verification of the status of workers is feasible without a national identity card.

We must presume, therefore, that employer sanctions are not likely to have much effect in reducing employment opportunities for illegal aliens. As a consequence, the substantial clandestine entry of immigrants will continue unabated. But this situation would seem to refute our proposition that domestic pressure groups will use the property right of their vote to effectively curb immigration. A still closer look at events, however, suggests more support for our theory.

We have seen that votes can be marshalled wherever special interest groups find it beneficial to do so. The feasibility of such political pressure depends on the prevailing costs of organization. Normally, these will be lower where the membership of the organization is concentrated either geographically or occupationally. Conversely, where potential members are widely dispersed, the conditions for organization into trade unions are unfavorable. Usually the latter situation occurs where the marginal productivity of workers is low and labor turnover is high. And it is precisely in the low-wage and high-turnover occupations that most of the illegal immigrants are concentrated. Unions will be less sensitive to the immigration of such workers than to higher-productivity workers.

It so happens that the practice of the present law as it relates to higher-productivity workers is to grant visas to applicants in certain

occupations in which there are "shortages" and to deny visas to applicants in "crowded" occupations. It is relatively easy, meanwhile, for a professional association or a trade union to make out a case that its occupation is "crowded." A union-negotiated wage at a higher-than-market level will always cause an excess supply of willing workers over the demand for them at that price. Thus, in recent years, physicians, nurses, physical therapists, and dietitians have been withdrawn from the list of the most-favored (Schedule A Occupations) "on the basis not of labor-market studies but of political pressures of interested parties."³

While unions representing high-skilled labor will thus resist the immigration of competing workers, it will at the same time be in their interests to encourage the immigration of low-wage individuals. The arrival of the latter reduces the marginal product of low-skilled native workers but raises the marginal product of high-skilled workers. This is a consequence of the economic principle of complementarity, which states that the marginal product of a factor increases the greater the quantity of other factors of production with which it works. Thus, immigration will have redistributive effects against the low-income earners of the native population and in favor of the high-income native workers. Immigration, therefore, appears to be just one of hundreds of instances that demonstrate the perverse effect of the present pattern of democracy in Western countries.

CONCLUSION

In trying to find a consistent position on the issue of immigration, the libertarian must simultaneously consider the basic principle of property along with that of liberty. Insofar as the inhabitants of a territory believe in effect that they have a property right to their country, for reasons discussed above, they will automatically believe also that they have a right of exclusion. This does not mean that exclusion will always be observed. Individuals possessing property are not immune to beliefs in equity or justice to their neighbors. Nevertheless, it is intriguing to attempt to determine whether the volume and pattern of immigration that are allowed in practice are a product of these beliefs in justice or, instead, follow from the actions of self-interested individuals who are able to marshal their vote in a more strategic way than other citizens. Arguing from noble principles is one thing. Examining the

real world is another. Those who still pursue the former must, it seems, first recognize the formidable constraints in the present system of democracy just described if their argument is to be realistic and plausible.

1. "The Immigrants," *Wall Street Journal*, Sept. 11, 1980, p. 1.

2. Quoted in Barry R. Chiswick, "Guidelines for the Reform of Immigration Policies," in William Fellner, ed., *Essays in Contemporary Economic Problems* (Washington, D.C.: American Enterprise Institute, 1981-82).

3. Ibid.

SCIENCE AND PSEUDOSCIENCE: CRITERIA OF DEMARCATION

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DRAWING LINES between science and pseudoscience is a complicated matter. In this paper I discuss three of the complications. First, how strict should criteria of demarcation be? Second, can demarcation decisions be made without recognizing a distinction between science as a human activity and science as a collection of systems, theories, hypotheses, and propositions? Third, is there a difference between descriptive criteria and legislative criteria, and does this have a bearing on the current controversy concerning the role of historical studies in the philosophy of science?

DEMARCATION AND ACCEPTABILITY

In this section I shall argue that some proposed criteria of demarcation are inadequate because they are too strict. These criteria would make it impossible for there to be incorrect or unacceptable scientific hypotheses.¹ For example, there is presently a dispute concerning the identity of the first people to inhabit the North American continent. One group of scientists is trying to establish that the first people to cross the land bridge that is now covered by the Bering Strait were the first people in North America. Another group is trying to establish that there already were people in North America who were overrun by the Bering Strait crossers. At most, only one of these hypotheses is acceptable, yet both are clearly scientific. I make this elementary point because some philosophers and scientists have proposed criteria of demarcation so narrow that only *acceptable* hypotheses are allowed to be scientific.

I wish to suggest the following test for whether or not a proposed criterion of demarcation is adequate. It is derived from a similar test stated by Hempel.² If, under a proposed criterion of demarcation, a hypothesis is unscientific, then so must be its negation. I shall argue that by using this test, several recently proposed criteria of demarcation are inadequate; that is, they are such that a

hypothesis is determined to be nonscientific, yet its negation is arguably scientific.

As an initial example of a criterion that is inadequate by the above principle, consider the following: Every science that is a science has hundreds of hard results, but search fails to turn up a single one in "parapsychology."³ The criterion used here may be spelled out in this way: A hypothesis is scientific if and only if it has at least one "hard result." A hard result, we may stipulate, is a confirming experiment or test. In this sense, the hypothesis that gravity obeys an inverse square rule does have hundreds of hard results.

Now, to test the adequacy of this criterion, we may formulate a very weak hypothesis of parapsychology, namely, some people have the ability to "know" what will happen before it happens. (The obvious vagueness of this hypothesis will not affect the present point.) This hypothesis has not one "hard result," according to Wheeler, and therefore is not scientific by the criterion proposed. If the "hard results" criterion is to be adequate, the negation of the precognition hypothesis must be unscientific as well. But, on the contrary, the negation—that is, no one has the power of precognition—is scientific by the criterion; there are hundreds of hard results showing people *not* to have precognition. People fail to predict the future with alarming regularity. So, the proposed criterion fails the test and is thus not an adequate criterion of demarcation.

A second and slightly more complex case is this. Paul Kurtz in his article "Is Parapsychology a Science?" offers the following as "an essential criterion of a genuine science," namely, "the ability to replicate hypotheses in any and all laboratories and under standard experimental conditions."⁴ This criterion of replicability is, I shall argue, not an adequate criterion of demarcation.

To see this, consider another hypothesis of parapsychology, that if certain gifted subjects are tested with Zener cards (the familiar cards with simple geometrical shapes on them), they will realize above-chance calls fairly consistently. This hypothesis is unscientific by the replicability criterion because "Some experimentors—a relatively few—are able to get similar results, but most are unable to do so."⁵ If we now use the test formulated above, we must ask, by the replicability criterion, is the negation of this hypothesis unscientific? Is the hypothesis that it is not the case that certain gifted individuals will realize above-chance calls unscientific? No, because

this hypothesis *is* replicable in any laboratory. What Kurtz should be saying is that parapsychology is unacceptable because its hypotheses are not replicable. He should not, however, assert solely on this basis that parapsychology is pseudoscientific.

Other examples of this use of too-strict criteria are readily found. Several of the criteria given by Lafleur are like this. For example, to require that in every case in which the new hypothesis is in contradiction with established theory, the new include or imply a suitable substitute, is to require that the new hypothesis be as acceptable as the one it would replace. But the question of the scientific nature of the hypothesis is another question altogether.

The point of this adequacy test is that it should be much more difficult for a hypothesis to be accepted as true or highly confirmed than for a hypothesis to be accepted as scientific according to some demarcation criterion. A scientifically acceptable hypothesis has presumably already passed demarcation tests. Many hypotheses are proposed that are scientific but ultimately unacceptable. Failed scientific hypotheses tend to be quickly forgotten, but several examples should jar the memory. The hypothesis of the fixity of the main continental land masses was accepted by geologists for at least 50 years. This hypothesis has recently been rejected in favor of the continental drift hypothesis. The former hypothesis is unacceptable but surely not for *this* reason unscientific. Other examples of failed scientific hypotheses include those concerning the existence of phlogiston and spontaneous generation.⁶ Having made this first crucial clarification, let us now turn to demarcation criteria proper and see what differences can be found among them.

PSYCHOLOGICAL CRITERIA

Psychological criteria are admittedly criteria of demarcation. But the line they draw is not between science and pseudoscience; it is between scientists and those people purporting to be scientists: cranks. A psychological criterion is one that identifies some psychological state, disposition, or character trait as characteristic of cranks and not scientists. In this section I shall report some such criteria that have been identified and argue that, while such criteria are undeniably useful, they are logically irrelevant to the problem of demarcating science and nonscience.⁷

Laurence Lafleur in his "Cranks and Scientists" lists seven questions that, as he says, "will help us to make up our minds as to

whether the person is a scientist or a crank.”⁸ Only two of Lafleur’s seven are actually psychological criteria, however; the others concern, not the proposer of a hypothesis, but the hypothesis itself. Two of Lafleur’s seven questions nicely illustrate the *difference* between psychological criteria and criteria concerned with hypotheses, theories, etc. The first is psychological; the second is not.

Is the proposer of the hypothesis aware of the theory he proposes to supersede?

Is the new hypothesis in accord with currently held theories in the field of the hypothesis, or, if not, is there adequate reason for making the changes, reasons of weight at least equal to the weight of the evidence for the existing theories?⁹

The first of these questions is a good example of a psychological criterion, inasmuch as it concerns the proposer’s knowledge. The second, however, is clearly not of this character, as it concerns the hypothesis itself and its relation to established theories.

The other psychological criterion identified by Lafleur is this:

Does the proposer show a disposition to accept minority opinions, to quote individual opinions opposed to current views, and to over-emphasize the admitted fallibility of science?¹⁰

Lafleur argues, based on these tests, that Immanuel Velikovsky is a crank. He argues that Velikovsky is not aware of the theories he would overthrow and is disposed to accept minority opinions, etc. Lafleur, of course, is aware of the possibility that some scientists may satisfy some or all of his tests. These tests are not absolute. There are probably scientists who would fail these tests and cranks who would pass them.

Martin Gardner in his classic *Fads and Fallacies in the Name of Science* identifies two main traits of cranks.¹¹ First, they work in almost total isolation from their colleagues. Second, cranks have a tendency toward paranoia. Many of the odd characters one encounters in Gardner’s book certainly satisfy these requirements as well as those set out by Lafleur.

All of the psychological criteria mentioned so far are subject to challenge. They are extremely vague and therefore hard to apply. There are bound to be a few isolated and paranoid scientists. But my concern is not with the adequacy or inadequacy of these criteria; rather, I am concerned with a fallacious argument that illicitly mixes the kinds of criteria I am attempting to separate. To

establish that a person is a crank, one must appeal to psychological criteria. To establish that a hypothesis or theory is pseudoscientific, one may not appeal solely to psychological criteria.

This distinction is useful in two ways. First, as I have asserted, it militates against fallacious arguments of the form: This person is a crank, so this person's theories are pseudoscientific. Clearly there is no logical force to these arguments; it is not contradictory to imagine a crank proposing a scientific theory or a pseudoscientific theory proposed by a scientist. Yet even though such arguments lack logical force, they do nevertheless have *some* force. The distinction between psychological criteria and logical criteria allows us to formulate the important question: What does the psychology of a person have to do with the credibility of that person's theories? There are connections between scientific theories and the proposers of those theories, connections that need examination. And this examination, which is beyond the scope of the present paper, cannot begin until the former distinction is recognized.

DESCRIPTIVE AND LEGISLATIVE CRITERIA

When we move away from psychological criteria and begin examining those criteria applicable to hypotheses, theories, etc., we find immediately a dispute concerning the scope of proposed criteria. Some philosophers have argued that it is a mistake to try to decide whether or not a single hypothesis or theory is scientific. Others have argued that this is both possible and desirable. Those of the former opinion urge that only research programs or traditions can be evaluated regarding their scientific value. Lakatos, for example, says: "It is a succession of theories and not one given theory which is appraised as scientific or pseudo-scientific."¹² More recently Larry Laudan has argued that

most philosophers of science have mistakenly identified the nature of scientific appraisal, and thereby the primary unit of rational analysis, by focussing on the individual theory, rather than what I call the *research tradition*.¹³

Thomas Kuhn, an early proponent of this view, holds that one necessary condition for a field's being scientific is that it generate puzzles the solutions of which "must be a challenging task, demanding, on occasions the very highest measure of talent and devotion."¹⁴

These views may be summarized in the thesis that demarcation decisions are only possible for units of analysis significantly broader than the individual theory or hypothesis. For Lakatos, the unit is the research program; for Laudan, the research tradition; and for Kuhn, the puzzle-solving activity of normal science.

I shall refer to such criteria of demarcation as *descriptive* criteria. Such criteria are essentially temporal; they refer to historical periods. They are often couched in terms of scientific progress—a notion that makes no sense if divorced from the temporal. On the other hand, proposals of rules or maxims for deciding whether or not a new hypothesis or theory is scientific are termed legislative criteria by Grünbaum. Legislative criteria are “regulative ideals,” similar in some respects to moral principles. Legislative criteria are essentially atemporal; they can in principle be applied to a hypothesis without regard to historical content or considerations.

Hempel’s criterion of testability-in-principle, stated in *Philosophy of Natural Science*, will serve as an illustration of a legislative criterion.

But if a statement or set of statements is not testable at least in principle, in other words, if it has no test implications at all, then it cannot be a scientific hypothesis or theory, for no conceivable empirical findings can then accord or conflict with it.¹⁵

Notice that Hempel’s criterion is applicable to statements or hypotheses and not restricted to “series of theories” or traditions. Notice also that one does not have to place a hypothesis or theory in a historical context before one can apply this criterion. In this sense, it is atemporal. Notice, finally, that Hempel’s criterion is not a generalization based on an examination of hypotheses agreed to be scientific. Hempel is defining “scientific hypothesis.”¹⁶ He is using “cannot be scientific” in its strongest possible sense: hypotheses that are not testable in principle ought not to be considered scientific. Hempel’s argument for his criterion is nowhere based on a historical study of scientific hypotheses. Rather, it is presented as a definition or, more broadly, as a characterization of “empirical import.”

Making a distinction between descriptive and legislative criteria of demarcation makes it possible to diffuse a persistent controversy in the philosophy of science. This controversy is embodied in a basic criticism Kuhn makes of Popper’s criterion of demarcation (one that I regard as a legislative criterion) and the reply Popper

himself makes to this criticism. Kuhn argues that

a careful look at the scientific enterprise suggests that it is normal science, in which Sir Karl's sort of testing does not occur, rather than extraordinary which most nearly distinguishes science from other enterprises. If a demarcation criterion exists (we must not, I think, seek a sharp or decisive one), it may be just in that part of science which Sir Karl ignores.¹⁷

Kuhn's criticism is that, historically, the testing required by Popper's criterion does not often occur. Popper's response? It ought to! In his revealingly entitled paper "Normal Science and Its Dangers," Popper says of normal science that unfortunately it does exist but it should not. He says normal scientists have been "taught badly" and that we "ought to feel sorry for" them.¹⁸ Such normal science is dangerous to both science and civilization.

Clearly, Kuhn's criterion and Popper's are of quite different kinds, in conflict only insofar as Popper thinks the history of science supports him and insofar as Kuhn thinks his criterion is a defining characteristic of science. What I am suggesting is that we regard Kuhn's criterion as descriptive and Popper's as legislative, thus reconciling the dispute.¹⁹ The general point is that there is room for both descriptive and legislative criteria. Both kinds are necessary given the dual endeavor of explaining and describing scientific progress and formulating (or reconstructing) the aims and goals of science. Legislative criteria are especially important given the inapplicability of descriptive criteria in dealing with newly proposed hypotheses and theories. Sometimes it is necessary to decide and not wait and see if a tradition or research program develops.

The distinction between legislative and descriptive criteria is subject to challenge in three respects. First, it may be objected that some legislative criteria are descriptively adequate as well. Popper in particular seems willing to extend his criterion of falsification beyond mere legislation to description of scientific progress. Second, some will object that some descriptive criteria are as legislative as any: in Feyerabend's terms, they result from an "ideology."²⁰ Third, if the history of science is not the touchstone for the adequacy of legislative criteria, there seems to be no way to decide among competing legislative criteria.

In response to these challenges, let me first rehearse the relevant differences between the two kinds of criteria. First, they differ in range of applicability: descriptive criteria are not designed to deal with new hypotheses and theories, whereas legislative criteria are

so designed. Second, I have said that legislative criteria are much more like moral principles than are descriptive criteria: they say how science ought to be viewed. And third, legislative criteria are definitions, whereas descriptive criteria are generalizations based on the examination of actual scientific theories and practices.

The first objection, that legislative criteria might be descriptive as well, is easily rebutted once one sees that it is simply false that hypotheses and theories have been considered scientific if and only if they have satisfied some criterion such as testability-in-principle or falsifiability. The whole point of constructing a criterion of demarcation is, I take it, to counteract widespread misuse of the concept of "scientific hypothesis." If in the past and present scientists have as a matter of fact followed (albeit unknowingly) a testability or falsifiability-like criterion, it would be of little or no interest to formulate it. It is only because demarcation decisions have been historically confused and idiosyncratic that there is clear need for an adequate criterion of demarcation. It thus seems to me that a legislative criterion cannot be at the same time a descriptive criterion.

But are descriptive criteria really legislative criteria in disguise? This is the second challenge, and I think it has much more merit than the first. What it amounts to is this. Even historians of science have preconceptions about what ought to be counted as scientific—their "ideology," as Feyerabend says. This point is well worth making because the most severe critics of legislative criteria seem at times to forget their own ideology. For example, Lakatos criticizes what he calls Popper's "falsificationist morality" for not noting that

scientists frequently and rationally claim "that the experimental results are not reliable, or that the discrepancies which are asserted to exist between the experimental results and the theory are only apparent and that they will disappear with the advance of our understanding."²¹

Feyerabend points out that Lakatos is no less guilty of moralizing than is Popper, insofar as the capacity to generate a research program is valuable only with regard to a given (if widespread) ideology.

While I agree with Feyerabend's criticism of Lakatos and by extension other descriptively-minded philosophers, I do not think it at all vitiates the distinction between legislative and descriptive criteria of demarcation. After all, this distinction concerns the formulation

and range of application of demarcation criteria and not the biases or ideologies of their proposers. The three differences noted remain differences, even granting Feyerabend's point. The only qualification necessary is that legislative criteria tend to hide their allegiance.

The third and final objection is that, as legislative criteria are statements of what science ought to be, there seems to be no way of deciding between competing criteria. Are proposers of legislative criteria left in the position pictured by Adolf Grunbaum—"The philosopher who presumes to sit on the legislative pedestal may be left to contemplate his own normative navel"²²? This issue goes well beyond the scope of this paper, but it would require for a solution the development of an ethics of criteria, that is, a systematic statement and ranking of various proposed legislative criteria and a comparison of their relative merits and faults.

1. Cf. Robert Weyant's comment: "The general point which I am attempting to make here is that the science/pseudoscience distinction is misleading when we take it to be a dichotomy without alternative possibilities. The distinction is blurred if 'incorrect' science and proto-science are included within the pseudoscience category." ("Metaphors and Animal Magnetism," in Marsha P. Hanan, et al., eds., *Science, Pseudo-science, and Society* [Waterloo, Ontario: Wilfrid Laurier University Press, 1980], p. 82.)

2. Carl G. Hempel, *Aspects of Scientific Explanation* (New York: Free Press, 1965), p. 102.

3. John Archibald Wheeler, "Point of View: Drive the Pseudos Out..." *Skeptical Inquirer* 3 (1979): 12-13.

4. Paul Kurtz, "Is Parapsychology a Science?" *Skeptical Inquirer* 3 (1978): 14-32.

5. Ibid.

6. John M. Ziman, *Public Knowledge: An Essay Concerning the Social Dimension of Science* (London: Cambridge University Press, 1968), pp. 92 ff.

7. Psychological criteria are one variety of what have been called "extrinsic criteria." Other varieties are sociological, political, or even economic criteria. Cf. Stephen Toulmin: "We shall find the disciplinary or intellectual history of the enterprise interacting with its professional or sociological history, and we can separate the 'internal' life-story of ideas from the 'external' life-stories of the men whose ideas they are, only at the price of oversimplification" (*Human Understanding: The Collective Use and Evolution of Concepts* [Princeton, N.J.: Princeton University Press, 1972], p. 143). My point in this section is that, unless this separation is initially made, we would fail to see how these factors *do* interact.

8. Laurence J. Lafleur, "Cranks and Scientists," *Scientific Monthly* 73 (1951): 285.

9. Ibid.

10. Ibid., p. 286.

11. Martin Gardner, *Fads and Fallacies in the Name of Science* (New York: Dover, 1952), pp. 8-14.

12. Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes," in Imre Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge* (Cambridge: Cambridge University Press, 1970), p. 132.

13. Larry Laudan, *Progress and Its Problems: Toward a Theory of Scientific Growth* (Berkeley and Los Angeles: University of California Press, 1977), p. 5.

14. Thomas S. Kuhn, "Reflections on My Critics," in Lakatos and Musgrave, *Criticism*, p. 246.

15. Carl G. Hempel, *Philosophy of Natural Science* (Englewood Cliffs, N.J.: Prentice-Hall, 1966), p. 30.

16. I am not claiming that the three characteristics of being applicable to individual hypotheses, being atemporal, and being stipulative are necessary features of all legislative criteria. They are features of Hempel's and Popper's, however.

17. Thomas S. Kuhn, "Logic of Discovery or Psychology of Research?" in Lakatos and Musgrave, *Criticism*, p. 6.

18. Karl R. Popper, "Normal Science and Its Dangers," in Lakatos and Musgrave, *Criticism*, pp. 52-53.

19. Cf. Toulmin: "Of course, the logician's formal analysis might be defended, as merely presenting an abstract ideal or aspiration—the utopian vision of an ultimate goal—without offering practical indices for judging the rights and wrongs of actual scientific concepts. . . . For such an analysis to carry conviction even as a utopian vision, however, the resulting image of a 'perfect theory' must—like that of a perfect society—have some sort of bearing on the task of constructing better actual theories and societies." (*Human Understanding*, p. 230; see also chap. 8.)

20. Paul Feyerabend, *Against Method: Outline of an Anarchist Theory of Knowledge* (London: Verso, 1975), p. 203.

21. Lakatos, "Falsification," p. 176.

22. Adolf Grünbaum, "Is Freudian Psychoanalytic Theory Pseudo-Scientific by Karl Popper's Criterion of Demarcation?" *American Philosophical Quarterly* 16 (1979): 136.

Review Essays

PHILOSOPHY: BELIEFS, ATTITUDES, AND JUSTIFICATION

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JOHN KEKES in *The Nature of Philosophy* (Oxford: Blackwell; Totowa, N.J.: Rowman and Littlefield, 1980) holds that philosophy is or ought to be ultimately concerned with finding a rationally justified "worldview," a conception of one's place in the world that indicates what one's attitude should be to the world, other people, and oneself. According to Kekes, philosophy cannot be identified either with science or with ideology, although it shares features with both. Science attempts to find a rationally justified view of the world but is concerned only with the facts and not with the attitude one should take toward the facts. Ideology is concerned with the attitude one should take toward the facts but not with the rational justification of that attitude. Only philosophy is concerned with the rational justification of a full worldview, including the attitudes involved.

This is a traditional, but mildly controversial, conception of philosophy—controversial because of widespread skepticism about the possibility of rationally justifying attitudes of the sort involved in a worldview. Kekes observes that such skepticism can lead to either of two views about the nature of philosophy, depending on which aspect of the traditional view of philosophy is stressed. If stress is placed on the idea that philosophy is concerned with rational justification, philosophy comes to be seen as mainly a critical discipline, possibly continuous with science. If stress is placed on the idea that philosophy should indicate what attitude to take toward one's place in the world, philosophy comes to be seen as a source of prescriptions that can in the end only be accepted by virtue of an irrational leap of faith. Kekes says both of these limited conceptions of philosophy are wrong and that the traditional conception is right. Philosophy can and should aim at rationally justifying a worldview.

Most of the book is concerned with spelling out what this con-

ception of philosophy involves: There are certain "enduring problems" all normal people must face, involving their relationship with external reality, other people, and themselves. These problems are enduring in the sense that they cannot be solved once and for all. So policies have to be developed for dealing with the problems. These policies will involve certain disputable goals or "ideals." Philosophical argument is concerned to formulate and rationally justify particular ideals and policies of this sort.

Surprisingly, Kekes's discussion of rational justification concentrates on the justification of straightforward factual or descriptive beliefs and does not say very much about the special problems that arise concerning the justification of goals and attitudes. So, in the end, Kekes does not really argue for his conception of philosophy. Consequently, the book is rather abstract as an account of "the nature of philosophy" and at some distance from philosophy itself.

THE LIMITS OF JUSTIFICATION

Kekes's discussion of justification is marred by a failure to distinguish between the question whether a given person is justified in holding a certain attitude and the question whether there is a rational resolution of a dispute between two people with conflicting attitudes. These are different questions, since two people might each be rationally justified in taking different attitudes without there being a rational way to settle the dispute between them.

Kekes's failure to make this distinction affects his discussion of the so-called coherence and foundations theories of justification, against which he raises similar objections. To the foundations theory, which says that certain privileged basic attitudes are directly justified and other attitudes are to be justified in terms of their relations to basic attitudes, Kekes objects that different worldviews treat different attitudes as basic, and the foundations theory provides no justification for choosing one set of basic attitudes over another. To the coherence theory, which says that one is justified in having a belief or other attitude to the extent the attitude coheres with one's overall view, Kekes objects that false beliefs can cohere as well as true beliefs, and the coherence theory offers no way to choose between two equally coherent worldviews.

This sort of criticism rests on a misunderstanding of these theories. Consider the coherence theory. The theory points out that one has a great many beliefs, goals, attitudes, etc., and it is always an issue whether one has any reason to make changes. In this view, one ordinarily has no special reason to change a given belief or

other attitude, and one is therefore justified in continuing to accept it. Furthermore, in this view, reasons to change one's beliefs and other attitudes must come from elsewhere in one's beliefs and attitudes, since there is nowhere else they could possibly come from.

More generally, the coherence and foundations theories are theories of *individual justification*. They are not theories of *conflict resolution*. They attempt to say when a particular person is justified in having the attitudes he or she has; they do not try to say how people with conflicting attitudes might rationally settle their disagreements.

Kekes's objections to these theories concern how disputes might be rationally settled, not what attitudes it is rational for a particular individual to hold; his objections concern rational conflict resolution, not rational justification. He is right: the coherence theory does not indicate how to resolve an issue that arises between two people with different overall systems, nor does the foundations theory indicate how to settle a dispute between two people who treat different attitudes as basic. This shows that these theories are not theories of rational conflict resolution. But they were never thought to be. They have been always advanced, rather, as theories of individual rational justification.

What about conflict resolution? Well, it is widely thought that interpersonal conflicts in attitude cannot always be purely rationally resolved, without negotiation and compromise. Kekes believes that, at least in philosophy, there is always a purely rational resolution of such disputes, purely through reasoning, without bargaining and compromise. But he does not make it clear why he believes this.

THE PROBLEM AS BASIS

If participants in a philosophical dispute accept different overall systems with different basic attitudes, where is the common ground that would allow them to resolve their dispute? Kekes answers that there is common ground in the very fact that they are disputing with each other, for they must be disputing over how to resolve a particular enduring problem. The disputants must, therefore, at least to some extent, agree on the problem and its presuppositions; and, according to Kekes, this provides enough common ground to allow them to resolve their dispute. However, he does not say why he thinks this much common ground is sufficient, and a reader might be excused for being skeptical.

Let us look more closely at what Kekes says in this connection.

He says we should distinguish two aspects, or "contexts," of justification: first, the "introduction" of a number of theories as possible solutions to the problem involved; second, the "acceptance" of one of these theories as providing the best solution to that problem. These different contexts involve different considerations, he says, since there is a difference between showing that something is a possible solution and showing that it is the best of competing solutions, where "best" means "closest to the truth."

This appeal to closeness to the truth simply ignores the problems of justifying attitudes. When an issue concerns goals and ideals, as it will according to Kekes if it is a basic philosophical issue, different solutions will attempt to obtain somewhat different goals in somewhat different ways. Deciding between possible solutions will, therefore, involve a kind of balancing that is not just a matter of deciding what is true.

PERENNIAL ARGUMENTS

According to Kekes, philosophical arguments are concerned with what ideals should be valued. These arguments are "perennial" in that they are recurrent and endless.

In Kekes's view, a perennial argument occurs when certain people have a problem and argue concerning the ideals in terms of which the problem should be solved. The basic problems are problems of life: how to relate to nature, other people, and oneself. And a theoretical framework is rational if (among other things) it contributes a possible solution to such problems of life.

Perennial problems are enduring rather than removable. Their solution does not consist in the elimination of the problem but of finding a *modus vivendi*, a policy for dealing with the problem. Such problems tend to require theoretical reflection. But these problems are not scientific or technological problems, since scientific and technical problems are removable problems rather than enduring problems in this sense.

Kekes offers the following examples of enduring problems:

Typical enduring problems in one's attitude to himself [sic] have to do with the meaning and purpose of one's life, the importance and attainability of self-knowledge and the possibility and method of forming and shaping oneself. Some of the enduring problems which arise in one's relations to humanity are the nature of one's responsibility to and for others, one's attitude toward authority, the resolution of inevitable conflicts between altruism and self-interest, and the extent of one's allegiance owed to institutions, friends, one's coun-

try. Characteristic enduring problems connected with the relation between a person and nature are whether one should attempt to live in harmony with or make use of his environment, or whether nature is properly viewed as hostile, benevolent, or indifferent. [P. 39]

There are no general answers to perennial questions because the answers vary with the situation. For example, consider the perennial argument about morality.

In a pure laissez-faire economy, altruism should be stressed; in times of revolutionary changes, emphasizing the importance of moral rules against the fervid pursuit of ideals is likely to serve the ideal implicit in morality. But in a static, ritualistic society, reminding moral agents of the ideals of moral behavior may redress the balance; just as in a tightly organized political system, the claims of individuality should be stressed. [P. 39]

Kekes suggests, implausibly, that perennial arguments are recurrent because the background situation changes over time in this way. But that would not explain why philosophical arguments continue even in periods during which the background situation remains the same.

CAN PHILOSOPHICAL THEORIES BE JUSTIFIED?

Kekes notes that there are grounds for thinking philosophy cannot provide a rationally justified worldview. Success at justifying a worldview would seem to require philosophical knowledge, but there does not seem to be any instance of such knowledge in the 2,500-year history of philosophy. There have been methodological advances but no settled conclusions concerning

whether there is a spiritual element in reality, what things are good or bad, how to live well, whether anything exists that we can not observe, whether human beings are determined or free, what sort of society is the best, and so on [p. 5].

One indication of this is that most great philosophers feel they must begin again, from the beginning. Philosophy does not seem to be cumulative in the way that other knowledge-seeking inquiries are.

This is in part an illusion. In fact, philosophical inquiry has often resulted in knowledge, but the result has always been counted part of some other discipline. When philosophy is successful, the successful part splits off and becomes a separate science, like physics or psychology. On the other hand, such success has always been success at solving factual, descriptive problems. There has been no

progress at finding general solutions that everyone can accept to problems about what attitudes to take toward reality, other people, or oneself.

I have already mentioned Kekes's suggestion that perennial arguments are perennial because of changing circumstances that require new answers. That is unpersuasive, since philosophical disputes continue even in situations with fixed circumstances. One obvious reason for such continued disagreement is that people attach different weights to the values they accept—for example, the relative importance they place on general happiness as against cultural achievement. It is unclear how this sort of disagreement could be resolved except through negotiation and compromise.

Alas, nothing in Kekes's discussion indicates how one might find a purely rational justification for theories that would answer the sorts of problems he mentions: whether there is a spiritual element in reality, what things are good or bad, and so on.

Kekes asserts incorrectly that people who say fundamental questions are incapable of being rationally answered

disqualify themselves from having a right to object to other people holding other ideas which are vicious, harmful, destructive, and abominable. For if all they have in favor of their ideals is unreasoned commitment, then they cannot very well object to other people's commitments. [P. 22]

This begs the question by assuming a principle, about when one has the "right" to object to something, that would not be accepted by those who hold the view in question.

Kekes also asserts implausibly that, if one's basic choices are irrational in the sense that they cannot be rationally justified, "the prospects for civilized life are poor" (p. 27). This is to overlook two points. First, some basic choices can be made in various ways without affecting the prospects of civilized life. And, second, where this is not the case, disputes about basic choices can often be settled by negotiation and compromise.

THE CURRENT STATE OF PHILOSOPHY

Kekes's unhappiness with the current state of philosophy leads him to say a number of absurd things. For example, "The disappearance of philosophers would make no difference to the intellectual life of our society" (p. 4). This is absurd, since philosophers are intellectuals, and their disappearance would by definition make

a difference to the intellectual life of our society. Furthermore, there are ongoing interactions among philosophers and psychologists, as represented, for example, in the pages of the journal *Behavioral and Brain Sciences*, and among philosophers and linguists, as represented, for example in the pages of the journal *Linguistics and Philosophy*. And there are many other examples of interaction between philosophers and economists, statisticians, lawyers, political scientists, etc. I would think that the disappearance of philosophers would matter to those psychologists, linguists, economists, lawyers, and so forth whose work intersects the work of some of those philosophers. Some examples are the psychologist Richard Nisbett, the linguist Noam Chomsky, the economist A. K. Sen, the statistician Glenn Shaffer, the lawyer Ronald Dworkin, the political scientist Michael Walzer. I could give many more names in each category. These people are certainly intellectuals; so, since the disappearance of philosophers would affect their work, it would affect the intellectual life of our society.

Kekes might argue that, inasmuch as their work intersects the work of philosophers, Chomsky, Dworkin, et al. are in part philosophers, who must therefore disappear when the philosophers disappear! But would he want to say that this disappearance would have no effect on the intellectual life of our society?

Perhaps what Kekes means is that philosophers have no impact on ordinary people. This would be to assume falsely that psychology, linguistics, economics, statistics, and so on have no impact on ordinary people.

Perhaps the point is supposed to be that philosophers are not read by such ordinary people. But is that so? John Rawls's *Theory of Justice* has been widely read and has had a great impact on the intellectual life of our society. The same can be said for Robert Nozick's *Anarchy, State and Utopia* and Peter Singer's *Animal Liberation*. It is true these are all works in ethical, political, or legal philosophy; but of course that is exactly the aspect of philosophy Kekes thinks philosophers have been ignoring. And other areas of philosophy have had an impact in such widely read books as Daniel Dennett's *Brainstorms*.

THE RELEVANCE OF HISTORY TO PHILOSOPHY

Kekes accepts the widely held but, I believe, wholly erroneous view that a knowledge of history is useful in philosophy. I see no evidence for this. Kekes says, "The attempt to understand perennial arguments merely by examining the contemporary state of the

debate and by offering a general description of that domain on the basis dooms one's conclusion to absurdity." This is, he says, because only by examining tradition "can one discover what the problem is that forms the background of various approaches in perennial arguments" (p. 41).

I do not understand this. History, including the history of philosophy, can be a fascinating subject, at least when pursued as history and not merely as an attempt to read currently fashionable ideas into ancient texts. However, the question is not whether history, including the history of philosophy, is *interesting* but whether it is *useful in philosophy*. Kekes says history is useful because it is useful to know what problem *originally* gave rise to a dispute. But that is false. What is needed is to consider the problems that *currently* drive a dispute, which are almost certainly different in various ways from the original problem or problems. I have never seen the slightest reason to suppose that knowledge of the history of philosophy is any more help in philosophy than knowledge of the history of physics or chemistry is of any help in physics or chemistry.

THE ROLE OF LOGIC IN JUSTIFICATION

Kekes's account of the role of logic in justification is mistaken. Indeed, his whole account of justification is puzzling.

He says that, to determine which of competing theories has the best chance of being true, one must compare them on the basis of "logical consistency, adequacy of interpretation, and capacity to withstand criticism" (p. 111). One obvious and mildly troubling point here is that these are not three independent criteria. A theory that is logically inconsistent or whose interpretation is inadequate is subject to criticism on that account, so the third criterion includes the first two. More significantly, the theories in question are already supposed to be consistent by the time we consider which has the best chance of being true, since according to Kekes they are supposed to be "possible" solutions to the background problem. So we shouldn't have to worry about consistency at this stage.

So far, these are minor worries. Kekes goes on to observe that different theories may involve different logics and, therefore, different notions of logical consistency. In order to decide which logic is to be accepted, he says, one must compare the problem-solving capacity of the theories. But this is much harder than he supposes. He overlooks the crucial difficulty that the theories may disagree about their relative problem-solving capacities. Theory A might say

that A has a greater problem-solving capacity than B, and B might say the reverse.

In any event, and here is my main complaint, Kekes argues that logical rules are themselves extracted from practice.

Logical rules are the rules which guide successful practice. They are crystallizations of methodological principles that have proved successful in the past. Logical rules are implicit in the past. Logical rules are implicit in practices we wish to perpetuate and their discovery consists in making explicit and codifying what has been implicit before. [P. 113]

This is quite wrong. It confuses inference and implication. Logic is the theory of implication. It is not a theory of method or inference in the sense of a theory telling one what to infer under certain circumstances. A logical principle such as *modus ponens* says that certain propositions imply another proposition. It does not say, for example, that if one believes certain propositions one may infer another specified proposition in the sense that one may accept that other proposition. The implied proposition is sometimes absurd, so that what one should do is reject one of the premises rather than accept the conclusion. Even if no absurdity is involved, one should not normally clutter one's mind with logical consequences of one's beliefs. ("If the sole aim of inquiries were the accumulation of likely truths, we would end up with an enormously large amount of trivial and useless information" [p. 120].)

The relation between logic and inference or reasoning is obscure. There is no adequate account of it of which I am aware. The relation is certainly not direct and immediate. It may or may not be true that principles of inference and other methodological principles are abstracted from successful practice (I doubt it); but logical principles certainly are not.

True, an important test of one's overall view is how well it enables one to resolve one's problems. And logic, which is part of that scheme, is therefore indirectly subject to the test as well. But logic is not what is abstracted from the practice of problem solving. Something may indeed be abstracted from that practice, but not logic.

POPPER'S ADEQUACY TEST

Kekes accepts, on dubious grounds, Popper's test of adequacy for a theory. In this view, one should not take a theory seriously unless one knows what would indicate that the theory is mistaken,

and a theory is acceptable if it survives one's best attempts to show that it is mistaken. Kekes argues fallaciously that this test is a consequence of the fact that:

A theory is an interpretation of some set of facts. The interpretation it offers is incompatible with other possible interpretations. The absence of anything that could be incompatible with an interpretation is conclusive evidence of its inadequacy. [P. 117]

But this makes the question-begging assumption that, if one interpretation is incompatible with another, there must be some test, some crucial experiment, that would decide between them.

Kekes goes on to offer a confused account of the relation between acceptability, knowledge, and truth. He says, "A true theory would have to survive all possible criticisms and be preferable to all possible rivals" (p. 121). But the truth does not always survive criticism. It is sometimes mistakenly rejected, as in this very remark of Kekes's, as well as in the conclusion he draws—namely, that "theories cannot be known to be true," which, by the way, is in striking contrast with his earlier, more sensible claim in the introduction to the book: "The ideals we hold should be rationally justified. If they are not, we have no way of *knowing* whether the policies we adopt in accordance with them can be satisfactory solutions of our problems" (p. xi, emphasis added).

DISCOVERY VERSUS JUSTIFICATION

Kekes is also confused about the familiar distinction between considerations that lead to the discovery of a theory and considerations that justify acceptance of the theory. He argues that the usual way of making this distinction is mistaken, but only because he mixes up that issue with another, namely, whether the justification of a theory ever involves consideration of the cultural influences which helped lead to the acceptance of the theory.

He asserts that the justification of ideals must take into account certain "cultural influences," namely,

the intellectual climate, the existing learned consensus about what is traditional and what is novel; the prevailing judgments about what is problematic, worrisome, or disturbing in current affairs; the general agreement about what sort of questions are fundamental as opposed to being secondary questions of detail [p. 79].

Kekes says, mistakenly, that some philosophers would object to this by distinguishing the context of discovery from the context of

justification. In this view, he says, what is relevant to the justification of a belief is not how the belief came to be held but, rather, whether the belief is true; cultural factors might explain why a belief is held but cannot show that it is true. But there are already several things wrong with Kekes's discussion of these issues.

One mistake is supposing that being justified in believing something is the same thing as having a true belief. One can be justified in believing something that happens to be false; justification does not guarantee truth. And one can fail to be justified in believing something that happens to be true, because one might believe it for the wrong reasons.

The context of discovery can be distinguished from the context of justification without confusing justification and truth. All that is needed is to notice that one might come to believe something for the wrong reasons and later find the right reasons.

Kekes says, "The view that the cultural influences within the context of discovery have any bearing on the context of justification has been called the genetic fallacy" (p. 80). That is incorrect. The genetic fallacy consists in thinking that whether one is justified in believing something is *always* determined *entirely* by what led one to believe it in the first place. That *is* a fallacy. But it is not a fallacy to think that in certain cases, even in most cases, one's reasons for believing something are the reasons that led one to believe it in the first place.

Kekes is similarly mistaken when he says in this connection, "Justification is the process of ascertaining whether" a belief is true in the sense of corresponding with reality (p. 81). Since one might be justified in believing something false, one might be justified in believing something without "ascertaining" that it is true.

In any event, it is extremely odd to attribute to anyone the view that cultural factors are *always* irrelevant to justification. Consider beliefs *about* cultural factors. Presumably, cultural factors might help to show that *such* a belief is true. And cultural factors can be relevant to whether other beliefs are true too, quite apart from any distinction between the context of discovery and the context of justification.

Kekes says that one way to defend the distinction between the context of discovery and the context of justification for philosophical claims is to argue that philosophy is concerned to bring out conceptual truths. In this view, how one came to believe or accept these truths is irrelevant—perhaps one was merely taught to accept them—but now, once one accepts them and other related truths,

they become conceptual truths. Philosophy, the study of such conceptual truths, is, therefore, taken to be an autonomous discipline that does not presuppose inquiry into cultural conditions; etc. Indeed, such other inquiry is supposed to presuppose these conceptual truths.

Kekes rejects this defense on the grounds that there is no sharp distinction between conceptual truths and factual truths, so that philosophy cannot be autonomous in this way. Justification becomes a matter of coherence; and

since the system contains psychological, sociological, historical, and other propositions as well, there is no way of excluding these propositions from having a bearing on justification. It seems, then, that if justification is a matter of coherence, discovery and justification cannot be distinguished, and thus the so-called genetic fallacy is not a fallacy at all.

The first part of this is correct; not the second. A coherence theory of justification allows cultural factors to be relevant to justification. But this does not entail that the genetic fallacy is not a fallacy. The coherence theory can allow for cases in which one is justified in believing something now, although one's original reasons were no good.

Kekes suggests that a second way to argue for the distinction between the context of discovery and the context of justification for philosophical claims is to argue that philosophy is concerned with rational reconstruction of ordinary views and that one's initial reasons need not be preserved in such rational reconstruction. Kekes objects that there is no standard for assessing the adequacy of such reconstruction that does not appeal to cultural factors.

Again, this is irrelevant. Kekes's claim reduces to the obvious point that distinguishing the context of discovery from the context of justification does not imply that cultural factors are irrelevant to justification.

THE NATURE OF PHILOSOPHY: A REPLY TO HARMAN

The editor has invited me to respond to Professor Gilbert Harman's review of my book, *The Nature of Philosophy*. I am happy to accept this invitation, because Harman and I disagree about some basic issues that need further discussion. I have arranged my remarks around three topics: the place of philosophy in our culture, perennial arguments, and the nature of justification.

PHILOSOPHY IN OUR CULTURE

Harman is quite right about my unhappiness with the current state of philosophy in America. He says, however, that this leads me to say a number of absurd things (p. 64),* and, although one hopes for a list of these absurdities, Harman mentions only one. I say that "the disappearance of philosophers would make no difference to the intellectual life of our society" (p. 4). Harman fails to notice that the quoted passage refers to a rather funny observation I cite in a footnote, but no matter. I concede that I exaggerate. The passage should read: The disappearance of philosophers would make *almost* no difference to the intellectual life of our society. This emendation allows me to escape Harman's objection that "since philosophers are intellectuals... their disappearance would by definition make a difference to the intellectual life of our society" (pp. 64-65).

But is the amended passage true? Harman thinks not, and I disagree. My guess is that there are about 5,000 philosophers in America who at least occasionally publish, and another 5,000 who do not. The circulation of these journals is roughly between 1,000 and 4,000, and the usual printing of a philosophy book is about 2,000. These numbers make it unlikely that even philosophers read much philosophy, let alone that nonphilosophers do.

Philosophy in America has become an inbred self-perpetuating specialty. Philosophers write for other philosophers, and their work is appreciated and criticized by their colleagues. The problems they deal with arise from one another's work. I think that it is not unusual for a philosopher to think that one of his articles can be ap-

*The numbers in parentheses following Harman's name refer to the pages of his review in this journal, and those following my name refer to the pages of *The Nature of Philosophy*.

preciated by perhaps 50 souls.

Against these distressing observations, Harman bravely points at exceptions. Yes, Rawls's and Nozick's books have reached a large number of people; yes, Chomsky's work is connected with philosophy; yes, Sen, Dworkin, et al., do draw on the work of some philosophers.

One cannot reasonably suppose, however, that these contacts are essential. Surely, the work of these people would continue virtually unaffected if all contemporary philosophers disappeared. The connection between philosophy and other subjects is not like the connection between, say, physics and mathematics, political thought and economics, or zoology and biochemistry. Furthermore, even if one grants to Harman the exceptions he cites, contrast these drops in the bucket with the immense amount of work, talk, paper, mental energy, and money that has gone into philosophy in this country, say, since the end of the Second World War. Harman is cheered by the rare exceptions; I am distressed by the deadly, monotonous, inconsequential rule. And so I wrote: "Something bad has happened to philosophy. If this has been produced by a defect in the very nature of philosophy, then the subject is doomed. It is my view, however, that the sad contemporary state of philosophy is just a present-day aberration which may be remedied in time." (P. 4)

Harman does not see it as an aberration. However, if we look at the history of philosophy, we can see that the Academicians and Sophists in Athens, Stoics and Epicureans in Greece and Rome, Christian moralists throughout the Middle Ages, British empiricists, the Encyclopedists, utilitarians, Kantians, Hegelians, existentialists, and Marxists were influential people whose opinions, for better or worse, fundamentally influenced the intellectual climate of their society. And these influences were not exerted just by the rare great philosophers but by their many followers, as well. This is not true of the American followers of Quine, Wittgenstein, Whitehead, Husserl, or Heidegger.

Why does Harman fail to see the contrast between philosophy in present-day America and in the periods I have just listed? Because he regards the view "wholly erroneous... that knowledge of history is useful in philosophy" (p. 65). And why is it so? Because, Harman says, "I have never seen the slightest reason to suppose that knowledge of the history of philosophy is any more help in philosophy than knowledge of the history of physics or chemistry is of any help in physics or chemistry" (p. 66). This is a singular observation in any case, but especially so since I devote chapter 11,

"Philosophy and History," to giving reasons for their connection. I shall return to this. It will suffice to note here that Harman's avowed ignorance of the evidence supporting the position he finds absurd does not amount to an argument.

PERENNIAL ARGUMENTS

There are two main reasons for thinking that the current sad state of philosophy in America is not due to some defect in the subject itself. The first requires understanding the nature of philosophical arguments; this is the aim of my discussion of perennial arguments in part 2 of the book. The second requires showing that perennial arguments can be rationally settled; this is what I try to do in part 3 of the book, where I give an account of philosophical justification. Harman has doubts about both reasons. I shall discuss the first here and the second in the next section.

The human condition requires us to cope with problems. The problems occur because achieving what we want is frustrated by our physical environment, by the facts of social life, and by our own limitations. Some of these problems are removable, but others are not. The solution of these latter, enduring, problems is the task of philosophy.

The solution consists in developing a policy for coping with the problems. However, there are many policies available for coping with enduring problems. Naturally, we want to adopt the best policy. Which policy is the best is determined by the ideal in accordance with which we want to solve the problem. But just as there are many policies, so also there are many ideals and many interpretations of each ideal.

Perennial arguments are about ideals in accordance with which particular policies are developed for solving enduring problems. They may be external, if they concern the conflict between different ideals; or they may be internal, if they concern conflicting interpretations of the same ideal.

Perennial arguments are recurrent and endless, because the forms in which enduring problems present themselves change from age to age and because the ideals and their interpretations also change. Consequently, the policies, which depend on these changing ideals and problems, also change.

Scientific understanding, a historical perspective, freedom, rationality, morality, knowledge, democracy, religiosity, culture, education, and aesthetic sensibility are some of the ideals I have in mind. Harman quotes my examples of enduring problems

(pp. 62-63), so I shall not repeat them.

A philosophical theory aims to justify a particular ideal for solving an enduring problem as it occurs in a given problem situation. The disputants in perennial arguments champion competing philosophical theories. The resolution of perennial arguments is thus the selection of a particular philosophical theory. The selection is based on the success of the theory's justification of the ideal or of the interpretation of the ideal in accordance with which the enduring problem is to be solved.

The task of philosophy is to solve enduring problems. This is accomplished by having a system of philosophical theories. Such a system is a worldview. What a worldview aims to do, therefore, is embody a cluster of policies for solving the enduring problems of a particular society in accordance with a rationally justified system of ideals. The benefit a person gains from participation in such a worldview is not just the pragmatic one of having a device for solving his problems, but also the benefit of having a system of ideals that makes these solutions worthwhile, thus giving meaning and purpose to his life.

I found it necessary to restate my position (drawing on pp. 73-74), because Harman's criticisms rest on several misunderstandings of it. Harman thinks that I concentrate on "straightforward factual or descriptive beliefs and [do] not say very much about the special problems that arise concerning the justification of goals and attitudes. So, in the end, Kekes does not really argue for his conception of philosophy." (P. 60)

To begin with a point to which I shall return in the next section, Harman keeps talking about my various attempts to justify attitudes. I make no such attempts. I am not concerned with justifying attitudes; I am interested in justifying philosophical theories or, since philosophical theories aim to justify ideals, ideals. Let us suppose that by goals, in the above passage, Harman means what I mean by ideals. His charge, then, is that I concentrate on justifying factual beliefs but not on justifying ideals.

Now this is a very peculiar charge. If by factual beliefs Harman means straightforward empirical claims about facts, then I cannot recall a single attempt I make to justify such a claim. And to say that I *concentrate* on doing this makes me think that Harman is reviewing some other book.

But what about my attempt to justify ideals? Is it true that I do not say much about their justification? Well, the whole book is an attempt to justify my interpretation of one ideal: philosophy. I say this explicitly in a section entitled "The Ideal of Philosophy" (pp.

186-91). But apart from this primary aim, I discuss the justification of several specific ideals: of scientific understanding (in the whole of chap. 10), of historical understanding (in the whole of chap. 11), of rationality (pp. 19-21, 49-50, 53-55), of culture (pp. 213-18), of logical consistency (pp. 111-16); and I also discuss, although in less detail, the justification of democracy, morality, and Christianity. I find it hard to understand how Harman could have missed these absolutely central features of the book.

Harman's next criticism is equally misdirected. He says: "Kekes suggests, implausibly, that perennial arguments are recurrent because the background situation changes over time. . . . But that would not explain why philosophical arguments continue even in periods during which the background situation remains the same." (P. 63) The point is repeated (p. 64).

In offering this criticism, Harman completely misses the crucial distinction between external and internal perennial arguments introduced in chapter 2 (pp. 19-20) and used throughout the book. There is no mention of it in Harman's review. External perennial arguments occur in changing circumstances, when there is no agreement about ideals. Internal perennial arguments occur in stable circumstances, when there is agreement about ideals and disagreement about how they should be interpreted in particular situations. In the first case, the background situation is changing; in the second it is not. Again, I say this explicitly: "A developing or disintegrating society is characterized by many external perennial arguments about ideals" (p. 47), and "homogeneous and robust societies are often preoccupied with internal perennial arguments about mutually shared ideals. Their debates concern the question of how to interpret ideals which are generally accepted." (P. 48) So my explanation of why philosophical arguments continue when the background is stable is that they are internal perennial arguments.

Harman's next objection begins with the observation: "Kekes notes that there are grounds for thinking philosophy cannot provide a rationally justified worldview. Success at justifying a worldview would seem to require philosophical knowledge; but there does not seem to be any instance of such knowledge in the 2,500-year history of philosophy." (P. 63)

Now, I do say this, but Harman omits to mention that I say it in a chapter entitled "The Case against Philosophy," in which I state the objections I am concerned with meeting. At the end of the chapter, I say: "My purpose is to present a view of philosophy which avoids the pitfalls just discussed. . . . Philosophy, it will be shown, can and should play. . . its traditional role and its contemporary failure to

do so is the disease whose cure is one of the intended consequences of this book.... A defense of philosophy must ask and give satisfactory answers to such questions as What kind of knowledge, if any, does philosophy provide? What does philosophy do that science does not do better? Is there progress in philosophy?... I shall answer these questions favorably for philosophy." (P. 13)

Having basically misunderstood the aim of the book, Harman blithely goes on to dispose of the problem in a few sentences: "Philosophical inquiry has often resulted in knowledge, but the result has always been counted part of some other discipline. When philosophy is successful, the successful part splits off and becomes a separate science...." (P. 63)

Harman fails to inform the reader that he is here paraphrasing one of the replies to the case against philosophy I consider and reject. I quote Russell's remark that "philosophical knowledge... does not differ essentially from scientific knowledge; there is no special source of wisdom which is open to philosophy, but not to science, and the results obtained by philosophy are not radically different from those obtained by science" (p. 8). Harman embraces Russell's answer without paying the slightest attention to the extensive criticisms I make of it (pp. 8-9, the whole of chap. 10, pp. 213-18).

My reply, briefly, is that it follows from this answer that philosophy cannot have anything to say about values and also that the field of philosophy has been preempted by science, since there is no presently known aspect of reality for which there does not already exist a science. There is nothing left in philosophy, according to this view, which could split off.

It will not have escaped the reader's attention that Harman's is the discredited answer of positivism. It assigns knowledge to science, and values become dependent on arbitrary decisions. As Harman says: "People attach different weights to the values they accept.... It is unclear how this sort of disagreement could be resolved except through negotiation and compromise." (P. 64) He does not say how these negotiations could be rationally conducted and how reasonable compromises could be reached. What would happen, then, is what I fear in the book: "The civilizing restraints of debate, criticism, and rational discussion would disappear and force and propaganda would take their places as the method for settling disputes" (p. 12). And this brings us to the question of justification.

THE NATURE OF JUSTIFICATION

Harman and I have fundamental disagreements about justification. He has written extensively about it, for instance, in *Thought* (Princeton University Press, 1973), and so have I in *A Justification of Rationality* (SUNY Press, 1976) and elsewhere. The main points separating us are that Harman believes that justification is a matter of coherence among one's beliefs, while I think that it involves the correspondence between one's beliefs and features of the world; Harman denies that there exists a standard external to one's beliefs by which the epistemological merits of beliefs could be decided, while I think that problems and the capacity of beliefs to solve problems present an external standard; Harman thinks that the relativism that follows from his position is harmless, while I think that it is one of the main causes of the disease of contemporary American culture. Obviously, I cannot discuss these large questions here. The reader should be aware, however, that Harman's criticisms and my replies have to be understood against this background.

The key idea of my account of philosophical justification is the distinction between the contexts of introduction and acceptance. The distinction aims to replace the mistaken distinction between the contexts of discovery and justification. There are two main differences between the proposed and the criticized distinctions. The first is that justification plays a role in both the contexts of introduction and acceptance. This contrasts with the context of discovery being nonrational. The advantage gained is that the question of what theories should be candidates for serious consideration becomes rationally answerable. The second difference is that the relevance of cultural influences both to the introduction and to the acceptance of theories must be recognized. The earlier distinction sharply divided the context to which cultural influences are relevant and the context where rational justification is possible. The removal of this ill-conceived distinction makes it possible for philosophy to play the role it needs to and should play in society.

Justification is relevant to both the introduction and the acceptance of theories, but the kinds of justification required are different. The justification of the introduction of a theory is in terms of its problem-solving capacity. It is testable by determining whether the theory is a possible solution of the enduring problem that prompted it and, if so, whether it is initially plausible. Initial plausibility is judged by finding out whether the theory manages to offer a possible reconciliation of the conflict occurring in the worldview. The worldview is the embodiment of the conventional

interpretations of the ideals in accordance with which the enduring problems are to be solved.

The justification of the acceptance of a theory depends on its truth-directedness. Its three tests are logical consistency, adequacy of interpretation, and the capacity to withstand criticism. These tests are applied to determine which of several possible and plausible solutions of problems has the best chance of being true.

Problem-solving and truth-directedness are to be applied jointly. Problem-solving by itself is a purely pragmatic criterion. It alone is insufficient, for it affords no way of choosing between fortuitous success and success due to having come closer to the truth. Truth-directedness by itself leads to triviality. For it is easy and pointless to generate a vast amount of likely truths. Some putative truths are important, and it is these we want our theories to have. Problem solving provides the required principle for distinguishing between important and trivial candidates for truths. Thus, the rational justification of philosophical theories depends on their conformity to the standards of problem solving and truth-directedness. (For this summary, I have relied on pp. 126-27.)

I shall proceed by discussing four of Harman's criticisms. The first is Harman's claim that I do "not say very much about special problems that arise concerning the justification of goals and attitudes. So, in the end, Kekes does not really argue for his conception of philosophy." (P. 60) I have already commented on how wrong Harman is about what I say regarding the justification of goals; here I shall take up the justification of attitudes.

Harman says, "Kekes's discussion of justification is marred by a failure to distinguish between the question whether a given person is justified in holding a certain attitude and the question whether there is a rational resolution of a dispute between people with conflicting attitudes" (p. 60). Now this is another misplaced criticism. Nowhere in the book do I address the question of how attitudes can be justified; my concern is with justifying philosophical theories. So, drawing the distinction Harman thinks I should is irrelevant to the aim of the book. But perhaps this is a mistake; perhaps I should concentrate on attitudes and not on theories?

My reasons for not doing so are as follows. Attitudes are psychological states; theories, including philosophical ones, are constructed by people, but once they are written down, they exist independently of people. By this I mean that theories would continue to exist, in libraries, even if people did not. Attitudes, then, are like theories in being produced by people, but they are unlike theories in that attitudes do and theories do not require people for their con-

tinued existence. Of course, if there were no people, theories would not be used; but that is another matter. What I want to insist on is that theories are objective in a sense in which attitudes are not. This makes an important difference to their justification.

In the case of attitudes, there is no room for distinguishing between justifying an attitude and justifying having an attitude, for there exist no attitudes apart from people having them. In the case of theories, however, there is a distinction between justifying a theory and justifying a person having that theory. For theories do exist, once invented and written down, independently of people.

It follows that psychological considerations are necessary to justifying an attitude, because a person's experiences, temperament, hopes, and fears are necessarily involved in the attitudes he has. And since these psychological considerations differ from person to person, so does the justification of the attitudes. What is a justified attitude for me may not be a justified attitude for you. In short, attitudes are subjective.

Theories, however, are objective. The justification of a theory depends on its problem-solving capacity and truth-directedness. These are what they are independently of psychological considerations. A theory is justified or not regardless of what anyone thinks or feels. Of course, psychological considerations enter when we ask whether a person is justified in having a theory. But notice the shift from justifying a theory to justifying a person having a theory.

In the book, I concentrate exclusively on justifying a theory. I think that theories can be justified independently of people having them. Harman does not think so; he thinks that justification has an unavoidably subjective component. That is partly why he is a relativist. And it may be that he is right and I am wrong. Surely, however, to establish that requires a good deal more than Harman has done. He faults me for not doing what I have not set out to do and fails to grapple with one-half of the book in which I aim to do what he thinks cannot be done: offer an account of the objective justification of philosophical theories.

Harman's second criticism of my view on justification concerns the relevance of cultural influences and my objections to the distinction between the contexts of discovery and justification. In the opinion of Carnap, Reichenbach, Salmon, Popper, and many others who accept the distinction, cultural influences are relevant only to the context of discovery and not to the context of justification. Harman quotes what I mean by cultural influences (p. 68), so I shall not repeat it.

Harman's view is that the "genetic fallacy consists in thinking that whether one is justified in believing something is *always* deter-

mined *entirely* by what led one to believe it in the first place. That is a fallacy. But it is not a fallacy to think that in certain cases, even in most cases, one's reasons for believing something are the reasons that led one to believe it in the first place." (P. 69)

The last sentence contains an equivocation. What leads a person to believe something may not be reasons. Thus equivocating, Harman can render this important dispute innocuous. The question is whether historical, moral, political, and other considerations are relevant to the justification of theories. The philosophers I name above and whose opinions I quote (pp. 80-81 and 88-92) think that these cultural influences have no bearing on justification. I disagree, and I argue against them in chapter 6. My argument, very briefly, is that understanding a theory is necessary to justifying it, and one cannot understand a theory unless one takes into account the cultural influences upon its formulation, so that cultural influences are necessary to justification in this indirect way. The problem about them is not *whether* they are relevant but, rather, *which* of them are relevant.

The first issue between Harman and myself is whether there is a substantial body of philosophical opinion against which I need to argue. As I say above, I quote chapter and verse to show that there is. And what does Harman do? Well, he asserts the contrary, but without taking the trouble to offer any supporting evidence. I miss the reasons behind his pronouncement.

The second issue between us is whether cultural influences should be included in the context of justification, quite apart from who believes what. It seems that Harman and I agree, for he writes: "Kekes's claim reduces to the obvious point that distinguishing the context of discovery from the context of justification does not imply that cultural factors are irrelevant to justification" (p. 70) I take it that this means that Harman thinks, as I do, that cultural influences are relevant to justification. If so, it is pleasant to have as severe a critic as Harman on my side.

I fear, however, that this involves Harman in flagrant inconsistency. For one of the important cultural influences is historical, and Harman believes that it is irrelevant to justification. Recall his claim that he sees no evidence for the "wholly erroneous view that a knowledge of history is useful in philosophy" (p. 65). Which is it then? Are cultural influences relevant to justification or not? I suspect that this inconsistency is obscured from Harman by the equivocation to which I call attention in the third paragraph preceding this.

It is important to note that my diagnosis of the sad state of contemporary philosophy in America is that responsibility is to be at-

tributed to the mistaken belief held by many philosophers that cultural influences are irrelevant to philosophy. This belief is what enables them to proceed as if they function professionally in a moral, political, historical, and aesthetic vacuum. And this is why so many philosophers find it convenient to talk only to other philosophers living in a similar self-imposed internal exile.

Fortunately, I can be quite brief about Harman's remaining two criticisms. He objects to my treatment of logic and to the use I make of Popper's idea of criticism. Now, Harman and I agree that logical consistency is one test by which we can determine the truth-directedness of a theory. I am concerned with justifying this test. I ask: Why is it that logical rules have the obvious authority they have? And I answer it (pp. 111-16) by arguing that logical rules are crystallizations of methods involved in successful practice. Their justification is that they help us proceed successfully.

Harman objects to this by saying: "This is quite wrong. It confuses inference and implication. Logic is the theory of implication. It is not a theory of method or inference in the sense of a theory telling one what to infer under certain circumstances." (P. 67) I agree with Harman that logic is about implication. However, I am interested in asking what justifies the rules of implication, and my remarks about logic are directed at answering this question. Harman takes me to be asking another question, namely, what justifies a person in inferring one thing from another. And so, once again, he misunderstands what I am doing. It is hard to know what more I could do to avoid such misunderstanding than to introduce the discussion by saying, "The question we need to ask here is... what gives logical rules the authority they seem to have" (p. 113).

Harman's criticism of the third test of truth-directedness reflects our disagreement about justification being a matter of coherence or correspondence. I think that theories should be tested by criticizing them and then seeing whether they survive criticism. In this way, we can decide which of two or more conflicting theories is better, for we can compare their capacity to withstand criticism.

Harman objects: "This makes the question-begging assumption that, if one interpretation is incompatible with another, there must be some test, some crucial experiment, that could decide between them" (p. 68). Harman is right; I assume that there is such a test—but not a crucial experiment, for that exists, if at all, only in science. But why does he think that this assumption is question-begging? If two theories conflict, they cannot both be true. We can decide between them by finding some criticism that applies to one but not to the other. Of course, it may be very hard to find such a criticism; but this has to do with the nature of theories. My view

may be mistaken, but I fail to see what question it begs.

Now Harman thinks that it is mistaken because justification depends on the coherence of one's beliefs and it is possible to have conflicting sets of coherent beliefs. This means that two theories may conflict, and there may be no rational way of resolving their conflict. I think that this consequence of the coherence theory of justification commits one to relativism. I shall end my remarks by saying why I think that relativism, and Harman's version of it, has dreadful moral and political consequences. In the book, I discuss its epistemological shortcomings.

RELATIVISM

About the dire consequences of relativism, I have said: relativists "deny, unwillingly perhaps, that fundamental questions are capable of rational answers. They are acquiescing in the view that the choice of ideals by which one lives one's life is determined by taste, temperament, accident, authority, or instinct, but cannot be rationally derived from arguments for and against them. And in resigning themselves to this opinion, they disqualify themselves from having a right to object to other people holding other ideals which are vicious, harmful, destructive, and abominable. For if all they have in favor of their ideals is unreasoned commitment, then they cannot very well object to other people's commitments." (P. 22)

Harman's response is that "people attach different weights to the values they accept. . . . It is unclear how this sort of disagreement could be resolved except through negotiation and compromise." (P. 64) The point is repeated (p. 64). This suggestion fails to draw a crucial distinction between ideals and policies for implementing them. In a democratic society, policies must be carried out by negotiation and compromise. But it is a very bad mistake to suppose that it follows from this that the ideals themselves are subject to negotiation and compromise. Many people, including Harman, make this mistake. But ideals are good or bad, justified or unjustified, quite independently of what the political realities dictate about their implementation. How ideals can be justified is the subject matter of one-half of my book. If it is supposed that ideals themselves are subject to negotiation and compromise, we end up with unprincipled men, who lack integrity and who know, as Wilde aptly said, the price of everything and the value of nothing; these people are the cynics. We are surrounded by them.

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ATTEMPTS TO REVITALIZE philosophical doctrines by placing them on a new footing merit attention at least because they may expose elements that have hitherto gone unnoticed or been given insufficient weight. This is, for example, a major strength of John Rawls's *Theory of Justice*, which casts a great deal of light on the notion of an "original position," or prepolitical state out of which some sort of social compact is supposed to arise, and on the sorts of agreements that can be imputed to "reasonable" people. Bruce A. Ackerman's attempt to revitalize liberalism, in *Social Justice in the Liberal State* (New Haven and London: Yale University Press, 1980), exhibits the same strength, with one significant difference: whereas Rawls's attempt to revitalize contractarianism is most illuminating insofar as it succeeds, Ackerman's attempt to revitalize liberalism is most illuminating precisely where it fails. We will accordingly concentrate on the failure of Ackerman's central arguments to address adequately issues that traditionally have been problematic for liberalism. Although Ackerman offers innovative discussions of several public policy issues, they are not central to his attempt to ground liberalism, and we will not discuss them here.

IDEAL THEORY AND SECOND-BEST THEORY

Traditionally, liberalism has been a response to the problem of the legitimacy of power. But Ackerman rejects the view of many liberals that "the only significant power in society comes out of the smoking typewriter of a government bureaucrat" and proposes to subject "the powers of 'private' citizens" to scrutiny as well (p. 19). All individuals, in order to sustain their lives, must control their bodies and at least a part of the world around them. But in a world of scarce resources, this gives rise to conflicts of power and to questions of legitimacy. Why should you, rather than I, exercise control over a particular share of the scarce resources that both of us need? One response, Ackerman notes, is simply to suppress the

questioner. But Ackerman proposes to take the question of legitimacy seriously, to ask what our world would look like if every question of legitimacy were met with an honest attempt at an answer. Indeed, he takes this stance as definitive of liberalism.

Ackerman's answer to this question is developed in three stages (corresponding to the first three parts of the book). In the first ("A New World") he begins with a thought experiment: a group of colonists aboard a spaceship has decided to settle a planet that, while it is wealthy, does not have sufficient resources to satisfy all the demands of all the colonists; for simplicity, all property consists of "manna," a homogeneous asset. The colonists must confront the problem of distributive justice: How should *the manna* be distributed among the colonists? (It should be noted that Ackerman's thought experiment poses the problem of justice in a peculiar way: there is no "problem of production"; for all the manna is a preexisting, collectively owned asset that is to be distributed according to rules collectively agreed upon.) Ackerman proposes to answer this question first in the context of *ideal theory*, which is constrained by two assumptions. First, the settlers have a perfect technology of justice; that is, "there never is any practical difficulty (including cost) in implementing the substantive conclusions" at which the settlers arrive (p. 21). Second, there is no danger of corruption or abuse of power; those charged with implementing the distributional scheme the settlers adopt will do just this and nothing else. Within these constraints, the settlers must decide how to distribute the available manna.

The second stage of Ackerman's argument ("Justice over Time") is also developed in the context of ideal theory. But here he confronts the problem of intergenerational justice. He introduces into his argument the complexities arising from the fact that children are continually being born into society and making their own demands on scarce resources.

The final stage of the argument ("From Ideal to Reality") is developed in the context of *second-best theory*, which is characterized by the absence of a perfect technology of justice. At this stage, Ackerman confronts the fact that the best we can hope to do is approximate the preferred distributional scheme and that even this entails costs and trade-offs.

METHODOLOGICAL LIBERALISM

The core of Ackerman's attempt to revitalize liberalism is the method by which he proposes to resolve conflicts over legitimacy.

This is the method of liberal dialogue. "Rather than linking liberalism to ideas of natural right or imaginary contract, *we must learn to think of liberalism as a way of talking about power, a form of political culture*" (p. 6, emphasis in original). The problem of the original distribution of resources, and all subsequent challenges to the distributional scheme as a whole or to any particular person's holdings, are to be resolved by a dialogue between all parties to the dispute. That is, individuals must be prepared to respond to challenges to the legitimacy of their power; individuals who cannot successfully meet these challenges must (should) be prepared to relinquish their power.

This "dialogic" approach to the resolution of conflicts over individual rights and distributive justice is allegedly unprecedented. Dialogue has, of course, played an important role in contractarian political theory; it is a device that many contractarians use to convince us that people in a prepolitical state would agree to some particular social compact or other. But the *compact*, once it is made, forms the basis for the resolution of all subsequent conflicts over legitimacy. In contrast to this, Ackerman substantially inflates the role of dialogue. Challenges to legitimacy cannot be met simply by referring to some prior agreement. Rather, each challenge would be an occasion for reopening the debate about what principles are to govern society or how these principles are to be applied. Moreover, in contrast to the natural rights tradition, in which rights provide independent, objective criteria for evaluating social practices, Ackerman offers a *constructivist* account of rights: "an ongoing social practice—the dialogue engendered by the question of legitimacy—" is "itself the constituting matrix for any claim of right" (p. 6).

Ackerman's view is further distinguished from traditional political theories by the constraints he places on liberal dialogue, which are captured by three principles set forth in chapter 1. Two of these—Rationality and Consistency—are, putatively, purely formal principles. The Principle of Rationality requires that a power-holder not simply suppress someone who questions his legitimacy but, rather, give reasons why he is more entitled to the resources he controls than is the questioner. The Principle of Consistency requires that the reasons advanced by a power-holder on different occasions be consistent with one another. These principles are alleged to be purely formal: they do not place any restrictions on the kinds of reasons that can be given to justify power; hence, *any* distributions of resources can be defended in a manner that is consistent with these principles. But Ackerman never explains why the burden

of giving reasons must be borne by the power-holder rather than the claimant. In view of the way he assigns the burden of proof, it is questionable whether the Principle of Rationality, as he deploys it, is *purely* formal. For his assignment of the burden of proof to a specific party implies a *material* component in the principle.

Substantive restrictions on liberal dialogue are captured by the Principle of Neutrality. According to this principle, nothing will count as a reason if it requires a power-holder to assert (1) that his conception of the good is superior to others' conceptions or (2) that, regardless what his conception of the good is, he is intrinsically superior to one or more of his fellow citizens (p. 11). This principle, Ackerman claims, captures the liberal's opposition to paternalism; it effectively precludes any individual or group from imposing its values on the other members of society. Thus, it imposes substantive restrictions on the kinds of claims that can be made in defense of any distribution of resources.

The three principles—Rationality, Consistency, and Neutrality—are intended to explicate Ackerman's insight that the essence of liberalism is dialogic. They also allegedly represent the case of traditional liberalism, and a political system that would emerge from dialogue within these constraints could justifiably be called a "liberal state" (p. 20). Ackerman seems to presume without argument that the principles would not result in a state that was inimical to the liberal tradition.

But it is interesting to note that Ackerman's analysis falls into immediate difficulties in dealing with a central problem for liberal theory: the rights of potential citizens. He begins with a clear-cut constructivist criterion: "Since, in a liberal state, the policy is constituted by the process of a dialogic interchange, an individual who lacks dialogic competence fails to satisfy the necessary conditions for membership" (pp. 74-75). This permits him to assume a "pro-choice" view on abortion: the fetus is a mere potential citizen and thus not a citizen of a liberal state (p. 127). This would seem to imply that infanticide is permissible as well, since, as he concedes, "a day-old infant is no more a citizen than a nine-month fetus." Ackerman recognizes this as a problem but responds to it with rather lame arguments (see p. 129). Since his constructivism assigns rights only to actual participants of the dialogue, he is vulnerable to other objections: Some members of society could decide to breed selectively a group of genetic defectives who were obliging slaves but lacked the capacity for liberal dialogue, in the manner described in Huxley's *Brave New World*. Or they could deliberately deprive normal human beings of the education required to partake

in dialogue, a standard practice in slave-owning societies. How do these victims differ from aborted fetuses? Ackerman's response defies comprehension:

Quite simply, if the aborted fetus exists at all (subsequently) it exists as a purely spiritual being—with whom we could not conceivably talk in a way that is cognizable within a liberal Assembly. The victim, however, stands before us in the everyday way; indeed, he has many of our wants and anxieties. Yet whenever he grabs something, he is oblivious to our questioning. He turns blankly away from us as we invite him to reason together. . . . While such a relationship cannot be avoided in dealing with the animal, vegetable, and mineral kingdoms, it cannot be the affirmative aim of education in a community whose very being is constituted by the common effort to discipline power through the rule of Neutral dialogue. [p. 146]

If by "common effort" he means to *include* the victims, he contradicts himself (since, *ex hypothesi*, they are not capable of dialogue); if not, his conclusion simply does not follow.

TACIT ETHICAL ASSUMPTIONS

Ackerman would, it seems, prescribe that *all* disputes over legitimacy be resolved through dialogue constrained by three principles: Rationality, Consistency, and Neutrality. The most important is Neutrality, since it is allegedly the only principle that places substantive constraints on liberal dialogue. Neutrality does play a central role in the sample dialogues Ackerman constructs. But at certain crucial junctures, Ackerman's arguments rely on additional ethical assumptions that are never argued for or even clearly articulated. These tacit ethical assumptions enter the arguments of both ideal theory and second-best theory. Without them, Ackerman's arguments would often yield quite different results. One tacit assumption—that the burden of proof always rests with the holder of power (in Ackerman's extended sense of "power")—has already been alluded to. But there are two others that play a crucial role in his argument.

Tacit Maximization Assumption

The first of these assumptions is a maximization principle with close affinities to the utilitarianism that Ackerman repeatedly castigates. This assumption is necessitated by Ackerman's constructivist view of rights ("the substance of individual rights is constructed through a social dialogue," p. 347). Allegedly, Neutrality

is the only substantive constraint on liberal dialogue; participants do not enter the dialogue endowed with a set of natural rights that can be used to block certain kinds of challenges to legitimacy and rule out some distributional schemes. Rather, all rights are determined by liberal dialogue. Thus, Ackerman must confront two very serious problems. At the level of ideal theory, he must confront the problem of citizenship: Who will be allowed to participate in the dialogue? At the level of second-best theory, he must confront the problem of conflict between individual interests and the public welfare: To what extent may the individual be required to sacrifice his or her own ends for the welfare of society?

Ackerman's response to the first question is to argue that disputes over citizenship must also be resolved in accordance with Neutrality. Citizenship is at the core of liberalism, he claims, "involving as it does the right to have one's rights determined through a Neutral conversation" (p. 93). To allow this prior right to be determined by a method that did not meet the constraints of Neutrality would simply trivialize liberalism. For example, Nazis could avoid the charge of violating Consistency in claiming both "Aryans are better than Jews" and "All citizens are created equal" (cf. p. 7), if they could arbitrarily exclude Jews from citizenship. In the real world, Ackerman argues, the liberal account of citizenship translates into an immigration policy under which newcomers must be admitted to the community, either by simply being granted citizenship or by being allowed to replace someone who is already a citizen, unless it can be shown that this would cause a disruption of the *liberal* community—for example, by reducing the proportion of citizens who are committed to and experienced in liberal dialogue below some threshold. In short, the only reason to exclude immigrants is to protect the liberal dialogue itself (pp. 94-95).

But notice what has happened here. Ackerman has introduced a kind of *maximizing principle*: Follow policies that will protect "the operation of liberal institutions" and, thereby, "the ongoing process of liberal conversation." If, as he claims, citizenship is "conceptually prior to all other power struggles," this maximizing principle will have the effect of making all individual rights instrumental. For the rights that an individual will have are contingent on whether or not he or she attains the status of a citizen, and when the latter is made contingent on whether or not it is consistent with preserving liberal dialogue, then individual rights may be sacrificed to the "higher" goal of preserving the liberal state. But it is far from obvious that Ackerman's three principles entail that the liberal state is such an end in itself; rather, this seems to be an addi-

tional tacit assumption.

At the level of second-best theory, another maximizing principle functions to resolve disputes over inequality. Ackerman argues that the liberal dialogue yields a presumption in favor of equal distribution of society's resources and equal sacrifice by all to fund social programs that meliorate inequality. Equal distribution, Ackerman is quick to point out, does not entail simply giving everyone an equal share of society's resources; rather, those who suffer certain handicaps—for example, birth defects—must be compensated so that they are not at a disadvantage relative to other members of society. To the extent that this and other programs are undertaken by the state, there is also a presumption in favor of requiring everyone to contribute an equal share. This presumption can be overridden *only* if it can be shown that giving special advantages to some will induce them to be so productive that *everyone* will be better off than they would be under a scheme of equal sacrifice. Ackerman calls this kind of argument, which resembles Rawls's difference principle, an appeal to general advantage (pp. 239-40, 257-61).

This argument is important because of the twin problems of scarce resources and imperfect technologies of justice. Even in a community in which all members are committed to liberal dialogue, there will be some legitimate claims that cannot be met, either because resources are too scarce or because there is not the technology to remedy the handicaps of some citizens. If giving special advantages to some members of society would meliorate this situation, we are justified in doing so. Once again, individual rights are instrumentally justified, since individuals are granted those rights whose exercise will promote the general advantage. But in this case the justification depends upon a gratuitous maximizing principle. For the principle that individuals may be treated unequally provided that each person is better off than he or she would be otherwise does not follow in any obvious way from the Neutrality principle that each person is at least as good as any other. Nor does Ackerman provide a persuasive argument that his appeal to the general advantage is a legitimate part of the liberal tradition.

The Egalitarian Assumption

A glaring *non sequitur* recurs throughout the book in nearly every application that Ackerman makes of the Neutrality principle, starting with the first dialogue on pp. 15-16:

Q: I want X.

A: So do I! And if I have my way, I'll use force to stop you from taking X.

Q: What gives you the right to do this? Do you think you're better than I am?

A: Not at all. But I think I'm just as good.

Q: And how is that a reason for your use of power?

A: Because you *already* have an X that's at least as good as mine is. If you take this X as well, you'd be better off than I am. And that's not right. Since I'm at least as good as you are, I should have power over an X that is at least as good as yours is.

Q: But haven't you just violated Neutrality?

A: Not at all. Neutrality forbids me from saying that I'm any better than you are; it doesn't prevent me from saying that I'm at least as good.

Etcetera, etcetera.

In order to derive the inference made by A—"Since I'm at least as good as you are, I should have power over an X that is at least as good as yours is"—one needs not only the Neutrality principle, which does imply that Q is at least as good as A, but also a principle of justice such as the following: A has a claim to more of X than Q does only if A is a better, that is, *more deserving*, person than Q. But for Ackerman to assume that all entitlements must be grounded in desert is to beg a fundamental question against theorists, like Robert Nozick, who contend that entitlement is a more fundamental concept than desert: one deserves, for example, the product of one's labor only if one produced it with natural assets and nonhuman resources to which one was entitled. That Ackerman does beg a basic question becomes obvious as soon as one plays the following dialogue, which is intended to parallel Ackerman's dialogue:

Q: I want your left kidney.

A: I want to keep it. And I'll use force to stop you from taking my kidney.

Q: What gives you the right to do this? Do you think you are any better than I am?

A: Not at all. But I think I'm just as good.

Q: Ah, hah! You have just violated Neutrality. My only kidney is about to fail, and you have two perfectly good ones. If you keep your kidney and prevent me from taking it, you'll be better off than I am. And that's not right. Since I'm at least as good as you are, I should have power over a kidney that is at least as good as a kidney you have power over.

Etcetera, etcetera.

Although Ackerman would seem obliged to accept the inference made by Q in this dialogue, since it employs the same logic as the previous dialogue, it is not obvious that A must consent to become a source of spare parts for Q. Cannot A object without inconsistency, "Even if you are at least as good as I am and have two failing kidneys, you have no claim to mine"? If Q were to ask if A were more deserving than Q is, A could respond: "That's irrelevant. It's *my* kidney!" Q can succeed only if A concedes an *egalitarian* principle: "If we are all equally good from the standpoint of liberal dialogue, we have an equal claim to everything." But it is not at all obvious that A is abjuring allegiance to the liberal tradition in rejecting this egalitarian precept and insisting upon his or her right to keep both kidneys. It is very likely that Ackerman would himself not want to go as far as kidney egalitarianism. But no good reason has been provided for driving a wedge between rights to person and rights to property and asserting egalitarianism in nonhuman assets. Ackerman tacitly assumes the latter egalitarian principle, but it is not at all obvious that A would be illiberal in rejecting it. A could still have a theory of social justice, namely, by supplementing the Neutrality principle with a theory of entitlement. Such a theory might set forth the principles according to which individuals could acquire entitlements (starting with the entitlement to their own persons) and transfer them and principles according to which individuals should be compensated or punished when entitlements were infringed upon. Insofar as a social system conformed to the principle of Neutrality, individuals would receive "equal protection" in the enforcement of these principles. But Q and A might be entitled to quite different, unequal human assets and property. Since Ackerman has not ruled out such a nonegalitarian interpretation of Neutrality, his arguments against Nozick beg the question.

Ackerman's egalitarianism colors his discussion of a variety of issues throughout the book, in conjunction with both ideal theory and second-best theory. For example, in the chapter "Free Exchange," Ackerman defends a liberal theory of economic and other social relationships founded on the egalitarian principle that each citizen has a "prima facie right to an *equal* share of material reality" and an allegedly "individualistic property system" (p. 171). He adds that liberalism "is grounded in each citizen's ideal right to use his transactional power as he sees fit so long as he does not engage in any act of censorship or monopolization." A few pages later, however, Ackerman repudiates as "myopic" Nozick's defense of Wilt Chamberlain's use of his natural talents to ac-

cumulate great wealth through voluntary transfers. All exchanges require the exchange of something produced with one's own genetic endowment through relatively costly negotiations in a transactional network. Nozick's argument, he concedes, might have some validity in a world in which we were equipped with costless transmitters and shields that enabled us to negotiate with whomever and only whomever we chose to; alas, this is not our world. If one's abilities give one "genetic dominance" over other citizens or if one's "messages" have a "privileged place in the transactional network," then one is not unqualifiedly entitled to what one receives (p. 185).

How can this be reconciled with Ackerman's earlier assertion of the "citizen's ideal right to use his transactional power as he sees fit so long as he does not engage in any act of censorship or monopolization?" The apparent answer is that Wilt Chamberlain is a monopolist. This may sound implausible, but Ackerman uses the term "monopoly" in a peculiar way. To be sure, he proceeds from a familiar description of monopoly: "Quite simply, you are guilty of the charge of monopolization if you make *any* effort to sabotage my shield so that you can impose a special sanction on me for dealing with one of your competitors" (p. 178). This suggests that monopoly involves the initiation of coercive force to prevent others' entry into markets. But Ackerman soon reveals his egalitarian bias, for we learn that if our situation places us in an advantaged situation for negotiating with others, then we are monopolizing. Because Chamberlain is taller, faster, and innately possesses many of the skills required for basketball, he possesses "genetic dominance" over his fellow citizens. This unfair advantage gives him "power" over others that is like a monopolistic sanction preventing others from competing fairly for wealth and fame. Ackerman uses these notions of monopoly and unfair competition to argue for government regulation: "To the extent that government regulation of individualistic property rights permits the reduction of negotiation costs, these measures can be readily justified in dialogic terms" (p. 188). Thus, Ackerman's systematic confusion of entitlement and desert leads to a systematic confusion of monopoly in the sense of using coercive force to prevent others from trading and "monopoly" in the sense of being better positioned than others to carry out exchanges.

Similar confusions crop up in the chapter "Exploitation," which begins his discussion of second-best theory. This theory addresses the situation in which individuals differ widely in the amount of wealth, quality of genes, or level of education they have, and in

which there is no costless way to rectify these inequalities—that is, no perfect technology of justice. The solution offered by second-best analysis is that “each citizen should bear an equal share of the costs” of social imperfection. One group of citizens is relatively more advantaged than another if it has more wealth, better education, and so on. When one group is more advantaged in a number of different ways, Ackerman describes this as “the exploitation of one group by another” (p. 242). He advocates a welfare state in which legislators would arrive at a budget (above a minimally acceptable baseline defined by the judiciary) to remedy all the clear cases of exploitation generated by the prevailing social structure (“racism, sexism, genetic handicap, and initial inequality of wealth,” p. 251).

Ackerman is quite explicit about what he takes to be the major difference between his view and that of libertarians and other proponents of a minimal state: “The statesman who is most likely to choose an intrinsically exploitative budget is precisely the advocate of *laissez faire*. While proposals for ‘minimal’ government differ in detail, I take their essence to be a refusal to permit the state to question the overall distribution of power in society” (p. 253). The gist of Ackerman’s argument is that, if the libertarian opposes the use of the state to redistribute wealth to the genetically handicapped, for example, the libertarian is defending an unjust power relationship. For the genetically handicapped are “just as good as” the genetically advantaged and thereby equally entitled to whatever the genetically advantaged have produced. If the genetically advantaged won’t share with them, they are using their “power” to perpetuate the “exploitation” of the genetically handicapped. Unless one concedes the egalitarian (assumed) premise on which this argument turns, it is not in the least convincing.

THE BETRAYAL OF THE LIBERAL TRADITION

We have argued that in many cases the results sought by Ackerman can be obtained only if one concedes tacit ethical assumptions such as maximization and egalitarian principles that stand in no clear logical relationship to the three principles of liberal dialogue enunciated at the beginning of the book. A far more serious difficulty for Ackerman’s project is that the introduction of these assumptions threatens to subvert the liberal tradition that he is striving to champion. Ackerman represents his extended defense as a “triumph of individualism,” in contrast to utilitarianism, which “fails to take individualism seriously enough” (pp. 347, 342). But

in the course of Ackerman's "constructivist" defense of rights, one finds that his individualism has died a death of a thousand qualifications.

Ackerman's analysis also fails to solve the central problem of liberal theory with which Mill wrestled: how to define a sphere of individual freedom consistent with public responsibility. He remarks that "the liberal ideal is a social order in which *free* people act within a *just* power structure" (p. 376). Ackerman criticizes "conservative *laissez faire*" for prizing freedom over justice and utilitarianism for not taking individualism seriously enough. He confesses: "Privileged people, like myself, must confront the fact that we have no right to use all the power at our command to further our own personal ends in life." Yet he advocates an egalitarianism so sweeping in ideal theory and a theory of rights so constructivist and tentative that—from a libertarian perspective—there remains scarcely any sphere of individual freedom at all. In Ackerman's second-best theory we are all exploiters and are entitled only to what "privileges" can be justified—this fiscal year—to promote the general advantage. Next year these may be included in our "equal sacrifice."

In fairness to Ackerman, this does not seem to be his intention. For he states that "it is the very point of Neutrality to permit each citizen to defend his rights *without* requiring him to convince his fellows that his personal good serves the common good" (p. 372). But if this is its point, it is certainly never attained. He attempts to distinguish a legitimate sphere of free exchange (legitimate as long as one is not a monopolist like Wilt Chamberlain) by distinguishing between intragenerational transfers and inheritance. (Both transfers are legitimate on Nozick's principle of transfer.) But intragenerational exchanges are vulnerable to egalitarian objections of the same sort as those that he uses against inheritance. Inheritance of large gifts creates "transactional advantages" for the recipients; but, argues Ackerman, free exchanges are implied by each citizen's right to pursue the good (p. 212). This is less a distinction than a contradiction. Intragenerational exchanges—for example, exchanging accumulated manna with one architect rather than another for a preferred house design—also make one person more advantaged than another. The right of the consumer to pursue the goods that he prefers simply contradicts the right of the unsuccessful vendor to be at least as well off as the successful vendor.

At the outset, we remarked that Ackerman's book was most instructive for what its failures reveal. First, they reveal the inadequacy of a "dialogic" or "constructivist" methodology to deal

with problems that can only be resolved by a general theory of human rights. Second, they reveal the impossibility of reconciling the liberal ideal with the presumption of egalitarianism and a maximization principle that places a higher premium on the liberal *state* than on individual rights. Ackerman's failures reveal, in sum, that the liberal ideal—which he *correctly* describes as “a social order in which *free* people act within a *just* power structure”—can become coherent and defensible only when it is again rooted in the classical liberal tradition that twentieth-century liberals have abandoned.

*This critical note resulted, in large part, from several discussions of Ackerman in a reading group that also involved Thomas Attig, Louis Katzner, Hyung Kim, and Eleanor Roemer. Often after ideas had taken shape through argument and counterargument, it was difficult for us to distinguish our contributions from those of our colleagues. We are especially indebted to Louis Katzner for detailed and incisive criticisms of an early draft. Although he has not entirely convinced us of the errors of our ways, we have with his help eliminated unclarities and infelicities.

Book Reviews

ON JUSTICE

The virtue of J. R. Lucas's *On Justice* (London: Oxford University Press, 1980) is not that it offers a new theory of justice destined to rival the one put forth by John Rawls in *A Theory of Justice*. Nor is it that the book is replete with ingenious examples and puzzles that will set one to thinking. Rather, it is that the book constitutes a paradigm example of good, solid, conceptual analysis and commonsense thinking as applied to the topic of justice. The author gives one a real sense, not so much of the importance of justice, but of its scope and limits. Perhaps the most important message of this book is that in society there is, of necessity, a trade-off between justice and freedom: social justice does not, and cannot, guarantee interpersonal justice (p. 197).

Lucas holds that a just society is one that accords its members a degree of autonomy and so, by way of rights, is one that guarantees all of its members a sphere of freedom in which they may do as they please (p. 29). Clearly, from the fact that justice requires a sphere of freedom, it does not follow that persons will act justly within this sphere. For example, a professor does a student a grave injustice if he believes the student to be first-rate but refuses to write a needed letter of recommendation for the student because he does not like the student's ethnic or religious background or because the student is a woman. A student in this predicament has no formal means of redress. Nor is it obvious that there *should* be any. After all, a letter of recommendation is the sort of thing that, if not written willingly, is perhaps best not written at all.

The above example of an interpersonal injustice that is compatible with social justice is, I think, superior to Lucas's example of a person disinheriting his family (p. 31). Disinheriting is a kind of taking back what one has given; it constitutes altering what a person had been led to believe he could count on, and there is something to be said against doing just that. In the letter of recommendation example, however, I did not suppose that the student is led to believe that he could count on a recommendation from the professor if his (the student's) performance in class is first-rate. This need not be true at all. The professor could make it manifestly clear that he does not write letters of recommendation for Jews, minorities, and women no matter how well they perform in his class. Nonetheless, in the case of those who are first-rate, his not doing so would still be a grave injustice.

On Justice contains a rather illuminating discussion of game theory (chap. 3). For instance, if the prisoner's dilemma makes it clear that complete selfishness on the part of everyone will lead to results that everyone will find undesirable, it would be a mistake to think that complete altruism

on the part of everyone does not (p. 49). In chapter 4, "Natural Justice and Process Values," the observation that, in order to be effective, "justice must not only be done, but be seen to be done" (p. 82), illuminates our conviction that a person should not be judge in his own case. And the chapter on punishment (chap. 6) contains a useful discussion of the difference between punishment and revenge (pp. 129-32).

While Lucas is for the most part a remarkably sensible writer, the chapter entitled "Justice and Law" does contain some quite disturbing asides. He writes as if it were obvious that the incarceration, after Pearl Harbor, of Americans of Japanese descent could easily be defended as fair (p. 121). This is far from obvious; yet Lucas does not advance a single consideration, let alone argument, in support of his way of regarding the matter.

As for his aside on sexism, let me say this. That sex has often proved to be correlated with some feature that is relevant to the performance of some task is beyond dispute. What turns on this, though, depends on the explanation for the correlation. It is one thing if the correlation has nothing to do with past prejudices and forms of discrimination that have resulted in women having a diminished or, at any rate, skewed, sense of self; it is quite another if the correlation is inextricably tied to these things. We have sexism in the latter instance but not in the former. (I hold that sexism, like racism, is by definition morally objectionable.)¹

As one might expect, given the title of this book, Lucas devotes a chapter to Rawls's views on justice. It is a fair criticism of Rawls that, in regarding the natural endowments of people as a common asset, he leaves himself somewhat vulnerable to precisely the charge he makes against utilitarianism, namely, that it does not take seriously the distinction between persons (pp. 189 ff.)² It is worth noting, however, that Rawls's premise does not yield the conclusion that he is a radical or strict egalitarian; for this premise is used in the argument for the difference principle, which applies to the basic structure of society. It is not Rawls's view that any and every inequality at the interpersonal level is impermissible. After all, he devotes an entire section of the book to the problem of envy, which is generated by economic differences.³ This section would be quite unnecessary if Rawls were a radical egalitarian. In fact, a very clear measure of his nonegalitarianism is that for him the most important primary good is self-respect, which consists of the conviction that one's plan of life is worthwhile, and which is underwritten by the primary good of liberty.⁴ Thus, Rawls wants to say that, so long as people have the conviction that their plan of life is secure, they are rather oblivious to the differences that surround them.⁵ So, if it is true that, in connection with our natural assets, Rawls starts with a very egalitarian premise in the original position, the fact of the matter is that the results are very nonegalitarian—perhaps surprisingly so. This is a testimony to Rawls's tremendous philosophical acumen. Like many, Lucas seems not to have read Part III of *A Theory of Justice*,

at least not carefully enough.

On Justice is not a very powerful philosophical work. It covers too much too quickly to be that. But, for this very reason, it is a very suggestive book. It raises many issues to think about. While the seasoned moral philosopher will not gain much by reading it, others can do so with profit.

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1. Since facts cannot be sexist or racist, I hold that true claims about the differences between women and men or minorities and nonminorities cannot be, either.

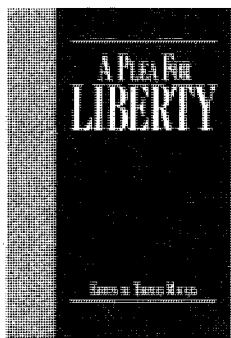
2. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 27. On the topic of natural assets and Rawls's theory of justice, I find it rather surprising that Lucas does not cite David Gauthier's very important article, "Justice and Natural Endowment: Toward a Critique of Rawls's Ideological Framework," *Social Theory and Practice* 3 (1974): 3-26.

3. *A Theory of Justice*, sect. 80; see also sect. 81.

4. *Ibid.*, sects. 67, 82.

5. *Ibid.*, p. 442. On this point, I have tried to show that the argument is not as successful as Rawls would like to think. See my "Rawlsian Self-Respect and the Black Consciousness Movement," *Philosophical Forum* 9 (1978): 303-14.

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ECONOMIC LIBERTIES AND THE CONSTITUTION

Consider the following peculiarity of history: In 1937 the Supreme Court falls under attack for standing in the way of popular New Deal measures and is induced by President Franklin D. Roosevelt's "court-packing" proposal to curb its much-maligned judicial activism. The Court's adherence to strict doctrines of constitutional due process is depicted as archconservative, and its opponents are styled as speaking for a new liberal theory of popular government.

The years roll forward to 1982, and the judiciary finds itself again under attack by a sitting administration, this time a "conservative" one. Do the right-wingers seek to roll back the changes Roosevelt wrought in the courts, as the textbooks say they should? Hardly. Here are the Reaganites in Congress lodging more than two dozen bills to *further* restrict the judiciary! Again the cry goes up for judges to "desist from actual policy-making,"¹ and the Justice Department announces plans to oppose the growth that "expands judicial power at the expense of legislative power."² Like 1937, 1982 has those who defend judicial activism as a necessary palliative to the breakdown of legislative processes—only this time the defenders are Common Cause and the American Civil Liberties Union.

The surface irony present in this seeming turnabout vanishes once one understands that today's campaign for restrictions on courts is largely the product of social-issue populists; it is aimed at reversing decisions on abortion, busing, prisoner rights, and other matters close to the heart of the "Moral Majority" constituent. Economic intervention has, to be sure, been initiated or aggravated by the judiciary often enough that new restrictions on activism may preserve a businessman's liberty now and then, but this result will be an accident of the administration's campaign. Certainly there is no call being made to reverse the coup d'état of 1937.

So, if economic conservatives and others of a more nearly libertarian persuasion are influential within the Reagan administration, they have yet to be heard from concerning future directions for constitutional law. Rectifying this lack is a challenging new book by Bernard Siegan, *Economic Liberties and the Constitution* (Chicago: University of Chicago Press, 1980). Siegan, distinguished professor of law and director of law and economic studies at the University of San Diego School of Law, is perhaps best known for his seminal work on voluntary alternatives to government land-use control.³ Here he speaks to a wider audience, arguing that our current public concern over judicial activism is in fact one product of a constitutional approach that, having given up protection of the rights of contract and property ownership, is forced willy-nilly into creating vague new "rights" and, with them, opportunities for judicial policymaking. He

paints a picture of a constitutional system adrift, which could regain coherence by applying across the board concepts of due process reserved today for personal and social liberties only.

"The question," states Siegan, "is really about equal treatment for liberties." That may be, but the better part of what makes Siegan's case initially arresting is the simple breakdown of economic interventionist doctrines themselves. Professor Siegan, no fan of the "Brandeis brief" method of substituting sociology for constitutional analysis, is nonetheless able to cite 53 studies illustrating the failure of regulation.

Better yet is to recall the rationales that were originally offered for intervening in the economy and should be expected to stand the test of ensuing experience. Take, for example, the Supreme Court opinion usually described as the "switch in time that saved nine," *West Coast Hotel Co. v. Parrish*, in which the High Court abandoned economic due process subsequent to Roosevelt's court-packing threats.

Parrish upheld a Washington State minimum-wage law for women and minors, overturning the Court's longstanding opposition to such measures, enunciated in the 1923 case of *Adkins v. Children's Hospital*⁵ and reaffirmed just a year prior to *Parrish*.⁶ The 1937 reversal approvingly quoted Justice Holmes's dissent in *Adkins* to the effect that:

This statute does not compel anybody to pay anything. *It simply forbids employment* at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that *women will not be employed at even the lowest wages allowed unless they earn them*, or unless the employer's business can sustain the burden.⁷

Parrish enlarged upon this theme by endorsing another *Adkins* dissent, by Justice Taft, concerning the economics of minimum-wage legislation. Taft believed that employers would absorb the wage increases by accepting reduced profits. Conceding that "in individual cases hardship may result"—meaning, presumably, that some women would be thrown out of work—*Parrish* held, as per Taft, that the benefit to the general class of employees would justify the exceptional injury.⁸

All this has crystallized in weary practice since 1937. Experience has shown, and economics explained, that in response to the minimum wage employers do *not* simply absorb the increased cost; the marginally profitable companies disinvest or fail, eliminating the jobs of their employees. In response to the reduced profitability occasioned by higher wage costs, investment in the industry narrows, reducing the supply of goods to the market. Thus does the consumer share in part of the cost of the legislation. Throughout all the remaining companies, those employees who cannot produce value equivalent to the minimum wage will have been let go, as Justice Holmes casually predicted.

We can no longer look benignly upon the arbitrary redistribution of income that occurs, since Taft's "exceptional cases" of hardship appear

more nearly the systematic norm among disadvantaged groups, while those reaping the "general benefit" include primarily workers whose productivity is at least sufficient to fund the extra burden of a politically active union. In fact, this state of affairs does not sit well today at all. Economic interventionism has earned a heap of scorn—which has at least robbed courts of the ready presumption of efficacy in considering regulatory proposals. Yet the system might still be ultimately perfectable, or at least refinable, were it not for the spate of constitutional anomalies it generates. Such anomalies arise in the practice of what Siegan has chosen to call "unequal treatment" of liberties. Here is the core of what most readers will find immediately and compellingly persuasive about *Economic Liberties and the Constitution*, and in his analysis of these contradictions Siegan has truly advanced the debate.

The primary disjunction today is between economic liberties and a new class of "fundamental rights and interests" that has grown up in the last four decades: rights of expression, the right to privacy, the right to travel, certain criminal procedures, voting rights, and other material interests sometimes linked to government entitlements. Prior to 1937, rights of expression and related conceptual liberties were treated in a manner roughly consistent with economic liberties—both were balanced against the legitimacy of the government's objectives in restricting them. Following the decline of economic due process, the balancing test itself became controversial; civil-liberties supporters wanted an absolutist construction given to these freedoms. Hence the emergent doctrine of fundamental personal rights and "suspect classifications"—and, too, the de facto reappearance of a more virile due process, but one limited to a few favored liberties.

The 1938 case of *United States v. Carolene Products Co.*⁹ illustrates one resultant contradiction. Here the Court upheld a statute outlawing the sale of milk substitutes in interstate commerce, legislation clearly benefiting the powerful dairy lobby without demonstrating any greater threat of public harm than that some consumers might enjoy the opportunity to deprive themselves of the fat content of whole natural milk. Footnote 4 to *Carolene Products* begins to enunciate the suspect classifications doctrine, suggesting that, while in general regulatory acts will be presumed valid, measures bearing upon particular religious, national, or social minorities may receive closer scrutiny on the theory that political processes do not normally operate to protect them.

Siegan goes to the heart of what is wrong here when he observes that "the footnote incorrectly assumes that the infirmities of legislatures are confined to certain subject matter." On a scale that can be petty or profound, a *failure of political process* follows when regulation disturbs the marketplace.

This power and authority spill over into the marketplace of ideas that Holmes in his later years was so concerned to maintain almost inviolate. Producers, sellers, and sometimes even consumers who re-

quire the approval or dispensation of the regulators surrender willingly their right to criticize rather than imperil their standing with the authorities. They are aware that political contributions, speeches, or articles unwisely directed may lead to unpleasant consequences, *equal in result to sustaining a substantial fine or penalty*. [P. 203, emphasis added]

Compared to the voting power amassed by labor, consumerist, or environmentalist interest groups, business owners would seem to constitute a paradigmatic minority. Even so, it is perhaps difficult to conceive of business as powerless until we realize that in the typical *Carolene Products* scheme of regulation, restricted entry, and consumer "protection," the bulk of so-called business money is spent supporting the restriction. Because of the nature of *politics*, typically it is the regulationist businesses whose interests are clearly focused, while those who would be injured have only a diffuse perception of the threat. Indeed, our regulation has developed a fine talent for disenfranchising and impoverishing those who lack either the proper residential address to vote, the legal standing to sue, or the financial resources to conduct an effective fight.

In truth, there is no way to police an "equal opportunity to political access" except on the basis of a schema of nonnegotiable rights applicable to all, which becomes part of the ground rules for political participation. But we do know that, while legislation affecting religious, national, or racial minorities receives strict scrutiny under the suspect classifications standard, economic minorities can be systematically, as contrasted to occasionally, injured by the political processes to which they are supposed to turn for relief. It simply will not do to presume that their "money," real or imagined, gives them political power.

Inconsistency emerges again when we compare judicial attitudes toward censorship and regulation. False and misleading information poses great dangers to society, argues Siegan—greater than the risks of liberty in the material marketplace. Misinformation can start wars and change governments. Still, we forbid censorship out of a pragmatic fear that it will be ugly, arbitrary, and must fail to achieve worthwhile ends. The consensus is that there does not exist such a thing as benevolent public-spirited censorship. What, then, is the basis for the double standard that supposes that government regulates—censors—economic activity more beneficently than it does expression? Surely not because the danger is greater or the process more rational!

Professor Siegan's remedy for these anomalies will not be well received by the right-populists who are currently busy trying to strip the Court's personal rights category of its near-absolute status. Instead of urging another jurisprudential "retreat" reminiscent of the 1937 abandonment of economic due process, Siegan is content (perhaps pleased) to leave the strict-scrutiny standards in place for personal liberties. And he has little to say about the "intractable" conflicts arising from government entitlements

which create so many new pseudo-rights.

What *Economic Liberties and the Constitution* does present is a single modest proposal. Reserving judicial concern for personal and expression rights is a political act awaiting a constitutional justification. Article III indicates that the judicial power shall extend to "all cases in law and equity," not merely noneconomic ones. Reallocating judicial concern more evenly would begin to right the awful imbalance present in constitutional law today and would afford a measure of protection to long-ignored liberties.

In practice this means that

a statute or ordinance shall not be deemed valid if . . . it (a) denies an owner the use and disposition of property without just compensation, or (b) denies an individual or corporation freedom to engage in an occupation, trade, profession, or business of one's or its choosing, or (c) denies an individual or corporation freedom of contract to produce and distribute goods and services. [Pp. 324-25]

Strict scrutiny according to these principles would go a long way toward enacting a free-enterprise Nirvana. Siegan believes that the American people, much less the legal community, will not stand for that; and while a libertarian may chafe at the necessity, finding the formula for achieving the maximum acceptable protection for liberty is a task worth surveying.

The formula offered is an "intermediate" standard of scrutiny comparable to the due process review that prevailed throughout much of the *laissez-faire* era. The government would bear the burden of proof that the legislation achieved a proper and compelling state interest, that the specific infringement of liberty was substantially related to achievement of such objective (the "means-ends test"), and, finally, that the same objective could not be achieved while more nearly preserving liberty (the "less-drastic-alternative test").

That Professor Siegan is prepared to countenance increased judicial activism is evident in his stipulation that the Supreme Court, in requiring the existence of a compelling state interest, must look "beyond the stated purposes and post hoc rationalizations into the history and political circumstances attending the enactment to ascertain what the lawmakers sought to achieve." That the rebirth of economic due process would to a large extent quell the incessant litigation wrought by government intervention is also no doubt true.

So, what we have is a neat argument. The proposed rules of intermediate scrutiny are advanced in the spirit of their having already been well-accepted, although in personal liberties cases. "No need exists for either a new constitution or a constitutional amendment," says Siegan, "because these provisions describe the present Supreme Court's approach to liberties it deems fundamental." Those who fully grasp the arbitrariness, first, and the *unfairness*, second, of denying economic liberties commensurate status before the law will be ready to see the Siegan standards applied across the board.

As tidy and, indeed, persuasive as this argument is, its limitations are worthy of note. *Economic Liberties and the Constitution* does not emphasize a straightforward appeal for the legitimacy of economic due process. Rather, it argues a kind of equal protection case: if we protect A, then it is patently unfair to ignore B. Siegan has produced a clear body of evidence that injuring economic liberty inevitably brings harms upon rights of expression, but he does not claim an essential unity for rights of both kinds. The book is inclined to brush over the observation that the viability of "intermediate scrutiny" as a wall against injustice is only as good as the strength of whatever essential libertarianism might exist in society at any given time. The standard can show us the road back to economic due process, but it seems not to have stood in the way of a gradual departure from the "old" (pre-1937) economic due process where such tests were applied. Lastly, Siegan does not address himself to the philosophical soft-headedness that gave rise to ad hoc "fundamental rights"—while allowing constitutionally protected freedoms to wither.

Thus, one can envision a couple of worrisome scenarios. One is that the Moral Majoritarians now on the warpath against the Supreme Court would welcome the opportunity to bring nearly inviolate rights of expression down to a standard of review comparable to that which currently applies to economic liberties; *both* could be curbed in the name of equal treatment for liberties. Another is that the campaign to make economic freedom a fundamental right would further excite those who would devalue all rights through counterfeiting and mindless proliferation. Sooner or later we will be due for a reappraisal as to why ad hoc constitutional rights seem necessary in the first place, and at that point we had better have established the lineage of economic liberties under the Constitution.

On balance, these concerns do not loom large. They are the kind that arise whenever someone attempts to take the first practical step toward a distant political ideal, and the dangers are not diminished by failing to take that step.

Purposefully, and with resolute attention to context, Bernard Siegan has assembled a case that will compel agreement among a broad audience concerning the need to correct the glaring incongruities of present law. Like the economic studies of the last decade that created a national consensus that regulation rarely succeeds on a pragmatic level, *Economic Liberties and the Constitution* will define an agenda for change among those who prize a justice that is not a sometime thing.

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1. Attorney General William French Smith, quoted in Stephen Wermiel and Robert E. Taylor, "The Administration's Critique of the Courts," *The Wall Street Journal*, Jan. 28, 1982.

2. Solicitor General Rex Lee, quoted in *Wermiel and Taylor*, *ibid.*
3. See Siegan, Bernard H., *Land Use without Zoning* (Lexington, Mass.: D.C. Heath, 1972).
4. 300 U.S. 379 (1937).
5. 261 U.S. 525 (1923).
6. *Morehead v. New York ex rel Tipaldo*, 298 U.S. 587 (1936).
7. 300 U.S. 379. Emphasis added.
8. *Ibid.*
9. 304 U.S. 144.

THE POLITICS OF PROCRUSTES

Procrustes is a mythical giant with a brutal disregard for individual differences. According to legend, he seized hapless travelers and modified their dimensions so that they might perfectly fit into his bed. Anyone too short was stretched; anyone too large was trimmed to fit. Justice came to Procrustes when the hero Theseus killed him by forcing the villain to sleep in his own bed. Anachronistically, we might say that when Theseus arranged for Procrustes himself to experience this unique brand of hospitality, he misapprehended the giant's willingness to universalize the maxim underlying his practice. As a modern-day Theseus, Antony Flew aims to destroy procrusteanism—not by serving procrustians a lethal dose of their own social panacea but rather by exposing its dark, noxious nature to the daylight of rational scrutiny. Such is the effect of Flew's latest book, *The Politics of Procrustes* (Buffalo: Prometheus Books, 1981).

According to procrusteanism's most sacred shibboleth, a society that makes its members more equal is morally better on that count alone. We should not be deceived about the thrust of this, for, as Flew reminds us, what we face here is "not a personal ideal, to be pursued by individual persuasion, and sometimes sacrificial example, but a political or administrative policy, to be enforced by the full power of an ever more extended state machine."

Procrusteanism's most extreme proponents interpret their commitment to making people equal in an unqualified way. Not content with forcible income redistribution in the pursuit of equalizing wealth, some advocate the abolition of that bastion of inequality—the family—while others toy with the desirability of "cognitive equality," a condition in which no one would know more than anyone else. Christopher Jencks, chagrined by the comparatively modest procrustean gains achievable through social engineering, candidly acknowledges that his principle might necessitate a eugenics program. "For a thoroughgoing egalitarian, however, inequality that derives from biology ought to be as repulsive as inequality that derives from early socialization." That such a statement comes from the writings of a respected Harvard professor bears witness to the fact that the idea of a socially controlled breeding program is not a distraction unique to crackpots and fascists.

Ironically, procrusteanism's obsession with comparative considerations can as easily be satisfied by a program that equalizes ignorance as by one that equalizes knowledge. It is a commonplace to think that egalitarianism is one of the pillars of the welfare state, but as Flew points out clearly, to think this is a mistake. Unless superseded by some other principle of oblige-

tion, the procrustean principle is indifferent between equal welfare and equal ill-fare. Supporters of a welfare state are commonly motivated by a concern that no one fall below a certain level of well-being. To accept the idea that no one should be distressed in certain ways involves a commitment to eliminate some distress. A determination that no one should be *unequally* distressed would positively forbid the elimination of a distress if the *balance* of distress were unfavorably affected. Perversely, the determination to eliminate unequal distress could be satisfied by an absolute increase in distress.

It was said of the late football coach Vince Lombardi that he treated all of his players equally—like dogs. For respected intellectuals and politicians to proudly affirm their allegiance to a cardinal principle, putatively moral, that is not offended by such “fair-mindedness” may seem incredible. Thus, Flew spends considerable time showing that the ideal he aims to devastate is not held by straw men. The book is replete with quotations that amply show the “good company” procrusteanism keeps. Some persons quoted appear to shrink from the implications of their principle, some boldly embrace them, while others display an amusing confusion about what their principle requires. James Callaghan, a Labour Party MP who served as British prime minister, was once speaking about a needed dose of painful medicine for his troubled economy. He said, “If this means hardship it has to be fairly shared, and Labour intends that the wealthy who are best able to take the burden should bear more than their fair share of sacrifices.” When served up for the consumption of “true believers,” such shabby reasoning may scarcely occasion a smile. Readers of Flew’s book will undoubtedly get more glee from howlers like this.

Were Flew’s book no more than a well-written ridicule of compulsory equalization of everything, there would be sufficient reason to read it, and those who have no use for the leveling ideal will have a nearly uninterrupted good time in doing so. But there is more benefit to be gained than this.

Professor Flew shows that “equality” is a complex idea sometimes used to make factual claims and at other times to endorse various ideals that are not only distinguishable from but in some cases actually incompatible with each other. Flew spends a chapter elucidating the various ideals of equality and concludes by arguing that the ideals of equality of liberty and equality of opportunity are incompatible with the ideal of equality of condition or result (true procrusteanism).

It used to be fashionable among social critics to begin by asserting that because all persons are in fact equal (in some respect) they ought to be treated equally (by the government?) in certain ways. Even the most ardent supporters of egalitarianism now recognize that this won’t do. Bernard Williams, in his much-discussed article, “The Idea of Equality,” allows that, “when the statement of equality ceases to claim more than is warranted, it rather rapidly reaches the point where it claims less than is in-

teresting."¹ Undaunted, Williams goes on to argue for the existence of an equal right to medical care by way of insisting that it is a "necessary truth" that *the* ground for the receipt of such care is the need for it. Williams thinks that it is the essence of medical practice to make sick people well. His nostrum can be a necessary truth only if there is such a thing as "relevance logic" and there are internal goals for human activities that are distinct from the goals people actually have in pursuing them. Flew adequately shows, as did Robert Nozick (1974), that this can't work.² There can be no goals-of-activities-in-themselves apart from persons whose goals they are.

Some of the best argumentation occurs in the section entitled "The Book of Rawls," acknowledging in its title the near-canonical status of *A Theory of Justice*. Flew argues that justice is essentially a past-oriented concept concerned with persons' deserts and entitlements. Thus, any theory that fails to give a central place to these concepts is not a theory of justice at all. Flew does not evaluate the feature of Rawls's book that made it famous—the "original position." Instead, he focuses on Rawls's reasons for denying desert a central place in the theory.

Rawls argues that desert cannot serve as a ground for basic claims of justice because no one deserves his natural assets and liabilities. The thinking is that for me to deserve anything by virtue of what I do with my talents, I must also deserve my talents. But plainly no one does. So desert cannot be a ground for testing the justice of alternative social arrangements. With characteristic accuracy, Flew points out that the logic of the concept of desert presupposes entitlements that are neither deserved nor undeserved.³ Failure to notice this conceptual point leads Rawls to the mistaken conclusion that, from the perspective of the basic structure of society, no one deserves anything.

Flew's book stands as a forceful statement that a morality grounded in a concern with comparative judgments is unworthy of support. Proper compassion for the poor is not framed in terms of how much less they have than others but in terms of how little they have. Making comparative judgments central to morality gives envy and feelings of guilt an undeserved purchase in human affairs. Laudably, Flew shows a keen awareness of this. "Again, much may be said—and at appropriate times and in appropriate places most certainly should be said—about people who cannot earn enough to buy even the most minimal necessities of life and health. But none of this justifies any general opposition between, on the one hand, the profit system or production for profit, and, on the other hand, production for use of production to satisfy human needs." We can hope that Professor Flew will next turn his considerable powers toward keeping this promise. Individualism in the classical liberal tradition is, according to a common perception, a selfish doctrine with a marked unconcern for the poor, whereas egalitarianism enjoys a reputation as compassionate and sensitive.

Reading Flew's book will be a shattering disillusion to those who harbor the latter belief. However, the former misperception, until destroyed, will for a great many stand as a barrier to full commitment to a social system that celebrates individual liberty.

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1. Bernard Williams, *Problems of the Self* (Cambridge: Cambridge University Press, 1976), pp. 230-31.
2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 233-34.
3. Also see Lance Stell, "Rawls on the Moral Importance of Natural Inequalities," *Personalist* 59 (1978).