

# JOURNAL *of* ETHICS & SOCIAL PHILOSOPHY

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## ARTICLES

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ARTICLES

- 91 Not Duties but Needs: Rethinking Refugeehood  
*Susanne Mantel*
- 121 New Shmagency Worries  
*Olof Leffler*
- 146 The Case for Stance-Dependent Reasons  
*David Sobel*

DISCUSSIONS

- 175 Asymmetrism and the Magnitudes of  
Welfare Benefits  
*Andrew T. Forcehimes*
- 186 The Meaning of a Market and the  
Meaning of “Meaning”  
*Julian Jonker*

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## NOT DUTIES BUT NEEDS RETHINKING REFUGEEHOOD

*Susanne Mantel*

THERE IS AN ONGOING DEBATE in political philosophy about the question who is a refugee. Disagreement persists, for instance, on whether only persecuted individuals are refugees, or whether also individuals fleeing famine are included. Nevertheless, there is a consensus among most authors that refugees have a special need for protection that is not addressed by their home states: refugees are threatened and lack state protection of their most basic needs and rights, and since this lack is morally relevant, they must be distinguished from other groups of migrants.<sup>1</sup> However, in the ethical literature on refugees, this thought has been developed in two directions and two disparate approaches to refugeehood have been advanced.

The first approach that I have in mind is wide insofar as it gives criteria of refugeehood that are meant to cover all *who ought to be protected* by foreign states, even if threatened by famine, although famine could in principle be addressed without admission.<sup>2</sup> This view is typically inspired by Andrew Shacknove's work.<sup>3</sup> As I said, there is a consensus that refugees have a special *need* for protection. Since they do not find protection by their own government, this need gives rise to a duty to protect that falls on foreign states. The wide approach that I will discuss characterizes refugeehood by this resulting *duty* to protect, which may include foreign aid.

The second approach I have in mind is narrower, although its proponents aim to develop the same core idea about needs. According to this narrower approach, refugees are characterized as individuals who ought to be *admitted* to a foreign state, which may not apply to victims of famine. On this view, refugee-

- 1 E.g., Shacknove, "Who Is a Refugee?"; Grey, "The Rights of Migration," 42; Wellman, "Freedom of Association and the Right to Exclude," 119.
- 2 E.g., Dummett, *On Immigration and Refugees*; Gibney, *The Ethics and Politics of Asylum and "Refugees and Justice between States"*; and Betts, *Survival Migration*.
- 3 Shacknove, "Who Is a Refugee?"

hood is defined by criteria that indicate that an individual can be protected by admission and only by admission.<sup>4</sup>

I argue primarily against the latter, but ultimately against both approaches, insofar as both turn away from the need for protection and toward *duties* that arise from this need: the duty of foreign states to protect individuals and the duty to admit them to foreign territory. A third definition, one that focuses on the *need* for protection alone and not on the duties that arise from that need, is superior to either of the common definitions. Although this definition is popular in ordinary thought, so far it has not received much attention in the philosophical debate.

My main argument against the wide and the narrow approach is that turning to duties brings up various factors that are inadequate criteria for refugeehood. Consider duties to admit for the sake of protection. These depend on various factors external to the threatened individual, and external to the way in which he or she is threatened. Suppose we want to say that someone is a refugee when there is a *prima facie* case to be made for protecting her by admission rather than for protecting her without admission (by military intervention or foreign aid, for instance). However, this *prima facie* case for admission is often influenced by factors such as moral duties toward third parties, e.g., not to use military force, as well as by decisions of receiving states, e.g., when foreign aid is far more costly than admission.<sup>5</sup> By contrast, refugeehood seems to be independent of the claims of third parties, as well as of the decisions of foreign states (or of the international community). Generally, refugeehood cannot be characterized by reference to a duty since duties are always relative to capable states or collectives that may bear them. This last consideration speaks not only against defining refugeehood via duties to admit, but also against definitions based on the duty to protect or on the international community's capacity to protect.<sup>6</sup>

My argument relies on a protection-centered understanding of refugeehood. It puts to work the intuition that refugeehood stems from factors internal to threats and threatened individuals, such that two people who flee threats of a certain common type will be categorized alike. My argument thus employs a commonsense intuition, but it does so not merely for the sake of common sense itself. A philosophical account of refugeehood must pick out a group of migrants who are of *ethical concern*, and it should do so in a way that facilitates both *public and political discussion*. This requires exactly what common sense presupposes, namely that two people who flee threats of a common type are categorized alike.

4 E.g., Lister, "Who Are Refugees?"; arguably also Cherem, "Refugee Rights."

5 Cf. Oberman, "Immigration, Global Poverty and the Right to Stay," 262.

6 E.g., Shacknove, "Who Is a Refugee?"

This background will be introduced in section 1. I argue that this protection-centered understanding of refugeehood must not be characterized by reference to duties to admit for the sake of protection (sections 2 and 3), nor by reference to duties to protect (section 4). Much more plausibly, a refugee is defined simply as a person whose basic needs and rights are threatened and who migrates with the aim to find protection (section 5). Finally, I address objections (section 6).

#### 1. THE PROTECTION-CENTERED PERSPECTIVE AND A DESIDERATUM

Let us assume that when people's basic rights and needs are threatened in ways that are not being addressed by their home governments, there are *prima facie* duties of foreign states to provide protection—regardless of whether threats consist in violations of basic rights, as by persecution, or in the lack of means to fulfill basic needs, as in case of famine.<sup>7</sup> The difference between persecution and famine may become relevant later when defining refugeehood, but I assume that it does not matter for the general duty to protect.<sup>8</sup> In an international system in which the duty to protect the basic needs and rights of certain individuals is assigned via citizenship to certain governments, foreign governments need to provide a substitute when these duties are not met by the state of nationality.

On the protection-centered view, refugeehood is ultimately grounded in the need for basic protection by a foreign government in this broad sense.<sup>9</sup> This view can be contrasted with the political conception of refugeehood defended by Matthew Price, in which refugeehood is grounded in the expression of condemnation for persecuting governments, as well as with views according to which duties toward refugees are merely negative and compensatory.<sup>10</sup> I take the pro-

7 E.g., Shacknove, "Who Is a Refugee?"; Miller, "Immigration"; Wellman, "Immigration and Freedom of Association" and "Freedom of Association and the Right to Exclude"; Kuosmanen, "Global Protection of the Right to Asylum and Partial Compliance"; Lister, "Who Are Refugees?" Protection is here meant to have a positive component; compare Hathaway and Storey, "What Is the Meaning of State Protection in Refugee Law?" For a discussion of a human rights framework versus a security framework, see Oduyayo, "Human Security and the International Refugee Crisis."

8 Surprisingly, perhaps, the distinction between socioeconomic threats and persecution is often vague and difficult to draw (e.g., Foster, *International Refugee Law and Socio-Economic Rights*, 4), but of course there are clear cases as well.

9 This view has been criticized for not establishing "claims against" particular agents (Cherem, "Refugee Rights," 184–87). It is unclear whether this criticism applies when migrants come to the border, however, and if "leaving one's country and attempting to enter another" seems to assert a "claim against specific authorities" (Cherem, "Refugee Rights," 186).

10 Price, *Rethinking Asylum*. For a discussion of compensatory duties and admission, see Carens, "Who Should Get In?" Reparation is an important moral ground for asylum, but

tection-centered view for granted and explore its consequences: if foreign states ought to help *protect* the basic rights and needs of the unprotected, do resulting duties, or the underlying need for protection, define refugeehood?

When speaking of admission, what I have in mind is primarily admission to territory and to institutions delivering basic protection such as basic health care. This is the form of admission required to fulfill basic needs and rights when protection on foreign ground is not an option. However, it seems that being excluded from full membership for too long constitutes itself a violation of rights, and I assume that admission to full citizenship is mandatory for those who have been admitted to a territory for a certain time (and who foreseeably require permanent admission to that territory).

I hope to simplify matters without oversimplifying them by focusing on migrants at the borders of rights-protecting states.<sup>11</sup> The question then is, who of them should count as a refugee, and why? One may hold that having reached an international frontier is an independent necessary condition on refugeehood (as laid down in the 1951 Convention Relating to the Status of Refugees, henceforth “Refugee Convention”), and I want to leave this question to the side for now. My view is that the most convincing strategy is to examine, first, how refugeehood is connected to needs and duties, and then to see whether this understanding of refugeehood implies that a migrant’s location at a border is of relevance or not.<sup>12</sup>

A central assumption in my argument is that it is a desideratum for any definition of refugeehood that the definition help categorize different individuals consistently as refugees or non-refugees based on the threats they face, where

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arguably not the only one (Souter, “Towards a Theory of Asylum as Reparation for Past Injustice”). Blake (“Immigration, Jurisdiction, and Exclusion”) takes the duty of admission to concern mainly the negative duty not to exclude by the use of force, but he acknowledges that admission results in the duty to provide certain forms of basic protection. On my view, the duty to provide basic protection is prior and calls for admission to territory, including legal permission to enter territory and to participate in the state’s basic protective institutions.

- 11 I will use the short expression “rights-protecting” to refer to states and groups of states that protect the basic *needs and rights* of their citizen and may be hoped to do so also for (some) foreigners. This is a simplification: many states protect only some needs and rights and do so with varying reliability (see also note 38).
- 12 If refugeehood presupposes duties to protect, these duties might be sensitive to distance (with respect to duties of assistance, cf. Kamm, “Does Distance Matter Morally to the Duty to Rescue?”), or might not apply on foreign ground, since one might hesitate to infringe on state sovereignty for the sake of refugee protection, e.g., Cherem, “Refugee Rights,” 188; *pace* Wellman, “Immigration and Freedom of Association.” See also Gibney, “Caring at a Distance.”

these are described in terms such as “persecution,” “war,” “famine,” “chaos,” or “inhabitableness or loss of land” (e.g., due to rise of sea level).

*The Desideratum:* It is possible to list, in plausible, sufficiently descriptive terms, the types of threats that determine refugeehood, such that two individuals who face threats of a common type at home and are fleeing from these are categorized alike.

The Desideratum is neutral regarding the scope of the list. The thesis is neither wedded to wide definitions nor to narrow ones. Many different lists would fulfill the desideratum, whether they include famine and war or merely certain forms of persecution, as laid out in the Refugee Convention.<sup>13</sup>

The Desideratum can be defended by reference to common sense, to moral philosophy, and to politics. It may be a desideratum for legal contexts as well, but my focus is mainly on the philosophical and political domain.

*Common sense:* Intuitively, migrants fleeing the same kinds of threats are categorized alike, no matter where they come from. Threats to basic rights or needs consist in phenomena described by non-gerrymandered descriptive criteria such as “persecution” or “hunger.” This is what ordinary people suspect and it is expressed by The Desideratum. Furthermore, this idea seems to have tacit consensus among authors who participate in the debate about refugeehood (although it will turn out that their duty-based approaches are actually ill suited to accommodate this intuition).

*Moral philosophy:* From the perspective of morality, conformity to common sense is welcome, but it is not of primary concern. Philosophical accounts are not merely meant to report the assumptions of ordinary people but to fulfill certain purposes within given debates. A philosophical account of refugeehood has the primary purpose of identifying migrants who merit special *moral concern* that arises from the threats they try to evade. Importantly, we are looking for a group that is of special moral concern *per se*, not only for certain states or collectives but not for others. This concern would seem to arise from features intrinsic to the individuals and the threats they flee, not, for instance, from the preferences or capacities of foreign states and third parties. Therefore, if the moral concept “refugee” picks out migrants who merit moral concern *per se* that is derived from *threats*, this concept must categorize those who face threats of a common type at home alike, just as The Desideratum asserts.

13 Some legal extensions and interpretations of the convention definition and regional definitions diverge from this narrow understanding, e.g., Sztucki, “Who Is a Refugee?” and Grey, “The Rights of Migration,” n51. For a human rights framework for interpreting the convention, see Foster, *International Refugee Law and Socio-Economic Rights*.

*Politics:* The political adequacy of a definition of refugeehood is partly shaped by moral considerations. Political discussion needs conceptual tools that track individuals who are of moral concern. A desideratum for the philosophical account of refugeehood therefore holds for the political domain as well. However, there are further pragmatic desiderata of discourse and policy making, such as to facilitate political discussion between parties with different backgrounds and nationalities. This, too, calls for descriptive, non-gerrymandered criteria of refugeehood that are the same for all migrants, no matter where they come from or where they turn in their search for help—just as The Desideratum claims. The concept of refugeehood must not invite confusion in international political discussion, which it might do if it implied that some individuals are refugees with respect to one state but not with respect to another. Similarly, whether someone is a refugee must not depend on the present size or military strength of an international community, such that any withdrawal of a previous member state from that international community calls for a completely new assessment of who is a refugee.

*Law:* The legal domain is structured by special pragmatic considerations. It aims to track moral and political concerns by distinguishing refugees from other migrants, but whereas a philosophical account must be maximally accurate in tracking moral concern, a legal procedure may make use of simplified criteria and presumptions in order to arrive at a reasonable trade-off between moral adequacy and practicality. Legal practice requires criteria that are easy to verify, even if they may not always track moral concern accurately, such as the legal presumption of death when a person has been missing for seven years without further evidence. Similarly, in admission procedures practicality may in some cases justify the use of criteria that diverge from the philosophical definition. It is therefore important to note that my arguments concern a philosophical definition, not (or only indirectly) practicable legal criteria (see section 6). For this reason, I mainly focus on definitions provided by political philosophers, not on the legal definition stated in the Refugee Convention.<sup>14</sup>

To summarize, I am not searching for a legal but for a *philosophical* account that captures the *moral* purpose of the concept of refugeehood with maximum accuracy. It is furthermore desirable that this philosophical account conforms to common sense and facilitates international discussion and policy making. All

14 Lister might be interpreted as primarily concerned with the question of which *legal* definition to accept, but he also argues that his approach captures important *moral* distinctions and argues against other philosophical accounts. I will only engage with his position from the philosophical perspective and see whether his view meets philosophical demands, not whether it is acceptable *for legal purposes*.

these concerns provide independent reasons to accept The Desideratum. In section 6 I will briefly discuss how the philosophical definition relates to the use of criteria in legal contexts.

## 2. DEFINING REFUGEEHOOD VIA DUTIES OF ADMISSION

Initially, it might seem plausible to characterize a refugee as a person who ought to be admitted to a foreign state for the sake of basic protection. More precisely, this characterization might seem *plausible* when the relevant duty to admit is a *prima facie* duty, not an all-things-considered duty. When there are too many refugees, overdemandingness and threats to a community's stability may rule out an all-things-considered duty to admit.<sup>15</sup> In some scenarios, the state or even the entire international community seems to be justified in excluding (some) refugees, but the fact that there is no duty to admit, all things considered, does not imply that those who are being excluded are not refugees. I take it that this is sufficient to reject an all-things-considered interpretation.

On a more charitable interpretation, the view put forward is concerned with *prima facie* duties to admit, i.e., with a *prima facie* case for protecting an individual by admission rather than by other forms of protection—even if, all things considered, it would be overdemanding to admit all for whom admission is *prima facie* preferable. A refugee would then be someone who should be admitted for the sake of protection—rather than protected by foreign aid or by military intervention on foreign ground, etc.—unless admission turns out to be overdemanding.

One of the clearest statements of such a characterization is given by Matthew Lister, which is why I will focus my discussion on his view.<sup>16</sup> Lister stresses that the notion of a refugee should reflect a deontic distinction: “the question of who is a refugee cannot be answered independently of an account of *what we owe* to refugees.”<sup>17</sup> On his view, what we owe to refugees is not only protection but *admission*. He therefore characterizes a refugee by saying that “a refugee is anyone whom a state has a moral duty to admit into itself . . . based on the need of the non-citizen.”<sup>18</sup> From this characterization he derives a more concrete definition.

15 E.g., Carens, “Aliens and Citizens.”

16 Another example is Cherem (“Refugee Rights,” 189): “only certain kinds of violations (or creditable fears) ground refugee status. This is appropriate because refugee status entitles one to a very specific durable remedy—membership in a new state—that may not be sensible for everyone with unfulfilled basic needs.”

17 Lister, “Who Are Refugees?” 671, emphasis added.

18 Lister, “Who Are Refugees?” 647–48.

On his view, certain criteria define refugeehood *because they give rise to the duty to admit*. I will therefore refer to his account as a duty-based account, since his definition relies on criteria that are ultimately defended by reference to the *prima facie* duty to *admit*. Throughout this paper, when speaking of a duty to admit, what I have in mind is the duty to admit for the sake of basic protection, similarly to Lister's use of the term.

The consequences of a definition based on the duty to admit depend on two points: (1) the general content of the duty to admit, and (2) the implications that this duty has with respect to certain concrete types of threats.

Concerning 1, Lister's statement of the duty to admit refers to only one central condition for admission, namely the *impossibility* of other forms of protection: states ought to admit all those whose dire need is caused such that it cannot be remedied without admission.<sup>19</sup> The definition of refugeehood therefore must "distinguish between harms that call for asylum as a remedy and other harms which could be responded to in other ways."<sup>20</sup>

Concerning point 2, it might be assumed that the types of threats that call for admission coincide only with persecution. Since persecution at least typically can only be addressed by admission but not by foreign aid, some authors conclude that the persecuted is the unique or, at least, the paradigmatic refugee.<sup>21</sup> Lister notes, however, that some other threats require admission as well.<sup>22</sup> Thus, "forms of harm other than persecution may also give rise to the need for the same remedies, if these harms, too, can only, or only plausibly, be remedied by not returning the person to a place where she fears harms and providing her with new membership. Certain environmental catastrophes . . . might fit this paradigm."<sup>23</sup> Lister's view can be summarized by distinguishing a general characterization of refugeehood, a general duty to admit, and a definition of refugeehood by concrete criteria, as follows:

*Duty of Admission-Based Characterization:* A refugee is anyone whom a state has a moral duty to admit, based on the need of the noncitizen.<sup>24</sup>

19 Lister, "Who Are Refugees?" 645, 662, 669. Brief statements of duties of admission, as well as of the right to asylum, often use a similar formulation, e.g., Kuosmanen, "Global Protection of the Right to Asylum and Partial Compliance," 46.

20 Lister, "The Place of Persecution and Non-State Action in Refugee Protection," 48.

21 E.g., Lister, "The Place of Persecution and Non-State Action in Refugee Protection," 48; Cherem, "Refugee Rights," 185–87; also Hathaway, "Is Refugee Status Really Elitist?"

22 Lister, "The Place of Persecution and Non-State Action in Refugee Protection." Similarly, e.g., Gibney, *The Ethics and Politics of Asylum* and "Refugees and Justice between States."

23 Lister, "The Place of Persecution and Non-State Action in Refugee Protection," 50.

24 Alternatively, one may say that a refugee is anyone whom the international collective of

*General Duty of Admission*<sub>Lister</sub>: Foreign states ought to admit all those whose dire need is caused such that it cannot be remedied without admission.

*Definition by Concrete Criteria*<sub>Lister</sub>: At least when a dire need results from persecution or from certain environmental catastrophes, it cannot be remedied without admission and therefore constitutes refugeehood.

One may of course wonder whether the list of concrete criteria is complete, but before addressing criteria (section 3), I want to focus on the duty to admit. The duty to admit is more complex than Lister's statement suggests. It is not enough to consider whether a harm or threat can plausibly be remedied without admission. If "a refugee is *anyone* whom a state has a moral duty to admit into itself," the complexity of duties of admission needs to be considered.<sup>25</sup> I argue elsewhere that *impossibility* to protect without admission is only one determinant of the duty to admit, while other determinants are *impermissibility* to protect without admission and the *choice* not to do so.<sup>26</sup> Duties of admission may result from moral side constraints that flow from duties toward affected non-refugees or may be self-imposed by choice. They apply often even when, in principle, the causes of dire need can be remedied in other ways. A more accurate statement of the general duty to admit, on my view, reads as follows:

*General Duty of Admission*<sub>Complex</sub>: States or collectives of states ought (*prima facie*) to admit an individual when it is impossible, morally impermissible, or precluded by that state's or collective's choice to protect the individual without admission.

In other words, threats that *cannot, must not, or would not* be remedied without admission give rise to a *prima facie* duty of admission. If refugeehood is tied to the *prima facie* duty of admission, these threats thereby constitute refugeehood.

Let me briefly explicate "preclusion by choice." When deciding whether to admit, potentially protecting states often have already adopted (or will foreseeably adopt) the policy not to use certain alternative means such as foreign aid, although these would be necessary to protect the individual without admission. Their decision against, for instance, foreign aid precludes protection without admission: when these states decide not to admit, the individual will be left without protection by foreign aid, although this form of protection is possible. The relevant question, therefore, is not whether there is any possible world in which

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rights-protecting states has a moral duty to admit. This interpretation will turn up later.

25 Lister, "Who Are Refugees?" 647, emphasis added.

26 Mantel, "Admission as Protection."

a threat is averted without admission. Since help in a distant possible world is a shallow consolation, admission is required when it has been *precluded* to avert the threat without admission.

Imagine that someone managed to flee from a devastating famine to a rich country in a boat he had found.<sup>27</sup> It might be determined that he is not a refugee since the famine *could* be remedied without admission (by contrast to the irreversible environmental catastrophes that Lister has in mind). However, no sufficient action is being taken to change the situation in his home country. There seems to be a disjunctive duty to protect with or without admission, but this duty *would not* be met without admission—and thus the duty to protect is incompatible with sending him home under these circumstances—even if, in principle, that duty *could* be met without admission.<sup>28</sup> Returning the migrant would be a violation of “the duty to refrain from returning people to their persecutors or *places where their lives or freedoms are threatened*,” even if, in this case, precisely the omissions of potentially protecting states are what renders returning home perilous to the migrant, and exclusion impermissible.<sup>29</sup>

To sum up: if refugeehood were tied to (*prima facie*) duties of admission, as Lister suggests, a more precise statement would be that a refugee is a person who ought to be admitted because protection without admission is impossible, impermissible, or precluded by choice—only this formula comprises all three determinants of duties to admit.

### 3. PROBLEMS FOR THE DUTY OF ADMISSION-BASED CHARACTERIZATION

The Duty of Admission-Based Characterization leads to several implausible criteria for refugeehood. If we plug in my formulation of the duty to admit, these implausible criteria derive from each of the three determinants of the complex duty to admit. (On Lister’s formulation, they derive merely from impossibility,

27 A slightly different case is presented by Ferracioli, “The Appeal and Danger of a New Refugee Convention,” 124, and discussed in Mantel, “Admission as Protection.”

28 For discussion of this disjunctive duty, cf., Wellman, “Immigration and Freedom of Association” and “Freedom of Association and the Right to Exclude.” It might seem unrealistic to even consider that foreign states have two options for protecting a migrant who comes to their border, one of which is financial aid (either for this individual alone or even aid aimed at ending famine in the entire home state). This option is rarely chosen. Nevertheless, I consider all options that arise according to the logic of a protection-based duty to admit, no matter how popular they are. Moreover, if a state already wanted to tackle famine for reasons other than protecting this particular migrant, or expected high numbers of future migrants, the state might choose to protect the migrant at home.

29 Cherem, “Refugee Rights,” 184, emphasis added.

which will be discussed below.) According to The Desideratum, two people fleeing threats of a common kind either both count as a refugee or both do not count as a refugee. A duty of admission-based definition in terms of criteria would account for this intuition if there were plausible, non-gerrymandered criteria (such as persecution and persistent environmental catastrophes) that can be singled out by reference to the duty of admission. But each of the three determinants of the complex duty to admit clashes with the intuition that underlies The Desideratum. I will discuss the three determinants in reverse order.

*Choice:* Imagine that two refugees, *A* and *B*, flee from two different home states to the border of a foreign state (or a collection of states) from a threat from which they can be protected either with or without admission. That state decides not to protect *A* without admission, but to do so for *B* (because doing so for *A* would be more expensive, or even without good reason). The foreign state thereby places itself under an obligation to admit *A*, such that *A* would be a refugee although *B* is not.

We may think of the example in two ways. The foreign state is either generally permitted to choose either mode of protection, but it must pick at least one.<sup>30</sup> Or, on an alternative view, *A* and *B* have a (non-absolute) human right to stay that usually results in the more specific duty to protect them at home.<sup>31</sup> Circumstances including the high costs and risks of protection at home and, arguably, a refugee's preference for migration may in some cases defeat the right to stay.<sup>32</sup>

We assumed that a state chose not to protect individual *A* at home. If the protecting state is entitled to choose, it would seem to place itself under the duty to admit by an autonomous decision that it is perfectly free to make. By contrast, if protection at home is obligatory, the duty is self-imposed in the sense that it results from a wrongdoing, such as when my unauthorized trip with your car places me under the duty to treat it properly while I am using it.<sup>33</sup>

Either way, the state's decision against protecting migrant *A* in her home state, but for protecting migrant *B* in this way, is not driven by those features of the threat that, intuitively, we are inclined to consider as relevant for refugeehood. Is *A* a refugee while *B* is not because the famine in *A*'s home state is *more expensive to address* than the famine in *B*'s home state? Is *A* a refugee while *B* is not because

30 E.g., Walzer, *Spheres of Justice*; Blake, "Discretionary Immigration"; Miller, "Immigration"; Wellman, "Immigration and Freedom of Association."

31 Oberman, "Immigration, Global Poverty and the Right to Stay."

32 Oberman, "Immigration, Global Poverty and the Right to Stay," 262–63. On the (ir-)relevance of preferences of refugees concerning admission to particular states, see, e.g., Kuosmanen, "What (if Anything) Is Wrong with Trading Refugee Quotas?" 108–9.

33 See Prakken and Sergot, "Contrary-to-Duty Obligations."

potentially receiving states *decide without good reasons* not to address the famine in *A*'s home state? It is rather implausible that among the concrete criteria for refugeehood we may list types of threats such as "famines that foreign states prefer to ignore." The concept of a refugee has the purpose to pick out individuals who merit special moral concern when they migrate, and they do so because the threats that they flee have not yet been sufficiently addressed by anyone, including the states where they seek help. But this moral concern is of interest because it should *play a role in a decision* for or against future modes of protection, not *result from such a decision*.

This intuition is strongest, of course, when foreign states have no good reasons to decide against foreign aid. It seems more plausible to say that, in the intuitively relevant sense in *The Desideratum*, two individuals, *A* and *B*, still face a common type of threat when they both flee from famine. Therefore, duties to admit that arise from choice are ill suited to define refugeehood.

Before I proceed, I want to address a possible misunderstanding and draw a preliminary conclusion. The question I am concerned with is not whether a decision ends refugeehood, but whether there has been refugeehood at all. Of course, individuals would eventually *cease to be* refugees if foreign aid would eventually end the threat they used to face. This is not the point, since admission may eventually end refugeehood just as well (and so would both modes of protection end the alternative status of being a "forced migrant"). The point is rather that according to the Duty of Admission–Based Characterization the decision against foreign aid gives rise to a different categorization until a form of protection is fully implemented that ends the threat.

A preliminary conclusion might be to reject the Duty of Admission–Based Characterization, since it leads to implausible criteria for refugeehood if duties of admission are self-imposed. But one might want to defend a modified version that excludes these problems by saying that refugeehood arises only from a duty to admit *that is not self-imposed by choice of a mode of protection*, and thus suggest:

*Modified Duty of Admission–Based Characterization:* A refugee is anyone whom a state has a moral duty to admit, based on the need of the non-citizen, where this duty is not self-imposed by the choice of a mode of protection.

The plausibility of this modified characterization must be judged by considering whether at least the remaining two sources of duties of admission, i.e., impermissibility and impossibility, harmonize with *The Desideratum*. However, in the remainder of this section it will turn out that they do not.

*Impermissibility:* Duties to admit partly depend on which remedies are per-

missible. In other words, they often depend on normative theory's verdict on intervention, which may in turn depend on the moral claims of third parties. Consequently, two people fleeing threats of a common kind may be categorized differently—not due to their own situation at home but due to the different numbers of civilians who would be affected by military intervention.

Similar situations may arise even when foreign aid is provided. Suppose two individuals, *A* and *B*, flee droughts and ask for protection in a foreign state. Both could be protected either by admission or by redirecting rivers from neighboring countries. However, in *A*'s case such a redirection of the river would deprive other communities in a neighboring country of water and is therefore impermissible. In terms of concrete criteria for the duty to admit, the list of types of threats would have to be extended to “droughts that cannot be ended without depriving others of water,” etc., although ordinarily two individuals who are fleeing severe droughts are said to flee threats that are in the relevant sense “of a common kind.” It seems implausible that facts about third parties determine that *A* is a refugee and *B* is not. The concept of refugeehood has the moral purpose to pick out migrants who are of moral concern *themselves* because *their* basic needs are threatened. If it picked out migrants who must not be protected at home for the sake of third parties, it would seem to track a moral concern that primarily applies to other, non-migrating individuals. By contrast, it does seem plausible that facts about third parties determine that *A* ought to be admitted while *B* might be sent back with a program for redirecting the river. Therefore, being a refugee must not be defined as being a person who ought to be admitted for the sake of protection, not even when self-imposed duties are excluded.

Impermissibility raises even deeper problems when normative theory prescribes applying a mixed strategy. Imagine that a great number of individuals who do not differ in any relevant descriptive features flee from a large state that is withered due to overpopulation. They ask the collective of rights-protecting states for help. Suppose the only permissible way to solve the problem is to admit 50 percent, so that overuse of the land will no longer be a problem, and to send the other 50 percent back with financial aid to refertilize the land. Admitting more than 50 percent might be unnecessary for protection, but sending more than 50 percent back would make future hunger inevitable and require more financial aid in the long run than the collective of states is able to give. This scenario is not implausible since poverty and overpopulation often go hand in hand and may be fostered by climate change when certain regions of a state become inhabitable, such that other regions become more crowded.<sup>34</sup>

34 On climate change and refugeehood, see, e.g., Alexander and Simon, “‘Unable to Return’ in the 1951 Refugee Convention”; Lister, “Climate Change Refugees.”

It seems that there is no truth of the matter such that some particular individuals are owed admission who constitute 50 percent of those who flee. Rather, there seems to be an undetermined duty to admit 50 percent, no matter which individuals (or, maybe, to admit everyone with a chance of 50 percent by using a lottery). If being a refugee is tied to the duty to admit, it is undetermined who is a refugee and who is not. There simply is not any descriptive criterion, plausible or not, for distinguishing refugees from non-refugees in a specification of a Definition by Concrete Criteria. One might use a lottery to decide whom to admit, but it does not sound right to say that the lottery decides who is a refugee and who is not. Nor does it sound right to say that each is half a refugee. At any rate, when all migrants face the same threat and only 50 percent ought to be admitted, it would obviously violate The Desideratum to say that only 50 percent are refugees, since all flee the same type of threat.

The problem is not simply that the collective of states may admit some but not all affected individuals when their capacity for admission comes to an end.<sup>35</sup> If taking all were merely overdemanding, states would not be obliged, *all things considered*, to admit all, but they might nevertheless have a *prima facie* duty toward each individual to admit them rather than to protect them at home. In this way, all may count as refugees. Instead, the case is one in which states do not have even a *prima facie* duty to admit each individual: they *ought* to administer a mixed strategy anyway.

The current state of the dialectic is that refugeehood on behalf of a foreign state's self-imposed duties of admission does not harmonize well with The Desideratum. The same holds for refugeehood on behalf of duties of admission arising from impermissibility. If we wanted to avoid these problems, we would have to restrict the Duty of Admission–Based Characterization further to duties of admission that arise from impossibility. However, even the duties grounded in this feature do not harmonize with The Desideratum.

*Impossibility*: Impossibility is a widely accepted determinant of duties of admission.<sup>36</sup> If protection without admission is impossible, there is a *prima facie* duty to admit (unless this is impossible as well). Impossibility does not only figure in the General Duty of Admission<sub>Complex</sub>, but also in General Duty of Admission<sub>Lister</sub>, which refers to “causes of need which cannot be remedied without admission.” While the General Duty of Admission<sub>Complex</sub> clashes with The Desideratum in especially obvious and manifold ways, the discussion of impossi-

35 E.g., Carens, “Aliens and Citizens.”

36 E.g., Lister, “Who Are Refugees?”; Kuosmanen, “Global Protection of the Right to Asylum and Partial Compliance,” 46; Gibney, “Refugees and Justice between States,” 452–53.

bility will show that related but more subtle problems arise for any formulation of duties of admission.

The role of impossibility depends on *who* the relevant duty bearer is. We might either choose the “individual state interpretation” or the “collective interpretation.”

*Individual state:* Whether it is possible to protect an individual without admission depends on the capacities of the state providing protection. Putting self-imposed duties and additional moral duties to the side and assuming that the protecting state has a right to choose among all available modes of protection, a powerful protecting state need not admit individuals from a failed state drowning in chaos if it is able to restore order instantly by sending in its military. By contrast, a less powerful state must *prima facie* admit when it is incapable of ending the chaotic situation abroad.

This would make refugeehood implausibly depend on the current balance of powers: when an individual flees a state and seeks help in another, it would depend on the proportion of the military power of these two states whether that individual is a refugee. Lister himself notes in his criticism of other authors that it would be a “counter-intuitive result that those threatened by weak states would be refugees while those threatened by strong states would not be.”<sup>37</sup> However, Lister’s Duty of Admission–Based Characterization implies that the current power of the refugee’s home state determines refugeehood on the individual state interpretation. *Only migrants who are threatened by states that are stronger than those they seek protection in* would be refugees but those who are threatened by weaker states would not be, because there is a military capacity to protect them at home.

It seems that Lister and Cherem overlook this implication because they assume that forcible intervention is not appropriate. This view, however, seems to bring in another factor, namely impermissibility (which may either be grounded in the value of sovereignty or in the unacceptability of collateral harm). My point is that this reasoning in itself shows that impossibility is not the only determinant of refugeehood. Moreover, in cases in which state sovereignty is morally irrelevant and collateral harm can be prevented, the relative strength of the states at issue would be the decisive determinant of refugeehood, which is implausible.

*Collective:* A more plausible view might be to say that a refugee is a person who ought to be admitted by the entire collective of rights-protecting states to

37 Lister, “Who Are Refugees?” 656–57; similarly, Cherem, “Refugee Rights,” 188. This is part of Lister’s criticism of the Duty of Protection–Based Characterization to which we will come in the next two sections.

one of its member states.<sup>38</sup> Focusing on impossibility, the relevant question is whether it is possible for the collective of rights-protecting states to protect an individual without admission. But also on this collective interpretation of impossibility, a similar problem looms: individuals fleeing sufficiently strong states count as refugees, whereas individuals fleeing weaker states do not. Suppose there are strong rights-violating states, strong enough to prevent intervention by the entire collective of rights-protecting states, but they do not attack the collective of rights-protecting states for admitting refugees. In this scenario, an individual must flee a sufficiently strong state in order to count as a refugee, because protection by admission is possible and protection by intervention is not.

The tension with The Desideratum is that, intuitively, different types of threats seem to yield refugee status independently of a comparison between the military strength of the home state and the military strength of the collective of rights-protecting states. Moreover, the concept of refugeehood would unnecessarily complicate political discourse if every change concerning the military strength of the collective of rights-protecting states affected which migrants are to be counted as refugees (namely, those persecuted by stronger regimes).

If what I have argued is right, the Duty of Admission–Based Characterization of refugeehood yields criteria for defining refugeehood that do not harmonize with The Desideratum, regardless of whether we accept General Duty of Admission<sub>Complex</sub> or General Duty of Admission<sub>Lister</sub>. In the first case, this can be shown with respect to duties arising from choice, impermissibility, and impossibility. In the second case, it results from duties arising from impossibility alone. The Duty of Admission–Based Characterization does not justify any intuitively plausible, non-gerrymandered list of criteria, neither the narrow one provided by the Refugee Convention, nor a more encompassing one. This is an especially serious problem for definitions by narrow lists of threats. Since these are typically defended by their alleged match with a duty to admit, this raises the worry that these definitions do not capture any morally relevant distinction with the precision required by philosophical analysis.

Furthermore, even if a definition switched to gerrymandered lists of threats to match the duty to admit, this duty seems an inadequate basis for a definition. The duty of admission does not sufficiently fit the moral purpose of the concept of refugeehood (section 1). Although this duty obviously marks a moral distinction, it does not single out the special moral concern for refugees *per se*.

38 E.g., Kuosmanen, “Perfecting Imperfect Duties,” 25; Gibney, “Refugees and Justice between States,” 459; Ferracioli, “The Appeal and Danger of a New Refugee Convention.” For the view that it might be inadequate and even harmful to speak of “the” collective of rights-protecting states, see Ibhawoh, “Defining Persecution and Protection.”

The gerrymandered criteria that flow from the duty of admission do not identify a concern that is intrinsic to the migrant's situation but one that is sensitive to all sorts of external interests. These criteria are contrary to common sense, do not fulfill the moral purpose of the concept of refugeehood, and raise pragmatic difficulties in political discourse.

#### 4. DEFINING REFUGEEHOOD VIA DUTIES OF PROTECTION

If it is problematic to tie refugeehood to the *duty to admit*, one might instead tie refugeehood to the *duty to protect*, more precisely to the duty to offer substitute state protection for basic needs and rights. This alternative duty-based approach would, I believe, take a similar shape as the definitions suggested by Shacknove and Gibney.<sup>39</sup> I will argue that a duty of protection-based approach does not harmonize with The Desideratum either, although it does not clash with it to the same extent as the duty of admission-based approach.

A duty of protection-based approach may be characterized in a similar form as a duty of admission-based approach by distinguishing the general characterization of refugeehood, the general duty of protection, and a definition by concrete criteria.

*Duty of Protection-Based Characterization:* A refugee is anyone whom a foreign state (or a collection of foreign states) has a moral duty to offer basic protection to.

*General Duty of Protection:* Foreign states and collectives of these (*prima facie*) ought to protect all those who are threatened and lack protection of their basic rights and needs from their home states if they can permissibly be protected by the international community.

*Definition by Concrete Criteria<sub>Protection</sub>:* Any threats to basic rights and needs, such as persecution, famine, drought, war, and environmental catastrophe, give rise to the duty of protection and thus to refugeehood—at least when they are such that the international collective of rights-protecting states has the capacity to deliver a permissible form of basic protection.

The Definition by Concrete Criteria<sub>Protection</sub> displays some interesting overlap with Shacknove's view. On his influential humanitarian definition of a refugee, a refugee is "a person whose government fails to protect his basic needs, who has no remaining recourse than to seek international restitution of these needs, and

39 Shacknove, "Who Is a Refugee?"; Gibney, "Refugees and Justice between States," 452.

who is so situated that international assistance is possible.”<sup>40</sup> This is a curious result, since Shacknove emphasizes that his definition is given independently of the question of whether “states and international agencies are obligated to assist refugees.”<sup>41</sup> He thus seems to deny any form of duty-based reasoning for his definition of refugeehood, which would seem to include a duty of protection-based reasoning just as much as a duty of admission-based reasoning.

However, even though it makes perfect sense that his definition is unrelated to the duty to admit, the definition does not seem very plausible without an implicit connection to the duty to protect. As Lister notes, the fact that Shacknove’s definition is not based on the duty to admit might explain why he assigns no special role to the fact that the refugee crossed the border of his home state and to persecution—that is, on features that either render admission easily possible or render protection without admission especially difficult and problematic, and in fact impossible when the home state is of sufficient military strength.<sup>42</sup> The role Shacknove assigns to the possibility of international assistance, however, is harder to understand.<sup>43</sup> This role would make sense if Shacknove based his definition on the duty to provide substitute state protection, because impossibility is a determinant not only of the duty to admit, but also of the duty to protect.<sup>44</sup> In fact, impossibility is a basic determinant of any duty, commonly expressed in the slogan “ought implies can.” At any rate, Shacknove’s definition strikingly coincides with the Definition by Concrete Criteria<sub>Protection</sub>, which would result from the Duty of Protection-Based Characterization, since such a characterization would plausibly state that, when basic needs are threatened but international assistance is possible (and there is no recourse to the home government), the collective of rights-protecting states has a *prima facie* duty to offer protection.

However, it is not necessary to determine whether Shacknove’s allegedly nonnormative definition is implicitly influenced by the idea that refugees are owed protection (contrary to his methodological claims). My aim is not to provide an exegesis, but to evaluate the Duty of Protection-Based Characterization. For this purpose the relevant upshot is that it delivers criteria that coincide with Shacknove’s definition (no matter why this may be so). Consequently, both definitions face similar problems if these criteria do not harmonize with The Desideratum.

First of all, it must be noted that the duty of protection-based approach rais-

40 Shacknove, “Who Is a Refugee?” 282.

41 Shacknove, “Who Is a Refugee?” 277.

42 Lister, “Who Are Refugees?” 658.

43 For a critical view, see Cherem, “Refugee Rights,” 188–89.

44 Lister, “The Place of Persecution and Non-State Action in Refugee Protection,” 665.

es considerably fewer problems than the duty of admission-based approach. It does not share the problems that stemmed from the fact that the duty to admit partly depends on a protecting state's *choice* and on the *impermissibility of protection without admission*. The Duty of Protection-Based Characterization instead groups individuals in the same category, namely that of a refugee, independently of whether the protecting state decides on a certain mode of protection, and independently of whether moral considerations with respect to third parties prescribe protection with or without admission. For instance, two individuals who are fleeing the same threat both count as refugees even if the right response is the mixed strategy to send home one with foreign aid and admit the other.

However, the view is duty based and this alone creates certain problems that stem from the determinant of *impossibility*. In some form or another, this determinant applies to any duty. Just as the Duty of Admission-Based Characterization of refugeehood yields implausible consequences when protection without admission is impossible, the Duty of Protection-Based Characterization does so as well when protection is itself impossible. The Duty of Protection-Based Characterization must specify a duty bearer, who, again, might be identified as the individual state in which a migrant seeks protection or, more plausibly, as the collective of rights-protecting states. The problems with the individual state interpretation came up in the last section with Lister's observation that it would be counterintuitive that "those threatened by weak states would be refugees while those threatened by strong states would not be."<sup>45</sup> This is precisely what results from the Duty of Protection-Based Characterization, however, if no individual state is able to protect those threatened by strong states. More precisely, the problem appears in two versions. The version that Lister seems to have in mind applies to individuals fleeing within the territory of their home states (whom Shacknove explicitly includes in his definition). The second version applies to migrants who reach the border of a receiving state (who are the individuals I mainly focus on for the purposes of this paper).

Here is the first version of the problem. If two individuals flee threats of the same kind within the territory of their respective home states, the military strength of their different home states might entail that the strongest foreign state is able to protect one of them by forcible intervention but unable to protect the other, such that the first counts as a refugee while the second does not. This problem reappears on the collective interpretation if the entire collection of rights-protecting states is able to protect one but not the other by intervention.

The second version of the problem arises in an even more pessimistic scenario in which two migrants are already at the border of the strongest foreign state,

45 Lister, "Who Are Refugees?" 656–57.

or simply at the border of one of the member states of the rights-protecting collective, but that state or collective is nevertheless unable to protect the second individual from the stronger home state by admission because her home state is strong enough, and willing, to persecute her successfully even outside its territory, while the weaker home state of the first migrant is unable to prevent protection by admission. Here, what counts is not the potentially protecting state's (or collective's) *capacity to intervene* in the refugee's home, but its *capacity to prevent intervention* on its own territory (as well as the home state's decision to persecute certain individuals even on foreign ground).

Such cases might arise, for instance, if some governments are in possession of technology to successfully persecute certain individuals even outside their territory. Furthermore, even two individuals fleeing the same state might differ. Suppose *A* and *B* seek admission, but the chances for successfully protecting *A* by admission are miniscule because she is a prominent opponent and therefore especially targeted by the persecuting government and suppose that therefore admission is not obligatory because it does not seem to amount to protection. Maybe admission will likely lead to an even more cruel treatment of *A*, or risks that citizens of the receiving states will be killed in the military intervention undertaken to persecute *A*. In this case, (the attempt to provide) protection by admission may even be impermissible. Does this scenario entail that *A* is not a refugee because there is no duty to protect *A*? It seems more plausible to say that *A* is a refugee, since *A* is fleeing a threat to her basic needs, even though there is only a low chance, or maybe no chance, that *A* may be successfully protected by anyone. In other words, the most troubling problem for the Duty of Protection-Based Characterization consists in the counterintuitive ways in which this notion of refugeehood is dependent on the strength of responding states or collectives and on the strength of home states.

One may think even one step further. Intuitively, there might be refugees even if no rights-protecting state or collective exists at all. There may be truly "hopeless refugees" who are fleeing and are entitled to substitute state protection, but who are out of reach of helping states. The most extreme case would be people in a world state that threatened them, when there is no other state that might or might not reach them. They would seem to be refugees as long as they run and hide from their own state's institutions. One consequence of this view may, again, be formulated in terms of a comparison of individuals living at different times: if *A* and *B* flee threats that, intuitively, seem to be of a common kind, it is counterintuitive to assume that *A* is not a refugee just because he lives at a time when there is no rights-protecting state, while *B*, living at a slightly gentler time in which there still are rights-protecting states, counts as a refugee.

Duty-based accounts of refugeehood run into problems of this kind for principled reasons: duties depend on what the duty bearer is capable of or can possibly achieve. According to The Desideratum, refugeehood is either independent of such facts, or these facts would have to be introduced by categorizing relevant types of threats in terms of the competences to address them, as “threats which the collection of rights-protecting states, existent at the time of threat, is able to handle” versus threats that are not of this kind. However, these characterizations of threats neither intuitively seem to be the relevant types of threats for refugeehood, nor do they track a moral concern internal to the refugee’s situation. Moreover, they complicate political discourse, when any change of powers can affect which forced migrants count as refugees. The intuitions expressed by The Desideratum can be accommodated in plausible ways only if duty-based accounts are left behind. Duties themselves depend on threats that do not exceed the duty-bearer’s capacities, but the definition of refugeehood must not be made to depend on criteria that are sensitive to the capabilities of others, but merely on the situation of the threatened individuals and on the more general type of threat they are facing.

##### 5. THE COMMONSENSE DEFINITION OF REFUGEEHOOD

Since duty-based accounts do not harmonize with The Desideratum, it seems that we must give up on a definition of refugeehood that focuses on (actual) *prima facie* duties. One might define refugeehood via hypothetical duties instead—duties that sufficiently capable rights-protecting states or collectives *would* have *if they existed*—but such a hypothetical construction seems unnecessarily complicated. Hypothetical duties correspond to the need for protection, and this need is the real core of refugeehood: duties do not make refugees, needs do. A simple and straightforward alternative (that is arguably co-extensional with the more complicated hypothetical construction) directly comes to mind, since it is deeply entrenched in ordinary thinking about refugees.

On the commonsense understanding of the term, which has gained strikingly little attention in the academic debate, refugeehood is characterized by the concurrence of the need for basic protection by a new state with the descriptive feature of flight aiming to remedy this condition.<sup>46</sup> This definition focuses entirely on the refugee, namely on basic needs and rights and on flight. This intuitive understanding of the word “refugee” is mentioned by Shacknove but then set aside: “A refugee, we might say, is a person fleeing life-threatening conditions.

46 E.g., Goodwin-Gill, *The Refugee in International Law*, 3–4; Tuitt, “Rethinking the Refugee Concept,” 108.

In daily parlance and for journalistic purposes this is roughly the meaning of refugeehood.<sup>47</sup>

The commonsense definition yields criteria that are completely independent of the capabilities, decisions, and needs of potentially protecting states and third parties. It cannot be characterized fully in parallel with previous definitions, since there is no underlying duty. Instead, it may be characterized simply by identifying a characterization and a definition by concrete criteria.

*Needs-Based Commonsense Characterization:* A refugee is anyone who migrates with the aim of finding protection from a threat to basic rights or needs.

*Definition by Concrete Criteria<sub>Needs</sub>:* Any threats that concern basic rights and needs count for refugeehood, e.g., persecution, famine, droughts, war, or environmental catastrophes.

The commonsense definition views migration and threat to basic rights and needs as two distinct conceptual conditions for refugeehood, of which migration is in some sense prior. The idea is not to distinguish between threats that cause individuals to migrate and those that do not, but to distinguish people who are already migrating according to the threats that do or do not underlie their migration. Thereby, the definition is in perfect harmony with The Desideratum. Two migrants who face a common type of threat such as persecution, famine, or other sufficiently severe threats are categorized alike, namely as refugees. Because threats are categorized in terms that highlight their relation to basic rights and needs, the standard commonsense types of threats that come to mind need no further specification. Only threats that might or might not concern basic rights and needs must be specified further, but the further specification concerns their potential of causing severe harm to the migrant, which means that these finer categories of threats would not seem to be distinguished in intuitively arbitrary or irrelevant ways.

To make the scope of the commonsense definition clear, let me highlight two important implications. The definition is in a certain respect broader and in another narrower than Shacknove's definition. It is broader insofar as an individual may count as a refugee even if the international community has no access to this individual such as to protect them. This is because the individual may migrate within her own state with the aim to find basic protection: these conditions do not imply that the individual has crossed a border. If this were deemed undesirable, one might supplement the definition with the extra condition that a bor-

47 Shacknove, "Who Is a Refugee?" 274.

der be crossed, but I do not see what the rationale for this move might be. The needs-based idea behind the definition is developed most consistently without any further supplement, such that the definition covers internally displaced people. Migration, in the sense at issue, consists in leaving one's home and hiding from threats elsewhere, but flight does not require leaving one's country.<sup>48</sup>

Second, despite its wide scope, the commonsense definition does not cover all who are in need of protection. People not only refrain from fleeing when they are safe. To the contrary: even more desperately in need of protection than a refugee is someone who is deprived of even any reasonable option of fleeing, e.g., by a natural disaster or by her persecutor. Moreover, flight is often prevented by those who ought to help, namely by potential receiving states. Many individuals are stopped on their way to the border of a foreign state (and would still count as refugees since they have left their homes), but others are deterred from the option of fleeing by the known dangers of measures to prevent their arrival, as well as by the threat of detention.<sup>49</sup> If they stay home because flight seems more dangerous than the threats they face at home, they are not refugees on the commonsense definition. In order to express the affinity of this group to actual refugees, they might quite tragically be referred to as "latent refugees," but being a latent refugee does, of course, not entail being an actual refugee—rather, it entails not being an actual refugee (yet).<sup>50</sup> This is a conceptual implication of defining refugees as migrants, an implication that excludes individuals who are not excluded from Shacknové's definition. However, I think that this consequence is acceptable precisely because the definition is not based on the duty to protect—which seems to be a duty we have toward many individuals who do not migrate.

I find the commonsense definition entirely plausible. However, my defense of the commonsense definition is comparative: of the three protection-centered views under consideration (namely, the concrete definition that would be derived from a duty of admission-based characterization, the concrete definition that would be derived from a duty of protection-based characterization, and the commonsense definition), the commonsense definition is the most plausible because it meets The Desideratum. Of course, a narrower definition might be given that meets The Desideratum as well, but it could not be defended by reference to a duty. So far, I do not know which moral concern might be accurately tracked by

48 Whether the obligation to assist a refugee arises for another state only, or strongest, when the refugee has made it to that state's borders is a question that I cannot answer here (but see, e.g., Walzer, *Spheres of Justice*, 51).

49 E.g., Gibney, *The Ethics and Politics of Asylum*; Grey, "The Rights of Migration," 46.

50 Possibly, Shacknové refrained from excluding this group from his definition of refugees precisely to highlight their unrestricted moral importance.

such a definition. My aim is to identify the most plausible protection-centered account of refugeehood, and it is unclear why a protection-centered account should focus on certain kinds of needs and rights at the outset. However, maybe all I have shown is that such a narrow definition would have to be defended without recourse to a conceptual tie between refugeehood and duties.

My argument thus did not presuppose that we must follow common sense *tout court* and adopt precisely the wide, needs-centered commonsense notion of refugeehood, but that we should stick, at least, to the core intuition expressed by The Desideratum. The Desideratum has been defended not merely by intuition, but also by reference to the purposes of moral and political discourse. As such, this core intuition is neither biased toward a humanitarian-needs-centered view, nor toward a restrictive-persecution-centered view. I even suppose that my premises are implicitly accepted by the authors I argue against. Proponents of duty-based views commonly seem to assume that their definitions help distinguish between plausible types of threat that do and do not give rise to refugeehood. I argue that this is not true. Duty of admission-based approaches fail in this respect, as we see especially clearly when a proper understanding of the complex nature of duties of admission is applied, i.e., if we attend to impermissibility and preclusion by choice. But even duty of protection-based approaches fail, as we see when considering that duties in general presuppose duty bearers with sufficient capacities. Therefore, a definition like Shacknové's clashes with The Desideratum, although this might easily be overlooked when no pessimistic counterfactual scenarios of feeble rights-protecting collectives are taken into view.

Because my argument has been complex, it may be worthwhile to summarize it before I turn to objections.

- P1. On Lister's Duty of Admission-Based Characterization, refugeehood is to be defined by criteria that ground (a) a duty of an actual state or collective toward refugees and (b) the relevant duty is a duty to admit.
- P2. A *prima facie* duty to admit arises whenever protection without admission is impossible, impermissible, or precluded by choice (as specified above).
- C1. *Choice*: Due to (b), when two individuals, *A* and *B*, flee a common kind of threat that concerns basic needs and rights, *A* may count as a refugee (because of a foreign state's *choice* not to respond to *A*'s needs without admission) while *B* does not count as a refugee.
- C2. *Impermissibility*: Due to (b), when *A* and *B* flee a common kind of threat that concerns basic needs and rights but a mixed strategy is

called for, *A* may count as a refugee depending on the outcome of a lottery while *B* does not (or refugeehood would apply only to a degree).

- C3. *Impossibility*: Due to (b), when *A* and *B* flee a common kind of threat that concerns basic needs and rights, *A* may count as a refugee if *A* flees from a stronger state to a weaker state (or collective) while *B* does not.
- C4. Due to (a), on all duty-based accounts (including definitions resembling Shacknové's), when *A* and *B* flee a common kind of threat that concerns basic needs and rights, *A* may count as a refugee if *A* lives at a time when there is a strong rights-protecting collective, while *B* does not if she lives at a time when there is no such collective.

But:

- P3. The Desideratum: It is possible to list, in plausible, sufficiently descriptive terms, the types of threats that determine refugeehood, such that two individuals who face threats of a common type at home, and are fleeing from these, are categorized alike. (This does not harmonize with the observation that *A* and *B* end up in different categories in C1 to C4.)
- P4. On the commonsense definition, a refugee is anyone who migrates with the aim of finding protection from a threat to basic rights or needs. On this view, *A* and *B* from C1 to C4 would be categorized alike, because they flee types of threats concerning basic needs and rights.
- C5. Therefore, the commonsense definition is the most plausible definition of refugeehood.

## 6. OBJECTIONS

It might be objected that a Duty of Admission–Based Characterization of refugeehood is preferable to both the Duty of Protection–Based Characterization and the Needs-Based Commonsense Characterization I advocate because both of these would have harmful consequences: they would result in using our capacity of admission ineffectively, filling states with those who should be protected in other ways, and not reserving enough slots for those who can only be helped through asylum.<sup>51</sup> Admittedly, both *would* have harmful consequences when combined with the assumption that all refugees must be granted asylum, since they would then preclude other forms of protection even when these are

51 E.g., Cherem, "Refugee Rights," esp. 192–96.

morally preferable. But this assumption is reminiscent of the idea that refugeehood is tied to the duty to admit. Since neither Shacknove's definition nor the commonsense definition conceptually ties refugeehood to duties of admission, this combination would be misguided. A wide definition of a refugee should instead be combined with a separate principle for when to admit a refugee and when to protect them without admission, such as the tripartite principle of admission I defended.

The objection most commonly raised against Shacknove's definition of a refugee, and the strongest objection against the commonsense definition, is that these definitions as such offer little assistance in determining the required mode of protection. This fact, it might be said, leads to more complicated procedures of admission.<sup>52</sup> It is true that these definitions offer little assistance for a decision on asylum. Shacknove remarks that "the refugee is eligible for many forms of international assistance."<sup>53</sup> Likewise, the commonsense definition does not prescribe admission as the only instrument of refugee protection. However, this does not imply that these definitions lead to more complicated procedures of assigning asylum when they are combined with an admission principle.

Quite generally, this "practicality objection" has little bite because it is hard to see how any *definition* of refugeehood, and thus a statement about the use of words, might make it easier than any other to decide whom to admit. On Lister's Duty of Admission–Based Characterization, refugees are understood as people who *prima facie* ought to be admitted. On his view, the most defensible formulation of a duty of admission will thus help determine criteria that do *both*: define refugeehood and ideally guide admission. On my view, these are criteria that indicate that protection cannot, must not, or would not be provided without admission. These criteria would plausibly include some rather traditional criteria, e.g., persecution and war, and (as noted by Lister) also irreversible environmental catastrophes. However, many items on the list would be relative to certain circumstances, such as "famine which helping states choose not to address" and "environmental catastrophes which it would be impermissible to address (because doing so would infringe on the rights of third parties)" (see section 3). Although it is possible to offer some guidance by providing such a list, any actual list would arguably be incomplete. For instance, when some criteria are relative to the moral rights of third parties, these rights may become relevant in various ways that cannot be pinned down easily. To sum up, although the same criteria are used for defining refugeehood and for deciding who ought, ideally, to

52 E.g., Lister, "Who Are Refugees?"

53 Shacknove, "Who Is a Refugee?" 276.

be admitted, we would be confronted with a complicated list of criteria simply because the duty of admission is complex.

If, by contrast, refugees are defined according to the commonsense definition as individuals fleeing threats to basic needs and rights, the complicated list of criteria applies only for ideal admission procedures. Refugeehood would be a separate matter and easier to detect, namely by detecting types of threats that concern basic needs and rights, which are independent of the capacities of helping states and the needs of third parties. No matter which definition we pick, if ideal admission decisions are complicated, this does not depend on the definition of refugeehood (which may be simpler) but on the complexity of the duty to admit.

So far, the focus has been on ideal theory, namely on criteria for admission that are meant to cohere perfectly to moral duties. Of course it may be debated when and to what extent the law may simplify the complex moral criteria for admission such as to arrive at less complex *legal* criteria based on a reasonable trade-off between morality and institutional efficiency. Importantly, the simplification required would be the same on both approaches to refugeehood, since the moral criteria for admission that these approaches deliver are of the same complexity.

What exactly that simplification may consist in is a question to be addressed in another paper, but it is plausible to hold that the criteria of the Refugee Convention do not deliver the best trade-off. After all, it may often be determined without difficulty or cost that certain instances of famine would not be addressed without admission or that certain droughts cannot be addressed or must not be addressed (e.g., by redirecting a river) for the sake of third parties. In other words, many conditions can easily be categorized as threats that require admission—even when they do not consist in persecution. It is often more difficult to determine whether an individual has been persecuted than whether an individual flees a famine that will not be addressed, or a drought that cannot be addressed without harming others.

## 7. CONCLUSION

I have argued that refugees are neither to be characterized as individuals to whom admission is owed by foreign states, nor as individuals to whom protection is owed, but as individuals who are fleeing threats to their basic needs and rights. Both the Duty of Admission–Based Characterization of refugeehood, as well as the Duty of Protection–Based Characterization, are sensitive to circumstances that ordinarily we would not deem relevant for refugeehood, such

as the capacities of the rights-protecting community and moral duties toward third parties. When two individuals flee threats that we would intuitively refer to as “of a common type,” these duty-based characterizations imply that only one individual may be a refugee depending on the military strength of her home state, for instance. Thus, they clash with an intuitive understanding of criteria of refugeehood, they fail to track a moral concern with the migrant’s situation, and they complicate political discourse. By contrast, the commonsense view that refugees are people who flee threats to their basic needs and rights enables us to list intuitively relevant types of threats as criteria for refugeehood.

A consequence of the commonsense definition of refugeehood is that morally underpinned admission policies need to apply a separate principle of admission that determines how to protect each individual by the most suitable means. Complex circumstances, including the abilities and choices of the helping state or of a collective of helping states, determine whether protection requires admission.<sup>54</sup>

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## NEW SHMAGENCY WORRIES

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CONSTITUTIVISM IS THE VIEW that there are constitutive features of agency, actions, or propositional attitudes, actual or idealized, that explain normative phenomena, such as reasons, values, or moral norms.<sup>1</sup> Constitutivists also usually hold that something about these constitutive features can explain the normative force of the phenomena; because we act, are agents, or have certain propositional attitudes, we are *ipso facto* required to follow certain norms. While constitutivists disagree about which norms we are required to follow, most have also argued that the constitutive features are inescapable, and that inescapability plays a vital role in the explanation of the normativity of these norms, as well as in replying to objections.<sup>2</sup>

But we may question how inescapable the norm-explaining features are. If we do not instantiate the constitutive features that explain norms, it seems like we can avoid the norms they are supposed to explain. In particular, we can avoid their normative force. Someone who is a shmagent—very much like an agent, but without instantiating the norm-explaining features—is very similar to an agent, but because the shmagent lacks the norm-explaining features, she is not subject to the norms.<sup>3</sup> Hence, it seems like constitutivism is unable to explain the norms that apply to such creatures.

This problem is known as the agency-shmagency problem, or—as I call it—the shmagency objection. My aim is to show that, despite many constitutivist responses, new versions of the problem appear for most forms of constitutivism; in particular, it remains a deep problem for those who attempt to explain practical reasons of normatively forceful varieties (cf. section 1, below, for details). This

- 1 This characterization is rough, but it is enough for present purposes. Several possible explanatory relations seem acceptable here, e.g., grounding (assuming that grounding is, indeed, explanatory), constitution, reductive identification—or even less realist alternatives—so constitutivism allows for many interpretations.
- 2 Cf. Ferrero, “Constitutivism and the Shmagency Challenge” and “Inescapability Revisited”; Katsafanas, *Agency and the Foundations of Ethics*; Korsgaard, *Self-Constitution*; Velleman, *How We Get Along*.
- 3 Enoch, “Agency, Shmagency” and “Shmagency Revisited.”

means that the shmagency objection remains a significant problem for constitutivism. If a form of constitutivism that attempts to explain normatively forceful practical reasons is to be viable, it will have to avoid the new shmagency worries.

To show this, in section 1, I present the original shmagency objection. In section 2, I show how the standard reply to the objection—that the shmagent is self-defeating—seems defensible, despite several arguments to the contrary. But then, in section 3, I extend the shmagency objection by arguing that shmagents can be sophisticated enough to have practical reasons while standing outside agency. This resuscitates the problem. In section 4, I explain how sophisticated shmagency remains a problem for some other recent constitutivist attempts to avoid the shmagency objection.

In section 5, I introduce another major line of response to the shmagency objection, according to which constitutivism is defended by appeal to constitutive features we are under normative pressure to have. I call this view *partial constitutivism*. Partial constitutivists respond to the shmagency objection by taking our constitutions to be normatively justified, so it does not matter for their purposes if we sometimes fail to live up to them. But in section 6, I argue that partial constitutivists suffer from a second new version of the objection, because they leave the normative phenomena they are supposed to explain underdetermined. I conclude in section 7.

#### 1. ENOCH'S ARGUMENT

The paradigmatic formulation of the shmagency objection comes from Enoch.<sup>4</sup> The basic point has often been set up using an example. Imagine that you are playing chess. There are certain rules (and maybe aims) constitutive of doing so; if you do not abide by them, you seem to be playing something else other than chess. Call this other game *shmness*. Why should you stick by the rules (or aims) of chess—rather than *shmness*—when you are deciding which game to play? A reason seems needed.

By analogy, Enoch thinks, it is unclear why we should care about what is constitutive of action or agency. We can always ask “so what?” and demand a reason for why we should be agents rather than shmagents—something very much like agents, but not quite like agents. Or, to put the same point in a more poignant way, we can ask the *shmagency question*: “Why should I be an agent rather than a shmagent?”

The question is meant to illustrate that we can avoid being agents by being shmagents instead. We can, so to speak, shirk from the normative requirements

<sup>4</sup> Enoch, “Agency, Shmagency.”

that agency is supposed to commit us to. For if we are shmagents rather than agents, we can have all the features that we would take to be constitutive of agency—or even otherwise associated with it—except those that explain the norms that hold for us.

But as constitutivists attempt to explain normative phenomena by the features that are constitutive of agency (including their inescapability), then if we can be shmagents, it seems like their explanation does not get off the ground. If shmagency is an open option for us, then constitutivists have yet to explain normative phenomena well, for they have not explained the normative force of the phenomena.<sup>5</sup> Therefore, when I mention the shmagency question below, I take its main point to be equivalent to suggesting that agency is not comprehensive enough to explain norms.<sup>6</sup>

More formally, here is the problem:

- P1. If constitutivism is true, the conditions of agency that explain (normatively forceful) practical reasons for us must be (descriptively) inescapable.
- P2. We can (descriptively) escape instantiating the conditions of agency that explain (normatively forceful) practical reasons for us.
- C. Constitutivism is false.

The core reasoning behind the different premises is already present in the description of the argument above. The thought behind P1 is that if we can escape the constitutive features of agency that explain norms, then we do not have an explanation of the phenomena these features are supposed to explain. The thought behind P2 is that we indeed can avoid instantiating the properties of agency that explain norms, for we can be shmagents, and then it is unclear why our reasons are normative for us. (Or, equivalently, we can ask the shmagency question.) The conclusion follows immediately.

Some clarifications are, however, needed before I proceed to discuss the argument. First, I have written “the conditions of agency that explain (normatively forceful) practical reasons.” What does that mean? Just what normative force involves is an extremely intricate question.<sup>7</sup> For now, a negative characterization

5 At least, this is the standard interpretation of the objection. Alternative interpretations (usually along with this one) are discussed by Katsafanas, *Agency and the Foundations of Ethics*; Paakkunainen, “Doing Away with the ‘Shmagency’ Objection to Constitutivism”; Rosati, “Agents and Shmagents”; and Smith, “The Magic of Constitutivism.”

6 This core point can be extended further with other plausible assumptions—e.g., if we need reasons to be agents, then plausibly those reasons may need to be external to agency, so constitutivism cannot explain all reasons. But the expansion is secondary to the main objection.

7 Cf. Finlay, “Defining Normativity.”

will do: a practical reason, *pro tanto* or overall, for an agent *A* to  $\phi$  is normatively forceful iff the reason cannot legitimately be ignored because *A* arbitrarily desires or wants something else than to  $\phi$ .<sup>8</sup> This means that the argument applies to all constitutivist views that attempt to give positive explanations of such practical reasons—not least of moral reasons.<sup>9</sup> These are the forms of constitutivism most participants in the debate have focused on, and the ones I will have in mind when I write “constitutivism” below.

I suspect that the shmagency objection mainly is a challenge for constitutivism about practical reasons of this kind. It has often been aimed at all forms of constitutivism, but it is not clear whether all forms of constitutivism are affected by it. For example, constitutivism about epistemic reasons, e.g., where reasons for belief are explained as truth-conducive considerations because truth is the aim of belief, need not be at fault. It is not obviously implausible to think that we do not have reasons for belief unless we have beliefs from the start.

More examples of forms of constitutivism where shmagency seems unimportant can probably be provided. But how such forms of constitutivism may be affected by the shmagency objection is beyond the scope of this paper. If the reader thinks that her favorite form of constitutivism suffers from the shmagency objection even though it is not one about normatively forceful practical reasons, she should feel free to reinterpret the rest of my discussion in her favored way. For now, I shall focus on constitutivism about normatively forceful practical reasons.

Second, the notion of inescapability in the argument is fairly complex. The standard interpretation of inescapability is that it is some descriptive form of necessity, not normative necessity. In particular, I am explicit that the form of inescapability involved here is descriptive, because this assumption will be tweaked below. In sections 5 and on, I will discuss normative inescapability, according to

8 This characterization is not intended to be comprehensive; much more can be said about normative force (or “prescriptivity,” “directivity,” “commendation,” or whichever term one prefers for this elusive phenomenon). The core point here is that, while it is highly unclear how normative force (or “prescriptivity,” “directivity,” “commendation,” etc.) should be characterized, a shared commitment of all plausible views about it is that one cannot ignore something that has such force just because one desires to do something else, or does not want to, if that desire or want is not forceful in itself (i.e., is “arbitrary”). If the desire or want lacks normative standing, then it has no normative force itself. Notably, this is why normative force cannot be treated as just outweighing opposing desires—outweighing implies that desires or wants, too, have force. But they need not.

9 E.g., Katsafanas, *Agency and the Foundations of Ethics*; Korsgaard, *The Sources of Normativity and Self-Constitution*; Smith, “Agents and Patients” and “The Magic of Constitutivism”; and Velleman, *How We Get Along*.

which it is normatively desirable to be the kind of agents that can explain norms. But more about that later.

Instead, for now, assume that the kind of inescapability that is involved in the shmagency argument is *dialectical inescapability*.<sup>10</sup> Dialectical inescapability is a descriptive form of inescapability, for it is something that an agent has, rather than one that she ought to have. Ferrero characterizes it as “the inescapability of rational agency in the sense of the closure of this agency under the exercise of its distinctive operation.”<sup>11</sup> What is inescapable is the agency that an agent already has, and agency is inescapable because it is self-defeating to attempt to escape agency, as acting so as to escape it involves exercising one’s agency. This form of inescapability might possibly work to ward off the shmagency objection—I discuss the argument for thinking that it may do so in depth in section 2, below.

Third and finally, all forms of constitutivism I discuss set out some (inescapable) feature(s) as a condition of agency, actions, or propositional attitudes. It is this feature (or these features) that explains normative phenomena. But, for simplicity, I will refer to all those possible norm-explaining features as “agency.”

## 2. INESCAPABILITY AND SELF-DEFEAT

The most common reply to the shmagency objection is to deny the argument for p2. We cannot, it is claimed, properly ask the shmagency question. This standard response comes from a dilemma based on a distinction between an internal and an external way to ask it. The question is internal if it is asked by someone who already is an agent, but external if it is asked by someone who is not. The internal question is largely unproblematic, for it is a normative question whether an agent ought to be an agent. Maybe one ought not to be an agent, but at least constitutivists can try to give reasons for or vindications of why one should be an agent as soon as one has come this far. And as long as one remains an agent, constitutivists can provide whatever positive explanation of practical reasons they want.

However, according to the standard reply, the external question does not arise. The most important reason for thinking that it does not is that anyone asking the question already is an agent, so it is self-defeating to ask it. Asking the

10 However, as Ferrero (“Inescapability Revisited”) points out, this kind of inescapability need not be the kind that many constitutivists think explains normativity, such as the one Korsgaard (*Self-Constitution*, 1–2) suggests when she says that agency is our “plight.” But whatever positively explains normativity is orthogonal to the present discussion.

11 Ferrero, “Inescapability Revisited,” 128.

external shmagency question is still an action, and hence subject to the norms explained by agency. Hence, agency is (dialectically) inescapable.

One version of this response, paradigmatically formulated by Ferrero, has generated most of the ensuing discussion.<sup>12</sup> I will start off by defending this argument, and hence constitutivism, against some recent responses. However, in the next section, I shall point out a deeper problem posed by shmagency, hence criticizing P2 anyway.

According to Ferrero's response, then, agency is dialectically inescapable in virtue of two properties.<sup>13</sup> First, agency is *the enterprise of the largest jurisdiction*, so all actions fit within its scope. Playing chess and playing shmess are both actions, while a shmagent does not act in the same way as an agent. Second, agency is *closed under reflection*, meaning that reflecting on how to get out of agency, let alone actively trying to do so, still counts as acting. It is, admittedly, logically possible to opt out of agency, e.g., by committing suicide. But once one is an agent, one cannot deliberately avoid being an agent without exercising one's agency.

The key argument, then, is that because agency is the enterprise of the largest jurisdiction, and one cannot opt out of it in the same way that one could decide to play shmess rather than chess, there is no alternative to it once one is in the game. One cannot deliberately leave for something else without exercising it. Hence, it is self-defeating to ask the shmagency question for an agent. Agency is dialectically inescapable.

I will proceed by presenting three points that can be construed as replies to the charge that shmagency is self-defeating. First, Enoch provides two such considerations.<sup>14</sup> Responding to an interpretation of Velleman, according to which Velleman considers it constitutive of agency to care about one's constitutive aim—so caring about it is inescapable, and this explains why we are subject to norms—Enoch writes:

What we are up against here is an *especially* problematic instance of [a naturalistic fallacy].... I want to concede that agency is indeed naturally inescapable for us. But I also want to note ... that such inescapability does not matter in our context.... For the move from "You inescapably  $\phi$ " to

12 Ferrero, "Constitutivism and the Shmagency Challenge." Cf. Ferrero, "Inescapability Revisited"; Katsafanas, *Agency and the Foundations of Ethics*; Korsgaard, *Self-Constitution*; Rosati, "Agents and Shmagents"; and Velleman, *How We Get Along*.

13 Ferrero, "Constitutivism and the Shmagency Challenge," 308–9.

14 Enoch also presents several other, less related, points ("Shmagency Revisited"). For example, he discusses the plausibility of the constitutive aims that constitutivists defend. But that has little to do with shmagency.

“You should  $\phi$ ” is no better—not even the tiniest little bit—than the move from “You actually  $\phi$ ” to “You should  $\phi$ .”<sup>15</sup>

The objection here is that constitutivism suffers from a version of the naturalistic fallacy. But the objection shifts the topic. It does not seem to have much to do with dialectical inescapability. As Ferrero points out, dialectical inescapability need not by itself be used to explain any norms. Because it is not the property to which constitutivists appeal to explain why a norm is normative, it is not subject to a naturalistic fallacy.<sup>16</sup> Dialectical inescapability only shows why one cannot avoid agency once one is an agent.

The positive explanation tends to be provided by some other inescapability-related property, such as Korsgaard’s plight inescapability.<sup>17</sup> On my interpretation, according to plight inescapability, we cannot avoid being subject to norms because we keep being faced with new choice situations where we must act, so we must both continuously face the demands of agency *and* cannot actively leave it (as according to dialectical inescapability).<sup>18</sup> But it is the former conjunct that explains how we keep being subject to the norms of agency. The naturalistic fallacy charge is aimed at the positive explanation that plight inescapability might provide, as is the talk about a move from “You actually  $\phi$ ” to “You should  $\phi$ .”

Having said that, it could be argued that this response of Enoch’s still is a problem for constitutivists, because it shows that they have to say more to explain normativity. But that is a point that constitutivists happily may concede, and then go on to try to provide such an explanation, for example by appealing to plight inescapability—though whether they succeed is a different question. Regardless, naturalistic fallacies seem beside the point at the present stage of the shmagency dialectic; constitutivists are allowed to say that one cannot avoid agency and then supplement their explanation of normative phenomena with any *explanans* they want.

Enoch’s second response is that constitutivists turn the skeptic into an actual character that they try to convince. They try to show that the potential shmagent cannot get out of its predicament of being an agent. That means that they do not face the conceptual problem that the shmagency objection stems from. As he

15 Enoch, “Shmagency Revisited,” 216, cf. 211.

16 Ferrero, “Inescapability Revisited.”

17 Korsgaard, *Self-Constitution*, 1–2.

18 Cf. note 10, above.

puts it, the skeptic “is not . . . an actual character, with a position to defend, [but] the embodiment of a problem *we* face, because of *our* commitments.”<sup>19</sup>

The shmagency objection should instead be understood as a problem for our concept of agency. The challenge is that constitutivism does not show why we would have to be agents *even* if the shmagent is self-defeating because she asks the shmagency question. The self-defeat response would, in a way, be an *ad hominem* charge of hypocrisy against the shmagent. But such hypocrisy is irrelevant—hypocrisy does not imply that our concept of agency is such that there is no question to ask about why one ought to be an agent. It only shows that the hypocrite is in a place where asking the shmagency question becomes hypocritical because she already is committed to being an agent. But whether she should be an agent is what is at issue.

To this point, Ferrero has replied by conceding that there is a sense in which he treats the shmagent as an actual character.<sup>20</sup> But this does not matter. Here Ferrero relies, again, on the distinction between internal and external questions. The shmagent occupies a position external to agency and asks whether it should become an agent, but that position can be shown to be self-defeating (by the argument above). This leaves the internal question—why an agent should care about being an agent, rather than a shmagent—open. But the reply to the internal question is distinct from the dialectical inescapability of agency, which can defuse the external question. Again, constitutivists can respond to the internal question however they want. It is enough for them to avoid the external one.

A third reply to the inescapability worry comes from Tiffany.<sup>21</sup> Tiffany accepts Ferrero’s point that the external question is self-defeating. However, he also holds that the kind of agency one cannot opt out of is too minimal to explain strong normative standards, such as those that normatively forceful reasons can provide us with. Hence, Tiffany thinks, some form of constitutivism may be true about some extremely weak norms, but not stronger norms.

The underlying reason for this is that he believes that constitutivists equivocate on the nature (or, possibly, concept) of agency. According to Tiffany, just because we cannot opt out of some weak form of agency, it does not follow that agents cannot opt out of substantive constitutivist-style agency that might explain norms. Maybe a minimal agent can be an agent in the sense, for example, that she is able to act for reasons. But constitutivists start off from substantive theories about agency that involve more than minimal agency. For example, Kantian constitutivists like Korsgaard think that agency requires a commitment

19 Enoch, “Shmagency Revisited,” 219.

20 Ferrero, “Inescapability Revisited,” 131.

21 Tiffany, “Why Be an Agent?”

to the categorical imperative.<sup>22</sup> Yet the minimal agent need not be committed to anything that strong.

However, Tiffany's equivocation response goes by too quickly. It seems to beg the question. Constitutivists often attempt to explain reasons in terms of some features of (presumably intentional) agency as such.<sup>23</sup> This means that there is no weaker version of agency out there—or, at the very least, constitutivists can hold that there is only one type of relevant agency, whereas other forms (e.g., animal agency) are extremely different and hence need not have the same normative commitments.<sup>24</sup> So constitutivist theories of agency differ from minimalist theories not by taking there to be different standards of agency for different (relevant) agents, but by claiming that agency involves much more than some weak standard like the ability to act for reasons from the start. If constitutivists are right, it follows that every agent (or every normatively relevant agent) is committed to everything that agency involves.

But might one not think that there are several forms of normatively relevant agency from the start, like Tiffany and others appear to do?<sup>25</sup> Why would agency be unified so as to generate the same normative reasons for all? The option is, admittedly, theoretically open. But absent an argument in its favor, it still seems question-begging. Constitutivists can answer: Why should we believe that there is more than one kind of (normatively relevant) agency? More would have to be said to give constitutivists reason to go with a disunified account.

### 3. NORMATIVITY FOR SHMAGENTS

I have just presented three lines of defense of the inescapability reply to the shmagency objection. There still seems to be a sense in which at least the standard kind of agency remains dialectically inescapable, and the skeptic therefore self-defeating. However, I shall now argue that P<sub>2</sub> remains defensible. Even though the original shmagency question can be avoided, the objection can be extended in a way that makes the original problem remain.

How so? The final response to the shmagency objection that I discussed and criticized was Tiffany's equivocation response. Even though it begs the question, there is still something to his point that different ways of being might generate different normative results. We may well accept the constitutivist response to the shmagency question and make a deeper point that threatens P<sub>2</sub>.

<sup>22</sup> Korsgaard, *The Sources of Normativity* and *Self-Constitution*.

<sup>23</sup> Cf. Katsafanas, *Agency and the Foundations of Ethics*, 37–46.

<sup>24</sup> Cf. Korsgaard, *Self-Constitution*, chs. 3–7, and *Fellow Creatures*.

<sup>25</sup> E.g., Lavin, "Forms of Rational Agency."

This is because insofar as we want to explain strong norms, such as normatively forceful practical reasons, we need to know more than who is an agent. Regardless of what agency involves, as long as the constitutive feature(s) used to explain reasons is relatively complex—and all constitutivist views under discussion are in agreement here—constitutivists will have trouble giving a good enough explanation of the normative reasons that hold for many creatures that appear to have them. Some of them can stand outside agency and ask the shmagency question. So constitutivism does not seem to provide a good explanation of reasons because it cannot explain the reasons of some creatures who have them. Therefore, it lacks explanatory power even when construed as a theory about subsets of the reasons there are.

In particular, constitutivists cannot explain reasons for what I will call *sophisticated shmagents*. Sophisticated shmagents appear to have reasons and stand outside agency, so such shmagents can ask the external shmagency question. This vindicates P2. (We can call the fact that they appear to have reasons, or at least something reasons-like, *the problem of normativity for shmagents*.)

But who are sophisticated shmagents? I stipulate that they are shmagents who are intelligent, knowledgeable, and perform what looks a lot like actions for what looks a lot like reasons—and, I shall argue, what well may be reasons.<sup>26</sup> They are also capable of (what looks like) deliberation, reflecting on what they do, and are able to prefer different actions to different extents. Accordingly, they seem like *prima facie* good candidates for participating in ordinary normative practices, such as that of giving reasons for their actions when asked why they are doing what they do.

But sophisticated shmagents cannot act and are not agents according to constitutivists. This is because they lack at least one—possibly all—of the constitutive features of agency that constitutivists also use to explain reasons. Since constitutive features are necessary features, without them the sophisticated shmagents fail to qualify as agents.

26 If one wants to use the word “reasons” conservatively, one can call what sophisticated shmagents have “shmeasons”—but they still seem to have exactly the same kind of role and force as reasons do for agents. So reasons and shmeasons are still equivalent. Hence, if we think more deeply about who the creatures that lack the reasons-explaining features are, it does not seem like they do not have reasons—instead, they seem to function surprisingly much like agents (who have reasons), so we have good reason to think that they do have reasons.

In fact, we have no pre-theoretical reason to think that what they have should not be explained in the same way as the reasons of agents. And it would be fallacious to think that, just because constitutivists can explain reasons for agents by appeal to the constitutive features of agency, there are not some reasons for shmagents that they cannot explain. Just because constitutivists can explain one part of the normative sphere (for agents) does not mean that there is nothing more to it.

We can concede to constitutivists that agency should be understood in their preferred ways; in fact, as I argued in response to Tiffany, we should do so, or else we beg the question against most constitutivists. But with that concession made, there remains a conceptual and normative space where sophisticated shmagents, characterized as above, can operate. And if they can do so, a problem re-emerges for constitutivism. Sophisticated shmagents can ask the external question about whether they should be agents, i.e., they can reason practically about whether or not they should be agents, since they have what appears to be reasons. However, being shmagents, they still stand outside agency—in other words, they are external to agency. So it seems like they can ask the external shmagency question.<sup>27</sup>

Moreover, they can do so independently of the dialectical inescapability of agency. To rehearse the last section: my responses to objections to Ferrero's argument were (i) that the naturalistic fallacy point does not matter because the fallacy has little to do with dialectical inescapability, (ii) that it does not seem to matter that constitutivists reify the shmagent because they can still defuse the external question, and (iii) that because constitutivists think agency involves a lot from the start, it begs the question to hold that only minimal forms of agency are inescapable.

Yet none of these responses indicate that there cannot be sophisticated shmagents. The responses can be avoided as follows: (i) the explanation of reasons in terms of agency is neither here nor there if we can escape agency, which sophisticated shmagents can; (ii) because sophisticated shmagents stand outside agency from the start, they can ask the external shmagency question; and (iii) sophisticated shmagents are shmagents, *ex hypothesi*, so they have little to do with what constitutivists take agency to involve.

I shall illustrate how such shmagents appear to have reasons while standing outside agency, vindicating P2, by discussing Korsgaard's theory of agency. Assume that she is right about the nature of agency. She thinks that it entails that agency must be regulated by the categorical imperative (CI), because we need to unify ourselves to act, and that, she thinks, fundamentally involves being regulated by CI. The core idea is that acting involves acting on maxims, these need to

27 I suspect that sophisticated shmagency is a problem here because philosophers have focused too much on shmagency as an offshoot of agency. Shmagency is usually taken to be agency minus the normativity-explaining feature that agency purportedly has (and possibly minus something else, but only little else). Hence, one might become a shmagent if one loses some agency-constituting feature. But shmagents can be extremely cognitively and maybe even normatively sophisticated, in the manners just described, while standing outside constitutivist agency.

be universalized, and universalization must proceed in line with CI. If not, we are mere heaps, not agents.<sup>28</sup>

But assume simultaneously that we have some sophisticated shmagents. Call them the Martians. A traditional Humean belief-desire theory is true about how the Martians behave or otherwise interact with their environment (rather than act, since only agents can act), intentionally or not, and that their ordinary behavior or interaction usually stems from belief-desire combinations of mental states. These are not in any way regulated by CI. There is no need to appeal to maxims, universalization, or being in line with CI to explain their behavior; such features, which Korsgaard takes to explain why we are bound by CI, are in no way part of their psychologies. Hence, they lack the norm-explaining features that she thinks are constitutive of agency.

Or consider some other sophisticated shmagents—the Saturnians—whose behavior or interaction stems from *besires*, i.e., mental states that both represent the world and push them to behave in certain ways. Again, they lack the features that might seem to bind us to CI. Examples of creatures with different kinds of psychological setups can be multiplied pretty much indefinitely here; they all lack the conditions that are constitutive of agency and constitutivists take to explain reasons.<sup>29</sup> I focus on these two, however, as they exemplify psychologies that philosophers often have thought explain action.

The Martians and Saturnians fail to qualify as agents on the theories of agency that constitutivists like Korsgaard, who want to explain normatively forceful practical reasons, hold. There is, *ex hypothesi*, no way that their “actions” have the typical constitutivist aims. Again, maxims, universalization, or being in line with CI have nothing to do with the explanation of their behavior. It follows that they do not aim at following norms such as CI (in any relevant way, at least), and hence do not have reasons on Korsgaard’s view.

Yet they still *appear* to have reasons. They are sophisticated and are therefore, pre-theoretically, on par with at least humans insofar as reason-possession goes. I have already assumed that sophisticated shmagents have all kinds of properties that indicate that they have reasons: they are intelligent; are knowledgeable; perform what looks a lot like actions for what looks a lot like reasons; are capable of (what seems to be) deliberation and reflecting on what they do; and are able to

28 Korsgaard, *Self-Constitution*, 72–80.

29 An anonymous reviewer has suggested that they may still be regulated by CI even though that is not their self-understanding. I do not deny that; I have not discussed self-understanding. The point is rather that the features that might commit one to CI are not involved in their psychologies at all, and a lot of argument would be needed to show that belief-desire pairs require it.

prefer different behaviors. And they seem to be *prima facie* good candidates for participating in normal normative practices.

Moreover, here is a number of things we take to be true about reasons. First, (i) they are facts counting in favor of something (for someone), so they would have to be reasons for someone. Furthermore, (ii) they appear to be normatively forceful (at least for those who have them), (iii) they depend (e.g., supervene on, or are grounded in) natural facts, (iv) they come in varying strengths (or weights), (v) they can contribute to generating all-things-considered reasons, and (vi) they have impact on deliberation.

All the properties that reasons are supposed to have seem possible to instantiate without having a constitutivist-style constitution. For example: Let a Martian deliberate (or deliberate\*, if you want to reserve the word “deliberation” for a kind of action that constitutivist-style agents perform). Let it also deliberate using facts; its desires might be backgrounded.<sup>30</sup> From its perspective when deliberating, it represents facts—which may or may not seem desired—when deliberating.

Using representations of these facts, the Martian judges which ones count in favor of what to do (i). It is these facts that appear, to the Martian, to be relevant to determine what it is to do by favoring different outcomes (ii).<sup>31</sup> Moreover, the facts that it takes into consideration seem to stem from natural properties, e.g., if something is pleasant or painful for the Martian (iii).

Now, the Martian thinks these facts can matter to different degrees (iv), but weighs them up, and tries to reach a conclusion about what to do based on what it most strongly favors. Because it is knowledgeable and intelligent, it can do this to quite a significant extent. What appears to be reasons therefore comes in different strengths depending on how it weighs things up (v), and they have been part of generating what looks like an all-things-considered reason. The Martian, then, seems to be deliberating with reasons (vi). And all this could be said about the Saturnians as well.

Again, it certainly seems like the Martians or Saturnians have reasons, or at least something that plays the role of reasons. Because these creatures stand outside constitutivist-style agency, there is a perspective from which it makes sense to ask the external question about whether they should be agents or shmagents.

30 Cf. Pettit and Smith, “Backgrounding Desire.”

31 It might be thought that the “normative force” here is fairly weak—the only force I give the reasons here is that they seem relevant for determining what to do to the Martian. But the reader is free to slot in many possible theories about what it might consist in, as long as it is compatible with some facts seeming that way to the Martian.

So we can preserve  $P_2$  in the original argument. So the shmagency objection stands.

Unsurprisingly, there are some worries about this defense of the shmagency objection. First, it might be claimed that it does not matter that there are shmagents who occupy a place outside agency from which they may ask the shmagency question. For one could hold that what matters is whether agency is inescapable for creatures like us, who already are agents. If it is, for example, psychologically impossible for us to have belief-desire psychologies or desires because we are the kinds of creatures who have Korsgaard-style constitutions, and these cannot be altered, becoming shmagents is not a live possibility for us.<sup>32</sup>

It seems possible that we might not be able to become shmagents. I have defended the inescapability of agency for agents in section 2, and then tried to argue that the real shmagency problem comes from creatures like the Martians or Saturnians who never may have been agents in the first place. The shmagents may or may not ever have been agents.

But because they still seem to have reasons, or something very much like reasons, *that* normative phenomenon should be explained in the same way that we explain reasons for ordinary agents.<sup>33</sup> We should want a general explanation of (what looks like) normatively forceful practical reasons. But then, constitutivism seems ill suited to explain a phenomenon like normatively forceful practical reasons if its explanation is limited to agents' reasons and not the reasons of sophisticated shmagents—it only seems able to explain a subset of our observations of the reasons there are. So constitutivism does not seem very explanatorily powerful because it cannot handle all the reasons there are. Hence, it is likely false, even about reasons for ordinary human agents.

A second possible response is to say that the kind of reasons that shmagents have are somehow different from, and probably of less normative interest than, those that constitutivist-style agents have. Or, similarly, one might think that what I have called shmagents are agents of another kind than standard constitutivist agents, and then argue that one should explain their reasons in different ways.

Versions of this point are already made in the constitutivist literature. Most obviously, Lavin thinks there can be different kinds of agents who have different kinds of norms applying to them in virtue of having different kinds of constitutions.<sup>34</sup> Similarly, Korsgaard thinks that while humans indeed act in accordance with universalized principles—and our fundamental principle is *CI*—for ani-

32 Thanks to an anonymous reviewer for raising this point.

33 Cf. note 26, above.

34 Lavin, "Forms of Rational Agency."

mals, instincts work as the right kind of principles.<sup>35</sup> By distinguishing between different kinds of principles, we can make sense of different kinds of agency, and, possibly, different kinds of reasons that stem from different sources.

But appealing to different kinds of reasons seems disingenuous insofar as we are talking about agents and shmagents instead of when we contrast, for example, human beings and animals. We can easily make further assumptions about the Martians and Saturnians that explain why it seems like they have reasons in the ordinary sense of the word. When I characterized them, I stipulated that they have all kinds of properties that make them seem to have reasons, and I have also showed how what looks like reasons might feature in their phenomenology. Examples of properties needed to have reasons in the ordinary sense of the word can be multiplied, since the Martians and Saturnians are creatures that we construct. They can always be made sophisticated enough to seem to have reasons in the ordinary sense.

#### 4. OTHER REASONS TO DISMISS THE EXTERNAL QUESTION

I have now motivated the shmagency worry again. Sophisticated shmagents seem to have reasons and stand outside agency, so they can ask the external shmagency question. However, some other motivations than the self-defeat argument from section 2 have also been proposed for explaining why the external question fails to make sense. If either of these is right,  $P_2$  would be defended. I shall first discuss a semantic response, and then a metaphysical one.<sup>36</sup> I shall argue that these responses, too, fail due to considerations that have appeared in the discussion in the previous section. The responses attempt to show that it is impossible to ask the external shmagency question, but sophisticated shmagents can do so.

First, there is a second strand of argument in Velleman's response to the

35 Korsgaard, *Self-Constitution*, 3–7, and *Fellow Creatures*.

36 Some responses can be treated more quickly. O'Hagan ("Shmagents, Realism and Constitutivism about Rational Norms") seems to endorse both types of response, but she is not able to face the challenge for Tiffany from section 3. She tries to defend constitutivism by arguing that shmagents must deny a minimal norm of reasons-responsiveness, but it does not follow from that norm that constitutivists must accept enough material to be able to explain normatively forceful practical reasons. Furthermore, Rosati ("Agents and Shmagents") argues that the difference between agents and shmagents is greater than what Enoch has assumed, but once we see that, we realize how much more valuable agency is to us. So agency matters because it is valuable. But, obviously, that requires her to have a take on values that is independent of what we can squeeze out of agency if it is to answer the skeptic. I discuss such responses in sections 5 and 6, below.

shmagency objection.<sup>37</sup> The idea is that the external question—asking “Should I be an agent or a shmagent?” from the perspective of a non-agent—does not make sense because it is semantically defective. It looks analogous to “Is a tree taller?” without specifying what the tree might be taller than. If so, it is conceptually impossible to ask the shmagency question, and so the possibility that we might end up outside agency is no challenge to constitutivism.

However, as Enoch points out in his response to the argument, shmagency-style questions do not seem defective.<sup>38</sup> Asking whether one should be an agent or something like it, or if one has reason to be an agent, seems perfectly intelligible. So, *prima facie*, shmagency-style questions do not seem defective.

Yet seemings can be erroneous, so maybe we need a deeper reason to think that they are correct in this case. One such reason stems from the point that the intelligibility of the external question does not stand or fall with the possibility of shmagency for creatures who already are agents. If the external question is unintelligible, it would make no sense for sophisticated shmagents, standing outside agency but having reasons, to ask the shmagency question. But whether sophisticated shmagents should become agents or not clearly matters for them—assuming some constitutivist view is right about the normative commitments and implications of agency, they would be subject to different norms if they were to become agents, which no doubt matters from their perspectives. This would not have made sense if the shmagency question had been conceptually confused. Hence, the external question does not seem semantically defective.

Another attempt to motivate the failure of the external interpretation of the shmagency question comes from Silverstein.<sup>39</sup> He thinks that it makes sense to ask it, but that it is ambiguous between the internal and external versions of the question. The internal question makes sense, but the external one does not. A shmagent—who is not an agent—would be asking for reasons for actions though she has none, but anyone asking the question is already an agent. So the external reading of the question begs the question against the constitutivist picture of normativity, according to which it is agency that explains why something is a reason:

It is tempting to interpret the shmagent’s question as one about reasons for action: Do I have any reason to become an agent rather than a shmagent? But that cannot be right, for a shmagent is not in a position to per-

37 Or, better: Enoch (“Shmagency Revisited”) attributes it to Velleman. I am not fully sure whether Velleman himself actually endorses it.

38 Enoch, “Shmagency Revisited.”

39 Silverstein, “The Shmagency Question.”

form actions. Only agents can act, and so only agents can be in the market for reasons for action.<sup>40</sup>

However, this answer is unsatisfactory due to the problem of normativity for shmagents. Sophisticated shmagents are still in the market for reasons (or something reasons-like) for action (or for something action-like), and the external question certainly seems intelligible for an intelligent being who does not count as an agent according to the strong constitutivist theories of agency. So again, the external shmagency question remains a live possibility.

##### 5. PARTIAL CONSTITUTIVISM

I have now argued that there are shmagents that plausibly have normative reasons, and hence defended P2. Can constitutivists respond to the shmagency objection in a better way? A number of authors have recently defended views according to which we—most directly—should be agents normatively, rather than descriptively. For example, Michael Bratman has argued that norms constitutive of planning agency are justified in virtue of their value for our self-governance.<sup>41</sup> And though she does not commit herself to constitutivism, Caroline Arruda has argued that the reason we ought to be full-fledged agents is not, as constitutivists have argued, that full-fledged agency is inescapable, but because it allows us to pursue other valuable projects that require exercising full-fledged agency.<sup>42</sup> It seems easy enough to turn her point into an argument for a form of constitutivism saying that we ought to endorse norms constitutive of full-fledged agency because of their general value for us.

Most importantly, however, Michael Smith has formulated a new version of constitutivism that diverges from previous accounts in interesting ways.<sup>43</sup> Because this view is the most developed theory in print according to which a deeper norm allows us to explain reasons in a constitutivist way, I shall use it to exemplify the second response strategy to the shmagency objection.<sup>44</sup>

40 Silverstein, “The Shmagency Question,” 1136.

41 Bratman, “The Rational Dynamics of Planning Agency.”

42 Arruda, “Why Care about Being an Agent?”

43 Smith, e.g., “Agents and Patients,” “The Magic of Constitutivism,” and “Constitutivism.”

44 Beyond the three views just mentioned, the first hint of such a view is arguably in Bagnoli (*Constructivism in Ethics*, 11), though she does not develop the point in detail. Moreover, Paakkunainen (“Doing Away with the ‘Shmagency’ Objection to Constitutivism”) has recently presented an interesting view in the vicinity of those I have in mind. Her response to the shmagency objection says that reasons can be grounded in features of agency that we need not instantiate. It does not seem committed to taking those features to be normatively

We can call the type of views mentioned above versions of *partial* constitutivism. The core idea here is that the constitutive conditions of agency that are supposed to explain normative phenomena such as reasons are normatively defended themselves. So the kind of agency that explains some normative phenomena is normatively justified from the start, but can still do explanatory work regarding *other* normative phenomena. Quite generally, we can characterize partial constitutivism like this:

*Partial Constitutivism:* For all forms of constitutivism, a form of constitutivism is a form of partial constitutivism iff the constitutive features of agency that explain normative phenomena are normatively justifiable (or desirable, required, etc.) to instantiate for someone, rather than only descriptively necessary for one to instantiate to be a member of some kind.

I call partial constitutivism “partial” because, on this view, it is not the case that all norms are explained by constitutive features that an agent only descriptively instantiates. Instead, at least one norm is a deeper feature of the explanation, suggesting what type of agent one is justified in being. That type of agency becomes normatively, not descriptively, inescapable. This norm (or these norms) may or may not be further reducible to descriptive constitutivist or naturalistic terms—but whether it (or they) can is an open question that one need not take a stand on.<sup>45</sup>

Partial constitutivism stands in contrast with standard forms of constitutivism in at least two ways. First, it is in one sense normative rather than descriptive. The constitutive features of agency by which some interesting normative phenomenon is explained are normatively justifiable (or desirable, required, etc.), and that is why one should instantiate them. They may or may not also be descriptively necessary for agency—one may have to live up to the standards of agency in some minimal sense to count as an agent at all. But then, those normative standards in turn impose stronger norms on an agent—e.g., to be a fully functional agent. Or, alternatively, it may be that there is some sort of external normative justification for being an agent of the relevant kind.

By contrast, according to standard formulations of constitutivism, the con-

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justifiable for us, so it differs slightly from the partial constitutivist solution to the problem that I will present—this solution is formulated in terms of a kind of normative inescapability. Nevertheless, her positive suggestion for how one might formulate a form of constitutivism that avoids the shmagency objection still relies on a kind of attributivism about goodness, making it very similar to Smith’s view that I will present in detail—and, I think, susceptible to the problem I will raise for his type of view. I hope to discuss her suggestions in more detail elsewhere.

45 However, at least Smith (“Constitutivism”) believes that it is so reducible.

stitutive norms are explained by non-idealized properties that constitute something as a member of their kind *simpliciter*. One must instantiate them to at least some extent to count as a member of some kind, but the constitutive conditions themselves need not put direct normative pressure on agents. Whether one should be an agent of some kind is a separate question from whether one is one.

Second, partial constitutivism is less comprehensive than many standard forms of constitutivism.<sup>46</sup> It does not attempt to explain all practical norms or all moral norms, but rather uses some normative feature to explain agency, which in turn explains some other normative phenomenon, such as reasons. This might seem to make it less ambitious, and therefore less attractive, than the standard forms of constitutivism. But the view still does substantive work to explain some normative phenomena (e.g., reasons) in terms of others (e.g., perfectly good agency), and so remains informative.

As mentioned, partial constitutivism can be exemplified using Smith's view. What Smith has done is to start to label his older ideal advisor theory of reasons a form of constitutivism.<sup>47</sup> On his present view, our reasons for action are explained by having their sources in the desires of our ideal counterparts, where our ideal counterparts are perfectly good *qua* agents. Agency is taken to be a goodness-fixing kind, i.e., a kind that itself sets out the features that something has to have to be a good member of it. Moreover, a perfect exemplar of an agent, Smith thinks, is fully practically and theoretically rational, and rationality is spelled out in terms of coherence.

To explain reasons, then, Smith appeals to a prior conception of goodness for an agent. The goodness here is functional; a perfectly coherent agent is a perfectly functioning agent. Furthermore, Smith thinks that functional goodness should be understood in terms of features that are constitutive of agency.<sup>48</sup> Again, as mentioned, it does not matter for theoretical purposes whether the functional goodness here is constitutivist, as long as one can get to the explanation of reasons in terms of the responses of perfectly functioning agents. That is still what Smith gives us: one can explain reasons in terms of the desires of perfectly functioning, or perfectly rationally coherent, agents, where that type of functional perfection is understood independently of our reasons.

So Smith is a partial constitutivist. He takes fully functioning agency to be able to explain normative reasons, and it is good for us to be such agents be-

46 E.g., Korsgaard, *The Sources of Normativity*.

47 E.g., Smith, *The Moral Problem*, ch. 5; cf. Smith, "Constitutivism."

48 Smith thinks that this is a form of constitutivist explanation too, taking any explanation of something normative in terms of the constitutive features of that thing to be constitutivist ("Constitutivism").

cause agency is a goodness-fixing kind. Doing so, he—like other partial constitutivists—is able to deny premise P<sub>1</sub> rather than P<sub>2</sub> in the original shmagency argument. For according to partial constitutivists, it is irrelevant whether or not actual agents are ideal. Their reasons can be explained regardless, for the kind of agency that explains norms is not descriptively inescapable, but normatively inescapable—on Smith’s view, this is because it is good to be a perfectly functioning agent. Importantly, it does not even matter whether the reasons that one attempts to explain are the reasons of a member of some kind of entity that does not instantiate agency. Even the reasons of Martians or Saturnians can quite possibly be explained by the responses of idealized agents.

Hence, on a partial constitutivist view, it is possible to explain normatively forceful practical reasons without requiring the agency in terms of which they are explained to be descriptively instantiated—it is *idealized* agency that explains reasons, not actual agency. On this view, questions about whether we should be agents or shmagents are first-order normative questions about which reasons we have, but the reasons themselves have a deeper explanation.<sup>49</sup> So partial constitutivists seem able to explain at least some normative phenomena without invoking the argument against P<sub>2</sub> discussed in the previous sections.

#### 6. SHMAGENCY AS UNDERDETERMINATION

Unfortunately, partial constitutivism lends itself to another version of the shmagency objection. In sections 3 and 4, I defended P<sub>2</sub> in the shmagency argument. The external shmagency question still stands if constitutivists cannot explain shmagents’ reasons. But I just argued that partial constitutivists can deny P<sub>1</sub>, for we need not be ideal agents descriptively, only normatively, and ideal agency remains the same regardless of who we are, descriptively.

However, a normatively analogous version of P<sub>2</sub> remains. This is a problem of *underdetermination*: the reasons that are explained by some form of justifiable (or desirable, required, etc.) agency do not seem normatively preferable to other, slightly different, potential reasons that can be explained by treating the same justified (or desirable, required, etc.) agency somewhat differently. There seems to be little reason to prefer one explanation of reasons in virtue of normatively justified agency to other such explanations, for the reasons that are to be explained in such terms can be given different interpretations depending on the extent or manner in which we should treat such agency. And there are many possible ways of baking the same normatively justified form of agency into our

49 Smith, “The Magic of Constitutivism.”

reasons, immediately yielding many possible candidate theories that might explain our reasons.

This problem exists because it is unclear how we should treat the normatively sanctioned form of agency that explains reasons. For, very plausibly, there are different ways to respond to the same normative feature that it might have, which gives rise to different possible sets of reasons that are explained by forms of agency with it. For example, if the normative feature is some form of goodness or value, we can ask: Ought the goodness or value of agency be maximized, satisfied, used to explain only some subset of our reasons, respected, honored, promoted, or something else? Until we have an answer to this question, we can always ask: “Why should I care about what an ideal advisor tells me rather than what a shmidéal advisor tells me?” where the difference between an ideal and a shmidéal agent is that we treat their goodness or value differently.

We can also exemplify this problem using Smith’s view. Why should we be concerned with any of the alleged reasons that the desires of our ideal counterparts supposedly grant us in virtue of functioning perfectly? There is, on his view, some sense in which it would be good to be fully functioning agents, and still good—but possibly less good—to be slightly less perfect as an agent. But no reason is provided for thinking that we ought to care more about reasons that have their sources in the desires of a perfectly functioning agent than a slightly less perfectly functioning agent. Being the latter type of agent may not be as attributively good for us as the former, but their responses may still be what gives us reasons. So until we know what to do with the value of agency, it seems like it is not just ideal agents, but also less than ideal agents, that have desires that seem decent candidates for giving us reasons. This gives rise to the shmagency question: Why should we care about what an ideal advisor rather than a shmidéal advisor desires?

This type of problematic underdetermination appears in several places in Smith’s framework. One form stems from the possibility of a satisficing conception of how we should handle the value of agency. It is possible that someone seeking advice would be happy with advice from an agent who is good enough rather than from one who is ideal. We are free to attribute functional perfection to all kinds of things without for that reason thinking that we are somehow normatively required to care about having the best versions—if a perfectly sharp knife is an ideal knife, I do not need a perfectly sharp knife to cut myself a piece of bread, just one that does the job. Similarly, a merely good enough agent might have desires that are good enough to count as the sources of reasons. We need something more to think that perfect functioning is required to provide reasons.

Second, there does not seem to be any reason to pick out Smith’s ideal advi-

sors rather than several other advisors even if we aim for perfect advice. A less than fully coherent, yet still idealized, version of me might have desires for lasagna ( $L$ ), mac and cheese ( $M$ ), and spaghetti carbonara ( $S$ ), but desire lasagna over mac and cheese ( $L > M$ ), mac and cheese over spaghetti carbonara ( $M > S$ ), and spaghetti carbonara over lasagna ( $S > L$ ). These desires are intransitive, and therefore incoherent. But that version of me might also always desire spaghetti Bolognese over any of the other dishes, leaving the intransitive desires moot, because—assuming, in this case, that my reasons vary with the strength of my desires—I will always have more reason to cook spaghetti Bolognese rather than any of the other dishes. It is not obvious that we ought to prefer Smith's view to this one when it comes to accounting for the reasons we have.

There are potential replies here. Smith thinks that the desires of ideal agents grant us reasons because they are authoritative, unlike other desires.<sup>50</sup> They are preferable to the desires of less than ideal agents for two reasons. First, he thinks, we tend to find out what we have reason to do by deliberating. Second, the extension of what we have reason to do is well captured by what we would be motivated to do if we deliberated well.<sup>51</sup>

It is unclear how these points have bearing on the underdetermination worry, however. We may well find out what we have reason to do by deliberating well *enough*, and the extension of what we have reason to do may well be fixed by what we are motivated to do if we reason well *enough*. So the satisficing worry stands. Similarly, intransitivities among desires we do not actively consider need not trouble our deliberation in practice, and hence the extension of what we have reason to do may well be compatible with cases such as the pasta case. It is very plausible that even an ideal version of me would not even consider making lasagna.

Another potential reply is that we might want to do more normative thinking prior to going constitutivist. Then we can, maybe, settle how we ought to treat the value of agency in terms of which we explain reasons, and then go on to defend some form of constitutivism based on the kind of agency we believe to be valuable for that reason.

50 Smith, "Constitutivism."

51 An anonymous reviewer has suggested two other lines of defense for Smith, but neither is very helpful. First, it does not help to say that fully functional or coherent agency is the best form of agency, and hence what we should care about. Again, it may be that we should satisfice, or maybe we could aim for perfect advice about some limited subset of questions rather than all, or something else insofar as we are trying to account for reasons. Nor does it help to suggest that Smith's ideal advisors have desires that are close to ours and hence are not alienated, because the desires of shmidial agents can be just as close—or possibly even closer, as they may share some of our flaws.

I admit that this strategy seems open, but the reply essentially concedes the problem. We need to explain how to handle the goodness of agency to avoid the underdetermination worry. There is more work to do to explain what we are supposed to do with the value of agency before we can explain things in terms of it. This task need not be impossible, but it seems very hard. And partial constitutivism is an incomplete view until we know how to treat valuable agency, and therefore which norms it is supposed to explain.

## 7. CONCLUSION

What have we learned? In section 1, I presented the shmagency objection, and in section 2 I showed that the standard line of defense—self-defeatingness—seems to hold against criticism. But then I argued, in sections 3 and 4, that the shmagency objection remains because there is still an external standpoint, occupied by sophisticated shmagents, that constitutivists cannot handle. After that, in section 5, I argued that partial constitutivists can defend themselves against the argument by denying  $P_1$  rather than  $P_2$ . But in section 6, I argued that this response fails due to another shmagency objection stemming from underdetermination.

From this discussion, one might conclude that constitutivism (about normatively forceful practical reasons, at least) still fails in virtue of the shmagency objection. But that conclusion seems hasty. There may still be versions of constitutivism that can avoid the sophisticated shmagents, and that are not based on underdetermined values. But just how such versions might look is better discussed elsewhere. My main conclusion is, instead, that constitutivists will need to avoid the challenges presented above to still be able to explain normatively forceful practical reasons.<sup>52</sup>

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## THE CASE FOR STANCE-DEPENDENT REASONS

David Sobel

LILA LOVES LAGAVULIN. It is her favorite whisky. Aatif likes watching college basketball but has little time for baseball. Taniquill prefers the feel of flannel pajamas to cotton. Pei Lin enjoys being in rooms that are painted eggshell blue more than those painted canary yellow. Alejandro is more in the mood to listen to jazz than classical music. Tyus totally goes for spicy food. As a result, each has a reason to go in for what they favor over what they disprefer.<sup>1</sup> In such matters of mere taste one has a reason to choose what one favors or prefers.<sup>2</sup> In such matters, one's "stance" or favoring can play a role in grounding reasons, at least if we suppose that the attitude is based on an accurate descriptive understanding of what one's options are really like.<sup>3</sup> These reasons need not be decisive, obviously, but they carry some *pro tanto* weight, at least in many contexts. I will call this the "Modest Claim."<sup>4</sup> The astute reader will spot that my choosing that label for the view reveals that I did not expect this view to be highly contentious.

- 1 I have claimed before that one's favorings concerning matters of mere taste play a role in grounding value. See Sobel, "On the Subjectivity of Welfare" and "Pain for Objectivists."
- 2 I might instead have made this claim in terms of *pro tanto* well-being benefits. I intend the "Modest Claim" (introduced below) to include claims both about reasons and about well-being benefits in matters of mere taste. But I will mostly focus on the version of the claim concerning reasons. (Steve Wall and I are working on developing related thoughts in the context of theories of well-being. See our "A Robust Hybrid Theory of Well-Being.") To keep the Modest Claim from immodest entanglements I will avoid as many other commitments as I can while prosecuting my case for it. In particular I do not make any claims about the interrelation or explanatory priority between facts about an agent's reasons and her well-being.
- 3 This phrase is intended to distinguish cases in which such favorings are a part of the ground of one's reasons from the claim that such favorings merely have causal upshot that make them, when combined with stance-independent norms, relevant to what we have reason to do. I do not offer much further about the sort of grounding at play here. I think of it as an asymmetrical relationship that offers a metaphysical, and not merely epistemic, explanation. The debate in Plato's *Euthyphro* is about grounding in the sense that I intend.
- 4 We need to distinguish between objective and subjective reasons. The latter are relative to a limited set of information or evidence whereas the former are not. Our topic will be objective reasons only (and well-being).

But it is. A wide range of influential philosophers, including T. M. Scanlon, Michael Smith, Ralph Wedgwood, Richard Arneson, Roger Crisp, and Richard Kraut, maintain that an individual's favorings or stance never play a normative role in grounding reasons.<sup>5</sup> Too often it is a bit obscure why people deny the Modest Claim. Indeed, there has been real confusion about the best formulation of the claim. In this paper I will try to clarify the central claim and articulate the considerations that seem to motivate people to resist it. I will argue that these considerations are unpersuasive and that we should accept the Modest Claim.

If one were ever going to grant normative authority to contingent attitudes it would surely be in the context of matters of mere taste.<sup>6</sup> Thus the most plausible and coherent views that deny the Modest Claim embrace what I will call broad normative stance-independence. Shafer-Landau, in the context of characterizing a type of moral realism, explicated this notion of stance-independence. Proponents of normative stance-independence maintain that truths in the relevant normative domain, in our case reasons for action, obtain "independently of any preferred perspective" and are "not made true by virtue of their ratification from within any given actual or hypothetical perspective."<sup>7</sup>

As the above examples made clear, a great variety of attitudes are covered by the relevant notion of an agent's "stance," including, among others, loving, liking, wanting, desiring, craving, valuing, and preferring. Further, there are different levels of stance, such as when one wants to love Radiohead more than  $\kappa$ C and the Sunshine Band. It is an advantage for the friend of the Modest Claim to have so many options. I will not champion here the normative relevance of a particular stance. I do think the above examples offered of favoring attitudes are all tempting stances for the defender of the Modest Claim to point to. It may be

- 5 Scanlon, *What We Owe to Each Other* and "Replies"; Smith, *The Moral Problem*; Wedgwood, "Intrinsic Values and Reasons for Action"; Arneson, "BOL: Defending the Bare Objective List Theory of Well-Being"; Crisp, "Hedonism Reconsidered"; Kraut, *What Is Good and Why*. See also Dworkin, *Sovereign Virtue*, ch. 6; Dancy, *Practical Reality*, ch. 1. Raz comes across to me as very conflicted on this issue; see *Engaging Reasons*, especially ch. 3. I do not mean to suggest that all such attributions are trivial to demonstrate. This paper will not focus on making good on these attributions. Scanlon, Smith, and Parfit's relevant views, however, will be discussed, below. Overall, I have been quite surprised how commonly people, including leaders in the field, self-ascribe this view. Admittedly, however, there is some confusion about exactly what the view comes to and that fact may be playing a role in swelling the ranks of those who think of themselves as belonging in this category.
- 6 Understanding the precise boundaries of what counts as a matter of mere taste would surely be a difficult matter. All I need to show here is that a range of cases surely fit in this category. I do discuss below strategies available to the friend of the Modest Claim for how to find cases that are especially difficult to deny belong in the category of matters of mere taste.
- 7 Shafer-Landau, *Moral Realism*, 15.

that more than one such favoring attitude grounds or partially grounds reasons.<sup>8</sup> However, the friend of the Modest Claim need only assert that at least one such stance grounds reasons, and they need not claim that it does so in all contexts. I will use “favoring attitude” or “stance” as the generic and “preference” or “desire” as the favored example of a particular stance. I will use “stance-independence” to refer to full stance-independence and “stance-dependence” to refer to at least partial stance-dependence.

Three ambiguities in understanding the most useful and important usage of stance-independence are worth considering before we proceed. First, consider a view that says that there are completely objective, stance-independent criteria for what is beautiful and that, while it is valuable to interact with the beautiful, appreciating the beautiful is even more valuable. Such a view might say that the relevant sort of appreciation is conative—being moved by beauty or loving it, for example. Such a view claims that one’s normatively favored conative reactions are the key to this extra value. Should this be thought of as a fully stance-independent view or not?

In this case, the appreciation is thought to be warranted by stance-independent norms and only warranted reactions are thought to be of value.<sup>9</sup> Such a view will say that conative reactions ground reasons, but only if those conative reactions are themselves warranted by the object of the attitude. The most important divide is between views that maintain that conative attitudes can play a role in grounding value even if the object of the attitude does not, by itself, justify or merit the attitude, and views that deny this. The latter sort of view still seems to me to side with Socrates in the *Euthyphro* question of where value originates. The attitudes are, on such a view, still normatively slaves of stance-independent values. Only by properly responding to what is stance-independently valuable can they generate value.

The friend of the Modest Claim, as I will understand it, maintains that, even in contexts in which none of the options commands or warrants the relevant favoring attitude, nonetheless where the attitude happens to go still plays a role in grounding reasons. So we will understand the relevant sort of stance-dependent theorist as claiming that, at least in some cases, one’s stance plays a grounding role even when that stance is not itself normatively required or favored by the

8 Lin, “The Subjective List Theory of Well-Being.”

9 For a view that has some similarities with the position outlined here, see Hurka, *Virtue, Vice, and Value*. Hurka claims that loving the (stance-independently grounded) good is itself good. For a version of this thought made in the context of well-being, see Parfit, *Reasons and Persons*, index I; Darwall, *Welfare and Rational Care*; Feldman, “The Good Life”; Kagan, “Well-Being as Enjoying the Good.”

stance-independent value of the object. Our question is whether the stances one has no stance-independent reason to have can ground normativity.<sup>10</sup>

The second ambiguity concerning stance-independence is what a stance is in the relevant sense. Dale Dorsey has shown how one can focus on contingent cognitive attitudes such as beliefs about what has the relevant sort of value within a recognizably subjectivist framework. Ruth Chang has suggested a voluntarist view according to which stipulating that one has a reason can, in some contexts, create a reason.<sup>11</sup> What is crucial to both views, I take it, is the thought that even if one's cognitive attitude or stipulation hits on something that is not stance-independently favored, it still has direct normative upshot. Both of these views still grant authority to an agent's contingent stance, even if not her conative stance.<sup>12</sup> As I understand the Modest Claim, it maintains that some such "favoring stance" can create reasons in such contexts and need not insist that the relevant favoring attitude is a conative state. However, I think there are strong reasons to incline toward a conative version of the view and I will assume such a version here for the sake of simplicity.

The third ambiguity concerns the level at which one's attitudes must endorse an option to count as authoritative. Some argue against the Modest Claim in this way. They maintain that, while one must favor a sensation for it to give one a reason in matters of mere taste, still, they maintain, one need not have a higher-order favoring attitude toward that pleasure in order for it to be reason-giving. Thus, they conclude, the reason here is stance-independent.

I think this argument mistaken. To see why, consider the full-on subjectivist who thinks that a particular favoring attitude grounds all of an agent's reasons. Now this alleged fact, that those attitudes ground reasons, is, according to the subjectivist, not itself hostage to anyone's further favoring attitudes. Subjectivists maintain that favoring attitudes at some level or other ground one's reasons. They need not maintain, and have not tended to maintain, that for the attitudes at level  $N$  to ground reasons, there must be a further favoring attitude at level  $N+1$  or higher toward the  $N$ -level attitude. If maintaining that one's favoring attitudes at a specific level ground reasons that are not themselves in need of

10 This claim is expanded and further defended in Wall and Sobel, "A Robust Hybrid Theory of Well-Being." On this understanding, the objectivist can help herself to warranted attitudes grounding reasons. How this would shake up the objectivist/subjectivist debate is explored in our paper.

11 Dorsey, "Subjectivism Without Desire"; Chang, "Voluntarist Reasons and the Sources of Normativity" and "Grounding Practical Normativity: Going Hybrid."

12 It is especially crucial in this context to recall that we are here interested in the claim that such cognitive attitudes generate objective reasons (or well-being), not subjective or evidence-relative reasons.

ratification from some further favoring attitude toward it was enough to make one a fully stance-independent theorist, then most full-on subjectivists do not accept any stance-dependence. If most subjectivists do not count as embracing stance-dependence on a construal of what makes a view stance-dependent, then so much the worse for the usefulness of that construal. Stance-dependence in that sense has rarely been endorsed, even by subjectivists.

Some influential stance-dependent views look to higher-order attitudes, such as what one's idealized self wants one's ordinary self to want. But a view that claimed normative authority for all (informed) attitudes at all levels, regardless of higher-order ratification, would clearly remain stance-dependent. Further, the higher-order stances that have been purported to have normative upshot were not claimed to be made reason-giving or well-being grounding only if there was some higher-order favoring attitude toward the lower-order stance.<sup>13</sup>

To see in action what I regard here as the mistake I am warning against, consider an argument from Guy Fletcher to the effect that even hedonistic views that take pleasure to be a sensation one intrinsically wants for its intrinsic phenomenological properties, and maintain that pleasure necessarily benefits one, do not count as relevantly attitude-dependent. He argues that "on the hedonistic theory, pleasure is good for you even if you have no pro-attitude toward it."<sup>14</sup> And that is true. If you bundle the pro-attitude into a state, as Fletcher does with pleasure, the hedonist does not claim you need an additional desire toward the bundled state for pleasure to benefit. But you might just as well bundle together the favoring attitude and the object of that attitude, call that a desire satisfaction, and say that views that claim that desire satisfaction benefits whether one has an additional desire for desire satisfaction or not are not subjectivist.<sup>15</sup> Such maneuvers will implausibly result in having to say that traditional fully subjectivist views are not stance-dependent in the relevant sense at all.

Subjectivists maintain that one's conative attitudes, perhaps after procedurally idealized deliberation, ground all of one's reasons. So the contrast between subjectivism and stance-independence is very stark. Fully stance-dependent views, such as subjectivism, are challenged by their apparent inability to vindi-

13 Frankfurt ("The Faintest Passion") holds a view that requires such a higher-order ratification of, or at least no higher-order dissatisfaction with, the lower-order attitude. However, my point is that if such a view were the only way of embracing stance-dependence, then implausibly few philosophers would fit in this category. Many who we rightly think of as embracing a stance-dependent component (or full-on subjectivism) have not claimed that the reason-giving or well-being grounding stance needs ratification from some yet higher-order level. For explicit resistance to this idea, see Lewis, "Dispositional Theories of Value."

14 Fletcher, "A Fresh Start for the Objective-List Theory of Well-Being."

15 See the discussion of Heathwood's view below at the end of section 4.

cate the thought that necessarily all have a significant reason to be decent. When we are confident that there is a right answer for all, independently of what an agent cares about, as many are in the moral case, we distrust the move toward full stance-dependence. Such a fully stance-dependent view will, many think, make too contingent whether or not an agent has a certain sort of reason we are confident she has. The friend of the Modest Claim, of course, can avoid such controversy by just accepting that our reasons to be moral are not contingent on our happening to care about something. They can allow that our reasons to be moral are not grounded in our contingent concerns but rather in some more secure way.

Conversely, fully stance-independent views are challenged by cases in which we are pre-theoretically confident that there is no single answer about what is best for all and we must thus find something that is different about the agents, other than their different stances, to ground the difference in what we think is best for each. Matters of mere taste, where we pre-theoretically think that what benefits an agent or gives her reasons depends on what resonates with her, are the most obvious and serious challenge for full stance-independence. In such contexts we think that what an agent likes or prefers plays a crucial role in determining what the agent has most reason to choose.

In such contexts we often think there is a value in letting people make their own choices even if they are going to make mistakes. And we also often think that it is morally problematic and paternalistic to interfere with such choices, even if such choices will be unwise. But these thoughts put no pressure on us to move to a stance-dependent view. We must distinguish them from thoughts that do put such pressure on us. Beyond these two thoughts we also think that, in such contexts, the best choice for a person depends on what that person likes or prefers, at least if they are informed about the options under consideration. If one was responding to a request for advice from a friend, such that worries of disrespecting someone's autonomy or acting paternalistically are not in play, we would think it crucial to know, in such contexts, what they like, favor, or prefer.

The rejection of the Modest Claim is not an immediately intuitive view. How then might one motivate it? The rest of the paper will consider reasons to accept full stance-independence stemming from (1) the arbitrariness of what we favor; (2) the potential pointlessness of what we favor; (3) the attractions of replacing stance-dependent attitudes with a stance-independent notion of pleasure; (4) explaining the covariation of favoring attitudes with reasons without granting a normatively grounding role to our attitudes; (5) insisting that symmetry with theoretical reasons favors stance-independence; and (6) maintaining that the normative pressure put on us by our stances, even in cases of matters of mere taste, is only rational coherence or consistency pressure, and so generates only

wide-scope normative upshot. In each case, I will argue that we should be unpersuaded. The Modest Claim is highly intuitive. If I succeed in showing that we have been offered no good reason to reject it, we should accept it.<sup>16</sup>

I aspire to show that at least some reasons are grounded by the agent's stance. I am trying to avoid being committal on many other questions when I can do so and still argue successfully for my main thesis. At some points in what follows I may appear to assume that morality and other domains are a domain of stance-independent reasons.<sup>17</sup> I do so because that seems what the point of view of the dissenter to my thesis must embrace. Clearly the full-on subjectivist will not resist my thesis. So my argument sometimes takes the form of conceding stance-independence in some domains for the sake of argument. I sometimes allow myself to, as it were, vent on behalf of the person who believes there are strong stance-independent values so as to highlight that the friend of the Modest Claim can accept the direction of all such reasonable venting.<sup>18</sup>

#### 1. ARBITRARINESS

One thought often suggested by those who reject the Modest Claim is that our contingent favorings, even procedurally idealized conative favorings, are arbitrary and therefore without intrinsic normative significance.<sup>19</sup> Here is how Michael Smith puts the point.

For on the relative [subjectivist] conception it turns out that, for example,

- 16 I do not here attempt to address concerns stemming from merely behavioral dispositional understandings of the nature of desire such as have been mentioned by Quinn ("Putting Rationality in Its Place") and Scanlon (*What We Owe to Each Other*). I make a start at addressing such concerns in Copp and Sobel, "Desires, Motives, and Reasons."
- 17 I am less concessive elsewhere. See my *From Valuing to Value*, especially "Subjectivism and Reasons to Be Moral."
- 18 Because I do not here take a stand on the broader view into which the Modest Claim ought to be embedded, as a helpful referee pointed out, some may worry that some potential costs of the Modest Claim are ignored. They might worry that either the Modest Claim will be embedded in a broader subjectivism or it will force one to a hybrid view. Thus, if we take the former route the status of reasons of morality would presumably be threatened, whereas if we take the latter route there will be some costs in terms of unity for the resulting hybrid view. This is a reasonable worry. However, if I can show that the purported costs of the Modest Claim that I focus on here are exaggerated, and that purported successes in accounting for reasons of mere taste without an appeal to stances are less successful than purported, then I think it quite unlikely that the costs mentioned above should sway us from a view that incorporates the Modest Claim.
- 19 Shafer-Landau, *Moral Realism*, 29; Heathwood, "Desire-Based Theories of Reasons, Pleasure, and Welfare"; Smith, *The Moral Problem*.

the desirability<sub>me</sub> of some consideration,  $p$ , is entirely dependent on the fact that *my* actual desires are such that, if I were to engage in a process of systematically justifying *my* desires, weeding out those that aren't justified and acquiring those that are, a desire that  $p$  would be one of the desires I would end up having. But what my actual desires are to begin with is, on the relative conception of reasons, an entirely arbitrary matter, one without any normative significance on its own. I might have had any old set of desires to begin with, even a set of desires that delivered up the desire that not  $p$  after a process of systematic justification. The desirability<sub>me</sub> of the fact that  $p$  thus turns out to be an entirely arbitrary fact about it. But arbitrariness is precisely a feature of a situation that tends to undermine any normative significance it might initially appear to have.<sup>20</sup>

It can help us better understand the thinking behind the idea that arbitrary favorings lack normative status to focus on lessons from the *Euthyphro*. The conclusion of the *Euthyphro* is that God's attitudes could not ground what is morally correct. Some who reject the Modest Claim might be moved by this argument to conclude that favoring attitudes generally could never ground reasons. I will argue that that is an unpersuasive generalization from the good points in the *Euthyphro*.

The *Euthyphro* argument is compelling because we are committed to conclusions about what is morally correct, such as that it is wrong to torture babies for fun or incarcerate blacks for longer periods of time than whites for the same crime, regardless of God's attitudes. We think there is something intrinsic to such actions that make them worthy of moral disapprobation. The suggestion that there is nothing about such actions that is worthy of such disapprobation and that such actions are wrong simply because God just happened to dislike such actions is unacceptable. In contexts in which there are specific conclusions that we cannot live without and where such conclusions seem clearly true regardless of anyone's stance, the suggestion that someone's stance grounds such truths seem obviously false.

God's stance toward options, unguided by antecedent moral facts, feels arbi-

20 Smith, *The Moral Problem*, 172. On Smith's more full picture, reasons of mere taste will be vindicated only if all fully rational agents converge on desires with the same *de se* content. Elsewhere, I have taken issue with this view ("Do the Desires of Rational Agents Converge?"). This view claims that my reasons not to poke myself in the eye with a stick are contingent on such broad convergence. More broadly, Smith thinks he can allow that our tastes give us reasons by saying that perhaps all rational agents would agree that if they had a desire for chocolate rather than vanilla then they have a reason to go for chocolate. But this is just for all rational agents to agree that our arbitrary favorings ground reasons in some contexts. The complaint that Smith offers here against arbitrariness cannot stand together with his purported solution to matters of mere taste.

trary from a moral point of view because we think there are right answers that God's attitudes, unguided by such facts, might hit or fail to hit. God's attitudes determining morality feel to us too much like just spinning a wheel and selecting whatever comes up, in a context in which we are persuaded that there are right answers regardless of what comes up on the wheel. The claim of arbitrariness in this context is a reflection of our antecedent convictions that there are right and wrong answers regardless of what God happens to favor. Lacking a reason to think that the attitude will track what we are sure is the right answer, we find the attitude problematically arbitrary.

In the *Euthyphro* case, (1) we are confident that there are right answers and that those answers are right regardless of what God's attitudes are; (2) we are confident that there is a correct moral attitude to have toward some cases that is warranted by intrinsic features of the situation; and (3) we do not see how God's attitudes could make slavery right or wrong. These features of the situation persuade us that the attitudes here could not ground the normative facts.

But these features are not replicated in our target cases of matters of mere taste. It is not at all intuitively obvious that there are stance-independent truths about what one has reason to do in matters of mere taste. It is not intuitively obvious that one's attitudes should track, or would be uniquely warranted by, attitude-independent facts in matters of mere taste. And it is not intuitively obvious that an agent's favoring attitudes could not make a normative difference in such cases. Thus the *Euthyphro* should not persuade us that an agent's stance could not ground reasons in our target cases.

The claim that conative favorings are arbitrary does not seem to be an argument for stance-independence but rather to presuppose it. This presupposition is in good shape, it seems to me, in the context of moral claims.<sup>21</sup> But the presupposition that there is a right answer in matters of mere taste regardless of what

21 There is another possible interpretation of what goes wrong when one thinks of God's attitudes as determining what is right. Even in cases in which it is not thought to be clear what is right and wrong in a particular case, one might say, still what is clear is that God loving something, say praying five times a day, could not be what grounds the duty to do so. Here the intuition is not that we know what the right answer is and so distrust any mechanism not ensured to get that answer. Rather the thought now is that the normative status of a type of action could not be changed just by God having a favoring or disfavoring attitude toward it. Favoring attitudes could not ground such normative changes in this way, or so this objection maintains. I think this complaint is less convincing in this context. But it is even less convincing still when we turn to our topic of an agent's reasons and her well-being. It is hardly obvious that my liking or preferring a color could not make it good for me to paint my walls with it or give me a reason to do so. So I will interpret the lesson of the *Euthyphro* that might be thought to help along the case for stance-independence in the first way mentioned above rather than the second.

we like or prefer is hardly similarly persuasive. Suppose my friend who wants what is best for me plans to bring dessert for the upcoming dinner party and asks me what to bring. My answer that I like salty caramel is unlikely to bring the response that that is entirely arbitrary and so there is no reason to think salty caramel benefits me more than dispreferred flavors. Without a background in which we are confident about the existence of a stance-independent right answer, the concern that an agent's preferences are arbitrary and so without normative status seems weird and difficult to understand.

Or, perhaps, one might say, yes, my favorings are arbitrary in the sense that there is no good reason to have them in preference to some other set of favorings. But in contexts like matters of mere taste that seems no good reason to doubt that their presence plays a normative role in grounding reasons to go one way rather than another. Again, it would be weird, and not in line with common sense, if my friend asked me whether I have any stance-independent reason to favor salty caramel ice cream and to insist that, unless I do, I have no reason to get that flavor.

Parfit advanced the claim that desires one has no reason to have cannot ground reasons. It is worth considering his claims to see why they cannot help defend the rejection of the Modest Claim or offer reasons to embrace full stance-independence. Parfit claims that, according to subjectivists, at the beginning of any chain that purportedly provides a reason

there must always be some desire or aim that we have no such reason to have. And . . . we cannot defensibly claim that such desires or aims give us reasons. . . . So subjective theories are built on sand. Since all subject-given reasons would have to get their normative force from some desire or aim that we have no such reason to have, and such desires or aims cannot be defensibly claimed to give us any reasons, we cannot be defensibly claimed to have any subject-given reasons.<sup>22</sup>

Desires, Parfit maintains, cannot ground reasons. And because of this he is often thought to belong to the stance-independent camp. But that is a mistake. Parfit rejects stance-independence. He argues that "liking" something can ground reasons even when one has no reason to like the object. In a fairly wide range of cases Parfit allows that one has no reason to like or dislike various sensations and experiences. Yet he maintains that such likings do ground reasons.

Parfit is clear that we do not have reasons to like the sensations we happen to like.

22 Parfit, *On What Matters*, 1:91.

It is sometimes claimed that these [hedonic] sensations are in themselves good or bad in the sense that their intrinsic qualitative features or what they *feel* like, gives us reasons to like or dislike them. But we do not, I believe, have such reasons. . . . Whether we like, dislike, or are indifferent to these various sensations, we are not responding or failing to respond to any reasons. . . . When we are in pain, what is bad is not our sensation but our conscious state of having a sensation that we dislike. If we didn't dislike this sensation, it would not be bad.<sup>23</sup>

Parfit agrees with the subjectivist, as against the Benthamite hedonist, that intrinsic features of sensations do not play a normative role in grounding reasons in matters of mere taste independently from our favoring or disfavoring responses to those sensations.

If Parfit's worry about desires was that they are arbitrary, likings will not look less arbitrary. If the worry was that value must be stance-independent, likings are no more stance-independent than desires. Obviously, the problems found in the *Euthyphro* cannot be solved by switching from a focus on what God wants or loves to what he likes. Parfit left it mysterious why likings one has no reason to have can be a ground of reasons but desires one has no reason to have cannot. Both are contingent states that we have no reason to have. Both are favoring attitudes or responses. But be that as it may, his conclusion is that reasons in matters of mere taste are grounded in stance-dependent attitudes. Parfit, his insistence that desires never ground reasons notwithstanding, did not purport to find a way to ground our reasons of mere taste in something other than favoring attitudes.

In the case of God, one being's attitudes were held to be normative for all—that is, to ground moral claims that applied to all. The friend of the Modest Claim might attempt to diagnose the greater persuasiveness of the arbitrariness concern in the moral case than in the well-being case by pointing to this feature. That is, they might say that perhaps contingent favorings are more plausible as grounds of normativity when we look to individualized normative notions such as what is good for Joey or what gives Jan a reason, and less plausible as a normative ground for universal normative claims. That is, they might try saying that while only stance-independent facts can ground universal normativity, stance-dependent facts can merely ground reasons for the person whose stance is involved.

Such a diagnosis might gain support from its ability to explain some of what went wrong in Mill's account of well-being. Mill claimed that "what makes one pleasure more valuable than another" is the "decided preference" of "all or al-

23 Parfit, *On What Matters*, 1:52–53.

most all” those who have “experience of both.”<sup>24</sup> But this part of Mill’s view does not seem compelling. It seems quite mistaken to think that dissenting minority, competent judges whose preferences over whisky are just as informed as the others, but who differ from the competent majority in what they prefer, ought to defer to or take their cue from what the majority prefer. Insisting, as Mill seems to, that there is a common answer about what is best for all in such contexts, regardless of differences in individual taste, seems unconvincing.<sup>25</sup> Stance-dependent views typically disavow this universality. Rather, the version of stance-dependence that will concern us here will maintain that, at least sometimes, Joe’s favoring attitudes are normative for Joe. Individualizing the authority such that my valuing attitudes are normative for me but not necessarily for you would therefore resolve some counterintuitive results from Mill’s competent-judges test.

But this move of individualizing the normative upshot of favoring attitudes, while perhaps necessary, is not sufficient on its own to avert the threat from arbitrariness. For so long as we remain confident that there are right answers about what I have reason to do that my attitudes could fail to hit on, we will continue to find that fully stance-dependent views have the fundamental problem we found in the *Euthyphro*. And there certainly are cases that plausibly fit this model, such as Parfit’s example of having a reason to avoid one’s own future agony regardless of whether one now cares about that or the claim that counting blades of grass is not good for one regardless of how much one likes it. These individualized normative claims still seem to have the sort of problem we saw in the *Euthyphro* case, and so individualizing the normativity, on its own, will not solve the worry. Individualizing and retreating to contexts of matters of mere taste seem to me sufficient.

## 2. VALUING THE VALUELESS, FAILING TO VALUE THE VALUABLE

Stance-independence might also be motivated by reflection on cases in which people value intuitively valueless things or fail to value intuitively valuable things. Recall Parfit’s example of a person who does not currently care, even after procedurally idealized deliberation, to avoid her own future agony or Rawls’s

<sup>24</sup> Mill, *Utilitarianism*, ch. 2.

<sup>25</sup> Those who think that, on Mill’s view, the preferences of the vast majority of competent judges do not ground, or even perhaps completely reliably covary with, what is good for dissenting competent judges might interpret Mill as offering a notion of objectivity of well-being claims across persons of the sort we use in saying that, since the vast majority of competent judges go for crisp apples, we will call crisp apples “good apples.” This would so far be compatible with the thought that a dissenting competent judge might prefer mealy apples and so “bad apples” would be better for them.

case of a person who values counting blades of grass.<sup>26</sup> Many think it clear that even if the person values in these ways after procedurally excellent deliberation, still she has no reason to count blades of grass and she does have a reason now to avoid future agony.<sup>27</sup>

The *Euthyphro* and the grass counter illustrate the same basic point. If our contingent conative reactions settle what has normative status, then they could grant normative status in intuitively very implausible directions. God could make torture intrinsically morally good and we could lack reason to avoid our own future agony just by failing to care about it now. The apparent implausibility of this leads many to embrace stance-independence.

Thus, one might conclude on the basis of such examples, desires on their own, without the backing of antecedent good reasons to value the option, cannot give us reason to do what there was no reason to do prior to our favoring it. Encouraged by such cases, one might be led to think quite generally that the cases in which wanting is correlated with reasons are cases where the want hits on antecedently valuable options.

In response, several strategies are possible. First, one might dispute the force of the cases even against full-on subjectivism. In different ways Sharon Street, Mark Schroeder, and I have made attempts in this direction.<sup>28</sup> Second, and much more relevantly for our purposes in this paper, one might allow for the sake of argument the force of such cases yet say that they fail to motivate full stance-independence. Let us consider how this latter reply might be developed.

To be moved by such examples to embrace full stance-independence seems a serious overreaction. We are perhaps too used to thinking about whether subjectivism is quite generally true and need to remind ourselves that the Modest Claim in no way entails that subjectivism is generally true. Even if we fully accept that there are plenty of stance-independent truths about what each agent has reason to do (comply with morality, avoid future agony, not waste their lives counting blades of grass, etc.), and even that such truths swamp, or perhaps even

26 I have argued that Parfit's agony argument can be fully accommodated by the subjectivist in Sobel, "Parfit's Case against Subjectivism."

27 The blades of grass example strikes me as odd given that we do not seem to similarly begrudge people other idiosyncratic and seemingly pointless activities such as stamp collecting or watching football. Perhaps the thought is that if one counts blades of grass too much one will waste one's life, but that is true for a wide range of activities. Perhaps the thought is that one might count blades of grass but not get Benthamite pleasure from doing it, but again that seems possible for a wide range of activities. There may be some temptation to marginalize favored wastes of time that no one really engages in.

28 Street, "In Defense of Future Tuesday Indifference"; Schroeder, *Slaves of the Passions*; and Sobel, "Subjectivism and Reasons to Be Moral" and other essays in *From Valuing to Value*.

silence, the normative force of our attitudes when the attitudes differ from such stance-independent reasons, this only gives us reason to think that the scope of authority of contingent attitudes is limited by such truths. Even if there were contexts in which we were confident there were such attitude-trumping reasons, we would so far lack a rationale for thinking contingent attitudes cannot carry authority outside such contexts. The examples on the table so far put pressure on the idea that our stance provides reasons even in cases in which it is sensible to think that a person's stance conflicts with stance-independent normative truths. But we have seen no reason to think that our stance is normatively impotent in cases in which this does not seem to be the case, such as where one has a preference between listening to the Stones rather than the Beatles or drinking Lagavulin rather than Talisker.

Obviously, arguments such as Parfit's Agony Argument or Rawls's Grass Counter are examples in which we are plausibly invited to see the relevant favoring attitude as hitting on options that are valueless or failing to hit on options that are valuable. Such examples leverage our confidence in certain favoring-independent right answers. But it is hard to see how such examples could be thought to carry over to cases in which we are not confident that there is a favoring-independent right answer. I suppose if someone started out quite confident that there are favoring-independent right answers about what we have reason to do in matters of mere taste, such an argument might work for them. But, I submit, that is not the situation for most of us. Full normative stance-independence is not just common sense; it will need to be motivated in some way. This explains why none of the examples that have been offered have focused on cases in the realm of mere taste. But why should examples in which we are antecedently confident that there is a stance-independent right answer persuade us that our stance is normatively irrelevant in contexts in which we are not similarly confident?

This raises the issue of whether what I have been calling matters of mere taste are just contexts in which stance-independent reasons give out and leave us with a range of what is, so far as stance-independent reasons are concerned, a variety of permissible options.<sup>29</sup> As I see it, the defender of the Modest Claim should concede, as much as possible, for the sake of argument that this is the situation. This allows us to set aside disputes about whether our attitudes over matters of mere taste ground reasons even when they would point us in, for example, immoral directions. That would be controversial and the friend of the Modest Claim seeks to avoid such controversy. The crucial issue for our purposes re-

29 Ruth Chang and Joseph Raz have important work discussing cases in which reasons of one type give out and leave room for matters of mere taste. See Chang, "Grounding Practical Normativity"; and Raz, *Engaging Reasons*, ch. 3.

mains, even if we allow that such reasons are silenced in those contexts. There remain a range of contexts in which our stance grounds reasons. What the defender of the Modest Claim insists is that there is a broad range of cases in which the fact that one just happens to favor one option over others grounds the fact that one has more reason to choose that favored option.<sup>30</sup>

However, while the friend of the Modest Claim can afford to be significantly concessive to their opponent about what the genuine stance-independent values are, and the extent to which they override stance-dependent values, they cannot be infinitely accommodating on this score. For example, some might insist that normative reality is densely packed with stance-independently grounded normative distinctions such that there is little or no room left for stance-dependent attitudes to play a normative role. One possible view in this direction would be Benthamite hedonism, which will be considered in the next section, and which the friend of the Modest Claim cannot happily grant for the sake of argument but must dispute.

If it turns out to ultimately be problematic for some reason to adopt the significantly but not infinitely concessive strategy for understanding the domain of matters of mere taste outlined above, the friend of the Modest Claim may have to offer a more positive characterization of that domain. I think an intuitive understanding of that domain exists and the examples I opened the paper with clearly fit within that domain. We tend to think our favorings over simple color, sound, or taste sensations, for example, clearly fall into this category. The friend of the Modest Claim need not be able to offer a precise positive characterization of the border between such matters and options outside this realm so long as a decent range of cases clearly fall within the bounds of matters of mere taste. That would be sufficient to make meaningful and informative the claim that our favorings within this realm carry authority.<sup>31</sup>

The most we could reasonably think justified on the basis of the considerations so far put on the table would be that one's stance cannot ground normative authority when it runs contrary to the part of normative reality that is

30 To be clear, the friend of the Modest Claim is in no way committed to the thought that the force of the attitudes is silenced by or otherwise limited to contexts in which they speak against stance-independent values. The point here is to show how relatively uncontroversially one's position can be compatible with the Modest Claim.

31 If for some reason the only live possibilities were that either favoring attitudes always carried authority or that they never did, then, armed with the agony-style arguments, we would have an argument for stance-independence. Parfit offers an argument along these lines that he calls his "All or Nothing" argument. I address this argument extensively and offer grounds for thinking it rests on a confusion in Wall and Sobel, "A Robust Hybrid Theory of Well-Being."

stance-independent. Let it be granted that stance-independent normative facts trump or outweigh stance-dependent normative facts. This conclusion seems to gain support from the examples so far on the table. But the stronger claim, that stance-dependent facts can never ground normative claims even when they do not run counter to stance-independent facts, seems so far to lack any support from what has so far been presented. And thus I do not see yet a reason to doubt the commonsensical view that my liking chocolate ice cream more than vanilla grounds a reason I have to eat the former rather than the latter. There is no independently plausible stance-independent fact that such a conception runs counter to. So we still lack a motivation for full normative stance-independence.

### 3. THE NORMATIVE ROLE OF FAVORING ATTITUDES CAN BE REPLACED BY PLEASURE

If our contingent conative favorings do not ground reasons, perhaps we have no reason at all to choose one way rather than another in matters of mere taste. That would be wildly counterintuitive. Providing an alternative grounding for such reasons is a necessary condition for finding a minimally plausible rejection of the Modest Claim. How can the stance-independent theorist hope to replace the role of the attitudes so as to avoid this extremely counterintuitive result?

By far, the most popular attempt is to point to pleasure. The stance-independent theorist need not say that all should go for chocolate over vanilla ice cream or flannel over cotton jammies. They can instead say that some get pleasure from chocolate and some get it from vanilla and people have a reason to choose, in such contexts, what brings them pleasure.

But a notion of pleasure that is serviceable for the stance-independence theorist comes with a variety of problems that have historically driven people away from Benthamite hedonism.<sup>32</sup> Obviously our stance-independent theorist must not say that what makes something pleasurable is that one has some contingent favoring attitude toward intrinsic features of a current sensation. That would just reintroduce the favoring attitude they are hoping to find a way to do without. Thus it would seem it must be something like a flavor or set of flavors of sensations (presumably with some phenomenological commonality). Such views have several problems, well known from the history of ethics.

It is not tempting to grant intrinsic normative authority in matters of mere taste to a flavor of sensation regardless of whether one likes that flavor or not. It

32 As I intend the term "Benthamite hedonism," it covers people who may disagree with Bentham about many things but who agree with him that pleasure and pain are stance-independent states with direct normative upshot.

is no more tempting to do so than to grant authority to the flavor of chocolate over vanilla in determining what an agent has a reason to choose, regardless of whether one likes it or not.

When we are assessing sensations for whether they benefit me thanks to what they feel like it is indeed “intolerably alienating” to think that despite in no way favoring a sensation it nonetheless intrinsically benefits me at the moment I experience it thanks to the way it feels. On the rival picture, we are to picture a person who is fully and accurately acquainted with what two sensations are like. The person quite likes or in some other way positively resonates with sensation  $x$  but finds  $y$  in no way agreeable. Nonetheless, we have to imagine, we should think  $y$  is intrinsically better for the person to feel even in our contexts of matters of mere taste. That, it seems to me, misunderstands the way we can be benefitted in such contexts. The benefit comes from the agreeable nature of the experience. There is not a sensation that normatively calls us, in the way many think morality does, regardless of what answers to our own perspective. There is no categorical imperative to pursue one type of sensation in the context of matters of mere taste, regardless of whether you like it or not.

Thus it seems to me deeply misguided to think that, in such contexts, what one resonates with is unimportant to what one has reason to do. Now perhaps the Benthamite hedonist can somehow try to tie a favoring attitude to the sensation they claim grounds reasons without allowing a grounding role to such favorings.<sup>33</sup> It seems weird for the Benthamite to intrinsically recommend a flavor of sensation to a person, just on the grounds of what it feels like, who does not like such feelings. If the Benthamite can robustly tie a favoring attitude to that sensation closely enough, this might well relieve much of this awkwardness. It would then be rare, at least in practice, for the Benthamite to recommend a sensation the agent in no way likes. In this spirit, Ben Bramble writes, “Or perhaps it is no coincidence at all that all beings with whom we are acquainted like or want their own pleasure. Perhaps we all like or want our own pleasure because pleasure is the most obviously valuable thing.”<sup>34</sup>

Considering this proposal brings us to the second historically significant worry about Benthamite hedonism: namely that there is no underlying phenomenological commonality behind the various pleasures we experience. One of the reasons it is not at all clear that there is a broad tendency for people to like the flavor of sensation that is alleged by the Benthamite to be pleasure is that we are offered so little concerning what such a flavor of sensation is supposed to be like. This makes it difficult to understand how to gather evidence for the empirical hy-

33 We will consider and find wanting some such proposals below.

34 Bramble, Review of *From Valuing to Value*.

pothesis that most people like it and like it because it is so obviously valuable. A great many philosophers have introspected in vain for such a phenomenological commonality involved in the full range of pleasurable experiences such as taking a warm bubble bath, winning a tense tennis match, and sexual excitement. It is difficult to believe that just about everyone, even presumably children and animals, recognizes the obvious value in pleasure as the Benthamite conceives of it, and as a result wants more of it, given that most philosophers who have focused on this question have doubted that there is any such thing.

Many are attracted to such a Benthamite picture because they think it natural to say that what makes pleasure good is the way it feels and that the reason it is liked, typically, is due to the way it feels. The valuable feeling explains and rationalizes both why it is good and why people tend to go for it. Many think only a Benthamite picture can vindicate all this.<sup>35</sup>

What seems clear, and what is right in what these hedonists say, is that what is bad about pain is the way it feels. But that is what the stance-dependent theorist should say as well. The stance-dependent theorist should say  $x$  is good or bad for one depending on one's attitude toward it. The attitude explains why the object of the attitude is good or bad. Consider a sensation that is bad for me to feel. What is bad about it? A perfectly natural answer on the part of the stance-dependent theorist in many contexts would be: the way it feels, rather than some upshot of the feeling such as it signaling that one has diabetes. Consider that one would naturally say, in reply to the question of why you like Diet Coke more than Diet Pepsi, "the way it tastes, not the stupid ads or the clever packaging." Why is the way it feels intrinsically bad? Because one dislikes such feelings. It is perfectly natural on such a view to say that what is bad about a sensation is what it feels like. Thus that being a perfectly natural thing to say does not tell in favor of the Benthamite.

Some maintain that our preference for pleasure over pain is not an arbitrary one.<sup>36</sup> The suggestion seems to be that the stance-dependent theorist must maintain that it is arbitrary to like pleasure. There are a few ways in which this is not so. First, it is not arbitrary to generally favor getting sensations one likes over sensations one does not like. So someone who thinks that pleasure is a sensation that is intrinsically liked for what it feels like will maintain that a preference for

35 Smuts, "The Feels Good Theory of Pleasure." Several other papers from *Philosophical Studies* are well worth studying in this context, including Bain, "What Makes Pains Unpleasant?"; Bramble, "The Distinctive Feeling Theory of Pleasure"; and Rachels, "Is Unpleasantness Intrinsic to Unpleasant Experiences?" I am grateful to Nikki Fortier's "The Hybrid View of Pleasure and Pain," which drew my attention to the prevalence of this reply on behalf of the Benthamite.

36 See, for example, Goldstein, "Why People Prefer Pleasure to Pain," 396.

pleasure is not at all arbitrary. Likely, however, our Benthamite means to say that the preference for the flavor of sensation that is pleasure is not arbitrary. I think the anti-Benthamite can say that it is no accident that the vast majority of people find intrinsically motivating states that involve having sex and eating highly caloric fats and sugars. Creatures that failed to find such things intrinsically motivating fared less well in our evolutionary past (when the most salient danger was too few calories rather than too many) and so would have been selected against. This understanding, at a minimum, would seem a more plausible story concerning animal pleasure and their attraction to such things rather than a story involving the animal's detection of valuable properties and rationally appropriate responses to such states. But if that is the best story for other animals, it would seem unnecessary to posit more in the case of adult humans. Thus it is no accident, our stance-dependent theorist can maintain, that overwhelmingly we find intrinsically motivating sensations involved in having sex and eating chocolate.

The Benthamite hedonistic view under consideration here has been broadly found to be unattractive. Its champions bemoan how this once popular view has become quite unpopular. It has lost favor because most found complaints against the view, such as I just offered, to be telling. Yet the friend of stance-independence needs some view of this sort to ground reasons in matters of mere taste. If there were a powerful motivation for stance-independence or for rejecting the Modest Claim, it might make sense to turn to Benthamite hedonism despite its unattractive features. But we have not yet found this powerful motivation for full stance-independence. My sense is that people have been persuaded by independent considerations that stance-grounded reasons are problematic and then felt forced to make their peace with some variant of the Benthamite view. This paper argues that those independent considerations do not force full stance-independence upon us. And the problems with Benthamite hedonism that led to its abandonment remain. The newfound attractions of Benthamite hedonism to some do not seem to stem from it solving the problems that have historically bedeviled it but rather from it being needed to fill a role in fully stance-independent views.<sup>37</sup> And we have been seeking and, so far, not finding a motivation for such fully stance-independent views.<sup>38</sup>

37 This, of course, is a claim that contemporary champions of such forms of hedonism will dispute—including, notably, Roger Crisp, Ben Bramble, and Neil Sinhababu. But I cannot here address the recent attempts to address such problems. See Crisp, *Reasons and the Good*; Bramble, "A New Defense of Hedonism about Well-Being"; and Sinhababu, "Epistemic Argument for Hedonism."

38 It should go without saying that I cannot, within the few pages available to me here, deal with all of the sophisticated moves advocates of a centuries-old position have made nor

## 4. REASONS COVARY WITH FAVORINGS BUT ARE NOT GROUNDED BY THEM

Some maintain that the appearance that contingent favoring attitudes ground reasons in some cases can be partially explained by saying that such favorings covary with our reasons but do not normatively ground them. Several such views are on offer. The first that we will consider claims that such favorings are causally but not normatively relevant to our having such reasons.<sup>39</sup> So the fact that someone prefers playing tennis to playing racquetball would not itself be the normative ground of why one has more reason to play tennis. Rather, the fact that one prefers it will make it more likely that one will play more often, more regularly get valuable exercise, and will make it easier for one to focus on developing worthwhile skills. The fact that one has this preference is relevant to what one has reason to do but only because it makes it more likely that various stance-independent valuable outcomes will occur if one plays the sport one likes.

The stance-independent theorist's gambit is to see the importance of desire as merely a matter of allowing us to focus on good things and stick with projects long enough to be capable of realizing the sort of stance-independent value that only focused, long-term effort can achieve, that is, to treat such favorings as instrumentally valuable to the achievement of stance-independently valuable states. But surely there is intrinsic value in getting flavors of ice cream one quite likes rather than a flavor one finds unpleasant. It is quite implausible to instrumentalize away all the intrinsic values we seem to see in getting what one favors. This surely explains why just about every objective list of intrinsic prudential goods ever offered includes pleasure.

A second way that stance-independent theorists try to explain why reasons covary with favorings without giving normative authority to desire can be found in Scanlon, who maintains that desires almost never ground reasons. He then is forced to explain the source of our reasons in matters of mere taste. He there appeals to pleasure and pain. When confronted with the thought that a sensation counts as pleasure only if it is wanted, he responds by admitting that desire tracks reasons in this context without grounding reasons. He wants to maintain that it is a "complex experiential whole" that is causally affected by desire that grounds reasons.<sup>40</sup> Again, desire is seen as causally but not normatively relevant to our reasons. Yet he admits that a state is pleasant in the reason-conferring

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refute to the satisfaction of advocates of the view a position that has been maintained for so long. Here I try to point to general issues for the view that, I claim, cannot be overcome.

39 Parfit, *On What Matters*, 1:67–68. Parfit, due to what he says about "liking" does not in fact try to instrumentalize away all normativity that flows from favoring attitudes.

40 Scanlon, "Replies."

sense he has in mind only if it is desired while it is occurring. I think such a view untenable.

As I understand the view, a sensation has normative status only if it is intrinsically liked, but the normatively relevant role of the attitude is merely to causally affect the sensation, altering it, and it is the altered sensation that grounds normativity, not the attitude. In this way we might be thought to tie favoring attitudes necessarily to normative status without grounding normative status in liking. But we need to distinguish the initial sensation that the agent has a desire for while it is occurring from the sensation that has been causally affected and changed by the desire. Let us call them  $S_1$  and  $S_2$ .  $S_1$  is what the agent desires while it is occurring.  $S_2$ , since it has intrinsic phenomenological features that are different from  $S_1$ , may not be desired. If Scanlon wants to claim  $S_2$  has normative status, he will have to confront cases in which  $S_2$  is in no way liked. He has failed to find a way to ensure that favoring attitudes and the normatively relevant stance-independent sensation necessarily covary without granting the attitudes a grounding role.

Scanlon sought a story that could explain why the satisfaction of a future desire lacks the manifest authority of a desire for a phenomenological state one is currently experiencing. I think the subjectivist has a better story here. If we think favoring attitudes in the context of matters of mere taste that are accurately informed about their objects have authority quite generally, then such favoring attitudes for current phenomenology, since they are uniquely accurately informed about their objects, make it easy to explain the special normative relevance of such states.<sup>41</sup>

A third strategy to explain the covariation of preference satisfaction with normative status, without granting a grounding role to our stance, would claim that it is well-being or autonomy that ground the normative facts in the area.<sup>42</sup> As this view has been developed, one accepts at least a subjectivist component in one's account of well-being, but one claims that what grounds our reasons is well-being facts or autonomy facts, not facts about our stance.

Obviously the connection between the furtherance of our stance and well-being or autonomy will be a delicate matter on this view. If the view granted that our stance grounds facts about well-being or autonomy, and facts about well-being or autonomy ground facts about our reasons, then it will be tempting to think that if  $a$  grounds  $b$ , and  $b$  grounds  $c$ , then  $a$  grounds  $c$ . Additionally, if the

41 It has been doubted that subjectivists have a rationale for appealing to informed desires rather than uninformed desires. I respond to this concern in Sobel, "Subjectivism and Idealization."

42 Parfit, *On What Matters*, vol. 1; Darwall, *Welfare and Rational Care*.

view allowed that facts about our stance were identical with facts about well-being or autonomy, and it is allowed on this view that facts about well-being or autonomy ground reasons, it would seem that what is identical to what grounds reasons must itself be allowed to ground reasons.

So seemingly this view must find a way to intertwine facts about our stance with facts about well-being or autonomy while avoiding claiming that the intertwining amounts to grounding or identity. The onus is on the person who would champion this view to specify the sort of intertwining imagined and explain how it would avoid the above concerns before it would be a serious challenge to the Modest Claim.

A fourth attempt to ensure that the relevant favoring attitudes necessary covary with reasons without granting a normatively grounding role to such favorings is a bit more nakedly an attempt to repackage the stance-dependent position in stance-independent garb. This view maintains that what is valuable is the combination of a sensation and a liking of that sensation. According to this view the combination need not itself be something the agent has any further favoring attitude toward in order to be normative. After all, the person who likes a sensation need not like that they like it. Thus, the champion of such a view maintains, the view is a fully stance-independent view. The gambit here is to put the favoring stance within the object deemed valuable rather than have the object of the attitude be valuable and the attitude explain why the object is valuable.<sup>43</sup>

Several plausible temptations toward such a view are not relevant in this context. First, one might think that only favorings that are accurately informed by their object carry authority and that favorings over current phenomenology are uniquely informed by their object. This might motivate one to focus on now-for-now desires rather than desires one has for outcomes that occur at some time other than when one has the desire. But this sensible view provides no grounds to deny that desires of the right sort ground our reasons rather than merely being conjoined with them. Second, one might sensibly think that having the desire without its object is not valuable. This seems highly intuitive but it is what the friend of the Modest Claim thinks as well. Third, one might well think that the combo of wanting *x* and having *x* is valuable even if one lacks a higher-order favoring attitude toward that combination. But again, as I argued earlier, that is what the friend of the Modest Claim should maintain as well.

The view under consideration here appears to largely repackage a stance-dependent view, not offer a genuine alternative. Given that, within such contexts, any sensation that is liked results in a valuable state, and no disliked sensation in

43 Heathwood, "Desire-Based Theories of Reasons, Pleasure, and Welfare"; and my reply in Sobel, "Parfit's Case against Subjectivism."

this context is valuable, and presumably the degree of benefit is tied to the degree of the favoring attitude, it is overwhelmingly plausible that such sensations are valuable because and to the extent that they are liked. A view that insisted on denying that would lack a convincing explanation for why, in such contexts, each combination of a sensation and a liking of that sensation was valuable. Surely that cannot be a coincidence. It seems the only role for the sensation is to be the object of the favoring attitude. If the object of the attitude is objectively valueless, and the attitude toward the object is objectively unwarranted, it is unconvincing and mysterious to claim that the combination of these two things is somehow objectively valuable. Further, a view that maintained that only such combinations of object and a liking of the object are valuable would intuitively not seem to be an objective view. The explanation of what makes such combinations valuable—presumably that it is valuable to get stuff you like—hardly looks like a distinctively objectivist view. The stance-dependent theorist already maintained, of course, that what is valuable is the getting of something one favors. That will necessitate that there be on hand something that one so favors. So it is already part of the stance-dependent theorist's view that in each valuable case there will be an object of the attitude and the attitude. It is hard to see what the purportedly stance-independent theorist thinks of themselves as adding to the stance-dependent theorist's claim here.

The attempt to find ways to mimic stance-dependent positions by purportedly stance-independent theorists should flatter the friend of the Modest Claim. But it would be more flattering still, and a bit more straightforward, to try to account for why this mimicry seems so necessary.

##### 5. SYMMETRY WITH THEORETICAL REASONS

Some might be tempted to point to the case of epistemic reasons to believe and maintain that as these are not determined by our stance, it is quite plausible that our practical reasons are likewise stance-independent.<sup>44</sup> Symmetry favors stance-independence, such a person might argue. But I think this is a weak consideration in favor of stance-independence. Surely it is more plausible to reject this symmetry than to reject the thought that we have reason to go one way rather than another in matters of mere taste. Further, symmetry considerations cannot explain why we should not start with the appearances on the practical side,

44 Increasingly there is pushback about the assumption expressed here about how things work on the epistemic side. See, for example, Cowie, "In Defence of Instrumentalism about Epistemic Normativity"; Sharadin, "Epistemic Instrumentalism and the Reason to Believe in Accord with the Evidence."

which suggest that our stance can determine our reasons, and use symmetry to reach the counterintuitive conclusion that our stance can determine what we have reason to believe.

#### 6. RATIONALITY NOT REASONS

Another thought might be that our desires are sort of like our intentions. The direction they go puts rational or coherence-based pressure on us, but has no important link with objective reasons. It can be rational in some context to do what one does not have a genuine reason to do. Think, for example of Williams's gin and petrol case where it seems rational, relative to one's information, to drink even though in some sense we would want to say that one lacks a normative reason to drink. One way of expressing this general thought would be to claim that our attitudes give rise only to wide-scope reasons but not to narrow-scope reasons.<sup>45</sup>

I do not think this is a plausible analysis of the sort of normativity involved with our cares and likings in contexts of matters of mere taste. Consider an advisor who wants us to get what is in our interests and who has information that we are in no way irrational to lack. Perhaps they know of a new flavor of ice cream and they have a way of determining whether we would like it or not. It would be "uncooperative" with the project of aiding me in getting what is good for me not to share such information with me in appropriate contexts or not to advise me to eat this flavor in preference to other, much less well-liked flavors. What this shows, I think, is that the normative authority of what we favor outstrips contexts in which rationality is at stake. Here the advisor could know that the advisee's rationality would be secure if the new information is not mentioned. Indeed, we can construct a situation in which it is clear the agent will, if left uninformed, act rationally with respect to her available information. Still, the flavor seems advisable to eat over some other flavors on grounds of the fact that I will find it yummy. And this sort of advice puts at risk the agent's rationality as they must deliberate anew, in light of the new information, and for all we know they might not deliberate as rationally as they did prior to gaining the additional information. Thus such very natural and sensible advice that aims to serve one's favoring attitudes is not motivated by considerations of rationality and indeed can put at risk the advisee's rationality, yet for all the world it seems a perfectly obvious sort of advice to offer. Further, I submit, it would be uncooperative for the informed advisor in such a situation to be indifferent between the agent getting the flavor she likes, in a context of a matter of mere taste, and losing that

45 Broome, "Normative Requirements."

favoring attitude. I think this shows that the normativity here is not merely rational, coherence-based, or wide scope.<sup>46</sup>

## 7. CONCLUSION

Peter Railton, in a famous passage, wrote:

Is it true that all normative judgments must find an internal resonance in those to whom they are applied? While I do not find this thesis convincing as a claim about all species of normative assessment, it does seem to me to capture an important feature of the concept of intrinsic value to say that what is intrinsically valuable for a person must have a connection with what he would find in some degree compelling or attractive, at least if he were rational and aware. It would be an intolerably alienated conception of someone's good to imagine that it might fail in any such way to engage him.<sup>47</sup>

While I find Railton's words ultimately compelling, as a premise in a philosophical argument I think one could reasonably complain that this was not common ground, that there were quite common intuitions that told against it, and that it was question-begging against a quite wide range of sensible views.

I want to champion the view that there is a scaled-down version of Railton's claim that it is much less plausible to resist and that can more reasonably be treated as a compelling premise. There is, I maintain, a component of normative reasons that must find this internal resonance with the person whose reason it is. In matters of mere taste, such as choosing between patterns of dress or music or gustatory sensations, where intuitively we are choosing something because it is pleasing to ourselves rather than for other reasons, such resonance is critical to which such options we have reason to choose. In such contexts, if it is to ground a reason, options must resonate with me. I must in some sense favor or like it, at least if rational and aware. Call this the Minimal Resonance Constraint.

And, while I do think the Minimal Resonance Constraint and the Modest Claim are crazy intuitive, there are those who deny it. But this denial is not justified by bringing forward cases in which intuitively our attitudes do not seem to ground reasons in the domain of matters of mere taste. It remains, I submit, highly intuitive that our attitudes ground our reasons in that domain. Instead, broadly speaking, the denial is motivated by finding cases outside of the realm of

46 Björnsson and Finlay, "Metaethical Contextualism Defended."

47 Railton, "Facts and Values," 47. See also, among others, Rosati, "Internalism and the Good for a Person."

matters of mere taste in which the attitudes seem to lack authority and assuming that if attitudes lack authority in those contexts they must also lack authority in matters of mere taste. But this crucial assumption, while warranted if the opponent were a full-blown subjectivist, is not warranted against the defender of the Modest Claim. Further, I maintain that when you kick the tires of the stance-independent attempts to capture our reasons in matters of mere taste you notice the problem that they keep running into is a failure to heed our minimal resonance constraint (or to unconvincingly and without explanation try to mimic it). And I put it to you that you find that lack of resonance, at least in the context of matters of mere taste, unacceptable.<sup>48</sup>

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## ASYMMETRISM AND THE MAGNITUDES OF WELFARE BENEFITS

*Andrew T. Forcehimes*

THEORIES OF WELFARE need to address two central questions. First, they need to supply an account of what has value for you—i.e., what things are good for you or bad for you. More precisely, they need to answer the

*Items-of-Value Question:* What states of affairs are of basic intrinsic value for you?

For example, as usually understood, Desire Satisfactionism answers that the relevant state of affairs consists of two parts: the subject having a certain propositional attitude—a desire—and the obtaining of the object of that attitude. But even if Desire Satisfactionism answered this question correctly, we would still need an account of the amount a given satisfied desire contributes to your welfare. Put generally, theories of welfare need to say how much value a given episode of welfare has for you—i.e., the extent to which something is good for you or bad for you. More precisely, they need to answer a second question, namely, the

*Magnitude-of-Value Question:* To what extent is a given state of affairs of basic intrinsic value for you?

Desire Satisfactionism, as it is usually understood, answers that the amount to which a given satisfied desire benefits the subject is proportional to the strength of the desire.

These are the two central questions theories of welfare need to answer. Desire Satisfactionism gives, at least initially, plausible-sounding answers to both. This explains its prominence. Still, questions remain. One that is particularly vexing for Desire Satisfactionism is the

*Timing Question:* At what time do you benefit from the obtaining of a given state of affairs?<sup>1</sup>

1 For more on why the Timing Question poses problems for Desire Satisfactionism, see Brad-

To this question, Desire Satisfactionism lacks a stock answer.

In this essay, I criticize an intriguing answer to the Timing Question—asymmetrism—proposed recently by Eden Lin.<sup>2</sup> I proceed in four sections. The first motivates asymmetrism. The second explains how Lin arrives at the final formulation of the view. The third argues that asymmetrism forces us to give implausible answers to the Magnitude-of-Value Question. The fourth section concludes.

### 1. MOTIVATING ASYMMETRISM

The best way to motivate asymmetrism is through cases where the time of desire and the time at which the object of the desire obtains do not overlap. So first consider

*Speech Yesterday*: Last night you gave an important speech. This morning you woke up and could not remember whether you thanked the host. As you lay in bed, you desire that you thanked the host. In fact, though you were so nervous you had no desire to do so, out of habit you did thank the host. We can visualize this desire satisfaction as follows.

	Yesterday	Today
Desire		
Object		

Assume that you do benefit from the satisfied desire in *Speech Yesterday*. When do you benefit—at the time of the desire (today) or the time of the object (yesterday)? The answer seems to be that, if you indeed benefit, the time at which you benefit is today. You did not benefit last night because you did not, at that time, have the desire to thank the host. You cannot be made better off by a satisfied desire prior to your having the desire.<sup>3</sup>

ley, *Well-Being and Death*; and Heathwood, “Desire Satisfactionism and Hedonism,” 539–63.

- 2 Lin, “Asymmetrism about Desire Satisfactionism and Time.” It is worth stressing that Lin does not endorse asymmetrism. His modest claim is that it is the best version of desire-satisfactionism that accommodates the idea that you can benefit at a time from the satisfaction of your desire even if there is no temporal overlap between the desire and its object. Lin is thus neutral on the relative merits of asymmetrism and concurrentism—the view that “you benefit from the satisfaction of a desire that you have during  $t$  whose object obtains during  $t^*$  at all and only those times when the desire and its object overlap” (165). Further, both of these views are compatible with a number of answers to the different question: “How must  $t$  and  $t^*$  be related in order for you to benefit from the satisfaction of your desire?” (164). For clear statements of Lin’s modest aims, see 162, 182.
- 3 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 167.

Next consider

*Publication Tomorrow:* Today you are thinking about the paper you have under review. You desire now that the paper is accepted tomorrow. Tomorrow your paper will be accepted. Sadly, tomorrow you will be hit with a bout of depression that saps you of this desire. We can visualize this desire satisfaction as follows.

	Yesterday	Today
Desire		
Object		

Assume that you do benefit from the satisfied desire in *Publication Tomorrow*. When do you benefit? At the time of the desire (today) or the time of the object (tomorrow)? The answer seems to be that, if you indeed benefit, the time at which you benefit is tomorrow. You did not benefit today because, at that time, your paper was not yet accepted. You cannot be made better off by a satisfied desire prior to the object of your desire obtaining.<sup>4</sup>

The upshot from *Speech Yesterday* is that, intuitively, when past-directed desires are satisfied, the time interval during which you benefit is the time of the desire. The upshot from *Publication Tomorrow* is that, intuitively, when future-directed desires are satisfied, the time interval during which you benefit is the time when the object obtains. Lin argues that a pair of powerful theoretical claims undergird these intuitions. His first claim we can call the

*All-Necessary-Conditions Principle:* You do not receive a particular benefit at  $t$  unless, at  $t$ , all of the necessary conditions on your receiving that benefit have been met.<sup>5</sup>

This principle is a narrower version of the general idea that a state of affairs does not obtain at a given time unless, at that time, all of the necessary conditions on that state of affairs' obtaining have been met.<sup>6</sup> For example, suppose your baby will eventually have a child. Obviously enough, your baby is not now a parent. Why? Because, now, one of the necessary conditions—your baby's having a child—has yet to be met. If we accept the All-Necessary-Conditions Principle, we can similarly explain our intuitions in *Speech Yesterday* and *Publication Tomorrow*. For past-directed desires, the benefit interval cannot start until the

4 Lin, "Asymmetrism about Desire Satisfactionism and Time," 167.

5 Lin, "Asymmetrism about Desire Satisfactionism and Time," 169.

6 Lin, "Asymmetrism about Desire Satisfactionism and Time," 170.

subject has the desire. For future-directed desires, the benefit interval cannot start until the object of the desire obtains.

On to Lin's second theoretical claim. We can call this the

*Certainty-for-Benefit Principle*: You do not receive a particular benefit at  $t$  unless, for each of the necessary conditions on your receiving that benefit, the chance at  $t$  that this condition will have been met by some time is 1.<sup>7</sup>

In support of this principle, Lin argues that, if you are receiving some benefit now, then the chance at present that you are receiving this benefit is 1. And this implies that, for any necessary condition on your receiving the benefit, the chance now that this condition will have been met by some time is 1. Assuming that the future is open—i.e., “for the most part, if something *might* happen at a future time  $t$ , then presently, the objective *chance* that it will happen at  $t$  is between 0 and 1”—the Certainty-for-Benefit Principle explains the intuitions elicited in *Speech Yesterday and Publication Tomorrow*.<sup>8</sup> Why? Because, for past-directed desires, the benefit interval cannot start until the subject has the desire, as any time prior will put the chance of having this desire somewhere between 0 and 1, and because, for future-directed desires, the benefit interval cannot start until the object of the desire obtains, as any time prior will put the chance of this object obtaining somewhere between 0 and 1.

If we want to accommodate the idea that you can be benefited by past- and future-directed desire satisfactions, we are thus led to an asymmetry: “If the time at which you have a desire is later than the time at which its object obtains, then you benefit at the time of the desire. If the time of object is later than the time of desire, then you benefit at the time of object.”<sup>9</sup> This is, very roughly, asymmetrism.

## 2. REFINING ASYMMETRISM

But complications remain. We have been focusing on cases where the desire and the object never temporally overlap. What should we say when they do? Lin's sensible proposal is that the benefit interval begins at the first time you have the desire and its object obtains, and the benefit interval ends at the latest time when either you have the desire or its object obtains.<sup>10</sup>

This suggestion has much appeal. To see why, consider

7 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 172.

8 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 172.

9 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 162.

10 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 177–78.

*Patriotism*: Inspired by the opening ceremony for the Olympics, on Monday you form the desire that your country holds the most all-time gold medals. This desire persists until Wednesday, when you grow bored of the Olympics entirely. In the meantime, on Tuesday, your country comes to hold the most all-time gold medals. However, another country surpasses your country's count on Friday at midnight, and your country never regains the lead. We can visualize this desire satisfaction as follows.

	M	Tu	W	Th	F	Sa	Su
Desire							
Object							

Assume that you do in fact benefit from the satisfied desire in Patriotism. How long do you benefit? Since when you begin seems obvious—on Tuesday—the real question is when you stop. Lin argues that, despite losing your desire starting Thursday, you benefit through Friday. His reasoning is persuasive: “if the interval during which [you] desired [that your country holds the most all-time gold medals] had occurred a month ago, asymmetrism would say that [you] benefit exactly when the object of [your] desire obtains—namely, from Tuesday through Friday. It would be bizarre if, in the case where [you] have the desire from Monday through Wednesday, [you] benefit during a different interval (e.g., from Tuesday through Wednesday).”<sup>11</sup> The same line of thought, *mutatis mutandis*, applies to cases of overlap in which the interval of the desire ends later than the interval of the object.

But here a new issue arises. Consider a revised version of the previous case:

*Death*: Things are just as described in Patriotism, except that you do not lose your desire on account of growing bored with the Olympics. Rather you die on Wednesday at midnight.

Should we still treat the time interval as extending from Tuesday through Friday? The answer seems to be no. Most of us, with Lin, balk at benefits that are received at posthumous times.<sup>12</sup> And so, if we want to rule out the possibility of benefits that are posthumously accrued, we need to keep the benefit interval within the times you are alive.

With these refinements, we arrive at Lin's final formulation of

*Asymmetrism*: You begin to benefit from the satisfaction of a desire at the earliest time at which (i) you exist, and (ii) you have had the desire and its

11 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 176.

12 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 180–81.

object has obtained. You cease to benefit from the satisfaction of a desire at the latest time at which (i) you exist and (ii) either you have the desire or its object obtains.<sup>13</sup>

This formulation, on the assumption that you are benefited in all the above cases, gives us very plausible results. It fits our intuitions in *Speech Yesterday and Publication Tomorrow*. But clause (i) ensures that, in *Death*, the benefit interval ceases on Wednesday at midnight. And clause (ii) ensures that, in *Patriotism*, the benefit interval extends until Friday. Moreover it conforms to the *All-Necessary-Conditions Principle* and the *Certainty-for-Benefit Principle*. I thus take this to be the definitive version of asymmetrism.

### 3. ASYMMETRISM AND THE MAGNITUDES OF BENEFITS

So much for what is appealing about asymmetrism. Now for what is unappealing. Thus far we have been ignoring the *Magnitude-of-Value Question*. In this section, I will argue that asymmetrism cannot give us plausible answers. To get there, however, we need to make a fairly uncontroversial assumption. This assumption holds that the extent to which you benefit from a satisfied desire tracks the strength of the desire. Put precisely, we should assume

*Strength Proportionalism*: The magnitude of the benefit you receive from a given satisfied desire matches, at least in some respect, the strength of the desire.

This assumption reflects the common idea that the amount of intrinsic value for you of a satisfied desire is equal to the strength of the desire. Note that *Strength Proportionalism*, given the “in some respect” clause, is modest. It claims only that the proportionality between amount of benefit and strength of the satisfied desire needs to be reflected somewhere in the answer to the *Magnitude-of-Value Question*. As we will see, this clause allows for more than one version of asymmetrism to be consistent with *Strength Proportionalism*.

With this assumption in place, we can turn to one answer that asymmetrism might give to the *Magnitude-of-Value Question*. Consistent with *Strength Proportionalism*, we could hold that the total intrinsic value for you of a satisfied desire is equal to the strength of the desire. And then hold that the total intrinsic value is evenly distributed over the benefit interval.<sup>14</sup> Return to *Patriotism*, and

13 Lin, “Asymmetrism about Desire Satisfactionism and Time,” 181.

14 I take it that, for each moment of the benefit interval, the agent must receive a nonzero welfare increase. That is, if you benefit from a satisfied desire from  $t$  to  $t^*$ , then this desire

let us stipulate that the strength of your satisfied desire is 12. On this proposal, then, your total benefit is 12 units of well-being. And, since the benefit interval is four days, for each day, you benefit 3 units of well-being. We can visualize this as follows.

	M	Tu	W	Th	F	Sa	Su
Benefit	0	3	3	3	3	0	0

This result seems, at first blush, plausible. Since this view works by spreading the total benefit—which here we treat as proportional to the strength of the desire satisfied—across the interval, let us call this *Diachronic-Payout Asymmetrism*.

Diachronic payments are what might first come to mind when thinking about how asymmetrism might answer the Magnitude-of-Value Question. A moment's reflection, however, reveals that this answer suffers serious problems. By adjusting the benefit interval, the very same desire satisfaction will deliver different synchronic payouts. If the benefit interval is shorter, for example, the distribution of the total benefit will need to be squeezed into fewer units of time. To see why this is counterintuitive, return to Death. In terms of your desire, nothing changes in this case from Patriotism. You still have the desire Monday through Wednesday and it is still of strength 12. Yet your death makes a surprising difference to your Tuesday and Wednesday. Though they are, in Patriotism and Death, identical states of affairs, Diachronic-Payout Asymmetrism implies that Tuesday and Wednesday are better for you in Death than they are in Patriotism. Why? Because there are two fewer days, in Death, to spread out the total benefit. We can visualize the benefit in Death as follows.

	M	Tu	W	Th	F	Sa	Su
Benefit	0	6	6	0	0	0	0

This result is hard to believe. Your Tuesday and Wednesday do not get better for you in Death than in Patriotism.<sup>15</sup>

Beyond this counterintuitive result, Diachronic-Payout Asymmetrism's handling of Death and Patriotism allows us to see a more damning problem. The

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satisfaction makes you uninterruptedly better off from  $t$  to  $t^*$ —i.e., you receive at least some benefit at each unit of time during this interval. This claim strikes me as trivially true, following from the very meaning of “you benefit from a satisfied desire from  $t$  to  $t^*$ .” I thank an anonymous reviewer for pressing me to clarify this point.

<sup>15</sup> You could, it is worth noting, get this result without death. For example, suppose things are as described in Patriotism, but your country's gold medal count is overtaken a day earlier. In that case, we would get the result that you benefited 4 units of well-being per day rather than 3.

view violates the Certainty-for-Benefit Principle. For notice, this variation of asymmetrism implies that the magnitude of the benefit that you receive now can depend on what happens in the future. In most cases, at the beginning of a benefit interval, the future is open with respect to how long the subject will continue benefiting. If the interval of the desire comes after the end of the interval of the object, then, at the beginning of the interval of the desire, the future is open with respect to how long the benefit interval will be. It depends on the length of the interval of the desire. If the interval of the object comes after the end of the interval of the desire, then, at the beginning of the interval of the object, the future is open with respect to how long the benefit interval will be. It depends on the length of the interval of the object. In Death, on Tuesday the future is open with respect to when the object of the desire will cease to obtain and with respect to when the subject will die. Accordingly, your receiving the particular benefit—6 units of well-being—on Tuesday depends, at that time, on states of affairs whose objective probability of obtaining lies between 0 and 1. Diachronic-Payout Asymmetrism is at odds with one of the main theoretical motivations for accepting asymmetrism. Hence anyone who accepts asymmetrism on account of the Certainty-for-Benefit Principle would deny that the magnitude of the benefit that you receive now can depend on what happens in the future.<sup>16</sup> Diachronic-Payout Asymmetrism should be rejected.

We can next turn to a second plausible way that asymmetrism might answer the Magnitude-of-Value Question. Consistent with Strength Proportionalism, we could hold that the intrinsic value for you of a satisfied desire is equal to the strength of the desire for each unit of time during the benefit interval. Return again to Patriotism. On this proposal, since you have a satisfied desire of strength 12, you are benefited 12 units of well-being for each moment of the benefit interval. Let us set aside complications about how units of time might be divided and just stick with days.<sup>17</sup> We thus get the following payout for Patriotism.

	M	Tu	W	Th	F	Sa	Su
Benefit	0	12	12	12	12	0	0

16 I thank Eden Lin for bringing this point to my attention. I also thank an anonymous reviewer for stressing its importance and for the wording of some parts of this paragraph.

17 If an interval is infinitely divisible and we are forced to assign a nonzero amount to each division, then any desire satisfaction (whatever the strength) would yield infinite value for you. I am here simply going to assume this problem can be solved. Hence, I assume that the number of units of time assigned a benefit for a given interval is finite. With this assumption made, nothing important in the argument to come hinges on how we divide up the units. So, for ease of exposition, I will stick with days.

This result is promising. Since this view works by repeatedly giving a benefit—proportional to the strength of the desire—at each moment of the interval, let us call this *Synchronic-Payout Asymmetrism*.

This view marks an improvement on its diachronic cousin.<sup>18</sup> It does not, in Death, adjust the magnitude of benefit you receive on Tuesday and Wednesday, nor does it violate the Certainty-for-Benefit Principle. Yet it too faces a serious problem. To see the worry, note how Synchronic-Payout Asymmetrism arrives at the total benefit. For Diachronic-Payout Asymmetrism, recall, the strength of the desire determines the total benefit, irrespective of the benefit interval. Accordingly, the total magnitude of the benefit conferred by a satisfied desire is reined in by that desire's strength. By contrast, for Synchronic-Payout Asymmetrism, the total benefit is a function of the strength of the satisfied desire and the length of the benefit interval. For a given satisfied desire, its total benefit is greater the longer the benefit interval. This implies that even a very weak satisfied desire, so long as it has an incredibly long interval, can yield an enormous benefit.

To see why this implication is counterintuitive for any version of asymmetrism, it is worth remembering that asymmetrism allows a benefit interval to extend beyond the time at which the agent ceases to have the desire. Keeping this in mind, a set of contrast cases will make the worry vivid. Start with

*Not Alone:* When you were five years old, you read a book about space travel. You found it mildly interesting, and formed an extremely weak—strength 1—desire that we are not alone in the universe. This desire persists until your death. And, in fact, other beings have existed in the universe from before you were born and continue to exist until after your death.

Synchronic-Payout Asymmetrism tells us that, in this case, though the strength of your satisfied desire is very weak, the magnitude of the benefit it confers is huge. If you live to seventy-five years old, for example, the benefit will be over twenty-five-thousand units of well-being.<sup>19</sup> Using this implication of Not Alone

18 In correspondence, Lin said he is inclined toward accepting Synchronic-Payout Asymmetrism. But he expressed reservations based, in part, on the problem raised below.

19 What is troubling about Synchronic-Payout Asymmetrism, I should stress, is not that it allows a very minor benefit per unit of time had for a very long time to outweigh a very great benefit per unit of time had for a very short time. Rather the problem I am pressing concerns the undue evaluative significance of the length of the benefit interval, as determined by asymmetrism, on the magnitude of the benefit. This problem would thus not apply to, for example, a synchronic payout version of a Time of Desire view, which holds roughly that you benefit from a satisfied desire at all and only those times when you have the desire (Lin, "Asymmetrism about Desire Satisfactionism and Time," 165). Since the Time of Desire view

as a baseline, we can see that the magnitude of a total benefit should not depend on the length of the benefit interval, as determined by asymmetrism, by considering a variation on the case.

*Dropped Quickly:* Things are just as described in Not Alone, except that the next day you cease having the desire. You are, the day after and for every day until your death, entirely indifferent to whether or not other beings exist in the universe.

According to asymmetrism, you start the benefit interval at the earliest time at which you have both the desire and its object obtains, and the benefit interval stops at the latest time at which either you have the desire or its object obtains. Hence, in *Dropped Quickly*, since we are not alone, the benefit interval begins the day you form the desire. And, since other beings exist in the universe until after your death, the benefit interval lasts until you die. The benefit interval is, in other words, identical in Not Alone and *Dropped Quickly*. Synchronic-Payout Asymmetrism thus tells us that the total benefit you receive is the same in both cases.

It is hard to believe that the amount of benefit conferred by a satisfied desire continues to increase at the same rate regardless of whether the desire has been abandoned. But this is precisely what Synchronic-Payout Asymmetrism claims to be the case. It should be rejected. The magnitude of the benefit from a given satisfied desire should not be tied to the duration of the benefit interval, as determined by asymmetrism, because asymmetrism allows this interval to extend beyond the duration of the desire.<sup>20</sup>

#### 4. CONCLUSION

Asymmetrism is a very attractive view for those who want to accommodate the idea that you benefit when there is no temporal overlap between a desire and its object. But it seems forced to give very unattractive answers to the Magnitude-of-Value Question. Diachronic-Payout Asymmetrism and Synchronic-Pay-

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ties the benefit interval to the duration of the desire, a synchronic payout version would yield different-sized benefits in Not Alone and *Dropped Quickly*. Incidentally, it seems unobjectionable, on a Time of Desire view, for a very weak satisfied desire with a very long benefit interval to yield a benefit greater than a very strong satisfied desire with a very short benefit interval. This seems unobjectionable because, once again, the Time of Desire view links the benefit interval to the possession of the relevant desire, and because of the familiar sequence arguments found, for example, in Norcross, "Comparing Harms." I thank an anonymous reviewer for flagging this potential misunderstanding.

<sup>20</sup> I am indebted to an anonymous reviewer for the wording here.

out Asymmetrism seem to be the only plausible views consistent with Strength Proportionalism. But both these versions of asymmetrism should be rejected. Thus to avoid giving implausible answers to the Magnitude-of-Value Question, asymmetrism seems required to abandon Strength Proportionalism. This is not a welcome position. Desire satisfactionists should perhaps look elsewhere for the answer to the Timing Question.<sup>21</sup>

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21 This paper would not have been written without Eden Lin's help and encouragement. Most of the ideas here were presented to him in crude form, and he took a great deal of his own time to refine them into something much better. It is rare to find a philosopher so eager to criticize his own work. I would also like to thank Winnie Sung and Luke Semrau for helpful comments on earlier drafts.

## THE MEANING OF A MARKET AND THE MEANING OF “MEANING”

*Julian Jonker*

ARE THERE ANY viable semiotic objections to commodification? A semiotic objection holds that even if there is no independent consequentialist or deontic objection to marketing a good—such as that it is exploitative or causes third-party harm—there remains a problem with what is said by participating in that market. Consider Michael Sandel’s arguments against markets in (among other things) death bets and children.<sup>1</sup> Sandel claims that, even if these markets are not exploitative, do not exacerbate inequality, and do not set the wrong incentives, they are nonetheless objectionable because of what they express. Betting on a stranger’s death in the context of a terrorism-prediction market is wrong because it signals a “dehumanizing attitude.”<sup>2</sup> And even if auctioning off orphans did not result in any harm to them or others, such a “market in children would express . . . the wrong way of valuing them.”<sup>3</sup>

Recent discussions have suffered from a basic ambiguity in such talk. The anti-commodificationist who presents a semiotic objection must bear in mind an elementary distinction between two uses of “meaning.” As Grice pointed out, there is a difference between saying that smoke on the horizon means fire, and saying that it means there will be war tomorrow.<sup>4</sup> We could say that in the former case smoke *indicates* fire because of its causal connection with fire, while in the latter case smoke *expresses* a call to war because that is the nonnatural meaning given to it by convention or by its place in a communicative practice. Note that causal indication relations are non-revisable, being a matter of natural law, whereas expressive relations are typically revisable because they are grounded in contingent social practices.<sup>5</sup>

It is this distinction that makes a recent anti-anti-commodificationist move

1 Sandel, *What Money Can’t Buy*.

2 Sandel, *What Money Can’t Buy*, 146.

3 Sandel, *What Money Can’t Buy*, 10.

4 Grice, “Meaning.”

5 Compare my use of “indication” with that of Crummett, “Expression and Indication in Eth-

by Jason Brennan and Peter Jaworski particularly compelling.<sup>6</sup> They argue that if there is no non-semiotic objection to a market in some good, but the market nonetheless has an objectionable meaning, then we should change the meaning of the market to reflect its otherwise unobjectionable nature. For example, if we think the market for surrogate mothers says something degrading about motherhood, though it in no other way does wrong or causes harm, then we should do what we can to change our understanding that the market for surrogate mothers is degrading. Call this the “collapsing move”: it collapses a purportedly intrinsic semiotic objection into a consequentialist objection grounded in the contingent costs and benefits of revising the meaning of a market.<sup>7</sup>

The collapsing move gives rise to a dilemma for the semiotic anti-commodificationist. If she thinks that the market has some objectionable non-revisable meaning, then that must be because the existence of the market indicates something objectionable. But then the anti-commodificationist’s objection is really a non-semiotic one, since the problem lies with what is indicated. On the other hand, if the anti-commodificationist thinks that the market expresses something objectionable, rather than merely indicating it, then she raises a semiotic objection. But since expressive meaning is revisable, the objection is vulnerable to the collapsing move.

#### 1. SOME RECENT DEFENSES OF SEMIOTIC OBJECTIONS

Some recent defenses of semiotic objections fall prey to the Gricean dilemma. Consider Anthony Booth’s claim that a market has at least one non-revisable meaning: if a marketed good is incommensurable, then the marketing of that good signals that the good is *proto-on-a-par*—i.e., (i) a rational choice can be made with respect to choosing between the good and another (it is *comparable*) and (ii) either the *comparison* (the rational choice as to how to choose between the goods) has been made or a mechanism is in place for making it.<sup>8</sup> We put incommensurable goods up for comparison in this way when we adopt norms for choosing between the goods. An individual may do that by accepting the com-

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ics and Political Philosophy.” Crummett uses “indication” to refer to costly signaling, which I discuss below.

6 Brennan and Jaworski, “Markets without Symbolic Limits.”

7 Booth, “The Real Symbolic Limit of Markets,” 200.

8 Booth, “The Real Symbolic Limit of Markets,” 205n4. The proposal is influenced by Ruth Chang’s idea that when we are presented with a hard choice between alternatives this need not be because the alternatives are incomparable, but because they are on a par. See, for example, Chang, “Hard Choices.”

parison offered by the market's price mechanism. In such a case, Booth thinks, the individual's acceptance of the market price noncontingently communicates that they have accepted that the good is up for comparison in this way.

Now it could not be a *semiotic* objection that the individual has accepted the comparison of what should not be compared. (There may well be prudential or deontic objections.) So Booth objects to the divergence between what the individual's acceptance of a market transaction says and her own beliefs about the good's noncomparability, and this objection is semiotic since it is grounded partly in what the individual's participation in the market says. Such a concern could also be raised at the political level. If a political community accepts the market's incursion into a domain such as sex, then this signals acceptance of the market as the mechanism for comparing sex and money, though the community may fail to collectively believe that sex and money are comparable. If that fails to be straightforwardly hypocritical or dishonest, it is at least inauthentic. As Booth puts it, "the moral wrong of signaling the commodification of sex is that it reflects something about who we are, and it is something we have chosen not to be."<sup>9</sup>

But Booth's claim that commodification "reflects" something about ourselves is subject to the same ambiguity we find in words like "says" and "signals." If what he means is that the fact of participating in a market for sex *indicates* that the participant has accepted that sex is up for comparison by the market, then whatever objection there is to that is not a semiotic objection. There is in fact little room for an objectionable divergence between what attitude the transaction indicates and what the participant believes about the good's value. What the transaction indicates, at most, is that the participant understands that the market provides a way of comparing the good with money and accepts the terms of their transaction; but that is compatible with believing anything about the value of the good, including that the good is incomparable but that one's best option is to transact on the particular terms of comparison presented by the transaction.

So Booth must have in mind that participation in the market *expresses* something thicker than mere acquiescence in the terms of the transaction. A *prima facie* compelling complaint would be that a participant expresses *endorsement* of the market as a mechanism for comparison, when in fact their own attitude is one of mere acceptance of the market's role. But since endorsement is not indicated by participation in the market, it is open to us to revise that participation in the market expresses endorsement. That is just another instance of the collapsing move.

A similar ambivalence lurks in Mark Wells's objection that charging for an

9 Booth, "The Real Symbolic Limit of Markets," 205n4.

action that one is obliged to perform (such as rescuing a drowning child, or perhaps voting in a particular way) “necessarily communicate[s], signal[s], express[es], or symbolize[s] the wrong motive.”<sup>10</sup> This disjunction of verbs is ambiguous between what I have been calling “expression” and “indication.” If Wells has identified a problem, it is not with what a seller expresses or indicates, but with the fact that she acts impermissibly.<sup>11</sup>

What of Dustin Crummett’s suggestion that costly signaling can give rise to “communicative normative considerations”?<sup>12</sup> An agent’s action sends a costly signal that she has an attitude if she would not perform the action, given its cost, were it not that the action were evidence for her attitude. But costly signaling is primarily a causal indication that the agent wishes the audience to believe she has the attitude (deception is nearby), and whatever objection there is to that is non-semiotic. It is true that costly signaling, when deployed by cognitive sophisticates (e.g., humans rather than peacocks), is capable of blurring the Gricean distinction.<sup>13</sup> But that is because costly signals are salient points for coordinating upon conventional meanings—so, for example, the costly signaling of gift giving is likely the basis of the conventional meaning of a birthday gift, which may in fact be too inexpensive to count as a costly signal.<sup>14</sup> So even a sophisticated practice grounded in costly signaling is subject to the Gricean dilemma: what it indicates is not grounds for a semiotic objection, and what it expresses is subject to the collapsing argument.

The most resilient contribution thus far has been Jacob Sparks’s anti-com-

10 Wells, “Markets with Some Limits,” 614.

11 I agree with an anonymous reviewer that Wells is best understood as raising a non-semiotic objection against Brennan and Jaworski’s claim that if there is nothing wrong with giving a thing away then there is nothing wrong with selling it. Yet Wells expressly frames his objection as “captur[ing] the concern behind some ‘semiotic objections,’” and describes it as “express[ing] a kind of semiotic objection to markets” (Wells, “Markets with Some Limits,” 611, 614). I am denying this characterization, rather than the viability of the objection.

12 Crummett, “Expression and Indication in Ethics and Political Philosophy,” n6. Crummett is concerned mostly with arguing for egalitarianism, and only hints at an anti-commodificationist argument. The latter argument, made against terrorism-prediction markets, seems to be that it is a psychological fact about people that they find betting on someone’s death disrespectful (19). But insofar as an objection is to be grounded in a hardwired attitude toward some activity, it need not identify the attitude as a form of costly signaling, or any other sort of signaling.

13 This leads one evolutionary game theorist to puff that “all meaning is natural meaning”—though he immediately agrees that “Grice is pointing to a real distinction.” Skyrms, *Signals*, 1.

14 The line is also blurred because a signal may be costly in virtue of its conventional meaning. A racist who unrepentantly uses a slur incurs the cost of social stigma; that he is willing to do so is evidence of his racist conviction.

modificationist claim that “when we allow the buying and selling of certain goods, we are expressing inappropriate attitudes ... toward the closely related goods that can’t be bought or sold.”<sup>15</sup> This claim must be distinguished from Sparks’s endorsement of the claim that certain sorts of goods cannot be bought and sold on pain of no longer being the same sort of good.<sup>16</sup> As Sandel puts it, “the money that buys ... friendship dissolves it, or turns it into something else.”<sup>17</sup> The same is true of other things, such as acknowledgments and praise and commendations, that are partly constituted by judgment-sensitive attitudes. Sandel’s concern is not a semiotic objection, but rather the non-semiotic objection that a market crowds out or destroys the good it purports to trade in.

Instead, the central plank of Sparks’s own anti-commodificationism is the claim that “market exchanges always express preferences.”<sup>18</sup> But is this a semiotic claim? It depends what Sparks means by “preferences.” For the economist inclined toward behaviorism, “preferences” means “revealed preferences.”<sup>19</sup> If revealed preferences were simply a description of choice behavior, then the relation between choice and preference would not be an expressive relation but the identity relation. But revealed preferences are subject to assumptions concerning completeness and consistency, which actual choice behavior might violate.<sup>20</sup> Perhaps then the economist should treat choice behavior as evidence of a psychological attitude that best explains and predicts choice.<sup>21</sup> If so, the relation between choice and revealed preference is the non-revisable one of indication. That exchange indicates that such an attitude may ground an objection to commodification if the attitude is regrettable and could be discouraged by limiting the market, but the objection is not a semiotic one.

A more interesting interpretation of revealed preference theory is that its assumptions and axioms provide a normative theory of what a rational agent should choose given what she does choose.<sup>22</sup> Then the theory is misleadingly named, since choice behavior reveals nothing further about the chooser, but in-

15 Sparks, “Can’t Buy Me Love,” 349. See also Dick, “Transformable Goods and the Limits of What Money Can Buy”; and Stein, “Exchanging for Reasons, Right and Wrong,” 10.

16 Sparks, “Can’t Buy Me Love,” 341n11, 343–44.

17 Sandel, *What Money Can’t Buy*, 94n1.

18 Sparks, “Can’t Buy Me Love,” 341n11.

19 Samuelson, “A Note on the Pure Theory of Consumer’s Behaviour”; Little, “A Reformulation of the Theory of Consumer’s Behaviour,” esp. 92.

20 Classic presentations of the theory are Arrow, “Rational Choice Functions and Ordering”; and Sen, “Choice Functions and Revealed Preference.”

21 As suggested by Hausman (*Preference, Value, and Choice*, 23–48), who emphasizes that this psychological attitude only explains choice in conjunction with belief.

22 Sen’s discussion in “Behaviour and the Concept of Preference” suggests that the concept of

stead commits her to further choices, on pain of being irrational. This relation between choice and preference is not one of identity or indication, but is much more like that between an utterance and the meaning to which the speaker commits herself by uttering it.<sup>23</sup> Such a rationalist view is not straightforwardly subject to collapse, given that the assumptions of revealed preference theory have the air of rationality about them, and may be difficult or impossible to revise. So a market participant rationally commits herself to the pattern of behavior that rationally follows from her market behavior, and it is this pattern of rational commitment that is communicated by her choices, whether she holds any such commitments or not.

This rationalist claim, not explicitly voiced by Sparks, does present us with grounds for an interesting semiotic objection. But its prospects look dim. Unlike in the case of linguistic phenomena, we are not obviously compelled by nature or practice to construe choice behavior as meaningful in the way that normative revealed preference theory does. We need not apply any norms of consistency and completeness in order to make sense of a person's choice to participate in or endorse a particular market. Unlike a linguistic utterance, a particular choice can be understood without having to be understood against a backdrop of logically related utterances. And in any case, we need not treat as significant the fact that this choice commits the chooser, on pain of inconsistency or incompleteness, to a backdrop of logically related choices. We can focus on other things instead: that the choice is evidence for the chooser's actual attitudes, say, or for the choices that they will and would actually make. The question is whether we should care more about what a person actually thinks and does than what their rational version would do. All ordinary considerations of character and consequence point to the former. But in any case, once we have raised the question of which of these things matters more, we have applied the collapsing move to the normative theory of revealed preference too.

## 2. SO WHAT?

A spectator to this debate may wonder why it matters that an objection is semiotic rather than not. One reason is that a semiotic objection shows that commodification wrongs not just participants and third parties who directly bear negative consequences, but everyone. It is an undeniable part of human nature that we care what others think about us, and also about whether they value the same

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a revealed preference is hopelessly torn between descriptive and normative aspirations. On the prospects of a normative theory, see Bermúdez, *Decision Theory and Rationality*, 43–76.

23 For this influential view of meaning, see Davidson, "Truth and Meaning."

things that we value. For example, we blame some hypocritical acts that do not directly affect us because the hypocrite thereby shows contempt for our equal moral standing.<sup>24</sup> And we blame the person who aims a slur at another not just because the addressee feels hurt, but because of the offense caused even to those not addressed, or because it undermines their equal standing.<sup>25</sup> Another reason for caring about a distinctively semiotic objection is that it names an intrinsic defect in a market, and so is not hostage to empirically testable claims about whether the market causes harm.

But an objection to commodification need not be semiotic in order to have these features. If a market for intimate services corrupts our ability to have genuine intimate relations, then it (non-expressively) harms all of us who could benefit from intimate relations. And if contingent gender disparities are such that a market for intimate services is inevitably unfair, then it is an intrinsic defect that the market is inevitably unfair in such circumstances. If commercial surrogacy involves the adoption of disrespectful attitudes toward motherhood, then it may (non-expressively) wrong all mothers if such a disrespectful attitude also counts as disrespecting mothers. And if one who engages in commercial surrogacy necessarily has such attitude, then there is an in-principle objection to such a market.

My argument has been skeptical about the possibility of semiotic objections, and their necessity, but it should not be understood as an anti-anti-commodificationist argument. All I hope to have shown is that the concerns raised by anti-commodificationists are not plausibly semiotic objections. Yet they remain plausible objections. Perhaps it is better to call some of them “symptom-identifying” or “etiological objections,” since they complain that markets appear somewhere in a causal chain involving objectionable behavior. When Anderson complains that commercial surrogacy undermines the intimacy involved in parenting relationships, her complaint is not that participating in a market expresses something objectionable about parenting, but that it indicates that parenting relationships are being impaired or are vulnerable to impairment.<sup>26</sup> Or consider a concern Satz raises about prostitution when she says that it “represents women as sexual servants to men.”<sup>27</sup> Suppose that it does. Whatever bite this complaint has lies in the fact that, at least in some cases, perhaps the paradigmatic ones, prostitution in fact involves women acting as sexual servants to men. That a practice represents women as servants is surely of secondary importance to the fact that it sufficiently often does make women into servants. The problem is not, as

24 Wallace, “Hypocrisy, Moral Address, and the Equal Standing of Persons.”

25 Feinberg, *Offense to Others*; Waldron, *The Harm in Hate Speech*.

26 Anderson, “Is Women’s Labor a Commodity?”

27 Satz, *Why Some Things Should Not Be for Sale*, 144.

Satz puts it, that prostitution is a “theatre of inequality,” but that it is a site of actual inequality.<sup>28</sup> In sum, while a purportedly semiotic objection sometimes deflates into a weak consequentialist objection, it sometimes inflates into a strong non-consequentialist objection.<sup>29</sup>

Indeed, I think it is not in the anti-commodificationist’s interest to emphasize an objection’s expressive dimension. First, doing so renders the anti-commodificationist open to the taunt that they are a snowflake. The move here is similar to the collapsing move: one who feels demeaned or insulted by what commodification says could just as well change how they feel about what is said. Or perhaps the anti-anti-commodificationist will say, plausibly if not persuasively, that we should not take hurt feelings as seriously as freedom and welfare improvements. Second, it allows the anti-anti-commodificationist to defend essentially economic activity on the basis of considerations of expressive freedom. Such arguments, seemingly on the rise in American law, are a distortion.<sup>30</sup> Not all forms of distinctively human interaction must be understood as communication. Economic exchange is a form of interaction that implicates our attitudes about the values of things. But we neither can nor need say what we think about the values of things by agreeing to exchange one quantity of one thing for another quantity of another thing. Economic exchange is primordial but inarticulate, a poor neighbor of our rich representational capacities when it comes to express-

28 Satz, *Why Some Things Should Not Be for Sale*, 147.

29 An etiological objection is not an impure semiotic objection, which David Dick describes as a complaint that a market exchange “sends a message that results in some [non-semiotic] wrong” (“Impure Semiotic Objections to Markets,” 231, italics omitted). An impure objection presupposes that market exchange “sends a message” in the expressive sense, and is therefore open to the collapsing move. In contrast, an etiological objection is a complaint against whatever is indicated by participation in or endorsement of market exchange, and has nothing to do with what is expressed by that exchange. Similarly, an etiological objection should not be thought of as a complaint against the fact that “a bad message is expressed because some other independent wrong occurs” (“Impure Semiotic Objections to Markets,” 231, italics omitted). An etiological objection is not a complaint against a message, but against a state of affairs. See also Brennan and Jaworski, “Markets without Symbolic Limits,” 1056n6.

30 Consider recent decisions by the U.S. Supreme Court to the effect that companies have a First Amendment right to unlimited financing of political broadcasts (*Citizens United v. Federal Election Commission*, 558 U.S. 310 [2010]), or that agency fees charged by public sector unions violate the First Amendment rights of nonmembers (*Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 [2018]). See, more generally, Shanor, “The New *Lochner*.”

ing who we are and what we value. Philosophy, and politics, should not give it more than its due.<sup>31</sup>

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