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Edited by

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## **D. Reidel Publishing Company**

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190 Old Derby St., Hingham, MA 02043, U.S.A.

P.S. ATIYAH, *Promises, Morals and Law*. Don Mills, Ont. and New York: Oxford University Press 1981. Pp. 218. Cdn\$52.50; US\$29.95. ISBN 0-19-825377-X.

This book offers an account of promising, which it identifies with contract, from legal and historical sources and which is in conflict in at least one vital respect with the main philosophical accounts. It is assumed by the author that in its central doctrines and ideas law and morality [have been] largely congruent. Moral philosophers can therefore learn from the law — promising can be modeled upon contract. Philosophers are criticized, however, in that they have largely 'proceeded in total disregard of [how] the law' (2) deals with contract. Had they not done so they would have noticed this vital feature and have discarded their belief in its contradictory. Consequently they would have fashioned, as Atiyah himself has, an alternative theory of promising in order to explain how this feature fits.

The signal feature of contract, lost upon cut-off moral theorists, is pointed to 'in the fact that the English common law has never treated the mere fact that a promise has been made as even *prima facie* a sufficient condition for the creation of a legal [or moral] obligation. Even in the latter half of the sixteenth century, when common lawyers began to build the modern law of contract on new foundations ... they rejected the notion that *prima facie* a promise created a legal [moral] obligation. To them, it was of vital importance to ask *why* a promise had been given. A promise made for a good reason — a good "consideration" as it came to be said — was *prima facie* enforceable; a promise made without reason — or consideration — was *prima facie* not enforceable' (3).

So, promises are 'given because of what they bring [to the promisor]' (144). The paradigm case of a promise is not, as moral theorists seem always to have believed, the gratuitously-given one but where it is given for what the promisor, in return, wants. The paradigm case does not confer an un-covenanted benefit upon the promises; on the contrary, it is the promisor who benefits. If you wish to buy goods but cannot pay cash you will ask the seller for credit which is to offer a promise of later repayment in place of present payment. When we appreciate this setting, see '*why* promises are given and ... performed' (144), Atiyah argues, we can in turn see that 'the buyer's obligation [to repay] derives from purchase of the goods, rather than from his promise' (143).

Actually, 'the implication of a promise to pay the price may be the result, rather than the cause of holding the transaction to be a purchase' (144). This last idea is worth dwelling upon. Clarified, it is that if we hold that a purchase took place we can from this infer an obligation (and hence a promise) to repay. This is contrasted with the mistaken notion that a purchase having taken place is to be inferred from the buyer's promise to (re)pay. It is the purchase which sets the obligation, not the promise. (Promises, on the most attractive interpretation of what Atiyah intends, do not [themselves] create obligations; certain surrounding factors — consideration — in this case the fact of a purchase, do.)

But what is a purchase? We know it is not merely the transfer of ownership of the goods. It is at the very least the-transfer-for-payment, or, where credit is allowed, the-transfer-for-promise-to-repay. So, the fact of a purchase cannot be the cause of the obligation — in a way which will support Atiyah's view that promises do not set obligations even *prima facie*. He needs purchase to be separated from promise in order for obligation to be separated from promise.

The doctrine of 'consideration' which Atiyah holds say that there are three grounds on 'which a promise may be held binding [or create a *prima facie* obligation] in law' (33). They are: (1) 'where the promisor has received some benefit from his promise; (2) where the promisee has acted to his detriment on the promise; and (3) where the promisee has given his own promise in exchange for the promisor's promise' (33). There is some reason to be concerned with at least the second of these grounds. Why should the fact that one has acted to one's own detriment on another's promise create thereby an obligation on the promisor unless the promise itself has already done so? If it does not do so then the putative grounds for the obligation are describable in a way which deals only with the promisee's expectations. The author himself has repudiated that as grounds for an obligation.

There is, however, a more pervasive worry with the main thesis of this book that promising carries with it not even a *prima facie* obligation. This thesis is at times generalized by the author to include the idea that no mere voluntary (speech) act performed by an agent can produce a *prima facie* obligation. He argues, probably correctly, that expectations set up in the hearer, for example, are not sufficient grounds upon which to claim an obligation. Hence, generally, such unilaterally created 'obligations' cannot be justified. If, however, we look at other practices which occur in speech we seem to find cases of unilaterally-created cases of *prima-facie* obligation which it would be difficult to separate effectively from promising. Truth-telling is such a case. Were there not a *prima facie* obligation to tell the truth when one voluntarily employs assertive forms of utterance it would be difficult to imagine a workable practice of truth-exchange working at all. Were the obligation to tell the truth under such conditions dependent upon 'consideration' of one sort or another received from the hearer, then a basic form of speech would be usable only in extremely personal or limited cases which contained a certain history between speaker and hearer. Since it is the history of the case

which will, according to the thesis of consideration, create the obligation, we are at a loss to see what role there is for promising or contract. Can it be that once there exists an obligation, promising acknowledges it? But what will that add which is useful unless *that* creates or expresses a new level of commitment?

It must be remembered that Atiyah's thesis is not that the conditions under which a prima facie obligation is created by a promise are shown by the law to be more stringent, or bilateral, where we thought them less stringent, or unilateral. His thesis is that the promise itself creates absolutely *no* obligation and that it is the bilateral conditions of consideration themselves which create the obligation. The former thesis is not a revolutionary thesis to philosophers, being merely a refinement of the basic 'felicity conditions,' as J.L. Austin called them, of promising and therefore a refinement of the conditions of a prima facie obligation. The latter thesis, however, is a radical and interesting thesis but probably false.

In either case, however, *Promises, Morals and Law* brings forward from the history and present doings of the courts some useful material. It is not clear, however, that this material is to be used as it is by Atiyah.

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HARTRY H. FIELD, *Science Without Numbers*. Don Mills, Ont.: Oxford University Press; Princeton, NJ: Princeton University Press 1980. Pp. xii + 130. Cdn\$27.95; ISBN 0-631-12672-4; US\$16.00; ISBN 0-691-07260-4.

This monograph is a clever reply to the argument given by Putnam, Quine and others that because mathematics is so inextricably bound up in our scientific theories we are as much committed to the existence of mathematical entities as we are to the theoretical entities of science. The argument is presented explicitly in Putnam's *Philosophy of Logic* (New York: Harper & Row 1971). Field's reply has two parts intended to show that the commitment of science to the existence of mathematical entities ('numbers' for short) is only apparent. The first is intended to show that the use of numbers differs in principle from that of other scientific entities. Mathematics is disengaged from the logical apparatus of a theory in a way that ordinary theoretical en-

tities are not. The second part of the argument is to show exactly what role mathematics does play in our theories: that it is eliminable in a more practical sense, namely, that an 'attractive' characterization of natural laws can be given which does not involve reference to numbers.

Field makes out a fundamental difference between the use of theoretical entities and numbers in scientific theories. The use of the former is justified because it helps to explain and predict observable phenomena not otherwise deducible from the theory. On the other hand the use of mathematics does not add all to the deductive power of a theory. In the logician's sense, the mathematical part of a theory is 'conservative' with respect to the rest. For this thesis Field offers two arguments, the first informal and stated briefly, the second formal and worked out in detail.

The first argument is that because mathematical truths are a priori, and hence necessary, they surely cannot increase the number of empirical, contingent truths deducible from a theory. This is not obvious if one accepts that some theoretical claims such as theoretical identities, (e.g.  $\text{Water} = \text{H}_2\text{O}$ ) are both obviously scientific, empirically discovered and necessarily true, (if true at all). Field relies on a dichotomy between the a priori necessary truths of mathematics and the contingent a posteriori truths of the nominalistic parts of science that may not hold up. But the real argument is the technical one: to say that a mathematical theory  $S$  is conservative with respect to a non-mathematical (or 'nominalist') theory  $N$  is to say that if  $N$  doesn't entail a given sentence  $A$  then  $N + S$  doesn't either. By familiar logical manipulations this is equivalent to a claim of the consistency of the theory  $S$  with  $A$ , which can be demonstrated. Such an argument relies on finding convincing formal models of mathematical and scientific theories and their parts to which to apply mathematical results. Field's proposed model is convincing, and will be discussed below.

The second part of the argument is to show how in practice reference to numbers can be removed from the statement of scientific laws. Field works up to a treatment of Newton's law of gravitation, an example discussed by Putnam. Putnam claims that the role of the formula representing gravitational force as a function of distance and mass can only be expressed in terms such as 'Any way of assigning values (numbers) to the force, mass, etc. of particles subject to certain constraints will have the result that the following mathematical relationship holds between those numbers....' Field denies that reference must be made to numbers in stating the real 'content' of the law. An example of Field's project comes from geometry. It is possible to provide an axiomatization of geometry using only predicates of points and lines such as ' $x$  is between  $y$  and  $z$ ' and 'the interval  $x, y$  is congruent with the interval  $z, w$ ' which allows the derivation of all geometric facts not mentioning distances. It is then possible to *prove* a 'representation theorem' to the effect that any way of assigning distances to pairs of points will allow one to deduce facts about points and lines by computing with the numerical values of distances. Some of this formal work has been done within the theory of measurement but Field puts it to a new use here. This use is to show how it is possible to

separate those 'nominalistic' facts about the subject matter, in the case of Newton's law facts about the positions and other relations among objects, which allow them to be represented by numbers satisfying particular equations. These nominalistically statable facts form the real content of the theory, the representation theorem and the computations made using it are solely of 'instrumental' use, intended to ease the inference to other nominalistic conclusions.

Field does refute Putnam's claims that reference to numbers is inextricably involved in the very statement of 'empirical' laws, but a weaker argument remains. One still might find even the instrumental utility of mathematics to be an argument for the existence of numbers. Field responds that this can be explained by the fact that mathematics was developed hand in hand with physical theories, so of course it is useful. But that just begs the question of the instrumentalist position, 'How can a theory be so useful without being true?'

In the course of answering this specific argument for platonism Field makes two important contributions to the methodology of the philosophy of mathematics. These should help to return the issue of the nature of applied mathematics to a central place in the field. The first is his use of notions from the theory of measurement such as representation theorems. Philosophy of applied mathematics often seems to involve such vague questions as what would one do if when computing how many tiles were needed to cover a floor the answer often came out wrong. Field is able to sharply distinguish the empirical hypotheses upon which measurement relies from the conventional choices made in applying numbers to the world, and both of these from the mathematical consequences of those choices.

Field's second contribution is to present a formal model of applied mathematics. Given the methods of reducing pure mathematics to the theory of 'pure sets' axiomatized by Zermelo-Frankel (ZF) set theory, many points in the philosophy of mathematics can be precisely formulated as questions about ZF and sometimes given precise answers. Field proposes that applied mathematics, involving for example functions applying numbers to objects, can be modeled in the theory of sets which can contain non-sets (or 'ur-elements') as members (ZFU). Given such a model of applied mathematics, the question of conservativeness can be given a precise formulation and indeed turns out to be provable assuming only the *consistency* (not the *truth*) of ZF, pure set theory. This Field takes as conclusive evidence that one is not forced to assume the truth of mathematics to explain its use.

While this is a technical book Field is at great pains to give informal versions of his arguments as well as illustrations. The mathematics involved in rewriting Newton's law of gravitation is only the elementary calculus of derivatives while the knowledge of models of set theory and the relationship of logics between first and second order logic which Field uses in his technical arguments is within the equipment of anyone with an interest in the philosophy of mathematics. This book is an excellent example of how to use technical notions in philosophy; to find formal models of theories and to

prove precise facts about them. Field does succeed in sorting out the tangle of mathematics and science. Of course lingering doubts may remain about whether the formal models are accurate, and whether mathematics is really eliminable from science in some genuinely practical sense, but how much can one do in 130 pages?

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JOHN FINNIS, *Natural Law and Natural Rights*. Don Mills, Ont. and New York: Oxford University Press 1980. Pp. xv + 425. Cdn\$62.95: US\$45.00 (cloth: ISBN 0-19-876098-1); Cdn\$19.95: US\$19.50 (paper: ISBN 0-19-876110-4).

For two centuries or more the idea of natural law has had a relatively bad press among English-speaking philosophers. By Bentham it was characterized as nonsense, derived largely, he thought, from confusing two different things — laws of countries and laws of science. By Austin it was, if not reduced to nonsense, shorn of all significance, since the idea of an intrinsic link between law and morality was incompatible with his claim that the existence of a law is one thing and its merit or demerit quite another. So by subsequent legal positivists it was for the most part disregarded or ignored because the validity of laws in their view depended not on content but on pedigree.

Of recent years there was a swing of the pendulum. Hart, for example, showed how sense could be made of natural law thinking and sketched an outline of a minimal natural law theory. Fuller, more drawn himself to natural law approaches, claimed to find an inner morality in law. And most important, Dworkin in his criticisms of 'neo-positivism' made it clear that no full analysis of law is possible without reference to legal, moral and political principles.

Given this change in climate, it was inevitable that eventually a comprehensive theory of natural law would be presented by some present day philosopher. Just such a theory is provided by John Finnis in a book which must be one of the most significant contributions to legal philosophy since the publication of *The Concept of Law*. What makes it so significant is precisely that it is not an account of the history of natural law theorizing but rather a carefully worked out theory in itself of natural law. The author's goal is to identify those human goods that can be secured only by institutions of human

law, to discover those requirements of practical reasonableness that can be satisfied only by such institutions, and so to inquire how such institutions may be justifiable or defective.

The inquiry begins with an introduction on methodology in legal theory. The approach taken rests on two premises. One is the need for theorists describing social practices or institutions to understand these from the inside by realizing their point or importance for those in the society in question. The other is the need for theorists wanting to be more than mere lexicographers to focus on central meanings and paradigm cases. Legal theorists, then, should neither present purely arbitrary definitions of law nor proffer detailed descriptions of word usage but should highlight and investigate the central and most important examples of law.

But since ideas regarding importance vary from person to person, importance here must be assessed by reference to those whose concerns create the subject matter. These, Finnis argues, following Hart and Raz, will be those who must — if there is to be a legal system at all — adopt an internal point of view towards the rules or at least towards the rule of recognition. In short they will be the judges and other officials in the legal system.

These officials, though, may not necessarily all share the self-same internal point of view. For, going further than either Hart or Raz, Finnis points out that there are central and peripheral cases not only of law but also of the internal point of view itself. Peripheral cases include self-interested conformity, unreflective traditionalism and even the position of the anarchist judge (envisaged by Raz) who follows the law most of the time in order to be able eventually to disobey it when so doing will most undermine it. By contrast the focal or central case must surely be that of following the rules on the ground that they are obligatory in their own right — morally obligatory, at least presumptively. Consequently, the most important things for legal theorists to know and describe will be those things that make such rules obligatory. In short a Hartian approach to legal theory leads Finnis naturally to a search for the link between law and morality.

This brings us to principles of natural law. These, he says, are nothing more nor less than two things: basic practical principles indicating basic forms of human flourishing as goods to be pursued, and basic requirements of practical reasonableness (itself one of the basic forms of human flourishing). Together these principles and requirements enable us to form sets of general moral standards.

What is the status of these principles? According to Aquinas, who in Finnis's view occupies a uniquely strategic place in the history of natural law, they are self-evident truths. This does not mean, however, that they must be regarded as demonstrable or necessary propositions whose denial constitutes self-contradiction. Nor does it mean that they are pure statements of fact from which the natural lawyer then makes an illicit leap from 'is' to 'ought' — and on this and on Hume's argument Finnis has much to say of interest. Nor does it even mean that these truths are clear to everyone — on the contrary Aquinas is quite plain that they are only clear to those of wisdom and

experience. It is rather that, like the principles of logic underlying all speculative reasoning, they are necessary for all demonstration yet are themselves undemonstrable. Their denial then is self-defeating: it may have meaning but it has no point.

What follows is an application of this kind of reasoning to the identification of the basic goods or forms of human flourishing. The first good to which the reasoning is convincingly applied is knowledge. To deny that knowledge is worth having or that truth is worth pursuing is by no means meaningless. It is, however, pointless and self-defeating: what would be the point of seriously contending that truth is not worth pursuing unless the contender is at least concerned to establish the truth of at least that one contention? As this 'retorsive' argument shows, the very activity of argument and contention commits us inescapably to the value of truth and knowledge.

Less convincing, however, is the discussion of other basic goods. These, it is said, include life, play, aesthetic experience, sociability, practical reasonableness and 'religion' — a list that few presumably would wish to quarrel with. The arguments establishing them as goods, though, are less powerful than that concerning knowledge. It may be that similar retorsive arguments might be made regarding them (for life perhaps though not for aesthetic experience) but Finnis nowhere tries to make them. Instead he does two things, which strike the reader as somewhat disappointingly inadequate: he refers to the findings of anthropology as revealing a fairly unanimous consensus on these matters; and, resorting to a sort of intuitionism, he suggests that the proper form of discourse here is '... is good, don't you think?' Now it may be true that here proof and demonstration are out of place (the argument about knowledge being an exception), that what is really called for is a full and sympathetic understanding of our human nature from the inside, and that logical discourse has to give place to some other mode such as that found in novels, plays and poems. But one would have liked to see this more fully explored, especially as Finnis himself could clearly have conducted an excellent exploration.

Nonetheless, what he does say on the individual basic goods holds much of interest and importance. His treatment of sociability and friendship is particularly valuable, leading on as it does to the concept of community and the common good. So too is his discussion of 'religion,' even if his exploration of an 'uncaused causing' fails wholly to convince. Here his argument is partly that there is a principle of theoretical rationality to the effect that if a question of a certain form (e.g. what caused such-and-such a state of affairs?) has been asked and answered, one can expect another question of the same general form (e.g. what caused the whole state of affairs causing the first mentioned state of affairs?) to be answerable. But are these questions really of the same form at all?

Particularly interesting is his discussion of play. Like 'religion' and aesthetic experience, play is, according to Finnis, a basic good, being something we do simply for its own sake. Indeed, following Plato, he suggests that the fundamental category of moral thought altogether is not obliga-

tion but rather the game of co-operating with God. The play of this game is what gives point to acting morally but, like all play, it has no further point beyond itself. Attractive though this line of argument may be, it raises more questions than it answers. Granted that games, like aesthetic experiences, are ends in themselves, does talk of the 'game of co-operating with God' add anything? Does it do more than simply use the term 'game' as a label for something claimed as worth doing for its own sake? In what other sense is that particular game a game at all?

Most important for the present inquiry of course is that basic good consisting of practical reasonableness. The requirements of practical reasonableness, therefore, are explored in great detail. They are said to include: the need for a coherent life plan, impartiality as to values (for all the basic goods are seen as fundamentally equal), impartiality as to persons, detachment (as against fanaticism), commitment (as against apathy), realization of the limited role of consequences (and here he makes many telling points against utilitarianism), respect for every basic value in every act, respect for the common good, and autonomy in the sense of following one's own conscience. On this foundation Finnis develops a careful analysis of the common good, justice, rights, law and authority.

On all these matters he writes well and interestingly, but, for philosophers of law, on none so interestingly as on the maxim *lex iniusta non est lex*. Significantly, he points out that this, contrary to what might be suggested by superficial acquaintance with natural law's long history, has never been more than a subsidiary theorem in any theory of natural law. Usefully, he disentangles four different meanings attachable to the question, 'Is this unjust law binding?' One is simply: Will the officials in the legal system enforce it? Another is: Does it have the same legal effect, from a court's point of view, as all other laws in the system? — and here he usefully reminds us not to overlook the way ordinary notions of justice and morality may feed back into a legal system and lead courts to sometimes refuse legal validity to rules violating these notions. A third is: Does it have the same presumptive moral obligatoriness as laws made for the common good? The fourth is: Should it, even if it lacks that presumptive obligatoriness, be obeyed for some collateral reason, e.g. to avoid undermining the whole legal system? These four different questions need to be carefully disentangled if anything sensible is to be said about the problem of the unjust law.

All in all and despite the matters mentioned above, Finnis has produced a first rate work. Impressive in its general scholarship, powerful in its reasoning and fertile in its insights, it is an eminently worthy addition to the Clarendon Law Series. By developing a well and closely argued theory (based largely on Aristotle and Aquinas) Finnis has performed a useful service for philosophy in general and produced a landmark in the field of jurisprudence.

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CHARLES FRIED, *Contract as Promise: A Theory of Contractual Obligation*. Cambridge, MA: Harvard University Press 1981. Pp. ii + 162. US\$14.00. ISBN 0-674-16925-5.

This book is bound to find itself compared with another, on the same subject, of much the same length, and published almost simultaneously, P.S. Atiyah's *Promises, Morals and Law* (Oxford: Clarendon Press 1981 [see elsewhere in this issue — Eds.]). The two books are contraries, although the authors may think of them as contradictories. While Atiyah finds all philosophers who have written on promises either obtuse or misguided, for failing to appreciate what modern contract lawyers have grasped, viz. that the obligation to keep a promise derives from either a benefit received or a detrimental reliance induced, Fried believes that contract law, which he admits to be tending in Atiyah's direction, is off course, to the degree that it fails to stay with the essence of contractual obligation, viz. its being self-imposed. What prevents the two views from being contradictories is the presupposition, which both authors share, and which neither discusses, that promises and contract should exactly match each other, with the consequence that, to the extent that they do not, what might otherwise appear to be the correct account of one must be seriously defective because it is not symmetrical with that of the other. Of the two authors Fried has the more sensitive philosophical antennae, and he could more easily accommodate rejection of the presupposition of correspondence. And surely it should be rejected. While it is plausible to suppose that contract law takes its start from the extra-legal practice of promising, there is no reason to expect one-to-one correspondence thereafter, and good reason to expect the opposite. The maker of promises does not have the choice of obligation, *either* to perform *or* to compensate. But, if the law cares to go along with Holmes and hold that the maker of a contract is to be legally free to go for either option, it might have good reason for doing so. It would not be the only case where law and non-law diverge. Extra-legally, a man has not murdered another in a case where he did not kill him, where he neither planned nor intended the other's death, and where he had neither the means nor the opportunity of killing him, but legally, given the appropriate context, he will (or may) have done; and the legal view can be defended. Whatever is wrong about breaking promises will be wrong about breaking contracts, unless what is arguably unlikely is accepted as a matter of legal practice, that legal contracts are not to be regarded as in any way imposing promissory obligation. But, if the law were to see fit to restrict success in a suit only to those cases where it can be shown that the breach has damaged an interest of the plaintiff or given the defendant an otherwise unobtainable advantage, it is not clear why we should have to say that the law had gone wrong. We blame people for breaking their promises, but we do not expect them to be made to pay for it, unless something else wrong has resulted. If in contract cases the courts concentrate, as in general, although not exclusively, they do, on the something else wrong, that is surely understandable and ac-

ceptable. Do any of us think that breach of promise should once more be made actionable? It is important that we see as distinct from each other the question whether contract should be regarded as promise and the question whether damages for failure to perform should be awarded on the *consequences* of the contract/promise having been made and breached. In moral terms the obligation to keep a promise is not identical with the obligation to make up for it if one does not keep it. In circumstances where, through no fault of one's own, one *cannot* keep a promise, one may even so have an obligation to compensate the other party for one's failure or inability to perform as promised.

In developing his contract-as-promise principle Fried accepts a number of familiar propositions which could do with the scrutiny of a more sceptical eye: that at the heart of the notion of the performance of promising is the *will* binding itself; that 'to have force in *a particular case* promises must be assumed to have force generally' (12); that (as Rawls) a particular promise has to be seen as an instance of the practice of promising; that offers are conditional promises, and that, in consequence, a promise, to be binding, must have been accepted. Some, if not all, of those propositions are widely thought to have acquired the carapace of a truism, but all are arguably softer and more vulnerable than that. To take the last as an example: it is true that, promising being communicating, a promise, to be binding, has to be acknowledged and not refused; but that is far short of an offer having to be accepted. Fried says that where 'A promises *x* to B if B will promise *y* to A,' A has made a conditional promise — which indeed he has; and that 'A's conditional promise is called in law the offer' (46). Well, perhaps it is so called, but then so much the worse for clarity. 'I'll do *x*, if you'll do/say you'll do *y*' can be either an offer (to be accepted or refused) or a promise (to be not refused or refused), depending on the context, the way it is uttered, etc.; and, if it is a promise, it is a conditional promise, and has gone beyond being an offer, or conditional offer. An offer can, given the appropriate conditions (e.g., that it has not yet been accepted), be withdrawn. A promise, even a conditional promise, cannot be withdrawn, because there is nothing to withdraw; if, in the case of a conditional promise, its condition is not met, it is nullified, as a bet on a horse is nullified, if the horse is a non-starter or if the race is not run. If the promise is unconditional, there is nothing to be done except to go through with it, to break it, or to be released from it by the other party.

Fried links his view of contract as promise with another classical but no longer fashionable view, of contract as meeting of the minds. He then thinks that he is faced with trouble over accommodating infelicities such as mistake and frustration, 'when parties think they have agreed but actually have not ... The court cannot enforce the will of the parties because there are no concordant wills' (60). Principles external to the will of the parties then have to be invoked, to resolve disputes. What Fried should have questioned but does not is his assumed connection between (i) contract as promise, or mutual promises, and its being either (ii) an expression of will or (iii) a meeting of minds. In fact, no one of these implies either of the others, so that Fried is creating

unnecessary problems for himself. Resolving devices, such as presumed intent or objective standard of interpretation, fit satisfactorily with (i), given the Wittgensteinian view of language which Fried himself accepts, however implausible an attempted connection with (ii) or (iii) may be.

In the second half of the book, where he is further into the technicalities of contract law, Fried's professional expertise gives him a surer touch. Chapters on good faith as a condition imposing or reinforcing obligation, on duress and unconscionability as nullifying it, and finally on the importance of being right (e.g., forfeiture of title by repudiation of promissory obligation, reinforcement of title by substantial performance, etc.) show how well the doctrines currently adopted and applied by courts fit his theme that the obligation to keep a promise made is the heart of legal liability for repudiating, or for failing to fulfil, a contractual undertaking. The argument in these chapters, which sometimes becomes legally intricate, is illuminated by actual litigated cases, which are often of a splendid dottiness and effrontery which no philosopher's imagination would dare invent.

In the end and on the whole, it is difficult not to see the book as another product of the American academic community's insane obsession with publication: it is a perfectly respectable book, but the subject would have been much the same without it. It is not that too much writing is being done, but that too much of it is getting into print, and too quickly. The attitude which this practice reflects is the same as the one that expresses itself in the absurd but unhappily almost uniform procedures for tenure and promotion which prevail in American universities, and which have probably contributed more than any other single factor to current mediocrity in scholarship. If only the climate would change so that authors sat longer with their thoughts, books would be both fewer and more valuable.

*Contract as Promise* contains barely a dozen misprints or misspellings, many fewer than in these days of careless proofreading by author and sloppy supervision by publisher we have come to expect.

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LON L. FULLER, *The Principle of Social Order; Selected Essays*. Edited with an introduction by Kenneth I. Winston. Durham, NC: Duke University Press 1981. Pp. 325. US\$19.75. ISBN 0-8223-0448-1.

Lon L. Fuller (1902-1978) was a philosopher of law of the first rank. Casual in style, he did not produce a systematic jurisprudence. Nevertheless, he made major advances in jurial understanding. His theoretical contribution was

designated *eunomics*: the study of good order and workable social arrangements. This collection selected by Professor Winston contains a range of Fuller's essays which illustrate and explain the conception of *eunomics* in its application to diverse aspects of the legal process. The selections also give some clue to Fuller's general views on law, legal education, and political theory.

In the early seventies while a visiting scholar at Harvard I developed a personal friendship with Fuller. He was dogmatic about his agnosticism. I would, jokingly, refer to his 'crypto-thomistic' leanings. His first book — *The Law in Quest of Itself* (1940) — had favorably compared the natural law tradition with legal positivism. His sympathies were more with a procedural, rather than substantive, natural law.

The distinction, while plausible, does not fully explain the nature of his work. Ideas of natural justice may have procedural qualities. The requirement of notice and opportunity to be heard before one is deprived of an important interest comes to mind. Fuller's 'secular natural law' was somewhat different. The key lies in his stress upon an *inner* morality of law. The uniqueness of his approach may be better understood if his jurisprudential outlook is related to some of the broader tendencies of modern thought.

One characteristic is the shift from transcendence to immanence. Philosophical anthropology, linguistics, and the rise of the social sciences all manifest an attempt to discover ultimate knowledge within, rather than beyond, human experience. In America, this disposition is exemplified by the work of John Dewey. In his instrumentalist logic, Dewey replaced 'reason' which he associated with the perception of higher, immutable realities, with 'intelligence,' understood as a capacity to perceive the possibilities of a concrete situation. Knowing became the quest for efficient, rather than final causes. Fuller, of course, never adopted Dewey's methodology. But the spirit of inquiry, the desire to comprehend *given* realities, is clearly evident in his work.

Winston correctly points out the influence of anthropology and sociology upon Fuller's thought, with stress upon the importance of the contextual. Some of the most enduring contributions are the penetrating distinctions between the various forms of dispute settlement; see the essays 'The Forms and Limits of Adjudication' and 'Irrigation and Tyranny' in this volume. Fuller was impatient with those who do not respect the real diverse forms of ordering. Nor did he succumb to the attraction of modern moral philosophy in which general abstract principles are assumed to be juridically normative.

Much of what Fuller wrote maintains connections with the earlier natural law tradition. That tradition, properly understood, was a commitment to cognitive pluralism. It respected the richness and diversity of being. Fuller's insistence upon the good as a natural disposition informs his writings from the beginning.<sup>1</sup> He saw that the task of legal philosophy encompassed more than an identification and naming of social and legal processes. He went further — seeking to discover the moral requirements which are essential to the proper functioning of each process. For this he was severely criticized. But in

doing so he preserved some vital links with a earlier jurisprudence which had been guided by transcendent principles.

Unlike his contemporaries, Fuller emphasized the relation between means and ends. But he shared the modern aversion to teleological explanations insofar as they suggest substantive ends (cf. p. 256). This discontinuity with the past makes his theory vulnerable at certain critical junctures. Fuller's account of legislation is a good example of the weakness inherent in any determined effort to comprehend law in isolation from teleological understanding.

Morally, the duty to obey enacted law could not arise, according to Fuller, unless the internal moralities were observed by the lawmaker:

Certainly there can be no rational grounds for asserting that a man can have a moral obligation to obey a legal rule that does not exist, or is kept secret from him, or that came into existence only after he had acted, or was unintelligible, or was contradicted by another rule of the same system, or commanded the impossible, or changed every minute. ... There is a kind of reciprocity between government and the citizen with respect to the observance of rules. (35)

Failure to observe the inner morality affects the dignity of the individual as a responsible agent. The objectives of legislation have no inherent value in this jurisprudential theory. Such enactments are intelligible only as baselines for self directing action by citizens, securing the minimal restraints necessary for continued interaction. Here Fuller follows the liberal tradition. Legal regulation defers to the powers of individual self determination.

A liberal conception of legislation has cogency when the subject of legislation is private law. But it does not adequately comprehend penal legislation. Here, if compliance is understood as a suggestion of individual choices, we do not fully grasp the phenomenon of obedience. Some sense of submission, or general duty to obey, is indispensable. This obligatory dimension (which may be qualified by conscientious objection) is also an element of the reciprocal relation between government and its citizens.

The final section of the book contains some of Fuller's views on legal education and professionalism. Here humanism is balanced with practical wisdom. His understanding of the nature of philosophy and its relevance to those called to the governance of men is also of enduring value.

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1 A frank recognition of the role of the good in legal philosophy was, in the final analysis, what separated Fuller from legal positivists. See Fuller, "Positivism and Fidelity to Law — A Reply to Professor Hart," *Harvard Law Review*, 71 (1958) 593.

JAMES M. GUSTAFSON, *Ethics from a Theocentric Perspective: I. Theology and Ethics*. Chicago: University of Chicago Press 1981. Pp. xii + 345. US\$20.00. ISBN 0-226-31110-4.

The dominant perspective of Christian ethics, indeed of Western ethics generally, is anthropocentric. Questions of the good or of value are construed as, What is good for man? What is of value to human beings? It is the purpose of Gustafson in his major two-volume work, of which the first volume is here under review, to oppose the presupposition that human well-being or salvation is the chief end of God in his dealings with the universe. There are no grounds for asserting that the purposes of ultimate power in the universe always work out for the benefit either of human individuals or of the human species. He argues, instead, for a theocentric perspective that acknowledges that man is not the measure of all things, that the salvation of man is not the chief, let alone, the exclusive end of God. We cannot assume a happy coincidence between the divine law and human fulfilment; the law of God does not guarantee benefits to oneself, one's community or to the human species as a whole.

God's purposes, in so far as they can be discerned are for the well-being of the whole of creation, not centrally for man. The chief end of man himself is not his own salvation, but to honor, serve and glorify God. Human beings have to determine what is right in relation to their place in the universe and to the will of God for all things. The practical moral question becomes, What is God enabling and requiring us to be and to do? The answer in the most general terms is that we are to relate ourselves to all things in a manner appropriate to their relations to God. What that means in detail will be worked out in the second volume, which will be subtitled, *Ethics and Theology*.

Gustafson writes in an expansive manner, unconcerned about length. He admits that if he had written only for theologians, his book could have been half its present size, but says he has adopted a loose discursiveness with a wider readership in view. Stylistically he has failed. The wordiness makes the book most tiring to read, and I found it difficult to keep my attention on a text that lacked shape and vigour.

The chief content of the volume is in the last three chapters, which in turn articulate the concept of God in relation to man and the world, the interpretation of man in relation to God thus conceived and finally the pattern of moral life in the theocentric perspective thus presented. The first five chapters, though substantial in content, are introductory. The author first presents an interpretation of the contemporary scene, covering culture, religion, theology and ethics. Then he poses the question he has in mind of theocentric ethics in relation to traditional ethics. The next chapter, presented as an interlude, sets forth the basic convictions underlying the work, namely, the priority of human experience, its social character and the historically conditioned nature of theological development. The fourth and last introductory chapter gives an account of his preference for the Reformed tradition.

The expansive rhetoric of the exposition means that the book touches upon a wide range of topics. Here I want to focus on the main, theocentric thesis itself, underlining first its specific character by contrasting it with the Catholic natural-law tradition and asking in the second place for the grounds of asserting it.

The contrast with the Catholic natural-law tradition is made by the author himself. That tradition does, like Gustafson, hold that normative ethics are to be derived from the place of human beings in the larger ordering of life in nature and in history. But, unlike Gustafson, it assumes that the natural world has a deep moral direction in the service of man, so that the purposes of God in creation are finally for the benefit of human beings. Gustafson denies that we can make the assumption that God's reign is finally for the benefit of the human race. In other words, the theodicy problem does not arise for him, because that problem gratuitously presupposes that God must will what is good in relation to man.

The grounds for rejecting the dominant anthropocentric approach and affirming a radical theocentricity are nowhere neatly listed in the volume, but in my reading two reasons emerge as basic.

First, an affinity is discerned between the theocentric thesis and crucial elements of the Reformed tradition. These elements are three: (1) a sense of a powerful Other or sovereign God; (2) the centrality of piety or the religious affections, namely an attitude of reverence, awe and respect under divine power; (3) the ordering of human life in relation to the powerful Other and what can be discerned of the purposes of God. Gustafson admits that the Reformed tradition, despite its stress on the sovereignty of God, still claims that the divine determination of events is for the sake of human well-being. Hence his own proposal is a revision of that tradition.

The second argument is that anthropocentrism is incompatible with the secure knowledge from modern science we now have of the universe, the evolution of species and the likely end of our planet. As Troeltsch already observed, at a certain point we emerged from the development of the universe and at a certain point we shall disappear again. The end just as the beginning will be without us.

That it is possible to elaborate an ethics that is not anthropocentric may be admitted without argument. The hypothesis of a theocentric ethics that denies the coincidence of the divine purpose and human fulfilment is more difficult to sustain. Here I find a crucial ambiguity in Gustafson's exposition. Sometimes he writes as if the unwarranted assumption he was attacking were simply that God's purposes were always in my own best interests *as I conceive them*. At other times he denies that God is the guarantor of human benefits because of a purpose greater than the salvation or well-being of the human species. The question then to be clearly answered is: Are human individuals and the human species itself expendable for a wider purpose in God's governance of the universe? If so, then the search for saving meaning in an apparently indifferent universe that has led to the theistic conception of God is largely nullified. There may be reverence for the power or powers

bearing down upon human beings, but hardly a loving relationship with a living God.

There are indeed different versions of theism, but in any event it remains difficult to see how Gustafson's account can be called Christian, even in a revisionist sense. He does not think that a theologian ought to be limited by commitments to past credal formularies, and I do not want to insist otherwise. However, he fails to convince me that the Gospel message retains any meaning if human fulfilment, both of individuals and of the species, is not understood as an inviolable because covenanted part of God's purposes for the universe. But if it is an irrevocable element, then an orientation towards human fulfilment is a sound ethical attitude, especially as there is reason to think that we have a better knowledge of God's purpose for human beings than for the universe at large. A narrow anthropocentrism is overcome, not by denying God's guarantee of human fulfilment, but by recognizing that authentic fulfilment lies in self-transcendence.

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ALASDAIR MacINTYRE, *After Virtue*. Notre Dame, IN: University of Notre Dame Press 1981. Pp. ix + 252. US\$15.95. ISBN 0-268-00594-x.

Cassandras warning of the *Untergang des Abendlandes* come a dime a dozen these days, but Alasdair MacIntyre's indictment of modern culture in his latest book, *After Virtue*, has to be taken more seriously than most. MacIntyre's erudition, philosophical lucidity and moral intensity amply qualify him to take stock of where we are and in what direction we are bound. He tells a gripping story of the decline of moral consciousness, tracing with a confident and learned pen the evolution of classical teleological naturalism into medieval religious teleology and thence into the scientific humanism that, in ushering in the Enlightenment, was supposed to make us free but, according to MacIntyre, has only enslaved us to new and worse tyrannies.

But MacIntyre's dour vision is not free of paradox. He maintains that moral standards can only be appreciated in their cultural context, as expressive of the institutional arrangements, common practices and 'forms of life' out of which they arise and which they serve to make coherent. Yet he himself stands apart from the contemporary culture that he deplores, as if he has, after all, some access to timeless and universal standards of right and

good, in terms of which he can compare cultures and pronounce this one inferior to earlier ones, more lacking in such qualities as harmony, justice, integrity and rationality. But if his adverse judgments of modern culture are sound, then the standards by which he judges cannot be all that dependent on their cultural sources, for he insists that those sources have atrophied to the point of nonexistence. Perhaps if he were older than Methuselah and had lived through all three eras, classical, medieval and modern, he would, on his own relativistic view, be able to rank them preferentially, for as a survivor, he would be able to appreciate equally all three. Or perhaps, as Hegel and Marx thought, later eras 'save' what is best in the earlier ones they transcend. But no, says MacIntyre, such cosmic optimism is itself a myth propagated by philosophers of modernism. The moral values of ancient and medieval society have been deformed to the point of extinction by the liberal individualism that Hegel and Marx mistakenly thought could, in turn, be transcended, only to become unwitting victims of it themselves. The contemporary legacy of the liberal individualism of the Enlightenment, says MacIntyre, is self-centred pleasure seeking, supported by emotivist scepticism, while the legacy of Marxism is mindless bureaucratic efficiency at the service of any master.

MacIntyre begins his dire tale with the dramatic announcement that we are all survivors of a 'catastrophe' of which we are blissfully unaware because it has deformed our ideas of good and evil so thoroughly that we (most of us, that is) cannot recognize a genuine evil even when it hits us in the face. What was this monumental catastrophe? It was, in a word, the Enlightenment. What was catastrophic about it? It undermined all beliefs in objective teleological grounds of morality and thereby produced a climate of opinion in which moral scepticism became rationally inescapable. Assuming MacIntyre is right so far, what, one may wonder, is so terrible about moral scepticism? Does it motivate people to do worse things than they did when they were devout believers in nature or God as objective sources of moral values, for example, in the Middle Ages when all believed in divine redemption and retribution, or in ancient Greece when almost all believed in *phusis* and *nomos* as paternal masters of their destinies? MacIntyre does not explicitly assert that people nowadays behave more viciously than they did in bygone times, so it would be cavilling to complain that he offers the reader no statistics on comparative crime rates. But he sneers at what he takes to be the dominant models of contemporary social life. These are, he tells us, the aesthete and the technocrat, the former aiming at his own arbitrary pleasures, the latter at efficiency of means toward whatever ends are set him by others. The implication would seem to be that people who have no aims more ultimate than pleasure and efficiency will commit any atrocity to achieve them. To take this implication seriously is to believe that Caligulas and Torquemadas lurk around every corner. That may indeed have been the case in the societies governed by Hitler and Stalin, but how then to explain the world's revulsion against those regimes, and the fact that the Nazis and the Stalinists were, of all people, the least infected by moral scepticism and the least inspired by the moral universalism of the Enlightenment?

One of the strangest features of this strangely perverse picture of things is that MacIntyre tries to support his catastrophic conception of the Enlightenment by blaming it for the rise in this century of emotivist metaethics, a philosophical theory that he criticizes as both logically unsound and as destructive of morality, yet he explains it as the inescapable historical outcome of the decline of classical and medieval institutions and faiths. His historical determinism which unfortunately has survived his disaffection with Marxism seems to me at odds with his moral indignation toward the emotivist doctrine that moral judgments are neither true nor false statements of fact but rather expressions of approval or disapproval. For if, given the downfall of the rigid class structure of the ancient world and its religious sanctification of that structure, emotivism was as inevitable a consequence as MacIntyre maintains, then what can be the reason for denying its truth since, according to MacIntyre, moral truth is the reflection of social structure? Emotivism, according to him, reflects modern democracy, as natural law doctrine reflected the caste system of the Middle Ages. The internal criticisms MacIntyre levels against emotivism are, not surprisingly, quite weak. He argues that (a) it cannot settle conflicts between ultimate principles, and (b) it denies that values can be derived from facts, falsely assuming that all facts are value-neutral. The first criticism is, if anything, a good argument *in favor* of emotivism as promoting modest tolerance toward rival moral principles, while the second argument confuses terminology with substance. If some facts are moral facts then they just aren't the kind of facts from which emotivists deny that values can be derived. If it is argued that an action is morally wrong because it isn't done, or because it is deviant, or because it is unnatural, the emotivist holds that the argument begs the question by assuming that what isn't done or is deviant or unnatural is wrong. He need not deny that moral conclusions can be derived from 'facts' already loaded with moral attitudes. If there is any substantive issue between emotivists and ethical naturalists it is whether moral or prudential judgments can be derived from value-neutral facts such as the data and laws of the natural sciences. Rebuttals appealing to value-loaded facts are terminological red herrings.

What are the morally significant facts from which MacIntyre holds we can derive sound moral judgments? They are, he tells us, facts about the functions of things, most importantly, about the function of a man, understood in terms of the aims imposed on him by his biological make-up and his place in society. I cannot understand this kind of talk except as an expression of some point of view from which people are considered as instruments of a divine or human master. The word 'function' means to me the appropriate use of an instrument, from the point of view of whoever intends to use it. Presumably MacIntyre doesn't mean it that way, but what else could he mean by 'function,' especially since he derives it from a person's social role? If a person decides on his own social role, then he doesn't get it from an 'objective' source. And if he is not to decide it himself, who is to decide it, other than a divine or human master?

Emotivists and existentialists, claims MacIntyre, empty the concept of the

self of all content but pure arbitrary willing, as a result of which any commitment to a moral principle or way of life is bound to seem an arbitrary choice, rather than seem necessitated by the agent's social identity. A non-empty self, according to MacIntyre, has or is a 'character,' by which he means a 'social role which provides a culture with its moral definitions' (29) and which embodies 'a view of human life as ordered to a given end' (32). 'Characters,' he declares, 'are the normal representatives of their culture' (27); they are, in effect, embodied moral ideals. 'So the culture of Victorian England was partially defined by the *characters* of the Public School Headmaster, the Explorer and the Engineer; and that of Wilhelmine Germany was similarly defined by such *characters* as those of the Prussian Officer, the Professor and the Social Democrat' (26). 'In our own time,' he goes on to say, 'emotivism is a theory embodied in *characters* who all share the emotivist view' (28-9), such as the Rich Aesthete, the Manager and the Therapist.

There is much perspicuity in these observations, but they seem hardly consistent with the claim that emotivism undermines *all* morality, and that it denudes the self of *all* social content. If, as he claims, characters are the moral representatives of their culture, then even so-called 'emotivist' characters represent some moral ideals and provide the concept of self with some social content. Or, on the other hand and, I think, more likely, the rather sleazy stereotypes MacIntyre chooses to represent modern culture are no more emotivist than any others, since they have little interest in academic analyses of the meanings of ethical concepts. The aesthete and the bureaucrat are simply vulgar perversions of the ideals of personal autonomy and rational planning, and the worthiness of these ideals is no more fairly measured by its perversions than is the monastic ideal as measured by a Cesare Borgia or a Rasputin.

Here again MacIntyre tries to have it both ways, to blame his favorite whipping boy, emotivism, for the shabby features of contemporary life while also blaming the moral universalism of the Enlightenment for undermining all objective sources of value, whether fine *or* shabby. There is, I fear, a bit of snobbery lurking behind his denunciation of the ideal of equality of rights as having obliterated proper standards of excellence and virtue, so that playboys, bureaucrats and psychiatrists now provide the models of conduct formerly reserved for great-souled gentlemen. Thus he argues, in a central chapter, that if we can no longer follow Aristotle we shall have to follow Nietzsche, that is, if there is no genuinely aristocratic morality then there can't be any morality worthy of the name. 'It is therefore after all the case that the crucial moral opposition is between liberal individualism in some version or other and the Aristotelian tradition in some version or other' (241).

It certainly looks as though MacIntyre yearns for a return to the rigid class structure of the ancient world ('in some version or other') in order to escape the liberal individualism that, he thinks, undermines our sense of our natural function and leads us inexorably to Nietzsche, Sartre and, I suppose, finally to Charles Manson, or else to Marx, Weber and finally, he informs us, to Stalin. To be sure, MacIntyre explicitly repudiates Aristotle's doctrine of the natural

slave and hastens to explain that it is not essential to Aristotle's general theory of virtue, but this demurrals a bit hollow in the light of MacIntyre's opposition to any form of moral universalism, whether utilitarian, Kantian or Rawlsian. And herein, I think, lies the tragic flaw of the book. MacIntyre is a gifted and sensitive philosopher. Had he been content to deplore the defects of modern culture that, with his perspicuity and erudition he is able to bring to light, defects such as, in capitalist countries, the mad quest for affluence and, in the totalitarian East, the equally mad quest for political domination, as illustrated by his central 'characters,' the rich aesthete and the efficient bureaucrat, MacIntyre might have shown us how the egalitarian aims of the Enlightenment become deformed and perverted by inadequate social institutions and morally insensitive leaders. Perhaps, had he put his mind to it, he could have given us helpful advice as to how to reform our institutions in order to prevent such perversions and so to realize more fully the potentialities of the human spirit. Unfortunately, his surgical purpose has been more deadly than that of removing damaged tissue; he pronounces the heart itself to be decayed and in need of amputation, and inserts his moral scalpel into the very ideals that he criticizes modern society for failing to fulfil.

This seems to me a deplorable misdirection of aim, one that has become all too popular in recent years, with a wave of neo-conservatism rising in the wake of tired liberalism. But it is my personal faith that the liberal ideals of the Enlightenment will survive MacIntyre's onslaught, as they have so many others.

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IAN R. MACNEIL, *The New Social Contract*. New Haven, CT: Yale University Press 1980. Pp. xiii + 165. US\$15.00. ISBN 0-300-02542-4.

Although philosophy has not much worked upon Ian Macneil (his Introduction gives honorable mention to 'Rousseau et al'), this law professor has written a book of social philosophy, ostensibly about the law of contracts. Impressed he is, perhaps obsessed, with the rich complexity of social, economic, moral, and legal life. He knows that practical reasoning weighs myriad considerations; he knows how deficient at this we are. There are implications for history here and questions for jurisprudence. Macneil is an in-

teresting thinker about the panorama. The law of contract is his specialty and at first the classical common law theory is under fire.

His notion of *contract* is any relationship between or among parties that 'projects exchange into the future.' Promises may be the vehicle for that process, as the common law said, but custom, status, habit, command, and expectations 'created by any status quo' may also project exchange, without any essential speech act, and so establish contracts. In the light of this, Macneil employs three analytical models, (1) the *discrete contract*: which is based on the 'entirely fictional' transaction paradigm of neoclassical microeconomics, (2) the *primitive relational contract*: which is a 'largely fictional summary' of anthropological work, and (3) the *modern contractual relation*: which is characteristic of the norms and facts of contemporary life.

(1) The contract of discrete transactions purports to suppose no social matrix at all. The parties are taken pair-wise and 'measured reciprocal exchange' characterizes their contract. Self-interest and an 'external god' give solidarity to the tie, yet, because the parties are thus not 'whole persons,' the relationship can be readily transferred. Future cooperation is not envisaged, so present planning is complete and specific for now; the future is thus 'presentiated.' In a discrete transaction parties are 'sharp in, sharp out' and breach will bring down the remedying angel.

(2) Primitive relational contracts presuppose a social matrix of whole persons exchanging things over time. So relations are not transferable. Future cooperation is certainly envisaged, but serious attempts to presentiate single deals give way to a willingness to make adjustments later. Because monetary values do not exist explicitly, 'self-interested reckoning is muted.' Custom dominates planning, thus contractual obligations can be 'diffuse,' something that is compensated for by the sense of continuing social unity.

(3) Modern contractual relations have this much in common with the primitive, they involve ongoing enterprises of whole persons. A major difference however is produced by technology. Modern contracts can become impersonal because of specialization and performance measurement; thus the sense of unity in a modern setting is not primitive. It exists, however, in part through the recognition of the fierce interdependence of everyone. There is intense rational planning in modern relations, and presentiation exists where substantive planning works. Otherwise and largely the future is faced through antecedently agreed procedures. For the main problem in modern contracting is the integration of the new technical precision into the recognized, ongoing, nondiscrete, social entity. The modern contract thus embodies some aspects of the discrete and of the primitive transaction.

Macneil's main criticism of the common law of contracts is its presupposition of the discrete transaction; it simplifies the life out of real contractual relations. Yet — against Macneil — it does seem characteristic of law that it limits the factors and reasons that are to be taken into account in solving problems. In the moral life we are less comfortable with limitation; 'legalistic' reasoning, one thinks, is insufficiently sensitive to moral demands. So law is always under pressure from the 'take-me-too' of various cogent considera-

tions, yet it characteristically turns a blind eye to some of these demands. One way of seeing any law is as a simplification of practical complexity. If oversimplification is a common law vice so may be undersimplification. If the law has any confines, then finding sermons in stones and contracts everywhere invites judicial decisions outside the law. But if the law is as open as all outdoors, then the freed judge *does* work within the law, for he is abroad in the land and the land is the law.

Such jurisprudential reflections are not part of this book, but Macneil does suggest that by *law* one could mean 'underlying principles that can serve as the basis for precise rules of more specific application' (136). But the norms that characterize the discrete classical theory (viz. 'implementation of planning and effectuation of consent') not only are incomplete but they actually have a capitalist or conservative tendency: 'The discrete norm presupposes the status quo ... This inevitably aids the already powerful ... in capturing a larger part of the exchange-surplus' (64). The idea would seem to be that as politico-economic foundations change in any society, so does its law. With greater realism, the underlying principles of 'contractual behavior,' he writes, go well beyond 'the norms imposed by the state legal system,' and include 'custom, habit, morality, and a host of institutional behavior patterns.' It is clear that Macneil has no objection to a law judge embracing the sweep of principles and it seems fairly clear also that in doing so the judge, in Macneil's mind, stays within the law.

There is here the philosophical view of law as something greater or deeper than the specific rules or commands issued by state authority, the usual positivist conception. Macneil's conception of law and contract is grounded in another tradition, which is historicist and anti-contractarian. So he sees one of law's functions to be a 'relatively precise expression ... of the great underlying and diffuse sea of custom and social practices ...' (94). He does not here quite commit himself to saying that the law *is* that sea, but there is probably no reason why he should not. For he believes that each society has a 'common conscience' of which a major part is the principles that hold together contractual behavior. The more this conscience is effective in resolving a difficulty about future exchange, the 'more relational' we have become. The actual sanctions provided for breach are overrated; contracts are solid for reasons of our normative beliefs, and fears are not enough without the 'more affirmative forces of morality.'

In the final section of his book, historicism and romanticism take him where, on reflection, is not a surprising place for him to go. He writes against perfectionism and technology. Broadly speaking, analytic model (1), the discrete transaction, had given him an asocial 'thesis'; model (2), the primitive relationship, gave him a social 'antithesis'; (3), the modern relation is a 'synthesis,' for it is an attempt to reconcile discreteness and presentation with organic social relationships. The classical theory was perhaps wise — given its service — to eschew social reality. Now the primitives were real enough in their time but lacked the capacity for social engineering. Modern times have produced an uneasy mix of 'La Technique' and new realism about

humanity; the perfectionism of the former and the humanism of the latter are strange companions. The next stage of history — the antithesis — where 'small is beautiful,' is the era 'Post-Technique'; thus it will be known that 'planning is inherently a defective product.' It is not surprising that Macneil should say of the coming law of contract that it will be 'rather like the customary law of primitive societies' (116). Rousseau et al would surely have approved, had they had the benefit of historicism.

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ROBERT NOZICK, *Philosophical Explanations*. Cambridge, MA: Harvard University Press 1981. Pp. xiv + 765. US\$25.00. ISBN 0-674-66448-5.

Nozick's announced intention is to outline and exemplify a way of philosophizing he believes to be unfashionable and undervalued. Distinguishing the external relations of one's thinking, one's attempts to convince and refute others, from the internal relations, one's attempts to render one's own beliefs clear, consistent, and mutually supportive, he opts for the latter. He intends not to prove but to explain. Explanation is more than understanding, for understanding relates only to what is possible and explanation relates to reality; but the aim is to cooperate with the reader and not to coerce. It is, however, hard to see any sharp contrast between Nozick's procedures and those of other American philosophers, few of whom are aggressive proof-mongers. In fact, his book is a showcase of the intellectual weaponry wielded by American philosophers and noone else in the world. And the effect is far from peaceable: he writes with a glittering complacency that makes reading his book a daunting if salutary experience. More importantly, his attitude to demonstration ignores the ancient distinction between dialectic and eristic, between the use of demonstrations as polemic and their use to liberate the mind from persuasive but untenable errors. A true belief, after all, has nothing to fear from a sound argument.

The book has a master thesis, though it appears only gradually. The thesis is that the ultimate principles in any line of inquiry are and ought to be self-subsumptive (though self-subsumption is far from being a criterion of truth, or even of significance). The alternatives are notoriously unacceptable: either there are no ultimates and we lose ourselves in a regress, or our ultimates are

groundless. Nozick argues (or *explains*) that a line of investigation that terminates self-subsumptively, by embracing the faults of both regress and baselessness, avoids the faults of either: it simply digs itself in. This pattern of thought occurs everywhere in the book. To embrace the principle that value is coherent complexity is to value coherent complexity. To have meaning is to transcend a limit, so that ultimate meaningfulness rests on relation to the Unlimited (Ein Sof), itself meaningful because unlimited. The thesis is one of the utmost importance, and it is startling to find such grand issues discussed with a precision beyond what most philosophers attain in their footnotes. So pervasive is self-subsumption, incidentally, that Nozick suspects its experiential analogue in the secret practice of Hatha Yoga, which he takes to be auto-fellation. That, he points out, would explain why they so assiduously cultivate suppleness of the spine. In their end is their beginning, in their beginning is their end.

The book is organized around a central concept, that of a self: that is, the property of being a reflexively self-referring self-synthesizer. It is this concept that is needed to develop an adequate theory of personal identity out of a general theory of identity based on a 'closest continuer,' that separately grounds Nozick's theories of free will, of value, and of morality, and that determines the shape a theory of truth must take. The original impression, rather encouraged by the author, that Nozick is merely taking us through a decade of his collected lecture notes, is altogether wrong. He is constructing a system in the grandest classical manner. What he reconstructs with the latest philosophical tools is an integrated world in the manner of Aristotle or Hegel, though Nozick speaks more fondly and knowledgeably of Fichte than he does of either of these. Surely, the reader feels, we are too sophisticated nowadays for this sort of thing; and one waits for the author to fall flat on his face. But he fails to oblige; and, if he did, he would get up again, clutching a ten-dollar bill he just happened to find lying on the sidewalk.

The strongest impression the book gives is of overpowering cleverness combined with untiring energy and inexhaustible inventiveness. None of its length is due to padding. Every paragraph is produced under intense intellectual pressure, every topic subjected to close scrutiny. Professional philosophers may be reduced to despair by the sheer display of talent. As with Mozart or Gretzky, it is as if nature had set out to demonstrate what specialized virtuosity could achieve. For what one is immediately impressed by is not wisdom or profundity or truth, but simple prowess in technical philosophizing.

Combined with Nozick's dazzling ability is a most admirable courage. He has recognized that it is mere cowardice that leads academic philosophers to refuse the ultimate questions. What is the meaning of life? Why is there anything rather than nothing? Too many philosophers duck such questions, making implausible Wittgensteinian excuses about how the wheels of language slip in the mud. Nozick makes no excuses, but explains seriously what such questions can be taken to mean and what can be done to answer them. That this might appear to be not courage butchutzpah is something

that Nozick has foreseen, and he responds to the charge in what might otherwise seem an embarrassingly personal conclusion to his Preface. Whether the Wittgensteinian grumbles can be quieted, though, is another matter. Clever verbal formulations and sweeping intellectual strategies may prove unsatisfying, even as explanation, without the sense that they are animated by the living presence of a sage. Nozick may be a sage, but he is a lot brasher than your average sage.

Conformably with his announced intention of enlightening the reader without coercing him, Nozick does not proceed by refutation. Rather, given a problem such as that raised by Gettier's counterexamples to the equation of knowledge with justified true belief, he will come up with a handful of suggestions that seem to come close to the sort of solution we would like, and develop the most promising of these without making claims for its preemptive validity. In this instance, we develop the notion that a person knows  $p$  if he truly believes  $p$  and if, subjunctively, he would believe  $p$  if  $p$  were true and would not believe  $p$  if  $p$  were not true. Nozick admits that this strategy is not original (it was proposed by Dretske, who also noted the important consequence that knowledge is not closed under known logical implication), but in his hands it not only shows how knowledge claims can be reconciled with systematic scepticism but also provides a model for the later theory of valuing, and meanwhile it is shown to be anthropologically plausible as well as epistemically convenient. This way of showing how a notion developed in one context in view of one set of considerations can be fruitful in different contexts and fit different sets of characterizations is typical of the fertility of Nozick's mind and is the unforgeable hallmark of a great thinker.

Nozick's voluminous notes cite an enormous number of books, many of them recent. Since only a small proportion of the cited titles are actually drawn on, I would like to think that they are meant as aids to the reader rather than sources for the author.<sup>1</sup> But the list is in any case long rather than wide. It consists mostly of the smarter and harder contributions to recent American philosophy and social science — the kind of bibliography that might be supplied by an intellectually up-market interior decorator. It is exhilarating and heartening to find that kind of writing, so often accused of being picayune, flowering into this exuberant philosophical creation. But other distinctive kinds of writing are drawn on as well. Indian idealism is abundantly present — Aurobindo is a name that recurs — and the literature of Jewish wisdom is constantly adduced for its aphoristic resources. For some reason, Jewish philosophers have seldom introduced this material into texts aimed at a largely gentile audience, and its presence is a real strength.

Nozick's range of references is as striking in its omissions as in its inclusions. Especially in the discussions of mysticism, blatantly Christian writers are clearly subjected to reverse discrimination.<sup>2</sup> It is amusing to note how little the book suffers from this; but it does suffer from the author's neglect and apparent ignorance of phenomenological writing. His discussions of autonomy, freedom, value, and the relation of persons to the world are innocent of fundamental and relevant considerations that have been deeply ex-

plored by Heidegger and Sartre, not to mention Husserl. Nozick's bold venture away from the restricted territory of conventional analytic philosophy has led him into areas where other resources are needed. Perhaps he was misled by ignorant common-room chatter; perhaps he was unable to adjust to the slovenly rhetoric. Whatever the explanation, the effect is that he shows himself incompetent in these areas.

Aside from his leaving out so much of that part of the philosophical tradition that bears most directly on his concerns, only one of Nozick's discussions struck me as really weak: the treatment of the relation between free will and determinacy. Part of the trouble seems to be that, for once, Nozick's enthusiasm for his topic fails too early, but the specific weakness lies in the absence of any serious treatment of the concept of causality itself. Causality is rather casually explained in terms of repeatability (310), but that is not the explanation that is being relied on in his actual discussion of the issue. This is the only place in the book where Nozick's treatment of a topic central to his concerns struck me as so superficial as to be worthless. (The treatment of aesthetic value is trivial; but then, real philosophers are not supposed to know about aesthetics.) A more pervasive weakness is that, despite the ingenuity of his procedures and the boldness of his conclusions, Nozick is quite uncritical of his starting points. He takes the systematic fragmentation of post-Cartesian scepticism to be the deliverance of nature and common sense, rather than an artifact of the schoolroom. It is strange to find a writer of Nozick's brilliance taking it for granted that life confronts us with isolated 'experiences' and 'events' that we then have somehow to combine.

Readers will wish to know how this book relates to the author's *Anarchy, State, and Utopia* (1974). The relation is indirect. In the new book there is a strong tension between the holistic thrust of the whole explanatory venture and the insistence (fundamental to the earlier book as well) on the autonomy and supreme importance, as the sole sources of empirically accessible value, of individual selves. In both books, it is the importance of the self that makes it supremely important to invoke *rights* as a hedge to preserve space for individual action. The extreme individualism that results is as hard to reconcile with the unity-in-variety theme as it is with the teachings of Aurobindo and with the community-oriented ethos of the Jewish wisdom to which Nozick so emphatically relates himself. But the determining factor here may be a double equation: the state is equated with institutionalized violence and also with the formalization of communal action, so that the only acceptable manifestation of community is what can be developed on a basis of spontaneity. One sees the point, then; but the standpoint is one that not everyone will feel impelled to adopt. However that may be, those who found the former book brilliant will find this one equally so, and those who found it silly will find this one less so.

The overall pattern of Nozick's new book, far richer and more complex than can be indicated here, describes a giant spiral. Starting from philosophy as non-preemptive explanation we return to philosophy as the romantic transcending of the classical. The classical is the domain of value, of the

reiterated integration of wholes; the romantic is the domain of meaning, of the repeated subsumption of wholes in what surpasses them. We end with the romantic because in any case understanding is possible only by changing the level of description, by reduction or incorporation; and reduction is not only demeaning but self-defeating, because a brilliant reduction is a great achievement of self-transcendence. So we learn in the last few pages that the vocation of the humanistic philosopher is a creative fidelity (not Nozick's phrase) that is true enough to the world to go beyond it. And to our surprise we find that the only example we are offered of the required attitude is Northrop Frye, a figure professional philosophers have previously ignored.<sup>3</sup>

The unrelenting brilliance of Nozick's book and the noisiness of his mind may make reading him a rather unpleasant experience. It is not a book to skim or to sample, and the dense texture of the argument makes reading a slow business. Readers not acclimatized to professional philosophy may find it quite incomprehensible, with its unexplained allusions to Kripke and Goedel and its reliance on classroom procedures. But philosophers owe it to themselves to work through it from beginning to end. It is an enterprise of a different order of magnitude from everyday academic productions. Whether it will prove in the long run to be a landmark in the history of its subject or only a glittering concatenation of ingenious plausibilities, it will take the world some time to find out for sure. One has an uneasy sense that Nozick is more at home in the schematic worlds of science fiction than in the world he spends his life in. Has he put his cleverness at the service of understanding, or only made the world an occasion for cleverness? Life, like a dome of manycoloured glass, stains the white radiance of eternity; but when the shit hits the fan, that is a horse of a different colour.

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- 1 Referring to Nagel's famous review of Langer's *Philosophy In a New Key*, Nozick points out how Langer might have replied to Nagel's chief objection (428). He is apparently unaware that the proposed rebuttal was a key point in Langer's original argument (p. 48 in the 1948 Pelican Books edition; also in *Feeling and Form*, 1953, p. 27), with which Nagel had not sufficiently acquainted himself. Presumably Nozick knows Langer's work only from Nagel's review, the celebrity of which has less to do with its merits than with the respective standings of author and reviewer in smart philosophical circles.
- 2 It is perhaps in a similarly rectificatory spirit that Nozick corrects the sexism built into the English language, sometimes referring to the reader and to every person as 'he' and sometimes as 'she.' I did not compile statistics to see whether parity was observed.
- 3 Nozick does not quote Frye's famous phrase 'Where is here?' but it would have been in the spirit of his book (and of Frye) to ask it and to answer 'Here is where' (see my 'Frye in Place,' *Canadian Literature* #83, 1979, pp. 59-65).

FRANÇOIS RÉCANATI, *Les énoncés performatifs*. Paris: éd. de Minuit, coll. 'propositions' 1981. 287p., ISBN 2-7073-0604-5.

Récanati se propose essentiellement d'expliquer comment il se fait que l'énonciation d'une phrase performative, c'est-à-dire une phrase composée d'un verbe performatif à la première personne du singulier de l'indicatif présent et (optionnellement) d'une complétive, permette normalement d'accomplir l'acte illocutoire qu'elle dénote en vertu des règles sémantiques du langage. Son livre constitue le traitement le plus systématique et le plus clair que je connaisse de ce problème qui depuis les premiers travaux d'Austin n'a cessé de préoccuper les philosophes du 'langage ordinaire,' de même que quelques linguistes.

Les travaux de Searle ont largement contribué à populariser l'idée, que Récanati reprend à son compte, selon laquelle la signification d'une phrase est un potentiel d'acte illocutoire, et donc que la description sémantique d'une phrase comprend non seulement la spécification du type d'état de choses ou de proposition qu'elle représente, mais aussi celle du type de force illocutoire avec laquelle elle peut être (littéralement) énoncée. Dans cette conception, qu'on peut d'ailleurs rattacher à une longue tradition, chaque phrase doit contenir une marque explicite ayant pour fonction d'indiquer le type d'acte illocutoire que l'énonciation littérale de cette phrase permet d'accomplir, sans contribuer à déterminer le contenu propositionnel de cet acte. Si en énonçant une phrase comme (1) 'Ouvre la fenêtre!', un locuteur demande à quelqu'un d'ouvrir la fenêtre et accomplit ainsi un acte illocutoire de type prescriptif, c'est uniquement, selon cette conception, en vertu de la signification de la phrase qu'il énonce, en l'occurrence celle du mode impératif. Mais que dire du locuteur qui demande qu'on ouvre la fenêtre en énonçant la phrase performative (2) 'Je te demande d'ouvrir la fenêtre?'

Il y a, on le voit, deux types de solutions possibles à ce problème. Une approche conventionnaliste voudra traiter le préfixe performatif d'une phrase performative comme un indicateur de force illocutoire, sur le même plan que le mode impératif ou la forme interrogative, mais devra alors expliquer comment le verbe performatif peut à la fois nommer et indiquer la force illocutoire de l'énoncé. Elle devra aussi expliquer pourquoi le mode indicatif ne fonctionne pas, dans une phrase performative, comme un indicateur de force illocutoire assertive. Un anti-conventionnaliste comme Récanati soutiendra au contraire que le verbe performatif sert seulement à nommer une force illocutoire, contribue ainsi à déterminer le contenu descriptif de la phrase performative, et se comporte donc sémantiquement de la même manière, de quelque façon qu'il soit conjugué. Mais il lui faudra en retour expliquer l'emploi performatif des phrases performatives par des considérations d'ordre pragmatique. Ce sont donc en fait deux conceptions des rapports et de la délimitation entre la sémantique et la pragmatique qui s'affrontent dans ce livre, à l'occasion d'un problème particulier.

Le livre comprend quatre parties. Dans les deux premières, Récanati examine et rejette diverses formes de la position conventionnaliste; il développe

dans la troisième une théorie pragmatique des énoncés performatifs qui l'amène, dans la quatrième, à défendre la thèse de l'irréductibilité de la pragmatique à la sémantique.

Après avoir noté que les phrases performatives peuvent être utilisées tantôt constativement, tantôt performativement, Récanati s'attache à montrer (chap. II) que cette ambiguïté n'est pas d'origine structurale. L'hypothèse d'une ambiguïté structurale est motivée par l'observation que, dans beaucoup de cas, la proposition apparemment principale d'une phrase performative a en fait un caractère accessoire, et peut être supprimée ou rejetée en incise sans affecter la force illocutoire de l'énoncé obtenu. Par exemple, le locuteur qui promet de venir en énonçant la phrase performative (3) 'je te promets que je viendrai,' aurait pu aussi bien le faire en isolément la subordonnée (4) 'je viendrai,' ou la phrase (5) 'Je viendrai, je te promets.' L'analyse parataxique des phrases performatives permet de maintenir que le préfixe performatif fonctionne comme un indicateur de force illocutoire, bien qu'il serve aussi à nommer la force illocutoire de l'énoncé. Elle consiste à supposer qu'une phrase performative, dans son sens performatif, est dérivée transformationnellement d'une structure sous-jacente contenant non pas une proposition principale et une proposition subordonnée, mais deux phrases indépendantes dont l'une, correspondant au préfixe performatif, sert seulement à expliciter la force illocutoire qu'aurait l'énonciation indépendante de l'autre. Ainsi (3) serait, dans son sens performatif, dérivée de la structure correspondant à (5).

Récanati soutient qu'une telle analyse ne peut rendre compte de toutes les phrases performatives. Son argument le plus convaincant consiste à signaler l'existence de phrases performatives atomiques telles que (6) 'Je vous licencie' et (7) 'Je vous salue bien,' dont l'hypothèse parataxique ne pourrait en effet rendre compte de façon naturelle. Il semble aussi qu'il y ait des phrases performatives où le verbe performatif n'est pas éliminable et contribue à déterminer le contenu descriptif de l'énoncé. Ce serait le cas de (8) 'Je parie mille dollars que Belle d'Azur va gagner' qui ne contient pas, même implicitement, de phrase dont l'énonciation indépendante aurait la force d'un pari de mille dollars, à supposer (ce que Récanati n'est pas prêt à admettre) qu'une telle force illocutoire existe. Ainsi on ne peut parier mille dollars sur Belle d'Azur en disant (9) 'Belle d'Azur va gagner.'

L'analyse parataxique illustre ce qu'on pourrait appeler le conventionalisme syntaxico-sémantique. On pourrait cependant maintenir avec Austin qu'en plus des règles sémantiques en vertu desquelles les verbes performatifs nomment des forces illocutoires, il y a des conventions sociales particulières en vertu desquelles l'emploi d'un verbe performatif à la première personne du singulier de l'indicatif présent constitue l'accomplissement d'un acte illocutoire ayant la force dénotée par ce verbe. Cette forme de conventionalisme, qu'on pourrait qualifier de pragmatique, émerge au chapitre III d'une discussion générale, et un peu embrouillée, concernant le rôle respectif des conventions linguistiques et des conventions extralinguistiques dans l'élaboration de la notion d'acte illocutoire chez Austin. Selon cette conception, les verbes performatifs tiennent leur sens (performatif) des conventions

pragmatiques qui en règlent l'emploi pour accomplir certains actes illocutoires; et les actes illocutoires eux-mêmes n'existent que parce qu'ils peuvent être accomplis par l'énonciation d'une formule explicitement consacrée à cet effet. Récanati n'a guère de mal à réfuter au chapitre suivant l'hypothèse d'une dérivation auto-délocutive des verbes performatifs élaborée par Ducrot (1975) pour justifier cette position. Mais sa meilleure réfutation du conventionnalisme c'est, à mon avis, sa propre théorie positive des énoncés performatifs.

Récanati entend défendre l'idée que le locuteur qui en énonçant (2) demande qu'on ouvre la fenêtre ne le fait qu'indirectement, par l'intermédiaire d'un autre acte illocutoire dont la force serait indiquée par le mode indicatif de la phrase énoncée. Si on admet, comme on le fait communément, que le mode indicatif indique une force illocutoire assertive (au sens strict, c'est-à-dire constatative), on devra faire intervenir les maximes conversationnelles de Grice (1975) pour expliquer qu'on puisse, en affirmant constativement qu'on accomplit un acte illocutoire, l'accomplir indirectement. Une telle analyse conversationnelle des énoncés performatifs obligerait cependant à réputer indirecte aussi bien la promesse accomplie en énonçant (4), que celle accomplie en énonçant (3). Pour éviter cette conséquence, Récanati renonce à l'idée que le mode indicatif est associé de façon privilégiée aux forces illocutoires assertives, pour le traiter comme une modalité illocutoirement neutre, dont la valeur spécifique serait entièrement déterminée par le contexte.

Après avoir repris, avec quelques modifications très intéressantes et selon moi bien motivées, la classification des actes illocutoires proposée par Searle (1975), Récanati suggère qu'en énonçant performativement une phrase performative, le locuteur *déclare* qu'il accomplit l'acte illocutoire que son énoncé dénote, et ce faisant il l'accomplit effectivement, simplement parce que les actes illocutoires sont de cette catégorie d'actes qu'on peut accomplir en déclarant qu'on les accomplit, de même qu'on peut ouvrir une assemblée en la déclarant ouverte. Ainsi, lorsqu'on énonce performativement une phrase performative, le mode indicatif indique que l'énoncé à la force d'une déclaration, et le fait que cette déclaration soit réussie dépend seulement de la nature de l'état de choses qu'on déclare être réalisé. Cette idée n'est pas entièrement nouvelle (elle est aussi défendue par Searle et Vanderveken dans *Foundations of Illocutionary Logic*, dont le manuscrit circule depuis quelque temps) mais elle est formulée et défendue pour la première fois dans une publication, et de plus elle est probablement correcte pour l'essentiel. On peut seulement regretter que Récanati ne dise rien sur la façon dont la valeur du mode indicatif est sensée être déterminée par le contexte.

Dans la dernière partie du livre, Récanati s'attaque au principe d'exprimabilité de Searle (1969), selon lequel tout acte illocutoire pourrait en principe être explicitement et littéralement signifié, qui n'est pourtant pas foncièrement incompatible avec son analyse des énoncés performatifs. Ceci l'amène à réhabiliter la notion austinienne d'acte locutoire, qui correspondrait selon son interprétation au sens linguistique de la phrase-en-contexte,

c'est-à-dire à l'acte illocutoire conventionnellement exprimé par une phrase (dans un contexte donné) mais sans être nécessairement accompli par le locuteur. Il est douteux que cette interprétation soit conforme à l'intention originale d'Austin, mais il est certain qu'une distinction de cet ordre, qui est d'ailleurs déjà à l'oeuvre chez Grice et chez Hare, est incontournable.

Je n'ai guère de remarques négatives à faire sur le contenu de ce livre, sinon que Récanati n'interprète pas correctement (p. 41 et 150), à mon sens, la notion de signification non-naturelle de Grice (1957). Il attribue à Grice l'idée qu'un locuteur n'accomplit un acte illocutoire que s'il a l'intention de l'accomplir et l'intention que le destinataire reconnaisse son intention de l'accomplir, alors que Grice parle de l'intention de produire une certaine réponse (en principe une attitude propositionnelle) chez le destinataire, au moyen de la reconnaissance par celui-ci de cette intention. La nuance a une certaine importance puisque Grice cherche précisément à réduire les actes illocutoires aux attitudes propositionnelles. Mais je dois ajouter que ceci n'affecte en rien l'argumentation de Récanati, et que celui-ci est généralement très nuancé dans l'interprétation des auteurs qu'il mentionne.

Je conclus en soulignant que la valeur didactique, la clarté d'expression et l'originalité de ce livre le rendent accessible et stimulant aussi bien pour le profane que pour le spécialiste, qui pourra cependant être agacé, comme je l'ai été à certains moments, par la lenteur de l'argumentation et quelques redondances.

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JOHN SALLIS, *The Gathering of Reason*. Athens, OH: Ohio University Press 1981. Pp. xii + 196. US\$ 15.95. ISBN 0-8214-0439-3.

*The Gathering of Reason* deals with the Dialectic of Kant's first *Critique*. The only criticism it offers is that Kant should have held that imagination rather than reason is the source of the illusions the Dialectic is concerned to expose. Unfortunately the book leaves unclear in what sense it is here using imagination. Imagination, as Kant conceives it, is not merely a capacity for forming mental pictures; it also provides procedures both for picturing an instantiation of a concept and for recognizing an observed object as an instance of a concept. In addition, it provides a procedure for picturing what may serve to symbolize a concept by analogy. Thus to represent a substance as that which is 'the support of accidents,' as the foundation supports a house, is 'not schematic but symbolic ... not by means of a direct intuition, but only by an analogy with it' (*Critique of Judgment*, #59). There is a second sense in which imagining is ordinarily used, in which imagining that something is so is no different from supposing, from thinking, that it is so. If *The Gathering of Reason* attributes dialectical illusions to imagination in the first of these two senses, it fails to show how what Kant calls Ideas of reason can be instantiated by imagination. If, on the other hand, it attributes dialectical illusions to imagination in the second sense, it is prevented from differentiating imagination from reason.

Most of the book is a summarizing of what Kant says in the Dialectic. Anyone who has read the *Critique* will be surprised at its omitting the arguments Kant presents for the Antinomies. He will also be surprised to read that the fallacy in the Paralogisms consists in the fact that the major premise mentions the 'I' that thinks, while the minor premise mentions the soul. On the other hand, the book has the merit of giving much space to what Kant has to say about the distinctive character and source of the three Ideas. It also has the merit of presenting the Dialectic as an integrated whole. Since it reads like a few lectures as part of an undergraduate course on eighteenth-century philosophy, the exposition is both clear and superficial. If he were advised to ignore the first two chapters and the last twenty pages, the book could well be recommended to any undergraduate who wanted to get an initial bird's eye view of the topics Kant deals with in the Dialectic.

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GUNTHER S. STENT (ed.), *Morality as a Biological Phenomenon*, Berkeley and Los Angeles: University of California Press 1980. Pp. 301. US\$ 19.95 (cloth: ISBN 0-520-04029-5); US\$5.95 (paper: ISBN 0-520-04028-7).

This book is the product of the 1977 Dahlem conference on biology and morals, held in Berlin. The conference was attended by philosophers, biologists, psychologists, social scientists, and others who had a common interest in sociobiology. The book has the following plan. After a brief introduction *Part One* consists of papers under the general title *Evolution and Morals*. These comprise the main contribution from the empirical sciences. *Part Two* is entitled *In search of social universals*, and contains contributions from philosophers and specialists in cultural history. *Part Three* contains the reports of the discussions and conclusions reached by the three groups into which the participants were divided. Finally there is a brief conclusion. I shall comment on each section and then make some general remarks.

The introduction by the editor, who is a neurobiologist, starts unfortunately. He contrasts the idealistic view of man in Plato with the naturalistic view of Aristotle, and the latter 'considers moral behavior as a strategy for optimizing human welfare.' This naturalistic view 'brings morality within the purview of biology and thus offers the hope of grounding moral law in sound scientific principles, rather than, as had been the case in prescientific times, in a morass of hand-me-down superstitions' (1). This is a caricature of Aristotle's position, and a dogmatic and grotesque assessment of the history of ethical theory. Fortunately the introduction then improves, giving a useful summary of the origins of the current sociological debate, together with a contrast between the views of E.O. Wilson and two of the other main writers in the field, M. Sahlins and R. Dawkins. These writers raise two of the questions that dominate the volume: first, how far is sociobiology good science?, second, what are the philosophical and moral implications of sociobiology?

The eight papers in *Part One* cover a wide range of topics. Some report empirical findings which are of interest to the debate, for example, about analogs of morality among nonhuman primates, and the prosocial behavior of the very young. The latter is of special interest because the findings of prosocial behavior before the age of three challenge some of the current theories of moral development. Other papers try to clarify the concepts used in the debate, and to discuss the origins of human morality. There is considerable unevenness in these papers, also an unnecessary amount of jargon, coupled on occasion with some extremely dogmatic assertions. This is particularly evident in a paper by the psychiatrist F.A. Jenner. This paper jumps from point to point in an almost random manner, and includes a reference to the 'discovery' that the self is an illusion (126), a claim for which no evidence is offered. Another example of dogmatism comes in the paper by the social scientist, D.T. Campbell. 'Whatever ultimate norms we choose to live by are the result of presumptive or logically unjustified choices' (67), a view which is directly opposed by a later writer (T. Nagel on p. 199).

Thus on the negative side we find some of the naivities and dogmatisms that tend to arise when scientists reach out of their own field and into philosophy. On the positive side there is some interesting empirical data, a genuine concern to clarify the basic concepts employed, and some helpful suggestions about the relevance of biology for the moral life. An example of the last occurs in N. Bischof's paper where the impact of time-representation in man is stressed and the consequent need to avoid the anxiety created (56). This fits in well with a passage in the paper by H. Kummer which suggests that predictability is a possible function of morality (43). Also on the positive side, some of the papers are fully aware of the dangers of passing straight from biology into ethics, and of the dangerous assumption that what is biologically 'normal' is 'morally good.' We see this, for example, in J. Maynard Smith's well balanced and cautious paper, and in E. Turiel's warnings on how the experimental method used may in itself distort the result. Thus, while a researcher on child behavior may label a prohibition as 'moral' this may not necessarily reflect 'moral behavior' as Turiel regards this in its strict sense, having made a crucial distinction between 'social convention' and 'morality' (110, 112).

The four papers contained in *Part Two* are all of good quality. J. Goody is concerned with the effects of literacy on moral rationality, and his stress on the importance of the influence of writing leads him to play down the genetic component in morality. W. Tu, a specialist in Eastern intellectual history, discusses the oneness of much Western reflection on morality. The Eastern alternative that is introduced is basically 'at odds with' explanations of morality in terms of biological or physical structures (184). Two papers by philosophers follow and both stress the autonomy of ethics, and its irreducibility, on logical grounds, to biology. However C. Fried is fairly positive about the relevance of sociobiology to ethics, especially in the light of 'the possibility of determining ever more closely the fulcrums of choice' (189). The tone of T. Nagel's paper is more negative. Seeing ethics as a critical inquiry demands that it cannot be fully understood 'from the outside' (196). No-one seems to have suggested a biological explanation of mathematics, and there is a similar incongruity in a biological explanation of ethics, as Nagel understands the term, although there is a reason that has led people to seek for one (197). He then describes the *progress* that has taken place in ethics, which he sees as real, though inevitably slower than that in disciplines such as mathematics. He concludes 'biology may tell us about perceptual and motivating starting points, but in its present state it has little bearing on the thinking process by which these starting points are transcended' (204).

The reports that form *Part Three* reflect a great diversity, as is to be expected from twenty-four participants, but a consensus on certain issues was nevertheless apparent. All three rejected the claims of the more outspoken sociobiologists concerning the possibility of adequate biological explanations of human morality. One of the important points here is that morality can renounce survival as a norm, (or as *the* norm), while sociobiology appears to be committed to making survival central in its account of 'morality' (217, cf. 83,

92, 226, 257, 262). On the other hand, the first two groups also emphasized ways in which sociobiology could illuminate ethics (e.g. 226, 234). Among the other points of interest that emerged in the discussion were the potential bias against the individual that is implicit in sociobiology (262), and the denial that the incest taboo is universal in the way that is often claimed (271).

B.A.O. Williams provides a useful, if somewhat disjointed, conclusion. He ends with a warning about the ethical and political dangers of sociobiology when it is taken as an ideology. This is not the sociobiology of Wilson and Dawkins, but a popular version of it that is at the same time conservative, and allegedly scientific. When it comes in this guise 'we had better watch out' (285).

For those who have a special interest in sociobiology I think that this is a valuable collection despite the unevenness of its quality. It certainly indicates ways in which sociobiology may be relevant to ethics, even if one accepts the argument (as I do) that it is a mistake to believe that it could supersede ethics as a philosophical discipline, even temporarily (cf. E.O. Wilson's *Sociobiology*, pp. 3 and 562). Also the book is well produced, and moderately priced. For non-specialists, I would suggest that they acquire their initial insights into the issues elsewhere, for example in the primary sources and in M. Ruse's *Sociobiology: Sense or Nonsense?* (1979).

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JOHN STURROCK, ed., *Structuralism and Since : From Lévi-Strauss to Derrida*. Don Mills, Ont. and New York: Oxford University Press 1980. Pp. 190. Cdn\$15.95: US\$15.75 (cloth: ISBN 0-19-289105-7); Cdn\$11.25: US\$5.95 (paper: ISBN 0-19-215839-2).

The purpose of John Sturrock's collection is '... to elucidate, without fear or favour, the work of five French thinkers commonly associated with "structuralism."' This difficult task is carried through with uncommon acuity and insight.

Besides the editor's introduction which provides helpful background on Saussure (some space might be reserved for Nietzsche and Freud in a second edition), the collection consists of five essays — Dan Sperber on Lévi-Strauss, Sturrock on Roland Barthes, Hayden White on Michel Foucault, Malcolm

Bowie on Jacques Lacan, and Jonathan Culler on Jacques Derrida. Each essay is of suitable length and ends with a brief biographical note on its subject (a controversial term), a list of the subject's major works, and a word or two about recommended secondary readings. Also included are notes on contributors and a good index. In general, the essays are sympathetic, critical, and well-written.

The editor's introduction tries to stake out some common ground among these figures by marking off several facts. The major works here appeared roughly in the last 25 years. The authors share an admiration for Marx, Freud, and Saussure. All are preoccupied with questions about language. All have a commitment against 'transcendence' of any kind. Excepting perhaps Lévi-Strauss, each in surprising ways aspires to the mantic title of 'écrivain,' which is not the same as 'writer.' And all are concerned with blurring the traditional distinctions between philosophical and literary discourse. The differences among these thinkers are of course more interesting. But, for openers, the introduction does succeed in justifying the inclusion of at least these writers if not others under the well-chosen title. Derrida however may require company under the rubric, '... and Since'; an additional essay for balance would be welcome, say on Deleuze.

This collection is important for at least one reason, one big reason. For the essays here exhibit a startling perspective on the problematic nature of philosophy.

If Lévi-Strauss is right in such works as *Tristes Tropiques* (1955), *The Savage Mind* (1962) better rendered as 'Untamed Thinking,' and *From Honey to Ashes* (1967) — the titles these French thinkers settle on merit reflection in their own right —, then philosophical activity is problematic. For its attempts to understand language, thought, and mind must finally rely on fictions, stories, myths. There is no final, metaphysical signified, the basic claim runs in Saussure's terminology, only signifiers. 'Each matrix of meanings,' Lévi-Strauss writes in *The Raw and the Cooked* (1964), 'refers to another matrix, each myth to other myths. And if it is now asked to what final meaning these mutually significative meanings are referring ... the only reply ... is that myths signify the mind that evolves them by making use of the world of which it is itself a part.' Philosophy's traditional descriptions then of the way things are, on this view, just another story. Philosophical accounts do no more than recount what has already been told. Philosophy in fact is a fiction. Still, some might ask whether the initial distinction which generates these reflections can accommodate acceptable criticisms that would lead to other, less sceptical conclusions.

Philosophical activity is also problematic, Barthes suggests in works like *Writing Degree Zero* (1953), *Sade Fourier Loyola* (1971), *Roland Barthes par Roland Barthes* (1975), and his collected interviews, not discussed here because just published, *Le Grain de la Voix* (1981), in that philosophical uses of language are seriously deficient. Language is used there as merely an instrument. Essentially rhetorical are the ritual appeals to 'clarity.' A covert belief in a mysterious finality results in the production of 'readable' (a technical term

here) works, exercises in an empty realism. 'To describe,' Barthes writes in *S/z* (1970), 'Is thus to set up the empty frame which the realist author transports always with him ... before a collection or continuum of objects that would be inaccessible to the word were it not for this maniacal operation, ... Thus realism ... consists, not in copying the real, but in copying a (painted) copy of the real.' But some might ask whether one of Barthes' alternatives, 'scriptible texts,' which establish intimate bonds between writer and reader, is necessary? Exactly what is wrong with traditional philosophical talk of meaning, especially in its contemporary reconstructions?

Foucault thinks philosophical activity is problematic too. His books — some entitled *Madness and Civilization* (1961), *The Birth of the Clinic* (1963), *Discipline and Punish* (1975), *The History of Sexuality: Volume I* (1978) — propound an ingenious mainly rhetorical theory of discourse which postulates no signifieds either. Foucault diagnoses several consequences of this view, the forms of power which are created to repress the free play of desire. Nothing precedes discourse. But much is not yet said just because philosophy in trying to 'speak the truth' conceals from itself its own character as a mere surface manifestation of the deep relation between desire and power. Philosophy must elaborate a discourse which is open to the depths of this nameless silence by thinking through the literature dedicated to language where 'we are led back,' Foucault writes in *The Order of Things* (1966), 'to the place that Nietzsche and Mallarmé signposted when the first asked: Who speaks?, and the second saw his glittering answer in the Word itself.' But much here is of Heideggerian inspiration, a prickly point which Foucault is most reluctant to admit. In both cases we need to ask just what rational recommendation can Foucault provide for construing a certain idea of language as discourse in such unavailable terms?

Lacan finds philosophical activity problematic because philosophers do not recognize the sources of genuine philosophical discourse in the unconscious. Thinkers need to retrieve from Freud what he himself was not able to think, the elusive structure of the unconscious which is finally linguistic. The unconscious is Plato's cave. But looking for a way out, like looking for signifieds, is vain. What needs doing is pursuing 'wandering signifiers.' 'There is no meta-language ...,' Lacan writes in *Ecrits* (1966), 'no language can say the truth about the truth ...' Things are essentially banal. 'La psychanalyse,' he writes in the just published Volume III of the projected 30 volumes of *Le Séminaire* (1981), 'rejoignant en cela l'expérience commune, vous montre qu'il n'y a rien de plus bête qu'une destinée humaine, à savoir qu'on est toujours blousé.' Traditionally understood, philosophical activity is pointless insofar as it is blindly driven to pursue endlessly and ignorantly an indefinitely receding term to the chain of signifiers, 'the Real.' Doing philosophy is witlessly displacing desire. But, we may ask, what other than cautionary value do these reflections have? Besides, in just what ways do these reflections allow of, and require, criticism?

Derrida has raised similar issues about the problematic character of philosophical discourse. In books such as *Writing and Difference* (1967), *Of*

*Grammatology* (1967), *Glas* (1974), *Spurs: The Styles of Nietzsche* (1976), and the recent *La Carte Postale* (1980; not discussed here), he has insisted that philosophers move beyond philosophy. Doing philosophy in traditional ways (but what *are* these ways?) is unsatisfactory because such activity remains insufficiently critical of a basic logocentrism, an ineluctable commitment to a metaphysics of presence. Nothing however is just present; everything is a matter of what Derrida calls mysteriously 'differance' (a neologism), a differing which is a diferring, 'a systematic play ... of the *spacing* by which elements refer to one another.' And such a matter cannot be exhibited simply by criticizing logocentrism since the criticism itself is logocentric. Instead, philosophy must pursue a rigorous questioning whose traces may succeed in displacing what first provokes the practice of philosophical discourse to begin with. Philosophy must be deconstructed; its basic rhetorical structures, its tropes, its interests must be undone so that its most fundamental character as a fiction can be comprehended. 'Deconstructing philosophy is then,' Derrida writes in *Positions* (1972), 'a matter of working through the structured genealogy of its concepts in the most scrupulous fashion, from within, but at the same time from a certain external perspective which it cannot name or describe, and of determining what this history may have concealed or forbidden, emerging as history from this repression in which it has some stake.' But if philosophical discourse is to be turned against itself in such a way that its own basic concepts and argumentative strategies are made to reveal their own unsatisfactory premises, just what is the nature and what the liabilities of the discourse which undertakes this task? What is the status of Derrida's protean discourse?

However thoughtful these recent French reflections are, the question remains open, I think, whether 'structuralism' or 'post-structuralism' has something to say of philosophical interest. Some who continue to struggle sympathetically with the many deliberate obscurities (consider Lacan) in this substantial body of material (58 books are listed here; about 7 or 8 have appeared more recently; with the deaths of Barthes then Lacan very recently, still more are now announced) about exactly what that philosophical interest is.

Understanding such puzzlement involves several difficult matters — considerations of intellectual style, of how the history of philosophy is to be read, of ideology and the politicization of knowledge, and above all of how 'doing philosophy' has more than one paradigm. Almost all Anglo-Saxon readers of contemporary European philosophers, the truism is, do not share the specific cultural context which has formed these writers and which they in turn seek to re-form. Nor, to include myself, have we lived their history either. Many consequences follow. The cardinal one is that reading French writers today usually occasions a violent clash between different paradigms for doing philosophy. How are we to understand the apparently interesting things discussed here, some keep asking quite sensibly, if our efforts to 'get clear' about these matters immediately occasion the claim of question-begging, or more often, a smile of disdain? Our critical attempts to understand beg the

question; which question we are not told. Whether native speakers of French or English however, we all cannot help but do philosophy after Kant. And part of that task entails elaborating a discourse where evidence is marshalled, concepts are clarified, propositions articulated, arguments constructed, soundness and validity checked, research programs established, hypotheses tested, problems solved, and results submitted to the community of investigators.

This standpoint however, the French story goes, is selective, self-interested, repressive, naive, and finally uncritical — in short, not a good thing. For we are also doing philosophy after Kant in another sense, namely as Kant's critics, the colleagues of all those who have read enough Hegel to know that Kant's genius was partly in bringing philosophy to face the problem of its limits and its history, its beginnings and its end. These limits, French thinkers continue, are indeed not those of knowledge alone but, as Wittgenstein (whom some French philosophers also read) showed, of language above all. At some point — in philosophers' ongoing critical discussion of what critical discussion is — and not just in the speaking of children, madmen, and perverts as Deleuze is at pains to show — language breaks down. Talk of clarity and argument then is no longer any good. And whatever sense we may succeed in attaching to such talk is radically controversial. Doing philosophy becomes newly problematic.

One issue arises here which English-speaking philosophers are not yet accustomed to spend much time on. It is an issue that can be heard at times in Eastern Europe, especially in Czechoslovakia, in Japan where moral philosophy is in part an environmental question, and throughout those European societies where women especially are thinking freshly about discourse. The issue, as I understand it only vaguely, goes something like this: given the course of European history in this century, and the symbolic consummation of Western philosophy in Nietzsche's entrusting himself to madness, what can doing philosophy look like in such times like ours? And the hunch — it is not a solution to a problem or an answer to a question nor any longer Hegel's cry of the heart that philosophy is its own time etc. If these French thinkers are given a hearing, doing philosophy is radically thinking the play of language. But this is a strange and difficult saying.

What distinguishes this collection is the chance it provides at least some philosophers to take such strange, and if finally intelligible, altogether fearful matters seriously.

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L.W. SUMNER, *Abortion and Moral Theory*. Princeton: Princeton University Press 1981. Pp. xi + 246. US\$ 16.50 (cloth: ISBN 0-691-07262-0); US\$ 4.95 (paper: ISBN 0-691-02017-5).

In a little over 200 readable pages Sumner manages: to articulate and decisively rebut two widely held views on the morality of abortion (the 'Liberal' and 'Conservative' views, according to which, respectively, abortions are almost always to be permitted or almost always to be banned); to cogently ground his own 'moderate' position in a general moral theory (Classical Utilitarianism); to schematically review and negatively assess alternative approaches in current ethical theorizing; and, for good measure, to shed light on a host of related moral notions and normative problems, from euthanasia and the 'worth' of persons to our moral duties towards animals. The pages are studded with interesting asides which address virtually all recent contributions to the abortion controversy. Obviously, then, this excellent book defies summary, let alone detailed evaluation, in a review as short as this one must be.

In chapters 1 - 4 Sumner subjects the liberal and conservative stands on abortion to exact analysis and proposes instead a third view inspired by Judith J. Thomson's well-known 'A Defense of Abortion' (*Philosophy and Public Affairs* [1971]). For the liberal, abortions are morally neutral 'private acts,' apart from inconclusive side-effect considerations; for the conservative, abortion is the taking of innocent human life and hence (almost) always to be condemned and prohibited. But both the liberal and the conservative adopt a 'uniform' and 'extreme' view of the moral status of the fetus, assigning no inherent moral significance to any of its developmental stages after conception and before birth, especially the onset of sentience, which Sumner holds to be most plausibly dated in the middle of the second trimester. Thus neither liberal nor conservative can account for the generally shared intuitive sense that late-term abortions are intrinsically 'worse' or 'more wrong' than early-term ones. Moreover, the liberal cannot justify within his 'rights theory' of morals his implicit claim that birth — or on some views, viability — is of deep, inherent moral importance; hence he has no way to non-arbitrarily and categorically set off infanticide from late-term abortion, which liberals, with few exceptions, have wanted to do. The 'rights' idiom suits competent, mature adults, but not fetuses, neonates, or the radically mentally deficient.

The conservative (Natural Law) advocate is embarrassed by the moral insignificance of conception, the 'criterion' he has chosen at the other (beginning) extreme of human ontogenesis; he cannot then account for the great moral divide he claims to exist between early-term abortions and (most forms of) contraception. Doctrines familiarly associated with conservative thought about the sanctity of human life and the occasional permissibility of homicide are shown to be either morally incoherent (e.g. speciesism), counter-intuitive in their results (e.g. doctrines of 'potential rationality'), or ultimately incom-

patible with the conservative's own stand on abortion (e.g. the doctrine of 'double effect'). The conservative, like the liberal, has wrongly assigned overwhelming moral importance to what Sumner argues is a 'shallow criterion' inconveniently located at one or another extreme of fetal development.

Sumner's own 'third view' is that pre-sentient fetuses have little or no moral standing, but that sentient ones are to be credited with a (defeasible) right to life, the defeasibility of this right constantly shrinking as sentience deepens and broadens. Sumner adduces Thomson's demonstration that recognizing the moral personhood and innocence of a being — in this case, a sentient fetus — does not, as conservatives have claimed and liberals feared, automatically ban the taking of his life 'simply' to ward off burdens and risks. It does, however, shift a heavy burden of proof, and Sumner, again following Thomson, suggests specific considerations which, in a range of cases too narrow for the liberal and too wide for the conservative, might bear the weight involved.

Sumner demands that one's stand on abortion be shown to follow from or at any rate cohere with an independently plausible ethical theory; in chapters 5 and 6 he attempts to make good this self-imposed obligation. A 2 x 2 matrix of types of ethical theories yields a four-fold taxonomy of (allegedly) all possible ethical theories. We have 'Discretionary' versus 'Ideal' theories, which, respectively, leave the individual morally unconstrained in a 'private sphere' or impose 'duties towards oneself', and 'Absolute' versus 'Qualified' accounts, which respectively, assign an indefeasible status to (some) moral rules or rights, or countenance (at least in principle) tradeoffs all across the board. Of particular interest are Sumner's critique of Natural Law theories (allegedly Ideal and Absolute) and his interpretation and defense of Classical Utilitarianism (Discretionary and Qualified). For Sumner goodness is determined by resultant total, not average, utility, where utility is not an ordinal affair of ranked desires, wants or preferences, but is a matter of the quantity of pleasure or pleasurable experiences (not, strictly speaking, *cardinal* since, Sumner admits, there is no metric available for measuring units of pleasure). Sumner's is not an 'Act Utilitarian' view since only goodness, not rightness, is fixed 'directly' by resultant utilities. Nor is it 'Rule Utilitarianism' either, for the rules of right, determined 'indirectly' in light of general facts about human nature and social realities, are qualified only. Sumner holds that what is yielded is a set of defeasible — but in fact largely undefeated — individual rights for the private sphere. A sentience criterion for enjoying the (qualified) right to life is plausibly defended in such a theoretical setting, for in the absence of sentience there are no central utilities of pleasure or pain for the fetus. Chapter 6 coherently grounds the rest of Sumner's Thomson-inspired normative position concerning late-term abortions in his preferred moral theory. Nothing important is left to dangle on threads of mere intuition.

So much by way of summary; now for even briefer comment. Does the intuitive plausibility of Sumner's 'moderate' position on abortion support his Classical Utilitarianism, as he claims? Surely the margin of error we should admit to obtain on both sides of our 'intuitions' cannot be focused so narrowly

as to warrant this reverse inference; *roughly similar* intuitions can be explained on non-Utilitarian grounds. Specifically, Sumner has ignored a modified version of Natural Law, in the spirit if not letter of, say, Maritain, which could support both a sentience criterion for the (qualified) *wrongness* (although perhaps not *badness*) of mid-term abortions, as well as a 'discretionary private space' for individual value autonomy. The latter claim is the less problematic; provided only that one's vision of human essence highlights the objective value of freedom and autonomy and provided that the importance of the latter is imported into the utopian social imperative, a discretionary Natural Law theory is not impossible. (Indeed, why must a non-orthodox Natural Law theorist be less successful than Sumner's Utilitarian in rendering an essentially Ideal tradition Discretionary?) Yet Sumner's brief against Natural Law assumes that the latter is irredeemably Ideal.

Sentience, too, might loom large on such a view, not because of the unique moral significance of pleasure and pain, as on Sumner's account, but rather because the absence of sentience makes it well-nigh impossible for us to see the early-term fetus as one of us. *We can no more imagine what it is like to be a pre-sentient fetus than what it is like to be a bat, perhaps even less so.* (Why is the Natural Law theorist barred from adducing this consideration? It surely won't do to quibble that any position free of speciesism or unfascinated by doctrines of potential rationality is ipso facto not 'Natural Law.')

Interestingly, this leaves the wrongness of euthanasia as serious as one could want it, for we can very well imagine what it is like to be retarded, deranged, and so on. As for the irreversibly comatose, well, perhaps a revised Natural Law view *will* accordingly weaken the prohibition of homicide. Or perhaps it will invoke side-effect considerations whose urgency derives from the sense that allowing killing in these cases will work against our duty to foster a society worthy of men and women of the sort we are. Or perhaps there remains this one inherent difference between the irreversibly comatose and the pre-sentient fetus, the location of the former, but not the latter, in a web of moral praxis whose momentum was gained before the lapse of sentience and is not yet spent, which praxis will be alleged to be of intrinsic moral significance as (in part) constitutive of 'the moral community.' We tend, visit, fondle, even address the no-longer-conscious; what we do with a zygote or embryo is: nothing. (To require the possibility, I don't mean the logical possibility but the real possibility, of involvement and care, is this to forfeit the title 'Natural Law theorist'?)

Perhaps in future work Sumner will address these possibilities with the same skill he has brought to bear in the present work. Be this as it may, in showing how to think about abortion in the context of general normative theorizing, Sumner has made a significant dialectical contribution which is likely to change the very terms of the abortion debate — much for the better.

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G.H. TREITEL, *Doctrine and Discretion in the Law of Contract*. Don Mills, Ontario and New York: Oxford University Press 1981. Pp. 31. Cdn.\$ 7.50. ISBN 0-19-951527-1.

This inaugural lecture by the new Vinerian Professor of English Law makes a valuable supplement to the recent and lengthier discussions of contract reviewed elsewhere in this issue (see reviews of books by Atiyah, Fried and Macneil). Treitel's theme is the roughly post-war movement in the law of contract from (rigid) doctrine to (flexible) discretion in its judge-made and legislative forms (2). The law of contract is peculiarly concerned with certainty, because of its role in planning; hence, trends towards discretion should be examined very carefully (2-3). The result of Treitel's examination is 'a reasonable degree of optimism and confidence' (20). With the exception of the law of mistake (8), and aspects of recent legislation (17-8), Treitel argues that the trend towards discretion takes an acceptable form. It amounts either to the rejection of defective doctrine (e.g. an over-rigid condition/warranty distinction [5-6]), or to valuable diversification of a general rule (9-10), or to the creation of a broader rule out of a group of narrower ones (11). In all of these cases, discretion is limited by principles and guidelines, and certainty preserved. The courts have rejected invitations to adopt broad discretionary rules on vague grounds of public policy (12-5). Nonetheless, Treitel warns that the substitution of discretion for doctrine can only be a first step in modification (16), and states his own preference, given the goal of certainty, for a doctrinal rule 'subject, in exceptional circumstances, to a discretionary relieving power' (19), rather than discretion plus guidelines.

Treitel's position has a distinctly Dworkinian ring to it, with its emphasis on principles as circumscribing discretion and embodying doctrine. But it would be a mistake to infer the law of contract as viewed by Treitel to support Dworkin's theory of law over Hart's. Treitel means by 'discretion' Dworkin's 'strong discretion.' Yet when he refers to familiar common law adjudicative techniques as embodying a development rather than a rejection of doctrine (8), he is referring precisely to that style of adjudication which Hart regards as discretionary. The theoretical issue is whether *this* kind of adjudication, not the extreme intuitive kind Treitel deprecates (20), is better viewed as 'principled' in Dworkin's sense or as 'discretionary' in Hart's sense. This issue is by Treitel's lecture revealingly side-stepped.

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MIKLOS VETÖ, *Éléments d'une doctrine chrétienne du mal*. Salamanca: Kadmos 1981.

Le problème du mal est un problème universel que les cultures et les religions ont posé différemment. Et le christianisme prend le mal tellement au sérieux que cette religion apparaît aux autres comme étant particulièrement centrée autour du problème de la souffrance, de la mort, du péché et de la damnation éternelle. Intitulée 'Éléments d'une doctrine chrétienne du mal,' la réflexion philosophico-théologique de Miklos Vetö veut élucider ce problème à la lumière de la doctrine chrétienne de la création, de l'incarnation, de la rédemption et de l'eschatologie, cela en trois mouvements. Comme l'auteur l'affirme dans l'introduction (6-7), il se livre, dans un premier moment, à une analyse de l'origine du mal (au sens physique, moral et religieux). Cette investigation montre 'l'impossibilité d'une explication exclusivement métaphysique du surgissement du mal' et fait apparaître 'comme en creux sa transcendance radicale.' Dans un deuxième moment, il dégage 'les notions positives, concrètes de cette transcendance en vertu d'une réflexion d'ordre métaphysique portant sur le donné révélé.' Et dans un troisième moment, il concentre son 'investigation sur la cause finale du mal,' en s'inspirant du donné révélé 'quasi-exclusivement et sans grille de lecture métaphysique.'

Truffé de citations des auteurs anciens, modernes et contemporains, le texte tend et réussit, à mon avis, à montrer que le mal, qui provient toujours d'une volonté mauvaise, est, à la lumière de la doctrine chrétienne, un 'advenu' hétérogène à l'ordre homogène créé par Dieu et à l'ordre des biens fondés en Dieu, et en même temps un affront au Dieu parfait et bon. En ce sens, conclut l'auteur, le mal ne peut être que 'de nature spirituelle' (30), et il ne trouve sa pleine élucidation que dans son rapport à la transcendance de Dieu. Mais si cette façon de procéder donne l'élucidation dernière au problème du mal, à son tour elle fait surgir d'autres questions, celles que les non-chrétiens posent souvent aux chrétiens et auxquelles ces derniers ne savent pas toujours donner de réponse satisfaisante. Je les résumerai en trois points: (1) Selon l'expression de Boèce, 'si Deus est unde mala?' (2) La distinction entre faute (de nature morale) et péché (de nature religieuse) subsiste-t-elle dans la doctrine chrétienne? (3) L'acte posé par la volonté mauvaise mérite-t-il une damnation éternelle?

En ce qui concerne la première question, l'auteur a démontré d'abord l'impossibilité pour la métaphysique de donner une élucidation exhaustive au problème du mal et ensuite l'insuffisance de la distinction, faite par la théologie chrétienne, entre le *matériel* et le *formel* du péché. Pour l'auteur, l'affirmation selon laquelle le mal en tant que formel, c'est-à-dire en tant qu'intention, ne vient pas de Dieu mais de la volonté mauvaise de l'homme, cette affirmation ne suffit pas à répondre à la question: pourquoi Dieu tout-puissant et infiniment bon maintient-il la mauvaise volonté (36). Il écarte aussi la solution facile: Dieu sait tirer du bien même à partir du mal (37). Il tend, par contre, à approfondir la dialectique de St-Augustin entre la nature humaine et

la grâce divine à la lumière de la rédemption. 'La rédemption demeure le suprême recours de l'intelligence croyante devant le mystère de l'iniquité' (39). En d'autres termes, c'est dans son dépassement voire même son effacement par la rédemption que le mal dévoile à l'intelligence croyante non seulement le paradoxe du pécheur, comme le montre Kierkegaard, mais aussi son mystère propre. Ainsi, 'le péché originel, affirme l'auteur, n'est pas de la FELIX CULPA en lui-même ... il ne reçoit son sens et sa finalité qu'à partir de la décision souveraine de Dieu-Trinité d'envoyer Jésus-Christ dans le monde' (38).

Si l'effacement du péché par la rédemption constitue le sommet de la spiritualité chrétienne, cela n'implique-t-il pas que toute transgression morale — la faute — devient de ce fait même une transgression contre Dieu — le péché? 'Sans l'engagement personnel de Dieu en Jésus-Christ on ne concevrait pas comment l'offense contre le prochain pourrait porter atteinte à la félicité, au bonheur de Dieu' (24). Dans d'autres cultures et religions, la distinction entre le mal physique, la faute morale et le péché de nature religieuse demeure toujours nette, comme en témoigne cette phrase de Confucius: 'Si tu as péché contre le Ciel, tu ne peux implorer nulle part le pardon.' Or, la doctrine chrétienne semble, de par la rédemption, abolir cette distinction. Aux yeux des non-chrétiens, toute faute devient péché pour le chrétien. Il est bien beau de dire que c'est dans et par le péché que l'individu accède, sur le plan existentiel, à la personnalité libre, qu'il réalise son néant et que le péché permet à Dieu de la sauver. Tout cela est vrai et clair, néanmoins la rédemption, qui permet de découvrir le sens profond du mal, a transformé toute faute en péché, et n'a qu'une portée en fin de compte limitée sur le mal, 'car il reste du mal dans le monde qui apparemment ne servira à rien' (43).

Liée à la deuxième, la troisième question concerne la damnation éternelle. C'est, comme le dit l'auteur, 'probablement le plus grand et certainement le plus terrible mystère de l'univers religieux du chrétien' (43). Pour les non-chrétiens avec lesquels j'ai souvent discuté de ce problème, la damnation éternelle propre au christianisme leur apparaît comme le mal le plus radical et surtout le plus disproportionné à l'existence de l'homme. Radical, car il s'agit de l'éternité dont notre existence temporelle n'a absolument aucune idée, (l'éternité qu'il ne faut pas confondre avec l'immortalité). Disproportionné, car la damnation éternelle implique plusieurs autres aspects de la doctrine chrétienne: le péché originel et la nature humaine affaiblie, la dialectique du salut, qui est à la fois l'oeuvre de l'homme et de Dieu (St-Augustin contre le pélagianisme), et enfin la temporalité et l'éternité. Il est par conséquent difficile de comprendre comment un acte posé dans de telles conditions puisse avoir des conséquences au-delà du temps et provoquer ainsi une réprobation éternelle, même si la volonté mauvaise perdure toute l'existence temporelle d'un individu.

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