

Book Reviews

The Right, the All Right, and the Good

The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions. By Samuel Scheffler. Oxford: Clarendon Press, 1982. Pp. viii, 129. \$12.95.

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Some days, I think I am a consequentialist; some days, I am sure I am not. Is it simply that I cannot make up my mind? Or is it that the meaning of consequentialism refuses to stay still? One thing seems sure: An approach to ethics that seems by turns as if it must be right, as if it cannot be right, and as if it misconceives the crucial questions shows all the signs of striking a deep philosophical chord.

I.

Samuel Scheffler feels the pull of consequentialism, and he feels the pull against it. In *The Rejection of Consequentialism*,¹ a book that has been eagerly awaited by moral philosophers, he tries to construct a moral theory that retains the strengths of consequentialism, but that at the same time avoids the powerful objections against it, by incorporating a crucial feature of nonconsequentialist views. This is an ambitious project, not because of its commonsense conclusions, but because of its aim of building a new theory out of parts of incompatible theories. In light of these ambitions, it is hardly a criticism to say that the project does not completely

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1. S. SCHEFFLER, *THE REJECTION OF CONSEQUENTIALISM: A PHILOSOPHICAL INVESTIGATION OF THE CONSIDERATIONS UNDERLYING RIVAL MORAL CONCEPTIONS* (1982) [hereinafter cited by page number only].

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succeed. Like consequentialism, Scheffler's "hybrid" theory² seems sometimes persuasive and at other times to have missed the mark. It is worth understanding why.

Consequentialism is not so much a moral theory as a class of moral theories. All such theories hold some kind of stuff to be intrinsically good and define rightness—right action—in terms of that good. Thus, the rightness of an action depends on its consequences, on the extent to which it produces goodness. In the typical form with which Scheffler is concerned, consequentialism says that right action is action that maximizes the good. Classical utilitarianism holds pleasure or happiness to be the sole intrinsic good; in modern utilitarianism, the good is preference-satisfaction. These are paradigmatic consequentialist theories. In principle, however, consequentialism is open as to the content of the good. A theory is consequentialist by virtue of its structure—by virtue of the way the concepts of the good and the right are defined. Goodness is prior (logically or conceptually), and rightness is dependent on goodness.

Opponents of consequentialism argue that some actions are right even though they do not maximize the good. But this assertion is ambiguous. It can mean either that it is sometimes wrong to maximize the good, or that it is not always wrong not to maximize the good. Although these statements obviously have different meanings, each expresses an objection to consequentialism. The first is rooted in what we may call old-fashioned deontology; the second responds to the extremely strong demands consequentialism seems to make on agents.

The deontological objection provides the traditional contrast to consequentialism. Whereas the latter understands rightness as that which maximizes goodness, the deontologist says that some actions are wrong even though they maximize the good. Rightness, in this view, is not dependent, or at least not wholly dependent, on goodness.

Like its rival, deontology names not a theory but a class of theories: those that understand rightness as at least partly independent of goodness. But deontological views may vary as to the degree of independence. The "absolutist" variety, which is probably the most familiar, holds that some actions are wrong regardless of the consequences of not doing them. The absolutist might not allow torturing one innocent child to save the world.³ But there are deontological views more moderate than the "whatever the consequences" variety; one might agree that any action could be justified if the consequences of not doing it were bad enough, but still insist that it is

2. P. 5.

3. This question is harder than Ivan's in *The Brothers Karamazov*, who asks whether torturing "to death only one little creature" would be permissible to make human beings happy. F. DOSTOYEVSKY, *THE BROTHERS KARAMAZOV* 291 (C. Garnett trans. 1950).

sometimes wrong to *maximize* the good.⁴ Thus, a deontologist might allow killing one person to save the world but still maintain that it would be wrong to kill one person to save five, or even fifty, or to prevent someone else from murdering five or fifty. In a standard example, we are to suppose that the sheriff of a small town can prevent a riot in which hundreds of people will be killed only by framing an innocent person whose blood the mob is demanding. The deontologist says that the sheriff may not so act, even to prevent the great evil he knows will ensue. *There are some things you may not do.* But the consequentialist, it seems, cannot rule out anything in advance: It all depends on what promotes the good or minimizes the bad.

Most of us have fairly strong "intuitions" (in the jargon of contemporary moral philosophy) that the kinds of actions just described would be wrong, and when confronted with these hard cases, the consequentialist can usually come up with good consequentialist reasons for not allowing the repugnant deeds.⁵ But since philosophers can tell their stories in ways that force the issue,⁶ the consequentialist will sometimes be forced to approve abhorrent actions.

At this point we may not know what to think. Perhaps in those circumstances it *would* be justifiable to do what the consequentialist approves. Perhaps our reluctance is a spillover from those cases in which the questionable act would clearly not be right, or perhaps it is a vestige of our deontological upbringing. Yet we are pulled the other way too: Even if the consequentialist gives the right answer, he seems to give the wrong reason. Even if knowingly framing the innocent always has bad consequences, we feel convinced that bad consequences are not the whole source of its wrongness. Let us call this conviction, the idea behind the view that it is sometimes wrong to maximize the good, the deontological objection to consequentialism.⁷

The other standard objection to consequentialism is more straightforward, at least in appearance.⁸ If I am morally required always to produce

4. Cf. J. RAWLS, A THEORY OF JUSTICE 30 (1971) (deontological theories do not "characterize the rightness of institutions and acts independently from their consequences. All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy."). Rawls' view diverges from the older, more common definition given by Broad: "Deontological theories hold that there are ethical propositions of the form: 'Such and such a kind of action would always be right (or wrong) in such and such circumstances, no matter what its consequences might be.'" C. BROAD, FIVE TYPES OF ETHICAL THEORY 206 (1931).

5. For example, he may argue that the institutions of justice, necessary for human well-being, will be undermined, or that killing induces bad traits of character.

6. They will say, for example, that no one will ever find out what the sheriff did, or that the sheriff will die of a heart attack five minutes later and his character will go no further.

7. P. 83; I. KANT, FOUNDATION OF THE METAPHYSICS OF MORALS 10 (L. Beck trans. 1959); W. ROSS, THE RIGHT AND THE GOOD 17, 35-39 (1930).

8. Pp. 7, 56; Williams, *A Critique of Utilitarianism*, in J. SMART & B. WILLIAMS, UTILITARIAN-

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the objectively best state of affairs available to me, my life will not be my own. My own concerns and desires will be lost in the larger calculus of goods and bads, and the shape and content of my life will be at the mercy of that calculus. Full-time do-goodism will be my inescapable duty. This may seem not only unrealistic, but also wrong and misguided, for human beings will cease to be agents who are sources of choice and value, and become machines that churn out the good. As a result, consequentialism seems to undermine our integrity as agents. Call this—the idea behind the view that it is not always wrong not to maximize the good—the objection from integrity.

Scheffler's purpose is to construct a moral theory that avoids consequentialism's violation of personal integrity, while preserving what he takes to be its "deeply plausible-sounding feature," the idea that "one may always do what would lead to the best available outcome overall."⁹ Thus, he rejects the deontological objection; but he seeks to free agents from the requirement always to maximize the good.

The differences between consequentialism, deontology, and Scheffler's hybrid theory can easily be displayed. On the now-common understanding of consequentialism—and, more important, on Scheffler's understanding—the consequentialist believes that:

- (i) One is always morally required to maximize the good.

It follows, of course, that:

- (ii) One is always morally permitted to maximize the good.

The deontologist denies both of these propositions; he denies (i) because he denies (ii), holding that:

- (iii) One is not always morally required to maximize the good

and, more important, that:

- (iv) One is not always morally permitted to maximize the good.

With the consequentialist, Scheffler holds (ii), thus denying (iv); with the deontologist, he holds (iii), thus denying (i).

The aim of Scheffler's book is to justify the departure from consequentialism that goes as far as (iii) but that stops short of the deontological

ISM: FOR AND AGAINST 75, 108-18 (1973).

9. P. 4.

premise of (iv). In his terms, he is defending the "agent-centered prerogatives" expressed by (iii) but rejecting the "agent-centered restrictions" expressed by (iv). So he must find a "theoretical rationale"¹⁰ for prerogatives that does not also entail restrictions, and he must show further that there is no other rationale for restrictions.

Scheffler goes to great lengths to argue against the view that there is no middle ground: Either you are a consequentialist, who believes one is morally required to maximize the good, or you are a deontologist, who believes one is sometimes required not to. One might wonder why anyone would want to take the middle road. The simple, if somewhat tautological answer is that the idea that one may always maximize the good seems persuasive, but a moral requirement to this effect is absurd. The difficulty for Scheffler is to find a rationale for this view that does not concede so much as to abandon the consequentialist framework altogether.

II.

The idea that one is always morally obligated to produce the best available state of affairs, Scheffler argues, ignores a crucial feature of persons; it ignores the "independence of the personal point of view."¹¹ Consequentialism "requires the agent to treat the concerns generated from his point of view as altogether dependent for their *moral* significance" on their weight in an impersonal ranking of states of affairs.¹² It mandates that one not give one's own interests any more weight in deciding what to do than one gives other people's interests. But a person "cares differentially about his projects just because they are *his* projects."¹³ And a moral theory, Scheffler thinks, should take account of this fact: not just for pragmatic reasons or because of what it tells us about "the nature of human fulfillment"¹⁴ (the good will be maximized if people are allowed to care about their projects out of proportion to their weight in an impersonal calculus), but also because of its connection with "the character of personal agency and motivation."¹⁵ What is at stake here is integrity in the literal rather than the more familiar moral sense. A person cannot be divorced from his projects and plans—cannot view them simply as projects or plans belonging to someone, it matters not whom--without ceasing to be a whole human being.¹⁶

10. *Id.* Scheffler speaks at various places of finding a "principled" or "theoretical rationale" or "motivation" for agent-centered prerogatives and restrictions. See, e.g., pp. 4, 95.

11. P. 56.

12. *Id.*

13. P. 57.

14. P. 62.

15. *Id.*

16. Williams, *supra* note 8, at 116-17 (describing nexus between personal integrity and priority of

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Of course, a consequentialist theory can count integrity as a good, and so take account of this feature of persons. The consequentialist will then seek the preservation of integrity; he will aim at increasing the number of people successfully carrying out their projects and plans.¹⁷ But such a strategy is prey to just the objections it is designed to avoid: When sacrificing my integrity maximizes integrity overall, I am required to sacrifice it.¹⁸ That it is *my* integrity can have no special moral significance for me; “the *moral* significance of a personal point of view, with its accompanying commitments and concerns, is entirely exhausted by the weight that point of view carries in the impersonal calculus, *even for the person who has the point of view.*”¹⁹

A moral theory can best take account of the independence of the personal point of view, Scheffler argues, not by counting it as a good to be maximized, but by “reflecting” it, “by freeing people from the demand that their actions and motives always be optimal from the impersonal perspective, and by allowing them to devote attention to their projects and concerns to a greater extent than impersonal optimality by itself would allow.”²⁰ The rationale, then, for an agent-centered prerogative is that it is the best way to incorporate a concern for the independence and integrity of the person. But this rationale does not justify agent-centered restrictions. It explains why people do not have to do what is best, but it gives no reason for thinking they should not if they want to:

Thus there might be an agent who willingly sacrificed his own projects for the greater good; on [Scheffler’s] view his conduct would be supererogatory. Or there might be an agent whose project simply *was* to bring about the best state of affairs; this project would be in no way ruled out by the agent-centred prerogative . . . if someone *wants* to bring about the best state of affairs . . . there is no reason from the standpoint of personal integrity to forbid that. Such a person is surely not alienated “from his actions and the source of his action in his own convictions.”²¹

Scheffler considers arguments for the deontological view and concludes that the “prima-facie difficulties with agent-centred restrictions” cannot be overcome.²² He finds “an apparent air of irrationality surrounding the

one’s own projects).

17. See pp. 58-60.

18. And, given the extent of deprivation in the world, this is no mere hypothetical: People will often be required to sacrifice their integrity.

19. P. 61.

20. P. 62.

21. Pp. 21-22.

22. P. 82.

claim that some acts are so objectionable that one ought not to perform them even if this means that more equally weighty acts of the very same kind or other comparably objectionable events will ensue²³ Scheffler can find no way to dispel this air of irrationality. It is clear that we cannot explain why some actions are wrong simply by assigning them very high disvalue,²⁴ and generally, Scheffler argues, all strategies designed to justify deontological restrictions founder in just the way appeals to the disvalue of reprehensible actions do. Whatever it is that makes these actions reprehensible, it is odd to prohibit them even in cases where their purpose is to prevent more such actions.

Of course, the plausibility of rejecting deontological constraints, and of concluding that one is always permitted to maximize the good, depends partly on what one takes to be the good. The conception of the good embodied in classical utilitarianism and its modern variants, for example, may seem unsatisfactory for two reasons. First, one may believe that pleasure or happiness or want-satisfaction is not the only intrinsic good; one may think that integrity is a good, that there are intrinsic aesthetic or intellectual goods, or that motives themselves—independently of what they produce—can be good (sympathy or love) or bad (spite or malice). Second, one may believe that the distribution of goodness matters as much as the amount of goodness produced. In principle, standard utilitarianism permits and even requires ignoring the misery of a few in favor of “the pleasures of the many in order that total aggregate satisfaction or utility might be maximized.”²⁵ Utilitarianism is morally indifferent as between a world in which some have a lot and others have very little, and a world in which goods are more equally distributed, if total utility is the same. The utilitarian will often have good utilitarian reasons for preferring more egalitarian distributions—for example, decreasing marginal utility—but he can have no reason for preferring them intrinsically.

But these are problems for standard utilitarianism, not necessarily for all consequentialist theories. A consequentialist can easily enough count “things” other than pleasure or want-satisfaction as intrinsic goods.²⁶ Scheffler’s account is in this respect completely abstract; he does not reveal his conception of the good, except to say that it is pluralistic.²⁷

23. *Id.*

24. P. 87.

25. P. 30.

26. For example, a consequentialist can maintain that some actions are good as well as right, that is, that some actions have intrinsic value. What distinguishes consequentialism is not its catalogue of the good, but its subjugation of the right. An action may be right because it produces good, or because it exemplifies the good, but its rightness must somehow depend on goodness; there is, for consequentialism, no such thing as intrinsic rightness.

27. P. 28.

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He is much more specific about the matter of distribution. Unlike the utilitarian, Scheffler's conception of the good is inherently "distribution-sensitive." The weight he accords to benefiting a person increases as that person's relative well-being decreases.²⁸ But this principle is less stringent than, for example, Rawls': It does not accord absolute priority to benefiting the least advantaged.²⁹

III.

The view that one is always morally required to produce the objectively best state of affairs available is about as familiar to students of moral philosophy as utilitarianism itself. And yet—what an extraordinary idea! One of the defects of Scheffler's extremely abstract approach is that he takes this idea completely for granted—takes it without question as the baseline from which deviations must be justified. But instead of asking whether a "departure" from this view can be given a "principled rationale," one might more sensibly begin by asking whether the view itself is credible.³⁰

If consequentialism implies that one is morally required to maximize the good, we must wonder why the classical utilitarians—Bentham, Mill, Sidgwick—seemed to have been largely untroubled by the kinds of criticisms plaguing contemporary consequentialists. They do not seem to have worried that utilitarianism would make unreasonable demands on the individual. One possible explanation, of course, is that they were prepared to accept the consequences of consequentialism. This explanation, however, is implausible on its face: The original utilitarians were down-to-earth, practical men who aimed to do as little violence as possible to commonsense beliefs. There is, in addition, a great deal of direct evidence that they did not think utilitarianism required the heroic exertions ascribed to it by modern critics.

28. See pp. 26-31.

29. See J. RAWLS, *supra* note 4, at 14-15. It might be argued that to incorporate a distributive principle into a moral theory is to depart from consequentialism to that extent, as it might be argued that there are some "things" a consequentialist cannot count as goods and still remain a consequentialist. I consider these arguments briefly at *infra* pp. 561-62. For most of this essay, however, I will not challenge Scheffler's assumption that some distributions can be preferred within the consequentialist framework, on grounds of their intrinsic betterness.

30. According to Brian Barry, G.E. Moore was the first to identify rightness with the maximization of goodness. Barry, *And Who Is My Neighbor?*, 88 YALE L.J. 629, 639 n.37 (1979). Moore maintained that "the assertion 'I am morally bound to perform this action' is identical with the assertion 'this action will produce the greatest possible amount of good in the Universe.'" G. MOORE, *PRINCIPIA ETHICA* 147 (1903). Barry describes this view as "the time-bomb that has been ticking away ever since" and that "has at last blown up utilitarianism." Barry, *supra*, at 639 n.7. But the maximization view seems implicit in the idea of consequentialism itself and has been asserted occasionally even by the original utilitarians: "[A] Utilitarian must hold that it is always wrong for a man knowingly to do anything other than what he believes to be most conducive to Universal Happiness." H. SIDGWICK, *THE METHODS OF ETHICS* 492 (1907).

In the first place, the utilitarians believed that individuals had limited power to affect the welfare of large numbers of people. In general, they thought, the effects of individuals' actions were confined within a fairly narrow range:

The multiplication of happiness is, according to the utilitarian ethics, the object of virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale—in other words, to be a public benefactor—are but exceptional; and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to.³¹

If my world consists of those nearest and dearest to me, I will not often be called on to sacrifice my own interests, for at least two reasons. First, my interests and the interests of those dearest to me will often coincide. In addition, those nearest and dearest to anyone who thinks about utilitarianism (or any other moral theory) are likely to be reasonably well off, so that concern for their welfare will not be so demanding. If my world consists not of sick and starving millions but only of the people around me, the view that “generally speaking, each man is better able to provide for his own happiness than for that of other persons”³² is highly plausible.

The utilitarians' belief in the limited power of individuals to “do much good to more than a very small number of persons”³³ still does not completely rebut the charge that utilitarianism demands too much. After all, one *could*, it seems clear, do more good by becoming a nurse and going off to Somalia or Bangladesh than by teaching in a university; Mill and Sidgwick could not, it seems, have denied such facts. They must instead have gotten around them. But how?

To answer this question we must look at classical utilitarianism in its original context, not as the abstract philosophical theory it has since become, but as the work of politically engaged thinkers who tried to give a theoretical foundation to their progressive social views. There are several related ways in which this understanding of what Bentham, Mill, and Sidgwick were about helps explain the puzzle before us.

In the first place, against the harsh, rule-bound deontological moralities that came before it, utilitarianism, with pleasure as its centerpiece, could easily look too soft and yielding. The utilitarians insisted, moreover, that there was nothing intrinsically good about self-sacrifice; there was no vir-

31. J. MILL, *UTILITARIANISM* 19 (G. Sher ed. 1979).

32. H. SIDGWICK, *supra* note 30, at 431.

33. *Id.* at 434.

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tue in denial per se.³⁴ So against what had come before, utilitarianism could seem to suggest more relaxation than repression.

More important, the utilitarians conceived their theory as applying in the first instance to the organization of society rather than directly to individuals. Even if they were not clearly rule-utilitarians, they often sounded like rule-utilitarians.³⁵ The rule-utilitarian does not ask, "What should I do (to maximize the good), given the world as it is?," but rather, "What rules ought to govern human conduct and the organization of society?" Focusing on the latter question lifts many of the burdens of consequentialism, for several reasons. First, the burdens are spread around; the individual need not bear the brunt of everyone else's negligence. Second, some burdens may be diminished just by being shared, either because beneficial feelings of solidarity are fostered, or because some of the usual costs of deprivation (like envy) are decreased if no one else has what one does not have. Finally, emphasizing general rules for social institutions forces one to pay attention to what is reasonable to expect of typical human beings.³⁶

In addition to the general emphasis on the structure of social institutions, there is the tendency, noted by Sidgwick, "which Utilitarian ethics have always shown to pass over into politics. For one who values conduct in proportion to its felicitic consequences will naturally set a higher estimate on effective beneficence in public affairs than on the purest manifestation of virtue in the details of private life"³⁷ What is wanted is not personal self-sacrifice but promotion of the general welfare.

For these reasons, then, the classical utilitarians were not bothered by the objection that plagues their descendants and around which Scheffler has built his theory. What explains the difference? In the early twentieth century, moral philosophy took an arid and asocial turn; when it was

34. J. MILL, *supra* note 31, at 15-16.

35. An early explanation of the distinction (not explicit in the classical utilitarians) between act- and rule-utilitarianism, can be found in Urmson, *The Interpretation of the Moral Philosophy of J. S. Mill*, 3 PHIL. Q. 33, 35-39 (1953). Urmson argues that Mill was a rule-utilitarian, and this is probably now the common view. *But see* Mabbott, *Interpretations of Mill's 'Utilitarianism,'* 6 PHIL. Q. 115, 116-19 (1956) (challenging Urmson's interpretation).

36. Thus in defending the view that people may show partiality to those near and dear, and need not be strictly impartial in distributing their beneficence, Sidgwick argues:

that most persons are only capable of strong affections towards a few human beings in certain close relations, especially the domestic: and that if these were suppressed, what they would feel towards their fellow-creatures generally would be, as Aristotle says, "but a watery kindness" and a very feeble counterpoise to self-love: so that such specialised affections as the present organisation of society normally produces afford the best means of developing in most persons a more extended benevolence

H. SIDGWICK, *supra* note 30, at 434. Sidgwick is obviously concerned here not with what an individual calculating in isolation should do, but with the sorts of social institutions most likely to promote general utility. Yet Sidgwick is often taken to be an act-utilitarian. *But see* J. SCHNEEWIND, *SIDGWICK'S ETHICS AND VICTORIAN MORAL PHILOSOPHY* 340-49 (1977) (challenging this classification and suggesting that distinction between act- and rule-utilitarianism is too simple).

37. H. SIDGWICK, *supra* note 30, at 495.

utilitarian at all, it retained only the broad and abstract features of classical utilitarianism and shed its subtleties: its political sense, its moral psychology, its understanding of human nature and social relations. Utilitarianism developed, for the most part, as a view about what an individual in isolation should do, and all that remained was the bare principle: maximize the good.³⁸ As meta-ethics prevailed over ethics, it was held that moral philosophy consists in the analysis of moral concepts, rather than anything that might directly affect one's life. It was easy enough to say that maximizing the good was obligatory—and unlikely that one's actual commitment to this view would be tested.

Scheffler takes seriously the logical extension of consequentialism that twentieth-century analytic philosophy has made central. He shares some of the flaws of that tradition, notably its extremely abstract approach. Thus he accepts unquestionably its "problematic," instead of at least noting the oddity or wondering at the origins of this consequentialist imperative. At the same time, however, he belongs to a generation of philosophers who are concerned about the implications of ethical theories for living one's life. The convergence of these two approaches is the driving force behind Scheffler's work.

IV.

There is yet another reason why the classical utilitarians were not beset by the problems Scheffler faces. A consequentialist must say that rightness depends on goodness, but it is a further step to say that rightness consists in *maximizing* goodness. Bentham, Mill, and Sidgwick all express views that diverge from this strong position. According to Bentham, for instance, to say that an action is right, or at least not wrong, is to say that it is "conformable to the principle of utility,"³⁹ and this means that "the tendency it has to augment the happiness of the community is greater than any it has to diminish it."⁴⁰ Thus, an action can be right even though other actions would have been even better. Mill and Sidgwick explicitly distinguish between obligatory and praiseworthy acts.⁴¹ All these views

38. The argument that rule-utilitarianism collapses into act-utilitarianism reinforces this abstract and individualistic tendency. See D. LYONS, *FORMS AND LIMITS OF UTILITARIANISM* 62-118 (1965).

39. J. BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 3 (1907).

40. *Id.*

41. Mill characterizes the willingness to sacrifice one's own happiness for others as "the highest virtue which can be found in man." J. MILL, *supra* note 31, at 16. This suggests the distinction he makes elsewhere between conduct that is morally obligatory and conduct that we wish for or admire people for, but do not hold to be morally binding. *Id.* at 48.

Sidgwick, while admitting that the "distinction between Excellence and Strict Duty does not seem properly admissible in Utilitarianism," argues that it is

practically expedient . . . to retain, in judging even the strictly voluntary conduct of others, the distinction between a part that is praiseworthy and a part that is merely right: because it is

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imply that to be true to consequentialism, one must hold that goodness, and nothing else, determines rightness but just how much goodness one needs for rightness is an open question. More specifically, the consequentialist must hold that the more goodness an action produces, the “righter” it is,⁴² but he need not maintain that for an action to be “merely right,” in Sidgwick’s phrase⁴³—that is, morally acceptable—it must be optimal.

The consequentialist, then, can draw the line between rightness and wrongness—between what is permitted and what is not—far down from the optimal. Where he draws the line will depend on his views about human nature, his expectations of it, and, no doubt, his own temperament. As Mill observes, the consequentialist can be “puritanically rigorous” or “as indulgent as can possibly be desired by sinner or sentimentalist.”⁴⁴

This strategy may appear to be a simple solution to Scheffler’s problem. For he is consequentialist enough, it seems, to agree that rightness depends on goodness; he wants only to deny that one is always obligated to maximize goodness. Why not draw the line of rightness, then, some distance down from the optimal, making saintliness and heroism recommended, but not required? For this, it seems, no principled rationale is needed.

But this approach will not help Scheffler; in seeing why, we discover problems with his view. On the line of reasoning just described, although it is permissible not to maximize the good, it is always preferable to bring more good into the world than not. Would Scheffler agree? What he says explicitly is just that one is permitted to maximize the good, as one is permitted not to. But his conception of persons and human agency and motivation implies something stronger. Something of ultimate value would be lost if people could not pursue their projects, could not live their lives according to their own scheme of value, and were instead always obligated to maximize the good. The natural conclusion is that it is not merely all right not to maximize the good; it is somehow better not to.

Scheffler wishes to allow maximizing the good so that those rare self-sacrificing or naturally altruistic souls may, like everyone else, pursue their projects, which happen to consist of maximizing the good.⁴⁵ On

natural to us to compare any individual’s character or conduct, not with our highest ideal—Utilitarian or otherwise—but with a certain average standard and to admire what rises above the standard

H. SIDGWICK, *supra* note 30, at 492.

42. J. MILL, *supra* note 31, at 7 (“[A]ctions are right in proportion as they tend to promote happiness.”).

43. H. SIDGWICK, *supra* note 30, at 492.

44. J. MILL, *supra* note 31, at 20.

45. *See supra* p. 549.

Scheffler's assumptions, this is a good reason to permit them to maximize the good, but it is not clear why anyone for whom maximizing the good is not a project ought be permitted to do so. A person with less saintly projects who maximizes the good will thereby forsake his integrity. It seems, then, that Scheffler ought to conclude that some people ought not maximize the good, or that one is morally prohibited from doing so unless that happens to be one's project.⁴⁶

It is impossible to penetrate these murky matters further without a better understanding of the nature of projects and the pull moral beliefs have on us. Scheffler does not discuss these issues in any detail, although he does deny that one's projects always take priority over objective goodness and badness.⁴⁷ But he does not explain how, except in the case of the saint or the altruist, moral beliefs become integrated into one's personality. I have my personal projects, but I may also believe that maximizing the good is desirable. Can I believe it is good or right without having some desire to do it? Is that enough to make it one of my projects? How do I fit it in with my other concerns? If I do not believe in maximizing the good, even more if I think it is wrong, then maximizing the good would violate my integrity in an obvious way.

However these issues are resolved, Scheffler's concern with integrity dictates a stronger conclusion than that one is permitted not to maximize the good. The language of permissions and prohibitions seems inadequate to these issues, but it is unfortunately the only language Scheffler uses. Given his views about integrity, and given people as they are (unsaintly and only moderately altruistic), the world in which people pursue their own projects and do not maximize the good is not just a second-best concession to realism; it is morally superior to the world in which they sacrifice their projects to maximize the good. But to admit this, it seems, is to abandon consequentialism altogether; it is to move beyond just allowing people not to maximize the good, and in the direction of recommending against it.

V.

It is not obvious why the independence of agent-centered prerogatives

46. This conclusion looks paradoxical. It seems peculiar to prohibit people from maximizing the good: Prohibitions against doing something are necessary only where there is some desire to do what is prohibited; only those whose project is to maximize the good have the requisite desire; those people, however, are exempt from the prohibition, for maximizing the good does not jeopardize their integrity. Thus it sounds odd to say that people are prohibited from maximizing the good, when only their own desires sustain the prohibition. But there is no real paradox here. On some theories, for example, such as egoism, one in fact ought to do what one wants to do. Such theories make right action dependent on one's desires; if the latter changed, the former would change as well.

47. Pp. 8, 20-21.

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from agent-centered restrictions should be hard to maintain, and one is inclined at first to wonder why Scheffler works so hard to show that his hybrid view does not lead to the deontologist's more radical departure from consequentialism. Yet on further reflection it begins to seem as if the two views, and the underlying objections to which each responds, stand or fall together. The argument at the end of the last section is one reason for this conclusion: If integrity is definitive of our nature as agents, then a moral theory must do more than simply allow us to maintain it. But there are other reasons for thinking the objection from integrity and the deontological objection go together.

Let us recall Scheffler's argument that although consequentialism can accommodate a concern with integrity by counting it as a good to be maximized, this strategy is inferior to his own, which takes account of integrity in the structure of the theory itself. At the same time, Scheffler maintains that deontological restrictions on action cannot be justified. They are not imposed by the rationale for agent-centered prerogatives: "to protect individuals from the demand that they organize their conduct in accordance with some canon of impersonal optimality."⁴⁸ A prohibition against doing so does not follow. And the question Scheffler poses to the deontologist looks insuperably difficult:

The question is not: what is it about people that makes it objectionable for them to be victimized? But rather: what is it about a person that makes it impermissible for him to victimize someone else even in order to minimize victimizations which are equally objectionable from an impersonal standpoint?⁴⁹

Put this way, the question compels thinking in terms of the impersonal counting up of violations and choosing the course that minimizes them. And, not surprisingly, this approach is incapable, as Scheffler argues, of justifying agent-centered restrictions, just as it was incapable of justifying agent-centered prerogatives.⁵⁰

But, at this point, the deontologist ought to object to the terms of the question. He is not concerned with the impersonal standpoint; at least, he is not concerned enough to sacrifice his convictions for it. Of course, if he does not do the abhorrent thing, there will be more badness in the world. But that is not the point. The deontologist believes that "each of us is specially responsible for what *he* does, rather than for what other people do."⁵¹ This is a concern with integrity, not in Scheffler's sense of living

48. P. 94.

49. P. 100.

50. See *supra* pp. 549-50.

51. Williams, *supra* note 8, at 99; see Nagel, *The Limits of Objectivity*, in 1 THE TANNER LEC-

one's life and carrying out one's projects—though the deontologist may be concerned about this too—but in the sense of not doing what one believes to be wrong, of not acting badly or compromising one's values. This is integrity in its more usual sense: moral integrity.

Of course, one may find this view less than satisfactory, for just the kinds of reasons Scheffler offers. If a certain kind of act is so awful, more of them are even more awful. The anti-consequentialist stance may seem even to smack of self-indulgence, of too much concern with one's own moral purity—let the world be damned.⁵² Our problem here, however, is not to decide the merits of this position. It is rather to see the connection between this deontological view and Scheffler's middle ground: the defense of agent-centered prerogatives. The difficulty is that, on the one hand, the argument Scheffler makes in defense of his view can be made by the deontologist, and, on the other, the criticism that can be made against the deontologist can be made against Scheffler.

Scheffler argues that the best way to build a concern with integrity into a moral theory is not to count it as a good among others to be maximized, but to give it a special place, reflecting its connection with our nature as agents, by allowing people to pursue their projects. It can be argued with equal force that the best way to incorporate a concern with right action into a moral theory is not to count it as a good to be maximized, but to reflect its connection with our nature as morally responsible agents by prohibiting certain actions and emphasizing that each person is responsible for his own conduct.

Scheffler argues that it is irrational not to allow otherwise objectionable actions when that is the only way to prevent more of them. It can be argued with equal force that if integrity is so important, it is irrational not to sacrifice one's own if doing so will promote aggregate integrity.

Why is it so difficult to maintain the moral distinction between agent-centered prerogatives and agent-centered restrictions? Not because their

TURES ON HUMAN VALUES 75, 119-39 (S. McMurrin ed. 1980). But Williams' words are misleading. They suggest that a person is responsible only for what he does, and not for what he omits to do. Although the denial of consequentialism is often conjoined with the belief that the distinction between actions and omissions is morally important, the former does not entail the latter. (Consequentialism, however, does imply that the distinction is not morally important.) One can believe, as Williams does, that people are especially responsible for the shape and content of their own lives, without thinking this is a matter only of what they do and not also of what they omit to do.

52. And, despite their arguments, Nagel and Williams do not come down clearly in favor of the anti-consequentialist answers to these moral dilemmas. See Nagel, *supra* note 51, at 126-35; Williams, *supra* note 8, at 117. They seem to be objecting more to what they see as the consequentialist's insensitivity than to his answers—as if a consequentialist could not recognize that the awful thing one does to prevent more awful things is not itself awful. But surely the consequentialist can recognize this; he advocates doing the lesser of two evils, but he does not deny that the lesser is still evil. What he cannot say is that doing the lesser evil is wrong, if to say it is wrong means, as we usually think, that one ought not do it. It is not clear how far Nagel and Williams are from this view.

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content is indistinguishable: Certainly there is a difference between the view that one is permitted not to maximize the good and the view that one is required not to maximize it. The difficulty seems to come in choosing a point of view from which to judge what is right and what is all right. Either we judge from an impersonal, external perspective, in which case we give the consequentialist answer, or we judge from our personal standpoint in the world, in which case we sometimes give the nonconsequentialist answer.⁵³ It is not the specific content of Scheffler's claim, but rather his move to the agent-centered point of view, that opens the way for the deontologist and for the critic against both Scheffler and the deontologist. But note that it is not the concern with agency per se that opens the way for the deontologist and the critic—for a consequentialist can care about agency⁵⁴—but the concern with *one's own* agency (the agent's agency). If I may take my projects more seriously than the Impartial Spectator would, why may I not take my moral purity more seriously too?

VI.

And yet, despite these arguments, I agree with Scheffler's conclusions: Where one would have to do an awful thing to prevent more awful things from being done, one may do it, that is, one may maximize the good or minimize the bad; one is not, however, always obligated to do the objectively best thing. If the above arguments are right, how can these views be consistently maintained?

Part of the answer to this question is simple, and part is complicated. The reason one is not *obligated* always to maximize the good is that there is no good reason to think one is. The only reason to think that one is obligated to maximize the good is the belief in consequentialism, conjoined with the belief that a consequentialist must be committed to this view. But, as I have argued, consequentialism does not require that one always do the best thing; it implies only that the more good one does, the better.⁵⁵ Where the line of obligatoriness is drawn, however, is an open question.

Explaining why it is not *wrong* to do something awful to prevent something more awful is more complicated. In part, it has to do with the great difficulty of maintaining one's integrity when faced with such clearly un-

53. See T. NAGEL, *MORTAL QUESTIONS* 196-213 (1979); Nagel, *supra* note 51, at 135-38.

54. See *supra* note 26; *infra* p. 560.

55. There are, of course, other things we value besides doing what is right. The right thing may not be the witty, the charming, the natural thing; one who always puts maximizing the good before all else may seem not fully human, or deficient in other qualities we value or admire. See G. ORWELL, *Reflections on Ghandi*, in *COLLECTED ESSAYS* 451, 459 (1961); Wolf, *Moral Saints*, 79 *J. PHIL.* 419 (1982). This point may dispel some of our dissatisfaction with the consequentialist account of the right: Rightness is one property of actions we value, but it is not the only one, and we should not expect rightness to include all that is worth valuing in the world or in people.

desirable options. Since nothing one can do in these dreadful situations seems quite right, nothing is clearly wrong either. For these extraordinary moral dilemmas simply confront one: One must choose either to do something or to refrain, and each course is morally loaded. One's knowledge of the terrible consequences of all choices may make proclamations about integrity seem self-deceptive. In any case, I do not think we conceive of such situations in terms of prohibitions at all. We are, in the end, more humble than that; we do not presume to judge. We would criticize someone confronted with such a choice not for what he decided, only for how. We would criticize him for acting too easily, for not agonizing.

There is another, more theoretical, reason for thinking it is permissible to do something awful to prevent something more awful. Remember that a deontological theory says that it is sometimes wrong to maximize the good; only the absolutist version insists that one may not maximize the good, whatever the consequences of not doing so.⁵⁶ The absolutist does not allow killing one person to save five, or however many. But the moderate deontologist concedes that consequences are relevant, and he may believe that the consequences of not killing in such a case are bad enough to justify the killing of one. What the deontologist cannot accept is the view that lying or breaking promises or killing is justified whenever doing so increases total utility. Killing one person would not be justified simply because it would make many others a bit happier.

Are we suggesting that the consequentialist must say that it *would* be all right to kill a person in order to cheer up a lot of others? This is a very crude consequentialist. He is indifferent between alternative distributions of the good, permitting the tradeoff between concentrated misery and a little bit of contentment spread thinly around. For him, there are no intrinsic goods that are not passive states of consciousness, like happiness or want-satisfaction. But a consequentialist need not be crude, just as a deontologist need not be absolutist. He can agree that certain kinds of motives or intentions are intrinsically, and not just instrumentally, good. The consequentialist can, furthermore, prefer some distributions of goods and bads on intrinsic grounds. This preference can be explained partly in terms of the "separateness of persons"⁵⁷ and partly in terms of the asymmetry between goodness and badness. Because persons are separate and because the calculus of goods and bads is additive, the individual good may be lost in the play of arithmetic: The net good or the total good may not be his own good. Yet we are concerned about the good of persons,

56. See *supra* pp. 545-46.

57. See pp. 11-12, 77-79; J. RAWLS, *supra* note 4, at 27-29. The emphasis in recent moral philosophy on the separateness of persons has its source in Rawls' claim that "Utilitarianism does not take seriously the distinction between persons." *Id.* at 27.

separate individuals. It is impossible to avoid the tension between division and addition entirely. But it can be avoided, in part, by counting some kinds of well-being or some portions of the welfare continuum as more important than others. We may call the most essential portions rights, and we may say that they are so important that they can only be sacrificed for the fulfillment of essential rights of others. There are other, weaker positions as well.⁵⁸ In any case, a consequentialist can by such means avoid the absurd conclusion that it would be all right to kill a person to please some others.

Is this still consequentialism? Clearly Scheffler thinks it is.⁵⁹ He does not see this aspect of his view—the acceptance of a distributive principle—as a departure from consequentialism. If he did, he almost certainly would have rejected consequentialism altogether, so as not to be saddled with conclusions that have long embarrassed utilitarians.⁶⁰ But it might be argued that one cannot build just anything into the good and still meaningfully describe one's theory as consequentialist. If this disagreement is to be more than the insistence by the consequentialist that he can say this or that is intrinsically good, and the insistence by the critic that *qua* consequentialist he cannot, the debate will have to be about *how* integrity, or a principle of distribution, is worked into the theory. Are these simply goods among other goods (in which case they will often be overridden)? Or do they have special weight or priority? How much weight? Any pluralistic theory must attempt to explain how to cash out the metaphor of weight, but then so too must a moderate deontological theory, under which consequences may sometimes override deontological restrictions.

These considerations lead us to wonder whether there is much to choose between the consequentialist who is not crude and the deontologist who is not absolutist. We begin with a clear distinction: between the utilitarian who cares just about pleasure and pain and is willing to bite the bullet when our intuitions about just distribution cannot be accommodated on consequentialist grounds, and the absolutist who will not tell a lie even to save the world. But most of us find neither view reasonable or adequate to our moral experience. As we move away from these extremes, to pluralistic and distribution-sensitive versions of consequentialism and to deontological views that allow consequences to count for something, the philosopher's labels "consequentialist" and "deontological" mean less and

58. See *supra* p. 551 (discussing Scheffler's position).

59. P. 26.

60. Until a decade or so ago, it was these problems about consequentialism—its apparent insensitivity to matters of justice, its willingness to violate the integrity not of agents but of victims—that preoccupied philosophers. The concern with the integrity of agents came to the fore with Williams' critique. See *supra* p. 548.

less.⁶¹ The credible versions of each converge to a kind of intuitionism in which the rules are always *prima facie* and the various goods and bads, values and disvalues that attract and repel us have to be balanced through a process of judgment in every difficult case. In short, we find ourselves describing a view that reflects the character and complexity of the dilemmas we confront and the choices we have to make.

VII.

Scheffler's fundamental question derives its force, I think, from its resemblance to a different question. Only philosophers wonder (and, I have argued, largely for bad reasons) whether one is always morally required to do what is best. Many people, however, worry about whether they are doing enough—whether, given the misery and degradation of the lives of millions of people, and the lesser but still serious misfortunes of many more, their own affluence, comfort, and general well-being are morally acceptable. They are disturbed not by the abstract question, "Am I permitted not to maximize the good?" but by the concrete one, "How much should I be doing to make other lives less miserable, and when may I ignore all that and lead my own life?" Should I tithe, as the churches recommend? Giving a twentieth of my income seems too little, a half may be too much. There is, we feel certain, such a thing as too much, for reasons Scheffler has explained. But how much is that, and how much is not enough? Perhaps there is a line for duty, and a different line for decency. We are interested in both.

These are the problems that really disturb us. They cannot be answered abstractly, and so philosophers tend to avoid them. What is needed to answer them? First we must decide whether we are interested in the question for the isolated individual: What should I do given that everyone else continues as before? Or the social question: What practices can be legitimately demanded of people, given that the burdens are shared? These questions have different answers.⁶² In addition, we will have to say much more about the kinds of things that are good and bad; inevitably, we will have to weigh them against each other, *not a priori*, but in the particular case. We may have to weigh "higher pleasures," not against lower pleasures but against "lower pains": the non-necessary but nontrivial benefits of advanced industrial society against the most primitive deprivations. These are messy line-drawing questions; they involve looking at what is at stake when a person gives up something to benefit someone in need, and

61. See Piper, *A Distinction Without a Difference*, 7 *MIDWEST STUD. PHIL.* 403, 403-24 (1982); Stocker, *Rightness and Goodness: Is There a Difference?*, 10 *AM. PHIL. Q.* 87, 92-98 (1973).

62. See *supra* p. 553.

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at what is at stake for the recipient.

Given the world as it is, it is often easy to see just how much is at stake for the beneficiary. It is the costs to the donor of doing good that raise the most difficult questions. What aspects of a person's life are so important that it would never (or almost never) be right to interfere with them? Which are less serious or more contingent on general social practices? We can, if we like, put these questions in terms of an agent's projects. But we will have to do more than give it a name. Despite the central place of personal projects in Scheffler's theory, nowhere does he mention a single one, or distinguish among them. Yet we cannot begin to draw the lines, to decide what it is reasonable to expect people to give, without distinguishing among a person's many concerns and interests. I have no doubt that Scheffler would agree.⁶³ I only regret that he asked a question whose answer is clear—whether it is sometimes permissible not to maximize the good—rather than the more difficult question: When?

63. See pp. 8-9, 20-21.

A Genealogy of Virtues

After Virtue: A Study in Moral Theory. By Alasdair MacIntyre. Notre Dame, Indiana: University of Notre Dame Press, 1981. Pp. ix, 252. \$15.95.

Robert Wachbroit†

Alasdair MacIntyre's new book, *After Virtue*,¹ is a stimulating and informed examination of moral theory and modern morality. These twin concerns have been a standing feature of much of MacIntyre's writing, making his work especially accessible and provocative. In *After Virtue*, he presents a book-length treatment of themes touched upon in his essays, collected in *Against the Self-Images of the Age*,² as well as in his book, *A Short History of Ethics*.³ The result is a fascinating blend of intellectual history and philosophical analysis. Most philosophers, I suspect, will fault the book because of the sketchiness of many of the arguments, but the book's chief value lies elsewhere. It challenges the reader to think.

Every age has its share of books lamenting contemporary morals; typically, such books are confident about the language of their lamentation. Everything else may be in disorder, but the language of morality is not. *After Virtue* differs from these books, for it questions the coherence of much contemporary moral criticism.

I. The Emotivism of Modern Moral Culture

According to MacIntyre, the distinguishing feature of modern morality is the presence of disagreement. Of course, disagreement over moral matters has always been with us. It is the character of modern disagreements that presents a problem. Much of *After Virtue* is devoted to characterizing the nature of such disagreements and explaining why their prevalence should cause concern.

MacIntyre presents three examples of contemporary moral debate: the morality of war, abortion, and justice and economic distribution.⁴ Each

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1. A. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (1981) [hereinafter cited by page number only].

2. A. MACINTYRE, *AGAINST THE SELF-IMAGES OF THE AGE* (1971).

3. A. MACINTYRE, *A SHORT HISTORY OF ETHICS* (1966).

4. Pp. 6-7.

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argument in these debates, as distilled by MacIntyre, has a conceptual purity. An argument constructed solely in the language of rights is pitted against an argument expressed only in terms of utilities; an argument based on equality against an argument based on freedom. Each argument relies on a different network of concepts; therefore, there is little common ground upon which a resolution can be based. As MacIntyre shows, these rival moral arguments rest on different initial premises, and as a result there is no rational terminus.⁵ In the end, the arguments face each other like assertion and counterassertion. This is what MacIntyre regards as distinctive of modern moral disagreements: Each disputant views the opposing argument not as a contender for truth, but as a rationalization of different values and interests. Thus, any resolution of their dispute must be nonrational.

This picture of contemporary moral debate is not meant to surprise anyone. MacIntyre is impressed by the fact that many see in this picture a deep insight into the nature of morality, a judgment that characterizes our contemporary moral culture. MacIntyre calls both culture and picture “emotivist.”⁶

Emotivism is usually understood as a theory of the meaning of evaluative judgments: Assertions such as “This is good” or “That is the right thing to do” are nothing but expressions of approval, equivalent to saying “Hurrah for this!”⁷ One of its distinguishing features is that it does not recognize that moral assertions can contradict one another. For example, if one person says “This is good,” and another, “this is not good,” an emotivist would conclude that the two people are not in disagreement, that one person is saying “I approve of this,” and the other, “I don’t approve of this.” If moral assertions are seen as mere expressions of approval, there can be differences of opinion, but no contradictions. Emotivism enjoyed some popularity in England and America during the 1930’s and 1940’s;⁸ today, however, it is accepted by few philosophers.

MacIntyre’s use of the term “emotivism” is somewhat peculiar since he wishes to characterize a number of other conceptions of morality as emotivist—some with a different theory of meaning, some with no apparent commitment to any particular theory of meaning. The feature MacIntyre extracts from emotivism is that if moral utterances are nothing but expressions of approval, then moral claims are not the sort of things for which one can give reasons or justifications.⁹ Hence, a change in one’s moral

5. P. 8.

6. P. 18.

7. P. 13.

8. The classic text is C. STEVENSON, *ETHICS AND LANGUAGE* (1945).

9. P. 19.

beliefs cannot be the result of weighing reasons; any such change must be nonrational. It must be a conversion. A fortiori, a refusal to change one's moral views can never be a mark of irrationality. In short, morality cannot be subject to rational assessment. MacIntyre finds this view in most modern moral theories and he thus characterizes them as emotivist. Formulated in this way, emotivism is a theory about the justification of moral statements, not about the meaning of such statements.¹⁰

MacIntyre draws out two interesting aspects of this new formulation of emotivism: the emotivist conception of society and social interactions, and the emotivist conception of the self. The social content of emotivism is the "obliteration of any genuine distinction between manipulative and non-manipulative social relations."¹¹ Nonmanipulative influence requires that the means used to influence be limited entirely to the giving of reasons. If someone oversteps these limits, intending to influence on the basis of fears, passions, or inattention, that person is not intending to influence rationally; he or she is attempting to manipulate. But under emotivism, reason has no place in moral considerations; thus, one no longer has a basis to distinguish manipulative from nonmanipulative interactions.¹² And just as the original emotivist picture will strike many as representing a deep truth about morality, so this social aspect of emotivism will strike many as an unsentimental picture of the way things really are.

If reason has no role in moral deliberation, moral judgment becomes no more than an expression of a nonrational choice. The essence of morality becomes choosing or willing; any moral claim can be coherently accepted or rejected by the moral self, since all that accepting or rejecting comes to is choosing a particular moral point of view. Thus, moral claims are external to the moral self; this self shrinks to a point, becoming just a will.¹³ Social and natural constraints are constraints on the self's freedom; they too are external to the self and not essential to the self's identity. In other words, in the emotivist picture the self has no social content.

MacIntyre shrewdly observes that this conception of the self is shared by writers as different as the philosopher Jean-Paul Sartre and the soci-

10. This distinction is mine, not MacIntyre's. Rather, he tries to draw a distinction between emotivism as a theory of meaning and emotivism as a theory of use, but unfortunately says too little to make the distinction clear. Certainly, many would claim that there is nothing to the meaning of an expression other than how the expression is used and that a theory of use therefore entails a theory of meaning. Nevertheless, I think MacIntyre draws an important distinction, one better characterized as between meaning and justification rather than between meaning and use.

11. P. 22.

12. If the distinction is nevertheless retained, it loses its original sense and becomes merely honorific. For example, if someone accuses a politician of manipulating public opinion, all that person is saying is that the politician has different political commitments.

13. There remains, of course, the question whether this will is free, whether the will is, so to speak, pure or not, but that issue can be debated entirely within an emotivist framework. See Stevenson, *Ethical Judgments and Avoidability*, 47 MIND 45, 47 (1938).

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ologist Erving Goffman.¹⁴ For Sartre, the self in its total freedom is distinct from any social roles it may take on. These roles are contingent and external to the self; to think otherwise, as Sartre's famous waiter illustrates, is to be guilty of a kind of self-deception or bad faith.¹⁵ For Goffman, the self is identified with a set of roles; the self is nothing over and beyond the complex presentations of role-playing.¹⁶ As MacIntyre reads Goffman, however, no single role is essential to the self; thus, one cannot distinguish roles that might be said to form the content of the self and roles that are merely accidental to the self.¹⁷ Thus, while Sartre can be read as saying that the self has no social content, Goffman can be read as saying that there is no self to have a social content. This is a fine distinction.

What evidence is there for MacIntyre's claim that contemporary moral culture is emotivist? The moral disagreements he presents as typical are said to be commonly found in "bars, barracks and boardrooms."¹⁸ Yet, as presented, they are untypically articulate, learned, and sophisticated. More to the point, as representative data they have an unnatural conceptual purity. Whereas ideologues might strive for such purity, the common person is more likely to hold to an amalgam of moral considerations concerning both rights and utilities, liberties and equality, and so forth. MacIntyre, nevertheless, is correct in describing much contemporary moral talk as emotivist, but I think his warrant for this claim is to be found in his discussion of characters, not in the debates he would call typical of common parlance.

The characters of a culture are those social roles that constitute its moral and cultural ideals and, as a result, are partially definitive of that culture. To use MacIntyre's examples, the characters of the Public School Headmaster, the Explorer, and the Engineer capture the moral culture of Victorian England,¹⁹ whereas the characters of the Prussian Officer, the Professor, and the Social Democrat capture the moral culture of Wilhelmine Germany.²⁰ Contemporary culture also has its characters: the Rich Aesthete, the Manager, and the Therapist.²¹ It is plain how the last two characters embody emotivism:

The manager represents in his *character* the obliteration of the dis-

14. Pp. 30-31.

15. J. SARTRE, BEING AND NOTHINGNESS: AN ESSAY ON PHENOMENOLOGICAL ONTOLOGY 58-60 (H. Barnes trans. 1956).

16. E. GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 253 (1959).

17. See P. 31.

18. P. 7.

19. P. 26.

20. Pp. 26-27.

21. P. 29.

inction between manipulative and nonmanipulative social relations; the therapist represents the same obliteration in the sphere of personal life. The manager treats ends as given, as outside his scope; his concern is with technique, with effectiveness in transforming raw materials into final products, unskilled labour into skilled labour, investment into profits. The therapist also treats ends as given, as outside his scope; his concern also is with technique, with effectiveness in transforming neurotic symptoms into directed energy, maladjusted individuals into well-adjusted ones. Neither manager nor therapist, in their roles as manager and therapist, do or are able to engage in moral debate. They are seen by themselves, and by those who see them with the same eyes as their own, as uncontested figures, who purport to restrict themselves to the realms in which rational agreement is possible—that is, of course from their point of view to the realm of fact, the realm of means, the realm of measurable effectiveness.²²

I think it is clear that we can recognize our culture in these characters.

II. Problems with Emotivism

MacIntyre raises three objections to emotivism: It signifies a loss of morality,²³ it rests on fictions,²⁴ and it is a stage of a “project” that wrongly rejected an Aristotelian conception of ethics.²⁵ Emotivism signifies a loss of morality in that it feeds upon and sustains incoherence and disorder in our moral language.²⁶ Moral judgments are linguistic survivals of practices in which the status and meaning of such judgments was clear. Out of context, the meaning of moral judgments becomes debatable, and their justification, unclear.²⁷ And it is a short step from confusion in language to confusion in thought. The disorder touches all levels of discourse so that all philosophical problems confronting various modern moral theories, not just ordinary moral disagreements, become insoluble.²⁸ But this may be to attack the appearance and not the substance of the problem. If moral language appears confused and incoherent, the blunt and more critical question is whether we are not in fact better off without the language of morality.²⁹ This response is Nietzschean in its complete and final embrace of

22. P. 29.

23. P. 2.

24. P. 67.

25. See pp. 60-75.

26. P. 14.

27. P. 57.

28. P. 105.

29. MacIntyre offers the example of the word “taboo” in “eighteenth-century” Polynesia. *Id.* He suggests that the language of taboos had fallen into confusion and incoherence. Taboo rules, deprived of their original context, appear arbitrary, their interpretation and justification, debatable. MacIntyre goes on to imagine how modern analytic philosophers would have disputed the meaning of “taboo” in

emotivism. As MacIntyre paraphrases the point: “[M]y morality can only be what my will creates. There can be no place for such fictions as natural rights, utility, the greatest happiness of the greatest number.”³⁰

This objection, as it stands, has little force. Emotivism, according to MacIntyre, also rests on fictions. First, the justification of the characters of the Therapist and the Manager, characters that exemplify our emotivist culture, lies in their effectiveness or expertise, but this expertise is a fiction.³¹ The bureaucratic manager’s expertise rests on a conception of social science as a stock of law-like generalizations with strong predictive power, but there is an essential unpredictability in the subject matter of the social sciences.³² This is a rich topic, but unfortunately MacIntyre does not allow himself the time to discuss the replies his arguments invite.

MacIntyre also argues that the concepts of natural rights and utilities that figure prominently in the irresolvable moral disputes of emotivist culture are themselves fictions:

The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there *are* such rights has failed.³³

But as philosophers such as Paul Feyerabend and historians such as Hugh Trevor-Roper point out, there are reasons underlying theories of witchcraft and demonic possession, reasons that convinced intelligent and sophisticated people as late as the sixteenth century.³⁴ The best reason we

ways similar to their disputes over the meaning of “good.” Is MacIntyre suggesting that the language of taboos should have been reconstructed rather than dropped as it was in 1819?

30. P. 107.

31. See pp. 84-102.

32. P. 84. In addition, MacIntyre claims on the basis of Church’s work that “it is a truth of logic that the future of mathematics is unpredictable.” P. 90. There is in fact no such truth of logic. Church, Turing, and others showed that if we assume that a certain set of procedures completely captures our notion of a mechanical decision procedure, then there is no mechanical procedure for deciding, in general, the truth or falsity of mathematical statements. This assumption, however, is not a truth of logic, and there is the possibility of nonmechanical decision procedures (as Kreisel has suggested). Why should the predictability of the social sciences be restricted to mechanical predictability?

33. P. 67.

34. It is ironic that MacIntyre is guilty of an insensitivity to historical contexts similar to the insensitivity he complains of in emotivism. Although no intelligent person would now believe in witches, in the sixteenth century many intelligent people did, not just the ignorant and vulgar. As Trevor-Roper has remarked, few people were as learned, subtle, and sophisticated as Jean Bodin, and yet Bodin thought he had good reasons to believe in witches. H. TREVOR-ROPER, *THE EUROPEAN WITCH-CRAZE OF THE SIXTEENTH AND SEVENTEENTH CENTURIES* 122 (1969). Concerning the significance of empirical evidence of witchcraft, see P. FEYERABEND, *AGAINST METHOD: AN OUTLINE OF AN ANARCHISTIC THEORY OF KNOWLEDGE* 44 (1975).

possess for asserting that there are no witches is that we have *better* reasons for believing a theory that rules them out. If MacIntyre wishes to employ a similar argument for rights being a fiction, he must show that we have better reasons to accept an alternative theory. Otherwise, the objection looks like an incorrect application of an argument by induction.³⁵

MacIntyre regards the third objection to emotivism as the most important and devotes half of his book to its development. He argues for an Aristotelian conception of ethics that is incompatible with emotivism and emotivism's Nietzschean extension. MacIntyre makes this argument by presenting a reading of the history of ethics from Homeric times to the present. This reading is important because, in MacIntyre's view, the favored version of Aristotelianism requires that we identify ourselves within a particular tradition of moral inquiry.

Emotivism springs from a conception of ethics as a system of rules or principles, of which particular moral judgments are applications. The rationality of judgment is understood to lie in the reasonableness of the initial rules. Possible foundations for these rules, to which various philosophers have appealed, include desires or fears common to all men, reason itself, and the phenomenon of willing or choosing.

In contrast, Aristotelianism springs from a different conception of ethics, one that focuses on the nature of virtues rather than on the articulation and defense of a set of moral rules. Instead of studying what it means for a judgment or action to be morally correct, the Aristotelian studies what it means for a person to be good, what character traits (virtues) a person must possess to have and enjoy the good life.³⁶ To talk about the virtues, we must be able to make sense of the point or *telos* of a human life, for the virtues are those traits that enable one to realize this *telos*.

For Aristotle, this *telos* was provided by his metaphysical biology.³⁷ For his Christian followers (notably Aquinas), biology was replaced by Christian dogma. By the sixteenth century, however, Aristotelian conceptions of the human *telos* began to fall into disrepute. The rise of modern science was greeted by Bacon, Descartes, and Galileo as a rejection of Aristotle's

35. Induction directs us to infer from an observation of a past regularity of an appropriate sort the belief that a certain present occurrence continues the pattern. It would be fallacious, however, to conclude that we should not believe present scientific theories just because past scientific theories have been falsified. Similarly, it would be a fallacy to conclude that we have no reason to believe any present moral theory just because past moral theories have been found objectionable. We could call this the "Fallacy of Defeatism."

36. Whereas the first conception naturally invites questions about the justification of morality and of epistemology, the other tends to questions about moral psychology. Why is integrity a virtue? Can someone possess the virtue of courage and not possess the virtue of temperance? A virtue-conception of ethics can be concerned with questions of justification, just as a rule-conception of ethics can be concerned with matters of moral psychology, but typically neither conception stresses the concerns emphasized by the other.

37. P. 152.

philosophy and science.³⁸ Not only were the latest scientific discoveries in conflict with the claims of Aristotelian science (as Galileo was so fond of pointing out), but the very idea of a *telos* in nature, of explaining phenomena in terms of “final causes,” went against the mechanistic philosophy that underlay the new science.³⁹ The decline in the authority of Christian dogma also undermined the persuasiveness of a Christian conception of the human *telos* and the role of religion in a rational, philosophical understanding of ethics.⁴⁰ And, finally, the rise of “individualism” was directly antagonistic to any single view of our *telos*. The belief that different people have different desires, interests, and needs on which the individual is the best authority rejects any standpoint that challenges the individual’s authority.

What follows, according to MacIntyre, is the “Enlightenment project,” which has engaged moral philosophers from the sixteenth century on, the task of providing a rational foundation to morality based on a conception of human nature as it actually is. Ethics has moved away from an appeal to a *telos* and, consequently, from any conception of a “man-as-he-could-be-if-he-realised-his-*telos*.”⁴¹ The many attempts at the Enlightenment project have failed and, MacIntyre claims, had to fail.⁴² Unfortunately, the sketchiness of his discussion again makes it difficult to assess his claim. The failures cannot arise from these philosophers’ lacking proofs for their claims, since MacIntyre does not think that philosophical arguments must take the form of proofs.⁴³ Nor can the failures be said to stem from a lack of good or interesting philosophical arguments. MacIntyre would surely acknowledge that Hume, Kant, and Kierkegaard, regardless of how wrongheaded he might think them, were not fools. Our nonantiquarian interests in these philosophers surely consist in part in the challenging and powerful arguments we discern in their work.

Some clarification of MacIntyre’s claim might be found in his very general account of why the Enlightenment project had to fail. MacIntyre argues that if we drop any appeal to the human *telos*, as philosophers undertaking the Enlightenment project apparently did, the status and function of ethical precepts become unintelligible.⁴⁴ But the ethical theories of Hume, Kant, Kierkegaard and the other “Enlightenment” philoso-

38. See E. BURTT, *THE METAPHYSICAL FOUNDATION OF MODERN PHYSICAL SCIENCE* (rev. ed. 1954); R.S. WESTFALL, *THE CONSTRUCTION OF MODERN SCIENCE: MECHANISMS AND MECHANICS* (1971).

39. E.A. BURTT, *supra* note 38, at 25-35.

40. H. SIDGWICK, *OUTLINES OF THE HISTORY OF ETHICS* 155-65 (1902).

41. P. 52.

42. Pp. 49-59.

43. P. 241.

44. P. 51.

phers are not without a conception of the purpose and function of ethical precepts. Is MacIntyre suggesting that this conception is incompatible with the rejection of any appeal to the human *telos*? He is not clear. Ultimately, his case against emotivism and the Enlightenment project must rest more on arguments for his alternative rather than on objections to failures of other ethical theories.

MacIntyre's alternative is an attempt to revive a theory of the virtues, which comes in a three-part discussion of practices, narratives, and traditions. Since he does not wish to resurrect Aristotelian biology or the authority of Christian dogma, the first part is concerned with establishing a different conception of the human *telos*. For MacIntyre, this conception is social and is rooted in what he calls a practice:

any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.⁴⁵

Thus, the arts, sciences, games, the making and sustaining of family life are all practices; those acquired human qualities the "exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods"⁴⁶ are all virtues.

It is natural to ask for a justification of this conception of the human *telos*. Since realizing the human *telos* means, for MacIntyre, realizing the goods internal to a practice, the answer to this question presupposes a justification for a practice. Plainly, not every practice is justifiable, and we might begin to wonder whether this crucial appeal to practices leads to moral relativism. It must be possible to evaluate practices, but this may seem problematic for a virtue-centered view of ethics if virtues are understood in terms of practices. In other words, we must either be able to disqualify some human activities as practices or accept the possibility that acting virtuously need not always be acting rightly. The first alternative is not very promising since it is difficult to see how "practices" could be suitably defined without making the account circular. But if we take the second alternative, as MacIntyre does,⁴⁷ we must be able to explain what this possibility means. Otherwise, our account of the virtues would be an

45. P. 175.

46. P. 178 (emphasis omitted).

47. Pp. 186-87.

incomplete account of morality because it would not capture what it is to act rightly.

This leads to the second part of the account, the need to place a practice within a narrative to render it intelligible. By being placed within a narrative, the raising of an arm can be understood as signaling a friend, hailing a taxi, catching a ball. But to become intelligible, each of these narratives must be seen as part of larger narratives. For example, arm-raising cannot be made intelligible as hailing a taxi if it occurs in the middle of a desert.

The narratives MacIntyre is particularly concerned with present human life as a unity so as to provide a basis upon which a conception of the good can be articulated. That conception can transcend the limited goods of any particular practice. Thus, it can provide a benchmark from which one can justify or criticize a practice. What kind of narrative links birth to life to death into a coherent story? MacIntyre suggests a narrative of a quest, a quest for the good.

MacIntyre tries to dispel the appearance of circularity in this proposal by distinguishing a quest from an ordinary search whose objective can be adequately characterized, such as a search for one's keys. The goal of a quest is not fully characterizable before its completion, for a quest is in large measure an education in the character of that which is sought. Thus, most education can be seen as a quest. Accordingly, a quest for the good may be intelligible without presupposing an account of the good. We can now begin to say what, in MacIntyre's view, morally justifies a practice. Practices form part of the narrative quest embodied in the unity of an individual's life. The virtues, according to MacIntyre, are "those dispositions which will not only sustain practices and enable us to achieve the goods internal to practices, but which will also sustain us in the relevant kind of quest for the good . . ." ⁴⁸ Nevertheless, if anything whatever can count as a quest for the good, the threat of relativism seems still present. For example, we can easily imagine a quest for the good that has, as a part, the practice of slavery. Indeed, such a conception of the quest for the good is presumably found in the works of Aristotle and his contemporaries. ⁴⁹ The fundamental question remains, though phrased in new terms: Can we rationally evaluate and criticize different conceptions of the good and what constitutes persevering or failing in its quest?

This leads to the third part of MacIntyre's account, the need to relate both the individual life and practices to a tradition. My social and historical context constrains the manner in which I exercise the virtues and un-

48. P. 204.

49. ARISTOTLE, POLITICS* 1253b-1255a.

derstand the quest for the good. These constraints are not accidental features of me, but rather are essential to my identity as a moral agent. They constitute "the given of my life, my moral starting point."⁵⁰ Thus, a fifth-century Athenian general's conception of the good is and must be different from a twentieth-century American academic's conception. One can rebel against one's social and historical identity (one's moral identity), but this "rebellion" must start from a certain point: "rebellion against my identity is always one possible mode of expressing it."⁵¹

Unfortunately, MacIntyre says little about tradition and the role it plays in his account. It can easily seem that a tradition is little more than the history of a practice, so that the appeal to tradition would not adequately ground practices and narrative quests. A better understanding might be had of MacIntyre's account if we focus on the particular tradition in which MacIntyre is keen to locate us, the tradition of moral inquiry.

MacIntyre's reading of this tradition is much too rich and fascinating to bear further summary. His main claim, which this reading is meant to support, is that our moral tradition is primarily Aristotelian, notwithstanding the past few centuries of anti-Aristotelianism.⁵² This tradition forms much of our moral identity; our moral attitudes and commitments are intelligible and rational only when placed within that tradition. The rejection of Aristotelianism is also rejection of the context in which our moral attitudes and commitments make sense. Our moral vocabulary becomes fragmented and disordered. The failure of moral philosophy in the last few centuries to regain order has led to our emotivist culture.⁵³ Aristotelianism, however, need not have been rejected: MacIntyre's account of the virtues is meant to be more than a contribution to the tradition of moral inquiry; it is also an attempt to review and sustain the earlier Aristotelian context. One of the features of the tradition in which we are located, especially the Aristotelian portion, is that not every conception of the good can be rendered intelligible, not every narrative of a quest for the good can be placed within the larger narrative this tradition embodies.

These are MacIntyre's central themes. We must now evaluate the success of his account.

III. After Relativism

There are problems with MacIntyre's reading of our moral tradition. There are some straightforward errors of fact. For example, concerning

50. P. 205.

51. *Id.*

52. Pp. 110-11.

53. Pp. 60-75.

the medieval inheritance of the Aristotelian tradition, he writes:

When Giotto represented the virtues and vices in Padua he presented them in pairs, and the pairs by their original and imaginative juxtapositions suggest one more way of rethinking the Aristotelian and Christian schemes. The most surprising of Giotto's pairings is at first sight that of charity as a virtue with foolishness as a vice. But then we recall that for Aristotle the highest virtue was wisdom, suggesting thereby that charity was indeed a, or rather the, form of wisdom. Thus Giotto's visual representation of the vices both seems to argue with and to presuppose the Aristotelian scheme. There could not be more striking evidence of the heterogeneity of medieval thought.⁵⁴

Giotto made no such pairing. In the Arena Chapel at Padua, Giotto painted frescoes of the seven virtues and, on the facing wall, the corresponding seven vices. The virtue of charity is opposed to the vice of envy; the vice of foolishness is opposed to the virtue of prudence. This is not a large point but it is troubling in a theory that places great importance on a view of our history.

There are more serious problems with MacIntyre's work; perhaps the most important involves moral relativism, a view that has recently received a number of different formulations in the philosophical literature.⁵⁵ One conclusion that all formulations draw is that moral disagreements between appropriate communities—cultures, societies, historical epochs—are not open to rational assessment. Different societies and times have different conceptions of what it is to be well-dressed, but we do not regard these differences as rationally disputable. The moral relativist claims that our moral disagreements should be viewed in the same way. Disagreements in our conception of the good are no more open to rational assessment than disagreements in our conceptions of being well-dressed.

Plainly, relativism is closely connected with emotivism, as MacIntyre understands it. Like emotivism, relativism holds that moral disagreements between individuals cannot be resolved rationally. Indeed, without a substantial account of what makes a group a community, relativism collapses into emotivism. Without such an account, moral disagreements within a community look no different than those between two smaller communities, so that by successive divisions the community can shrink to the individual. Thus, if MacIntyre's position amounts to a moral relativism, he has not

54. P. 165.

55. See, e.g., B. WILLIAMS, *The Truth in Relativism*, in *MORAL LUCK* 132 (1981); Harman, *Moral Relativism Defended*, 84 *PHIL. REV.* 3 (1975).

succeeded in providing us with a genuine alternative to emotivism.⁵⁶

MacIntyre's approach is to place the virtues in the context of practices, to understand such practices in terms of the narrative unity of a quest for the good, and to place that good within a broader narrative embodied in a tradition. Prima facie, this account does not avoid relativism; it embraces it: Individuals from different traditions cannot rationally dispute, much less resolve, moral disagreements. One could reply, however, that we all belong to the same tradition, and that this worry about relativism would therefore not arise. And to be sure, all the people MacIntyre mentions, all the moral standpoints he examines, belong to our moral tradition. But this reply will hardly do. The Chinese, the Japanese, the Indians, and the people of most third-world countries are not part of our moral tradition. The worry about relativism is thus relevant.

Despite his familiarity with history, sociology, and anthropology, MacIntyre does not address this problem at all. Nor does he address the similar problem of the change of morality over time. Clearly moral standpoints change as traditions change; disputes among these changed views also seem unresolvable. Unless MacIntyre can specify a tradition we all share (which is doubtful), there seem to be only two lines of reply. One is to say that people from different traditions or epochs share important moral characteristics. How this line would proceed is unclear, but it is clear that this sort of reply makes a significant step toward a universality MacIntyre rejects. The shared features that allegedly constitute the core of morality are obviously not particular to any moral tradition and, a fortiori, to any social or historical context. Arguably, this reply loses much of the spirit of MacIntyre's enterprise. The other line of reply, more in keeping with the spirit of *After Virtue*, is to say that while relativism is true of our current situation, we can change this situation. What sort of change would this be? Would it involve merging our moral traditions, regarding other peoples as forming a community with us? How this line would proceed is also unclear, but it is clear that there is no reason to think that the resulting merger need resemble anything Aristotelian.

As it stands, *After Virtue* is an extremely suggestive and thought-provoking book, but parts of it are very sketchy and, to that extent, unconvincing. Toward the end of *After Virtue*, MacIntyre rightly recognizes that his book requires a sequel. There are many people, this reviewer included, who look forward to that book.

56. The natural way to avoid relativism is to argue for a universality as an essential part of morality. This is what Kant and other modern moral philosophers have tried to do, and it is certainly part of their intellectual pull that they took this natural approach to avoid moral relativism. It would indeed be ironical if, as MacIntyre claims, this approach of avoiding relativism led to relativism's cousin, emotivism. In any case, MacIntyre apparently has no sympathy for the aspirations of a morality to universality. See p. 119.

Medical Research on Human Subjects

Ethics and Regulation of Clinical Research. By Robert J. Levine.
Baltimore: Urban & Schwartzberg, 1981. Pp. xviii, 299.
\$35.00.

William J. Curran†

During the past few years, a great deal has been written about experimental investigations using human beings as subjects. Dr. Robert Levine's book, *Ethics and Regulation of Clinical Research*,¹ for example, is one of two recent guidebooks for members of the hundreds of human studies committees, or "institutional review boards," as they are known in federal regulations, that must examine and approve or disapprove clinical research in hospitals and universities across the United States.² There have also been several fine books on the social context of medical research and on the requirements of informed consent.³ If only one book in this field were to be read, however, I would suggest it be this one by Dr. Levine. Since it is written by one person, rather than by a series of chapter authors, it is better organized, less repetitive and more consistent in its viewpoint than most multi-authored texts. It is also unusually authoritative. The author is a medical investigator at Yale Medical School, a respected clinical pharmacologist, and an editor of a leading medical research journal. Most importantly, he recently spent over three years on the staff of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. He is thus well qualified to discuss the vast and sometimes treacherous morass of federal statutes and regulations currently controlling clinical investigations.

Despite his close relationship to the research field, Dr. Levine does not write as an apologist for his fellow researchers. He travels a straight and fair path through the many ethical and regulatory standards governing

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1. R. LEVINE, *ETHICS AND REGULATION OF CLINICAL RESEARCH* (1981) [hereinafter cited by page number only].

2. The other is *HUMAN SUBJECTS RESEARCH: A HANDBOOK FOR INSTITUTIONAL REVIEW BOARDS* (R. Greenwald, M. Ryan & J. Mulvihill eds. 1982).

3. See, e.g., G. ANNAS, L. GLANTZ & B. KATZ, *INFORMED CONSENT TO HUMAN EXPERIMENTATION: THE SUBJECT'S DILEMMA* (1977); B. BARBER, *INFORMED CONSENT IN MEDICAL THERAPY AND RESEARCH* (1980); *THE SOCIAL CONTEXT OF MEDICAL RESEARCH* (H. Wechsler, R. Lamont-Havers & G. Cahill eds. 1981).

clinical research, a survey that is particularly important given the bad press "human experimentation" has received in the last ten years. Indeed, the field has been a favorite and sometimes vulnerable target for investigative reporters. There have been enough scandals and questionable practices to justify the media attention.

Given the criticisms that medical research is subjected to today, it is easy to forget that this field once enjoyed a hallowed reputation supported by romanticized stories of triumphs over human disease. Before Congress entered the deep quagmires of Medicare and Medicaid, the federal government was satisfied to support medical research in a truly grand fashion. Because the government did not bear the bulk of the financial burden for the provision of direct medical care, it could, and did, give generous support to biomedical research. But those days are over. Medical research, the glamor stock of the past, has now become a "suspect" activity required to prove itself every day. The low point came perhaps in 1974 when the Massachusetts legislature passed a statute making "experimentation" on the human fetus a felony, without even providing a statutory definition of the term.⁴

At the outset, Dr. Levine explains his strong dislike for the term medical "experimentation." It is one of three concepts commonly used in the field that he rejects as "unacceptable terminology."⁵ He does not seem to reject the term because of the negativist baggage it has acquired in the public eye, but because of the misleading implications the term conveys of always involving "testing something" or "trying something out." Dr. Levine asserts that such practices are more characteristic of medical practice than medical research, since practitioners regularly adjust diagnosis and treatment in seeking the best results for their patients. On the other hand, modern clinical investigators are strictly constrained by the written specifications of the research protocol within which they are working.⁶

This Review focuses on two of the many issues raised by Dr. Levine's book. First, it discusses ethical and fiduciary standards for the relationship between researcher and subject. Second, it analyzes the manner in which institutional review boards evaluate medical research proposals.

I. Medical Research, Ethical Norms, and Informed Consent

In a useful and fundamental chapter on ethical norms, Dr. Levine summarizes what he describes as the generally accepted list of ethical require-

4. See MASS. ANN. LAWS ch. 112, § 12J (Michie/Law. Co-op. 1982). The statute defines "live fetus," but not "experimentation."

5. P. 6. The other unacceptable terms are "therapeutic research" and "nontherapeutic research." *Id.*

6. P. 8.

Ethics and Clinical Research

ments for conducting clinical research: (i) good research design, (ii) competent investigators, (iii) a favorable balance of harm and benefit, (iv) informed consent of the subject, and (v) equitable selection of subjects.⁷ To this list, Dr. Levine also adds an additional principle. He suggests that monetary compensation be granted without fault for research-related injuries to subjects. He asserts that such a principle has begun to appear in some guidelines and he predicts that the requirement of no-fault compensation will soon be added to federal regulations.⁸

A. *Informed Consent as Contract*

Dr. Levine's longest chapter is on the fourth requirement, informed consent. He offers sixteen subrequirements for an adequate informed consent.⁹ Dr. Levine grounds the requirements of informed consent in what he calls the ethical principles of "respect for persons"¹⁰ and personal "autonomy."¹¹ But he also observes that through informed consent the investi-

7. Pp. 13-22. Some readers may note the absence from Dr. Levine's list of one other commonly accepted principle: the requirement that research on humans be preceded by laboratory and animal investigation that indicates an acceptable chance of success and safety. Dr. Levine does not ignore this principle, but notes it briefly as part of his first requirement of good research design. P. 14. In contrast, the two major international codes in the field distinguish the soundness of the research design for human investigation from the adequacy of "animal experimentation" (both codes use this term) that precedes and must be found to justify a research plan involving humans. See p. 286 (Nuremberg Code, principle 3); p. 288 (Declaration of Helsinki, basic principle 1).

The importance of the requirement of adequate prior testing on animals was recently underscored by the impressive media attention given to the first transplant of a totally mechanical heart on Dr. Barney Clark at the University of Utah Medical Center. Early media comment was euphoric. As the patient suffered severe downturns and seizures and the left ventricle valve of the machine had to be replaced, the *New York Times*, which had led the favorable national coverage with a full-time medically trained reporter, Lawrence Altman, on the spot, turned full-circle and published a scathing editorial attack. The *Times* emphasized the institutional review board's responsibility to curb the zeal of doctors who pioneer new operations but who may be "led by natural enthusiasm, or a passion for the spotlight, to test them prematurely." The editorial asked, "Don't these failures suggest that the review board should have required even more testing in animals before using a patient as guinea pig?" *Prolonging Death Is No Triumph*, N.Y. Times, Dec. 16, 1982, at A26, col. 1.

8. Pp. 118-23. At present, neither Congress nor the Department of Health and Human Services has implemented such a program. One of the many requirements of informed consent, however, is disclosure of the existence of compensation for injuries in any research project involving more than minimal risk. 45 C.F.R. § 46.116(a)(6) (1982). A presidential commission has recommended that the federal government finance a few small-scale no-fault compensation programs. See 1 PRESIDENT'S COMM'N FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, COMPENSATING FOR RESEARCH INJURIES: A REPORT ON THE ETHICAL AND LEGAL IMPLICATIONS OF PROGRAMS TO REDRESS INJURIES CAUSED BY BIOMEDICAL AND BEHAVIORAL RESEARCH 4 (1982).

9. Pp. 73-89. Lest this seem overly extensive, I would note that the latest federal regulations contain at least as many different categories of information that must be conveyed to subjects. See 45 C.F.R. § 46.116 (1982). The information must be given in understandable language and the consent cannot contain exculpatory language requiring a waiver of legal rights or liability for injury. *Id.* The regulation also contains a set of conditions under which institutional review boards may waive some or all of the elements. *Id.* § 46.116(c).

10. P. 70.

11. Pp. 91-92.

gator and the subject enter into a contractual relationship.¹² That relationship, when it exists, is certainly more one of law than of ethics.

While the reference to contractual theory is interesting, few arrangements between investigators and subjects meet the formal standards of traditional contracts. Indeed, the contractual model is useful to describe the relationship between researcher and paid volunteer in physiological or behavioral science projects; it sheds little light, however, on clinical research.

In the clinical-medical area—the primary focus of Dr. Levine's work—subjects are generally sick persons and the underlying contractual relationship concerns the medical service offered and received. For such persons, involvement in clinical research is almost always incidental to their status in an already established doctor-patient relationship. The core of the latter relationship is trust; the physician has a professional duty to provide the best available medical care to the patient¹³ and a fiduciary obligation of fair dealing and truthfulness. The parties are not equal and wary bargainers dealing at arms' length: The patient places great trust and hope in the physician and surrenders a considerable degree of privacy and personal convenience to receive the desired benefits of the treatment.

When the patient also agrees to become a research subject, he rarely obtains any financial compensation.¹⁴ The patient is not bound by a contractual "promise" to participate in the research throughout its course; his involvement is essentially voluntary. The patient can withdraw from the research project at any time, no matter how inconvenient for the researcher, and the institution and the researcher cannot penalize him by withholding medical services or improperly discharging him. In summary, the relationship of patient-subject in clinical research does not fit comfortably into a contractual model.

B. *Informed Consent and Ethical Principles*

More generally, the ethical principles of "respect for persons" and personal "autonomy," which form the basis for Dr. Levine's formation of

12. P. 93.

13. The basic foundation of the ethics of physicians is the Oath of the Hippocratic Physicians: "I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing." 1 HIPPOCRATES 299 (W. Jones trans. 1923), reprinted in *ETHICS IN MEDICINE: HISTORICAL PERSPECTIVES AND CONTEMPORARY CONCERNS* 5 (S. Reiser, A. Dyck & W. Curran eds. 1977). Dr. Levine does not cite the Oath in his discussion of fundamental ethical principles, though he does quote Hippocrates' *Epidemics* for the proposition that when treating diseases, physicians "help, or at least . . . do no harm." P. 10.

14. The patient is generally billed for hospital-day charges and services even if he participates in a research program. He is not billed for the cost of test medications, however. Similarly, he should not be billed if he overstays a hospitalization to continue in a study or if additional hospitalization is needed because of a side-effect of the study.

informed consent,¹⁵ are drawn more from general philosophy and ethics. Because they do not derive from the applied canons of professional medical ethics, obligations, and expectations that have developed over many centuries, Dr. Levine's discussion seems rather abstract and dogmatic. I believe that the study of informed consent in clinical research would profit from more attention to the applied ethical framework of the doctor-patient relationship and the ethical standards developed around the added relationship of clinical investigator and patient-subject. Such treatment would be consistent with the common-law approach to fiduciary duties and contractual expectations, which interprets professional and business relationships by examining the customs and practices of the fields themselves. Indeed, the criticism of Dr. Levine's contractual model suggests why a context-specific derivation of the ethical principles of informed consent is desirable.

C. *The Case for Disclosure*

In his chapter on informed consent, Dr. Levine also turns to the question of whether the case for full disclosure is more compelling in the therapeutic relationship or the research relationship.¹⁶ This discussion may remind one of medieval debates about which religious order was the most holy and virtuous, but it is analytically useful. Dr. Levine finds that the general consensus is that clinical investigative efforts carry the greater obligation to disclose.¹⁷ It is interesting to find that Dr. Levine answers this question by reference to accepted practice and the expectations of the parties rather than through application of the more abstract ethical concepts referred to earlier. Indeed, clinical subjects are often considered members of the research "team" and thus entitled to all knowledge possessed by the group's other members.

This collegial approach, however, does not adequately portray the status of the unsophisticated, sick, anxious hospitalized patient asked to try a new drug or procedure that may help alleviate ("has some interesting promise") the condition or pain that patient has been enduring. In addition, the distinction itself seems unnecessarily formalistic. Recent legal decisions concerning informed consent in therapeutic care support a high degree of disclosure for all risks and discomforts "material" to a reason-

15. This characterization is consistent with the work of the National Commission. See NATIONAL COMM'N FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, THE BELMONT REPORT: ETHICAL PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF HUMAN SUBJECTS OF RESEARCH 4 (1978) (noting that respect for persons requires treatment as autonomous agents and protection of those with diminished autonomy).

16. Pp. 93-95.

17. Pp. 93-94.

ble patient's decision to accept or reject therapy.¹⁸ It is not clear why there should be a significant difference in the degree of disclosure required for treatment and research. Different circumstances may create different demands and call for individualized decisions in the patient's or the subject's best interests, but the setting of clinical research itself should not affect the basic duties owed a subject-patient.

II. The Role of Institutional Review Boards

The last chapter of Dr. Levine's work addresses the functions of institutional review committees and boards.¹⁹ As an aid in developing appropriate review procedures, Dr. Levine includes a rather detailed description of the structure, administration, and practices of the Human Investigation Committee at Yale-New Haven Medical Center,²⁰ a group Dr. Levine has headed with distinction for several years. Scattered brightly among the descriptive materials are items of sage advice concerning committee operations.

Lawyers may be surprised by two practices at Yale. First, although there is a procedure for disapproving protocols, the Committee "virtually never labels a protocol disapproved."²¹ Second, there is currently no formally established appeal from decisions of the review group. According to Dr. Levine, no system exists because there have been no requests for appellate review in his ten-year experience.²² These observations do not surprise me. As chairman for many years of a Harvard review committee and a member of several committees at large teaching and research hospitals, my experience has been similar.

When the local review system was first developed, some commentators, especially lawyers, were struck with the great potential for building a common-law body of research-review principles and proposed elaborate systems of national reporting of committee decisions and opinions.²³ These

18. See, e.g., *Canterbury v. Spence*, 464 F.2d 772, 786-87 (D.C. Cir. 1972); *Cobbs v. Grant*, 8 Cal. 3d 229, 244-45, 502 P.2d 1, 11, 104 Cal. Rptr. 505, 515 (1972); *Sard v. Hardy*, 34 Md. App. 217, 231, 367 A.2d 525, 533 (1977); *Harnish v. Children's Hosp. Medical Center*, 439 N.E.2d 240, 243 (Mass. 1982); *Scott v. Bradford*, 606 P.2d 554, 559 (Okla. 1979). One state has adopted a similar "materiality rule" by statute. See WASH. REV. CODE ANN. § 7.70.050(2) (Supp. 1982).

19. Pp. 207-43.

20. Pp. 212-25.

21. P. 219.

22. P. 225.

23. See Calabresi, *Reflections on Medical Experimentation in Humans*, 98 DAEDALUS 387, 400-01 (1969). For example, one study states that the decisions of review boards should serve as precedents for future opinions. Thus publication would be a first step toward case-by-case development of sound policies for human experimentation. We regard such a development, analogous to the growth of the common law, as the best hope for ultimately providing workable standards for the regulation of the human experimentation process. TUSKEGEE SYPHILIS STUDY AD HOC ADVISORY PANEL, FINAL REPORT 45 (1973).

proposals have not been accepted and the review system remains locally based and informal, although functioning under an expanded set of federal regulations dealing with procedural and substantive due process. The early proposals fundamentally misconstrued the purposes and functions of the local review bodies. Commentators assumed that the committees would act like civil courts, hearing disputes on an advocacy basis and giving reasons for their acceptance or rejection of particular projects. The system has not developed that way. The review of proposals is a process of negotiation, not confrontation.²⁴

As Dr. Levine points out, an investigator usually approaches the review group at an early stage in the development of his proposal. He may discuss an idea with the chairperson, the administrator, or a member of the group, sometimes even before filing an application. Many committees ask the investigator to be present when the project is discussed, to answer questions, to listen to possible objections, and to react to them, but the tone of the discussion is usually not adversarial. If problems remain, the committee may postpone its decision, or it may approve the project on certain stated conditions. If an impasse persists, the investigator can withdraw the proposal, perhaps returning at a later time with a revised or quite different proposal. Outright disapproval is rare.

As a result, investigators can view the board as a group of colleagues striving to uphold ethical norms and to avoid harm to patients and subjects. In contrast, if the adversarial model were prevalent, the review committees could be perceived as an obstacle to research, a tool of the regulatory system without value to medical science.²⁵

Dr. Levine ends his book with wise advice for institutional review bodies. He cautions them to remember that their success depends on their own credibility within the institution. They must be perceived as exercising fair and independent judgment uncontrolled by the administration of the institution. They cannot be seen merely as eager policemen of federal rules, nor can they be constantly apologizing for all they do: "Don't blame us; it is all the Fed's fault."²⁶ The latter type of posturing, Dr. Levine notes, not only undermines the authority of the committee, but also hurts its ability to complain properly about undesirable federal requirements.

24. The review group has the power of rejection, however, and can use it to prompt uncooperative, inexperienced, or pompous investigators.

25. In an earlier paper, I predicted that few applications would be turned down and that a negotiation system would develop under which investigators would withdraw questionable applications. Curran, *Governmental Regulation of the Use of Human Subjects in Medical Research: The Approach of Two Federal Agencies*, 98 DAEDALUS 542, 586 (1969). I also argued that review committees should not be analogized to civil courts. *Id.* But see Calabresi, *supra* note 23, at 400-01 (suggesting analogy to common law). Such committees are more like licensing agencies.

26. P. 227.

Dr. Levine advises committees to operate in an atmosphere of trust that will encourage self-policing within the research community.²⁷

I came to this book with a great respect for Dr. Robert Levine as a physician and clinical investigator. I come away with renewed respect for his scientific talent and a fresh insight into his capacity to help us develop and maintain high ethical and regulatory standards in clinical research involving human subjects.

27. *Id.*