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A letter from the editors

It is with great pleasure that we introduce the inaugural issue of the student journal of the Philosophy, Politics and Economics Program at Penn.

What differentiates our journal, and the Philosophy, Politics & Economics major from other courses of study, is our dedication to interdisciplinary academics. We believe the name SPICE: Student Perspectives on Institutions, Choices & Ethics reflects this desire to approach traditional questions of the social sciences in an integrated way that combines institutional and analytical approaches. For this reason, we feel it is important that we welcome submissions from all undergraduates: bringing together ideas from not only philosophy, political science, and economics, but also sociology, biology, psychology, game theory and other disciplines that can add valuable perspectives and insights to the age old question of how society should be structured and why.

This has been a labor of love, and we are grateful to the faculty, staff and especially students who have helped us finally produce this issue, after several years of anticipation and false starts. We are particularly grateful to Professor Sumantra Sen for his encouragement, support and suggestion of the name for this journal. At the very heart of the process, however, are the students. Sophomores, juniors and seniors have volunteered to create this journal for their peers and this publication is a product of their hard work from the initial stages of the editing process to the final stages of layout. We want to thank everyone involved for the hours of work and dedication. We have enjoyed working with and getting to know all of the staff members and are excited about this year’s issue as well as the many issues to come.

Sincerely,

Katherine Gunderson
Academic Editor

Taylor Buley
Administrative Editor
Accountability is Not Always Good

The World Trade Organization (WTO) is an international body mandated by its members to uphold multilateral trade agreements and to mediate disputes among those members. Like the UN, the WTO is a one-country one-vote institution. The rationale behind such a voting system is to limit the power of larger states. In theory, the one-country one-vote system should give developing countries significant control over WTO policy, since they comprise a majority of the membership. In practice, however, the major developed powers, particularly the US, the European Community (EC), Japan, and Canada (collectively known as the Quad countries) manage to control the WTO’s agenda and therefore most of its actions. They have used this control to wrest lucrative concessions from developing countries, while simultaneously reneging on most promises to liberalize their own markets.

How do the US and EC (more so than Japan and Canada) continue to dictate WTO policy when they have so few votes? Influence over developing countries is exerted through multiple channels, including loans from the World Bank and IMF, direct bilateral aid, control over debt reduction, and threats to single out small countries for specific economic punishments. These mechanisms fall into the broad category of side-payments: external tools to influence voter preferences during WTO negotiations. In the context of the voting system, powerful players can single out weaker ones and attempt to “buy” their support through a combination of threats, promises, and outright bribes (though perfectly legal ones). If enough developing countries can be bought or pressured into agreement, developed countries can secure favorable terms of trade, protecting their own markets while enjoying access to the markets of others.

How might the WTO move closer in reality to its one-country, one-vote structure? A crucial characteristic of the present system is public voting. That is, accountability for votes allows powerful countries to identify and then penalize those who opposed them. Therefore, a possible approach to equalize voting power is to make voting anonymous. With a secret ballot, developed countries that seek to dictate the agenda through side-payments would have greater difficulty enforcing threats, since they would not know for certain who voted against them. This change in voting structure certainly would not eliminate the ability of powerful countries to have more than their one vote’s worth of influence on the WTO process, but it could reduce this disparity substantially. Critics might argue that there are
drawbacks to secret balloting, notably the lack of transparency; but in the context of the WTO, these losses seem small relative to the gains of the more equitable power structure that this organization was designed to reflect.

The International Monetary Fund (IMF) and the World Bank (WB) both use systems of proportional representation, tying vote share to monetary contributions. Since contributions are related to the size of a country’s economy, voting power in the IMF and WB are therefore linked to economic power. Over the years, this voting structure has led to numerous accusations that the US and Europe use their electoral dominance of these institutions for political purposes.1 Many claim the US has given better lending terms to countries it viewed as cooperative and has blocked loans to countries that openly opposed it.2 Additionally, because key decisions require 85% of the vote, and the US has a 17.08% vote share, this proportional voting system has given the US a veto on any major decision made by the IMF.3

In contrast, the WTO, like its previous incarnation, the General Agreement on Tariffs and Trade (GATT), grants each member country one vote through an appointed trade representative.4 This mandate was intended to help prevent domination by larger countries that might otherwise dictate unfair trade terms. Furthermore, the GATT/WTO has a strong tradition of favoring consensus whenever possible.5 Even on the rare occasions when a vote is called for, any significant legislative change requires a two-thirds majority, or for changes to negotiated treaties, a three-quarters majority.6 With 148 countries in total, the developed world has a relatively small vote share. Even given that the EC gets 26 votes (one for each member country and one for the EU itself), developed countries comprise less than a third of WTO members.7 As the WTO has expanded, that proportion has declined over time. Even as a few countries make the change in status from developing to developed or from least-developed to developing, their trade interests relative to the Quad country agenda rarely change significantly. Regardless of which other countries reach the same label as “developed,” US and EC interests are their own.

Despite their clear minority position measured in votes, the Quad countries have dominated all major GATT or WTO negotiations. Examples abound, but two particularly clear illustrations of their success are the TRIPS agreement and WTO regulation of agriculture.

TRIPS, or trade-related aspects of intellectual property rights, was negotiated in conjunction with the transition from GATT to the WTO in 1995, along with the General Agreement on Trade in Services (GATS). It incorporated international intellectual property law into WTO legal jurisdiction, allowing complaints of infringement to be brought under WTO judicial rules for dispute
resolution. Since developed countries generate the vast majority of patents, this agreement strongly favors those countries. It is their IP that is being protected. Thus, developing countries gave up their ability to choose on a case-by-case basis which patents they would acknowledge. Instead, they effectively surrendered that authority to the patent offices of other countries, hurting various domestic industries in developing countries since prices for IP are now dictated to them and sanctions can be brought if a country’s industry is found to be using IP illegally. It has caused particular damage to the generic pharmaceutical industries of developing countries like India and Brazil, where the new restrictions of IP rights hurt domestic industry to the point where production or export of many drugs is no longer economically viable. In addition, existing pharmaceutical patent law had only allowed the patenting of production methods, not the final result. Drug companies in developing countries had focused their research and development spending on creating alternate, more cost-effective methods of production, which they could use legally to manufacture the same drug. Under the new rules this action is illegal and although a firm could now secure a patent on their newer, cheaper production method, they would still have to pay a licensing fee of the original inventor’s choosing, typically high enough to skim off any profit margin. Leaving aside important ethical issues over patents to focus on economic ones, the 1995 TRIPS agreement clearly favors developed countries over developing ones. Some concessions were made to least-developed countries, but that does not change the fact that most poor countries were convinced to give up something for nothing.

They were convinced to do so, in part, because the “nothing” comprised a series of unfulfilled promises to address the grievances of developing countries on issues more important to them, particularly agriculture. Throughout the history of GATT, tariffs in most industries have been cut considerably over time. The big exception is agriculture. In fact US and EC farm subsidies have increased. The US now averages $18 billion a year in farm subsidies. Whether for “strategic” or “cultural” reasons (or for political ones), industrialized countries continue to protect their agriculture from rival producers in developing countries. In the 1930’s “about 25% of Americans lived on about 6 million farms.” Thus one could easily argue that, as an industry, agriculture was vital to the US economy. “By comparison, the USDA estimates that today only about 2% of the population lives on about 2 million farms, and only 8% of those farms account for approximately 72% of the agricultural sales.” In contrast, many developing countries rely heavily on agriculture; for some—especially most of the poorest, least-developed countries—it accounts for a majority of their GDP. Most have wages low enough that
even with lower absolute efficiency than US or EC farmers, they could potentially sell the same commodities at well below the cost of production in the US or EC. To “protect” their domestic agricultural industries from this competition, most developed countries use various combinations of domestic subsidies, export subsidies, quotas and tariffs to ensure not only that foreign goods will be more expensive, but often that domestic producers will be able to export so far below cost that they can undersell farmers from developing countries in their own domestic markets. Thus, many developing countries with arable land still end up importing more agricultural goods than they export. These subsidies have been written in as “special exceptions” to WTO treaties over the years, thereby allowing developed countries to continue this practice despite liberalization of agriculture markets in developing countries. To put the numbers in perspective, the subsidies given to American cotton producers are 60 percent more than the total GDP of Burkina Faso, where over 2 million people depend on cotton production. One half of cotton subsidies to American producers (around US$1 billion) goes to a few thousand farmers who cultivate around 1,000 acres of cotton... In the WCA [west central African] countries, on the other hand, these subsidies penalize one million farmers who only have five acres of cotton and live on less than US$1 per person per day.15 This protection of developed country agriculture contradicts everything the WTO officially stands for, yet developing countries have had virtually no success influencing the US or EC to change their behavior. Why have developing countries been so ineffective despite the fact that they hold a majority of the votes?

Side-payments feature prominently in voting theory. They are often described as a means to generate more efficient negotiations (when goods are not easily divisible), since agents can reach a Pareto optimal solution. However, in multi-party negotiations side-payments have been shown to facilitate inefficient outcomes when a minimal winning coalition can be formed more easily through bilateral exchanges. This phenomenon can be seen clearly in WTO negotiations, where wealthy developed countries use external channels of power to pressure other member countries into backing proposals that are contrary to their own interest. Throughout the history of GATT and the WTO, developing countries have complained about bullying by larger countries.16 Senator Chuck Grassley (R Iowa), chairman of the Senate Finance Committee provides one example,

Let me be clear. I’ll use my position as chairman of the Senate Finance Committee, which has jurisdiction over international trade policy in the US Senate, to carefully scrutinize the positions taken by many WTO members during this ministerial [conference in Cancun in 2003]. The United States evaluates potential partners for free trade agreements on
an ongoing basis. I’ll take note of those nations that played a constructive role in Cancun, and those nations that didn’t.\textsuperscript{17} This statement is a naked threat by a US Senator in possession of substantial power. It should also be noted that he represents one of the most agricultural states in the US.

The use of these side-payments, both positive and negative, has become endemic to the system. In a transparent example of a direct cash payment for support, on October 1, 2003, US Trade Representative Robert Zoellick “announced a $6.75 million grant for CAFTA partners… A week later Costa Rica withdrew from the G-20… Guatemala, too, yielded to the pressure…”\textsuperscript{18} The G-20 had been opposing the US/EC agenda in Cancun. Months later “US Senator Norm Coleman [R-Minnesota] warned President Alvaro Uribe that ‘remaining in [the G-20] will not lead to good relations between Colombia and the United States.’” Colombia withdrew from the G-20 within the year, and was duly rewarded in March 2004 with the opening of negotiations for a US-Colombian Free Trade Agreement.\textsuperscript{19}

Part of the reason that side-payments are so prominent in WTO negotiations is the magnitude of trade at stake. Because a concession to protect a single domestic industry can be worth billions of dollars to some organized special-interest group back in the US or EC, their trade representatives will lobby with all their might to secure it. In 2004, global export trade was worth US $8.907 trillion, so lobbyists will pay exorbitant sums to keep or expand their slice of the pie.\textsuperscript{20} Furthermore it is the nature of competition that even a slight edge can often prove decisive, so in many cases even small concessions become major political battles, both domestically and internationally. Any producer in the global marketplace can appreciate the competitive value of being able to sell goods, agricultural or manufactured, at even a small price advantage over those of competitors in other countries. Examples abound, but a straightforward case is the battle between Boeing and Airbus over the various domestic subsidies they each receive. Each competes against the other to secure more government monies than its rival, in effect subsidizing its sales on the international market. At the same time, they pressure their respective governments to attack the other airplane manufacturer for unfair trade practices. Because the representatives sent to the WTO are trade representatives, they answer to the trade departments of their various states, exacerbating the pressures listed above. This branch of government is usually tied more closely to industry than other branches of government.\textsuperscript{21} Thus US, EC, and other trade representatives from developed countries generally come to the table with an agenda dictated by domestic special interests and a mandate to coerce other states into backing them. Rarely do they have permission to offer
any major concessions that might be politically unpopular back home.22

Examples such as TRIPS or WTO agriculture rules are merely illustrations of a larger strategy by which the Quad countries use side-payments to keep developing countries factionalized and divided. By creating regional free trade agreements (NAFTA, CAFTA, ACP) they can play off developing countries against each other in a race to the bottom to win political and economic favors from the world’s wealthiest countries. If developing countries remain divided, the Quad countries can continue to dictate global trade policy. The result: some developing and least-developed countries make short-term concessions at the expense of their economic neighbors and their own long-term trade interests. Ironically, the increased revenue and economic power that accrue to the Quad countries enable them to offer even more appealing side-payments to the developing countries at whose expense they are profiting. The patronage network is thus self-reinforcing as long as developing countries can be kept fragmented during negotiations.

Given that developed countries are prepared to follow through on serious threats towards less powerful countries, what could be done to protect them from such bullying? In other words, how could the WTO in practice return to the WTO in theory, where weaker countries are protected by their majority status as a voting bloc? The answer lies in accountability. Modern society generally describes accountability as highly desirable, whether in business, politics, or day-to-day behavior. Accountability is associated with efficiency and competition; a Google search for “holding government accountable” demonstrates the diversity of groups viewing accountability as highly desirable. From research studies on government tobacco policy (#1 hit) to congressman John L. Mica of Florida and his proposed legislation to help reign in the IRS (#5) to Raymond Karsczewski’s letter of protest for his allegedly wrongful arrest and imprisonment (#6), Americans both inside and outside government use the catchword “accountable” to convey justice, even righteousness, as their motivation for fighting “the system.”

In certain contexts however, accountability can be detrimental. In the US we appoint Supreme Court justices to life terms specifically so that politicians in the executive or legislative branch cannot hold them accountable for their decisions, thus increasing the independence of the American judiciary. Likewise in the WTO, the ability of powerful developed countries to hold weaker countries accountable for their voting allows them to better isolate the weaker countries and intimidate them into submission. Because voting is done publicly, the US, EC, and others know which developing countries to reward and which to punish. The logical step, therefore, is to make voting private.
A secret ballot could effectively remedy the side-payment problem by shifting real power away from the wealthiest, most developed countries, towards those with less power under the current system. Whoever has the most resources to bring to the table benefits most from a side-payment regime; conversely, whoever has the least resources will likely benefit from a regime that undermines side-payments. Votes become more valuable when they are more difficult to buy, and removing accountability for voting would seriously undermine the effectiveness of threats from wealthy countries. When a proposal failed, no one would know for certain which countries had ultimately chosen to blackball it; thus, they would all be protected. This fact would derail the current US/EC side-payment tactic of “securing” the vote of one or a few countries at a time, and punishing those who oppose. If voting were secret, no one would be sure which votes had actually been “secured” and, thus, no one could be sure which countries had earned “punishment.”

One possible response to a secret ballot for the exploiting countries would be to lump whole regions together and punish them as a group if developed country proposals were rejected. However, if the US or EC adopted a strategy of group punishment, it would only solidify regions into stronger communities. The resulting alliances would most likely be more resistant to pressure from developed countries to “sell out” for their own individual benefit. This multinational solidarity occurred to a certain extent at the 2003 Cancun Ministerial Conference, when two groups of developing and least-developed countries banded together under the labels G-20 and G-90 to protect each other from strong US and EC pressure for further liberalization. While a few members were dislodged from this coalition (recall the examples of Columbia, Costa Rica, and Guatemala withdrawing from the G-20 cited above), enough held together that the conference ended without any concessions made or agreements reached. Whether secret balloting would have provided enough security to allow these particular countries to remain in the G-20 is uncertain. However, secret balloting would certainly have dispersed US pressure more broadly amongst various other developing countries whose loyalty the US would be less certain of.

There are two arguments that could arise in opposition to secret balloting as a decision-making method for the WTO. The first is that it will not significantly undermine side-payments. The second is that it will undermine transparency in the WTO. The first concern can only be addressed hypothetically, since no one can be sure how much secret balloting would actually undermine the ability of developed countries to exert pressure. On the one hand, the WTO operates by consensus, and involves lengthy negotiations, so countries often know where others stand. However, member nations could potentially oppose an agreement.
publicly, only to vote for it later under pressure from major powers. However, publicly opposing an agreement does not necessarily mean voting against it, so those seeking to use threats would face difficulty if they relied on public statements to mete out punishment.

Alternately, one might argue that developed countries such as the US have sufficient espionage capabilities to beat the system of secret ballots and discover how trade representatives were ordered to vote by their country’s government. Ignoring the potential fallout of a country’s being caught performing such covert operations during WTO negotiations, it seems implausible that such intelligence would be both complete and reliable. Furthermore, developing countries would have a strong incentive to keep such information secret, and would certainly work to undermine any covert information gathering. Such behavior, however, remains a legitimate concern regarding how “secret” WTO voting could be in actuality.

It is easier to refute the second concern—reduction of transparency. The WTO has always been a secretive organization. All negotiations are secret, no minutes are kept, no speeches are recorded, no video or audio recording of any kind is allowed, and only the voting records are made public. The WTO is arguably the least transparent public international institution on the globe. Given this fact, it becomes difficult to argue that the loss of transparency through voting records is problematic. To counteract this difficulty, making other aspects of the WTO, such as regular meetings, ministerial conferences, and internal reports, more accessible could compensate for the loss.

There are certainly other changes through which the balance of power could be shifted back towards developing and least-developed countries. A switch to secret ballots is only one of many proposals put forth to address this imbalance. Many of these proposals involve major changes to the WTO charter, the judicial process, and the methods of representation. In its support, a switch from public to private voting is a relatively cost-free and simple adjustment. Though certainly not politically feasible at this point in time, neither are any of the more drastic changes that have been proposed. And unlike broader proposals to overhaul the entire decision-making process, secret ballots are a more elegant solution: tipping the scales without recasting them.


http://www.economist.com/research/Backgrounders/displayBackgrounder.cfm?bg=929486


http://www.wto.org/english/res_e/statis_e/its2005_e/its05_overview_e.htm

1 Steinberg: 275
2 Jawara and Kwa: xxxviii, xliii
3 IMF Website. Interestingly, it took a site search to find these data, whereas information on IMF efforts to alleviate poverty was readily accessible.
4 Hoekman, Mattoo, and English: 48
5 Understanding the WTO: 107
6 ibid: 197
7 ibid: 110
8 Katrak and Strange: 146-164
9 t’ Hoen: Introduction and Part I
10 http://www.cid.harvard.edu/cidtrade/issues/ipr.html
For a more recent example see http://www.cptech.org/ip/wto/insidetrade05242002.html.
11 Compare the 1996 US Farm Bill to the 2003 US Farm Bill which increased spending by almost half a billion dollars a month
12 Grynberg and Turner: 21
13 USDA in Grynberg and Turner: 21
14 ibid: 21
16 Jawara and Kwa: introduction, especially xxxiv
17 ibid: lvii
18 ibid: lviii
19 Jawara and Kwa: lix
20 WTO International Trade Statistics: Table 1.3
21 Jawara and Kwa: xxvi, xxxii
22 ibid: liv
23 Jawara and Kwa: introduction
24 Esserman and Howse. For another typical NGO condemnation see: http://www.citizen.org/pressroom/release.cfm?ID=1759
I. Preface

Although religion and science often contradict one another, knowledge of two different types of truth can strengthen both science/mathematics and religion. I believe that using game theory, we can understand choices that religious figures made, and in doing so, gain important insights into the stories told about them.

II. The Story

In the Bible, Jacob flees from his parents’ home only to arrive at the scene of shepherds struggling to remove a stone from a well near the city of Charan. Charan, coincidentally, is where Laban, (Jacob’s mother’s brother) lived with his two daughters, Leah and Rachel:1

Jacob went to the land of the easterners. He looked, and behold – a well in the field… Jacob said to the shepherds, “Do you know Laban the [grand]son of Nahor?” And they said “We know.” Then he said, “Is he doing well?” And they answered, “He is well, and see – his daughter Rachel is coming with the flock.”

…While he was still speaking with them, Rachel had arrived with her father’s flock, for she was a shepherdess. And it was, when Jacob saw Rachel, daughter of Laban his mother’s brother, and the flock of Laban his mother’s brother, Jacob came forward and rolled the stone off the mouth of the well and watered the sheep of Laban his mother’s brother. Then Jacob kissed Rachel and he raised his voice and wept. Jacob told Rachel that he was her father’s brother, and that he was Rebecca’s son, and she ran and told her father.

And it was, when Laban heard the news of Jacob his sister’s son, he ran toward him, embraced him, kissed him, and took him to his house… and he stayed with him a month’s time.

Then Laban said to Jacob, “Just because you are my relative, should you serve me for nothing? Tell me: What are your wages?”

Laban had two daughters. The older one Leah and the younger one Rachel. Leah’s eyes were tender, while Rachel was beautiful of form and beautiful of appearance. Jacob lover Rachel, so he said, “I will work for you for seven years, for Rachel your younger daughter.” Laban said, “It is better that I give her to you than I give her to another man; remain with me.” So Jacob worked for seven years for Rachel and they seemed to him a few days because of his love for her.

Jacob said to Laban, “Deliver my wife for my term is fulfilled, and I will come to her.” So Laban gathered all the people of the place and made a feast. And it was in the evening, that he took Leah his daughter and brought her to him; and he came to her… And it was, in the morning, that behold it was Leah! So he said to Laban, “What is this you have done to me? Was it not for Rachel that I worked for you? Why have you deceived me?” Laban said, “Such is not done in our place, to give the younger before the elder. Complete the week of this one and we will give you the other one too, for the work which you will perform for me yet another seven years.”

So Jacob did so and he completed the week for her; and he gave him Rachel his daughter to him as a wife… He came also to Rachel and loved Rachel even more than Leah, and he worked for him yet another seven years.

The Talmud in Tractate Megilah 13b discusses Jacob’s “mistake” in telling Rachel that he is her father’s brother,2 instead of saying that he is the son of her father’s sister, as was truly the case.3

To resolve this inconsistency the Talmud relates the following story:

Jacob, having fallen in love with Rachel, asked her to marry him. She responded that she would,
but warned Jacob that her father was devious man and that he would most certainly prevent the two from marrying. To this Jacob replied, “I am your father’s brother in trickery.” Meaning Jacob could easily outwit Laban. Rachel, surprised that such a good man could be as deceitful as her father, remained skeptical because her older sister Leah remained unmarried and therefore was a more suitable match for Jacob. In order to prevent this, Jacob decided that at the wedding, the veiled bride would have to show Jacob the signs that he and Rachel had agreed upon before he would take her as his wife. In this way Jacob would be sure of the identity of his bride.

Knowing that Laban would send Leah to the altar in her place, Rachel became embarrassed with the idea of her sister’s public rejection. Thus, she decided to show Leah the secret signals. Jacob, thinking he was marrying Rachel, was surprised the next morning when it turned out the bride he had married was in fact Leah.

### III. Objective

This story raises a number of questions: Firstly, why was Jacob surprised? After spending seven years in Laban’s house, he should have recognized Rachel’s kind attitude and expected her to give the signs to Leah. Perhaps Jacob should have even preferred if Rachel gave her sister the signs, as it indicates Rachel’s kindness, surely a positive feature to add to Rachel’s desirability as a wife. Under these assumptions, it might even be reasonable to consider that Jacob should have chosen the sister who did not show him the signs, for if Rachel were kind, and therefore worth more to Jacob, she would have been the sister who did not show signs, and if Rachel were not kind in this regard, she would be less valuable to Jacob.

Jacob’s decision can be modeled as a Bayesian game if we take into consideration the two factors on which Jacob’s choices were based:

1. Jacob’s payoffs from Rachel and Leah
   - Marrying Leah = a
   - Marrying a kind Rachel = b
   - Marrying a selfish Rachel = c

2. Jacob’s beliefs about the probability that Rachel was kind enough to give the signs to Leah:
   - Probability that Rachel would give Leah the signs = p
   - Probability that Rachel would not give Leah the signs = 1 - p

We already know the outcome – that Jacob took the sister who gave him the signs, so by testing the following model with different possibilities for Jacob’s payoffs [a,b,c] we can determine the range of probabilities [p] that Jacob assigned to the chance that Rachel would give Leah the signs.
We also know that Jacob loved Rachel more than he loved Leah. Thus both \( b \) and \( c \) must be greater than \( a \). Jacob also received strong warning to marry well. While this does not necessarily mean that Jacob would favor a kind wife over an unkind wife, the combination of warnings from his parents and common sense would mean that a kind Rachel is at least weakly preferred to an unkind Rachel. Thus \( b > c \).

Thus, Jacob’s expected payoffs are:

- Expected payoff from marrying the girl who gives the signs = \( a \cdot p + c \cdot (1-p) \)
- Expected payoff from marrying the girl who doesn’t give the signs = \( b \cdot p + a \cdot (1-p) \)

We know that Jacob married the girl who gave the signs, which means that:

\[
\frac{1}{2} > p
\]

We can also analyze these numbers by focusing on the importance of the difference in Jacob’s payoffs between marrying Leah, marrying a kind Rachel, and marrying a selfish Rachel. In other words, how much Jacob loved Rachel more than Leah \( y \) and how much he valued Rachel’s kindliness \( z \). In this case, Jacob’s payoffs are as follows:

- Marrying Leah = \( a \)
- Marrying a selfish Rachel = \( c = a + y \)
• Marrying a kind Rachel = b = a + y + z

where a, y, and z are each greater than zero, for the reasons stated above. In fact note that for Jacob to choose as he did, the higher z is, the lower p must be. In other words, the more Jacob values kindness, the lower the probability he must assign to Rachel’s making an act of sacrifice by giving the signs. This implies that in order for Jacob to choose the sister who gave him the signs (as he did,) he must have either:

• Valued Rachel equally whether or not she was kind to her sister (b=c)

• Assigned a small probability to Rachel’s giving the signs to Leah (if b>c), as discussed above.

The first of these possibilities, that b=c and therefore p=1/2, should not be discounted. The Biblical text discusses Jacob’s affection towards Rachel a number of times. First, when Jacob is at the well, he kisses Rachel after seeing her for the first time. The second mention of Jacob’s love for Rachel immediately follows a description of the two sisters – mentioning that Leah’s eyes were weak and Rachel was very pretty. The text also reveals that his love for her made the seven years Jacob worked for her seem like a mere few days. All of these descriptions indicate a physical attraction unrelated to Rachel’s kindness. This suggest that perhaps Jacob took the sister who gave him the signs because, Rachel’s kindness was irrelevant, so he went for the sister who, at first glance, seems to be Rachel.

A more rational approach to Jacob’s character follows the second possibility: Jacob did not expect Rachel to give the signs to Leah, in fact, as discussed earlier, the higher z is, the lower p must be. But why would Jacob have low expectations for Rachel’s character? In the seven years he spent in her father’s house, did Jacob not recognize Rachel’s kindness earlier? It must be that regardless of Jacob’s opinion of Rachel’s character traits, the probability that someone would give up love to save her sister from embarrassment was so unusual that Jacob did not assign it a strong probability. According to this understanding, Rachel’s action was uniquely kind, and thus this explanation helps clarify the following story, as told by Rabbi Solomon Yitchaki:

The Patriarchs and the Matriarchs went to appease God, concerning the sin of Manasseh, who placed an image in the Temple, but He was not appeased. Rachel entered and stated before Him, “O Lord of the Universe, whose mercy is greater, Your mercy or the mercy of a flesh and blood person? You must admit that Your mercy is greater. Now did I not bring my rival into my house? For all the work that Jacob worked for my father, he worked only for me. When I came to enter the nuptial canopy, they brought my sister, and it was not enough that I kept my silence, but I gave her my password. You, too, if Your children have brought Your rival into Your house, keep Your silence for them.” He said to her, “You have defended them well. There is reward for your deed and for your righteousness, that you gave over your password to your sister – there will be an end to the exile and your sons (the nation of Israel) will return to their land.

Jacob did not expect Rachel to give the signs to her sister; it was an unprecedented and
unanticipated activity, but specifically because of Rachel’s unusual kindness, God promised to reward her and her descendents with mercy.

Through a game theoretical analysis of this story, we can deduce why Jacob acted the way he did. Furthermore, and perhaps more importantly, the analysis also elucidates the reasoning behind God’s promise and why Rachel was so deserving of reward. In this way mathematics and science are not necessarily antithetical, but can work together to reveal new meaning behind the stories of the Bible.

2 Genesis 29:12
3 For clarification, I have provided a condensed genealogy of the characters involved:
Preventative War Doctrine

The world of today is far different from that of the Cold War era. Whereas before many nations worked together to provide both social and political security, now it seems that the United States exists as the sole hegemon, who can utilize its power whenever and wherever it chooses. The world has also changed, however, in terms of the emerging threats. The United States and its allies can no longer say that they are at war with a single, country, but rather they are fighting terrorists who are unknowable, invisible, and unpredictable. Although both realist and liberalist theories merged with great success to provide answers to questions of world security in the past, many now question their effectiveness in fighting the new issues of world politics. In order to face these new challenges, many, including President Bush, argue that the US should adopt a “neoimperialist” strategy in which it “arrogates to itself the global role of setting standards, determining threats, using force, and meting out justice.”\textsuperscript{1} Despite the new risks that the US faces in this uncertain global environment, I believe the US can better insure global security by maintaining its “old” tactics of security partnerships, instead of adopting a new preventative war strategy.

The realist idea of balancing world power has served to create a global system in which the power of each state works to constrain the actions of every other state. During the Cold War era, the US focused its efforts against the Soviet Union by “denying it the ability to expand its sphere of influence.”\textsuperscript{2} Out of the tension between the US and the Soviet Union came a bipolar system that provided great world stability. This stability was enforced through nuclear deterrence. The assured destruction of both countries and the high costs of nuclear engagement increased the stakes of a conflict between the US and the Soviet Union to an unacceptable level. This nuclear deterrence created both valuable partnerships for the US such as NATO and the US-Japan alliances and a world structure that fostered stability “through commitment and reassurance.”\textsuperscript{3}

Liberal theory dominated the Cold War era. These liberal reforms focused on improving relations between democracies and on opening world economies in an effort to create and preserve order. Similar to interdependence theorists, who argue that states who are dependent upon one another are more willing to cooperate, liberals believe that opening markets will decrease the propensity for conflict. During this time, organizations like the World Trade Organizations proved that stability could also be provided by secure economic ties. As a result of these policies,
the United States was able to utilize its “political weight to derive congenial rules, most fully protect American interests, conserve its power, and to extend its influence,” ultimately creating a world system characterized by order and stability. Although realist and liberalist theory are “rooted in divergent, even antagonistic, intellectual traditions,” they have complemented each other surprisingly well over the past fifty years. While realist theorists encourage world powers to form alliance and power ties, and liberalists argue for more open trading circles, the result has been an increase in the security of all states. Through the complementary utilization of the realist and liberal strategies, the world has achieved a “political order of unprecedented size and success: a global coalition of democratic states tied together through markets, institutions, and security partnerships.”

Despite the success of the fusion of liberal and realist philosophies in determining the international structure over the past fifty years, many argue that these institutions are outdated and ineffective in the twenty-first century. These neoimperialists argue that the United States should distance itself from its allies to act in a more autonomous, independent fashion, and instead should subscribe to a preventative war doctrine. The first argument that proponents of this new “grand strategy” advocate is that the US should establish itself as an untouchable sole hegemon. They argue that by increasing its military force to a level beyond every other country, the US would discourage arms competition and so would in effect lower the security dilemma. Grand strategy theorists believe that if the US stands as a unipolar power, it will prove able to successfully use a preventative war strategy, and that this strategy will increase global security. With the US able to stop the threats of opposing nations, they argue, every country will feel more secure that these matters can be handled immediately and in the most effective manner.

Despite grand strategy theorists’ claims that preventative war and an all-powerful US will allow for international order, sustained unipolar action by the United States instead leads to a problem of self-encirclement, backlash from other nations. If the US attempts to create a global order in which it acts unilaterally without restrictions from other nations, it will set itself apart from the rest of the world and heighten the suspicions of other nations. Although neoimperialists claim that no nation will be able to counter the US in terms of military power, these countries can still harm America with economic sanctions, and by failing to cooperate in diplomatic missions. Unless the United States is prepared to deal with the consequences of European alienation, it must be very careful to not overextend its power.

Another risk associated with an increase in US power is that the it cannot sustain its position as
world hegemon over a long time period. If the US solely decides which states pose threats to international security, this will cause a “diminishment of multilateral mechanisms — most important of which is the nonproliferation regime.”\(^7\) When the United States encounters situations where war is not the best option, and instead needs to rely on international diplomacy, the lack of multilateral mechanisms will result in a breakdown of diplomatic relations. Although the US states that the nonproliferation regime is of primary importance, the inspections and punishments that it enforces would be severely hampered if multilateral action was no longer possible.

In addition, if the United States increases its military power to a higher level, other countries may feel that they are entitled to act similarly. Despite the US’s argument that it cannot afford the risks of waiting for the international approval of its actions, the argument that the actions of other states do require international approval is the “only basis that the United States can use if it needs to appeal for restraint in the actions of others.”\(^8\) In adopting this policy of neoimperialism, the US should be fully prepared for nations such as Pakistan and China to do the same. These states will feel further pressure to restrict the power of the United States, which could lead to an arms race and heighten the security dilemma.

Proponents of a neoimperialist grand theory also argue that the US needs preventative war capabilities to respond to the changing threats of the twenty-first century. These theorists, including those working for the Bush administration, propound that we need preventative war to counter both terrorist threats and to punish countries that harbor terrorists. They argue that “small groups of terrorists — perhaps aided by outlaw states — may soon acquire highly destructive nuclear, chemical, and biological weapons that can inflict catastrophic destruction,”\(^9\) and that these terrorist organizations will prove unappeasable. In order to deal with these threats, the Bush administration argues, we must be able to eliminate the terrorists themselves and punish the nations that foster terrorism. In addition, many warn that terrorist organizations will soon have nuclear capabilities and will not hesitate to use them. In this “age of terror,” many argue that “there is less room for error;”\(^10\) and so the immediacy of preventative war is necessary to effectively counter these looming threats.

Proponents of this new grand strategy argue that the US needs to be able to “take on potential threats before they can present a major problem;”\(^11\) however, by acting preventatively, without the support of other nations, the US risks engaging in war without a clear threat to its security. In effect, this doctrine would decrease the justification that nations need to engage in war, and would lead to an increase in international conflict. Whereas the United States previously joined other nations in
condemning the preventative tactics used in Israel’s bombing of Osirak, its new doctrines advocate engaging in these actions itself and it should expect a similar international outcry.

In addition, neoimperialism would prevent the United States from solving many important problems which require international cooperation. To conquer the threat of terrorism the US “needs cooperation from European and Asian countries in intelligence, law enforcement, and logistics.” The US also needs the aid of other nations in combating problems such as environmental protection and possible threat of China. Should the United States decide to act as a unipolar hegemon, Europe and many other countries may punish the US by denying it help with these pressing issues.

The final justification that proponents of a neoimperialist grand theory assert is that the United States’ preventative war would, in fact, be in accord with the just war tradition. Though President Bush’s administration argues that preventative strikes against terrorist threats are “exercising our right of self-defense,” and are therefore considered just war tactics, Bush’s team fails to account for many other aspects of the just war tradition. In order for a war to be just, it must be characterized by both just initiation and just means. Just initiation requires that a country has tried all other forms of resolution, is a legitimate party to initiate a war, has proper intentions, will most likely be successful, has a defensive purpose to the war, and is in a situation where the benefits outweigh the costs. Although some or all of these may be true in a preventative war situation, not every preventative war is marked by these characteristics. A war must also have just means according to the just war tradition. Just means includes not attacking civilians, using appropriate weapons, not pillaging, not authorizing assassinations, and not destroying cultural or religious structures. The US’s preventative war theory goes against many of the components of the just war tradition, and so appears to encourage other states to do the same.

Although the Bush administration argues that it reserves the right to use preemptive warfare, it intends to go beyond merely attacking a country when it feels it is on the brink of attack, and instead will use preventative measures to stop a situation that could become a threat in the future. Bush fails to distinguish between preemptive and preventative warfare because although preemptive warfare is considered to be self-defense and thus fits within the just war tradition, preventative warfare is not in accord with the tradition.

The benefits that the US would achieve by adopting a preventative war doctrine are clear: capabilities to quickly combat terrorism, the power to act unilaterally, and the freedom to justify almost any engagement. However, the risks from these actions are far too great. Not only will the United States alienate its allies and incur punishment for its independent actions, it will also exacerbate the
security dilemma, risk self-encirclement, increase the propensity of other states to act unilaterally, and overall threaten global security. Although the rules of the game have changed since September 11th, the appropriate response is not for the US to subscribe to a preventative war strategy; rather, the US should look to maintaining its “ability and willingness to exercise power within alliance and multinational frameworks which made its power and agenda more acceptable to allies and other key states around the world.”


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Rehabilitation or Retribution

The discourse on juvenile justice administration reveals a core thematic dichotomy, which has informed the history of the juvenile court since its inception in the late nineteenth century. Rehabilitation and retribution stand in opposition as the two poles of response to youth delinquency. A rehabilitative approach relies on the assumption that adolescents’ social environments are to blame for their transgressions, while a retributive approach accepts that juveniles are accountable for their own actions. While the juvenile court originated out of rehabilitation theory, contemporary criminal justice policy emphasizes retribution over a benevolent treatment model. In this paper, I will consider how traditional liberal theorists – John Locke, Jean-Jacques Rousseau, and Immanuel Kant – would assess present-day juvenile justice administration. I will also discuss how their theories contribute to ongoing debates about whether juveniles are inherently less culpable, and whether a distinct juvenile court should in fact exist. While traditional liberal philosophers tend to advocate for a rehabilitative parens patrie approach to juvenile justice based on a belief in environmental determinism, contemporaries tend to advocate for retribution based on a belief in individual culpability. Present-day theorists, Barry C. Feld and Andrew von Hirsch, however, bridge this gap by arguing for a more protective and nurturing retribution. In doing so, they suggest that a rehabilitative, re-education approach to juvenile delinquency is preferable to purely punitive sanction. Underlying cultural and class circumstances reinforce this conclusion.

The history of the American juvenile court reveals the centrality of the rehabilitation-retribution dichotomy. A product of the Progressive Era, the juvenile court was created by child welfare advocates to adhere to the ideals of traditional and progressive liberalism. The founders were motivated by two tenets – that “criminal behavior [is] caused by unwholesome environment, especially the banal influence of squalid urban life;” and that “like other children, adolescents are not morally accountable for their behavior.” The first tenet legitimized state intervention. In fact, the proponents claimed that it was the obligation of the juvenile court to take on a parental role and exercise wide discretion over the delinquent in order to “save [him] from a life of crime.” Accordingly, many state courts aimed to “[remove] from a minor committing a delinquency the taint of criminality…by substituting therefore an individual program of counseling, supervision, treatment and rehabilitation.” Others sought to provide the minor with “such care and guidance…as will serve [his]
moral, emotional, mental, and physical welfare.”

These missions reveal the juvenile court’s paternalism. Second, in counting adolescents as children, the founders maintained that childhood is a discrete life stage marked by its own set of capabilities. They saw “the essential difference between the moral and cognitive capacities of the juvenile and those of the adult...[as absolving] the juvenile completely from criminal liability.” While the adult courts dealt out retributive sentences, the juvenile court’s “exclusive concern [was] for the social rehabilitation of needy youths.”

In the second half of the twentieth century, juvenile justice administrators lost faith in the rehabilitative ability of court sentences. Consequently, the emphasis “turned from assessing the social needs of the offender to assessing the social harm that the offender caused.” State juvenile courts changed their missions to emphasize “public safety, punishment and individual accountability” over the youth’s future welfare.

As Janet Ainsworth writes, “sentences in the new punitive juvenile court are designed to hold the youth accountable for the offense committed; any rehabilitative services or programs provided during incarceration are incidental to the punishment meted out.” Statistics offer additional insight into the extent of this re-structuring. In 1923, there were 111 sentences to juvenile training school, 83 to detention and 23 to incarceration handed down for every 100,000 youth under the age of eighteen. By the mid-1990s, however, the numbers had jumped to 265, 872 and 304, respectively. This data reveals first an overall rise in juvenile criminalization, marked by the increase in the total number of sanctions. Second, the proportion of the sentences involving juvenile training schools fell from roughly 51 percent in 1923 to 18 percent in the mid-1990s. This is significant because juvenile training schools are primarily rehabilitative, rather than retributive. Their decreased proportional use indicates rehabilitation’s diminished influence in contemporary juvenile justice. The history of the juvenile court, therefore, exposes a fundamental disagreement over the court’s purpose – rehabilitation or retribution – and the root of delinquency – environmental determinism or individual culpability.

A new development in criminal justice theory inspired the change in juvenile justice administration in the latter part of the twentieth century. Contemporary theorists reject the paternalistic function of the juvenile court as unconstitutional and overly deterministic. In In re Gualt, the Supreme Court undermined the parens patrie court’s legitimacy by asserting that it violates juveniles’ “constitutional protections,” specifically “the fundamental requirements of due process.” Consequently, concern for the rights and personhood of juveniles became central to the backlash against the protective quality of the juvenile court. Other theorists, like Barry C. Feld, argue...
that paternalism relieves the adolescent of personal accountability. Such a court “[characterizes] delinquents as victims rather than perpetrators,” he claims, “[denies] youths’ personal responsibility,” and “[reduces] offenders’ duty to exercise self-control.”12 Thus, in some of his writing, he articulates the majority viewpoint in contemporary juvenile justice – that juveniles possess “sufficient moral reasoning, cognitive capacity and volitional control” to hold them primarily responsible for their actions.13 Only a retribution approach, present-day theorists hold, acknowledges the youth’s individual autonomy and accountability, and treats him as a rational actor.

In contrast, traditional liberal theorists do not perceive adolescents to be independent and reasonable. Rather, they view dependency and conformance as distinctive characteristics of childhood. Children, they hold, are different from adults in their inherent malleability. Accordingly, the youth’s educational environment has the power to mold him for a life of moral goodness. Though Locke, Rousseau and Kant preceded the inception of the juvenile court, their theories on education are applicable to the juvenile justice discourse. The emphasis they place on education and their belief in children’s impressionability suggest a powerful preference for rehabilitation, which involves the re-educating and re-training of delinquents. Thus, Locke, Rousseau and Kant would maintain that to reform transgressors, they must be given a paternalistic environment in which to be rehabilitated.

John Locke argues that education is the only vehicle by which to secure morality in a child. “This I am sure,” he claims, “that if the foundation of [virtue] not be laid in the education and principling of youth, all other endeavors will be in vain.”14 These other endeavors, punishment included, are incapable of turning an adolescent to good because they do not provide the moral framework or habits that will “sway and influence his life.”15 Likewise, he warns against treating the child as a fully autonomous and accountable being. In his Second Treatise on Government, he declares that turning the child “‘loose to an unrestrain’d Liberty, before he has reason to guide him, is not allowing him the privilege of his Nature, to be free; but to thrust him out amongst Brutes.’”16 Hence, Locke believes that the youth must be safeguarded. The fettered autonomy and sheltering Locke calls for are only possible within a rehabilitation framework. Moreover, Locke explicitly decries punitive sanction, claiming that “punishment does…great harm in education…those children who have been most chastised seldom make the best men.”17 Instead, the overseer must “strip” the transgressor of his vice and “undo again” his corrupted education, re-training him to be virtuous.18 According to Locke, education is the only way to “[set] the mind right” and correct for juvenile delinquency.19
Jean-Jacques Rousseau echoes Locke’s emphasis on education and asserts that all children, including wrongdoers, must be given a loving protective environment in which to discover right. He believes that “man is by nature good” but is “depraved and perverted by society.” Accordingly, juvenile delinquents must be isolated from corrupting influences and rehabilitated to recapture their potential for morality. Like Locke, Rousseau firmly denounces punishment as ineffective in deterring transgression. “We learn nothing from a lesson we detest,” he claims; “do not stifle [the child’s] imagination, but direct it lest it should bring forth monsters.” Punitive sanction will only motivate the child to rebel again, he contends. Furthermore, he believes that children cannot fundamentally understand the law and thus should not be held accountable to it. “By imposing on [children] a duty which they fail to recognize,” he maintains, “you make them disinclined to submit...you turn away their love; you teach them deceit, falsehood, and lying.” Hence, Rousseau would view retribution as both unproductive and detrimental. He would instead call for the rehabilitation of juvenile wrongdoers in a nurturing environment away from society’s perversion.

Immanuel Kant would argue too that retribution is a flawed solution for wrongdoing. “If we wish to establish morality, we must abolish punishment,” he declares outright. Rather, the youth must be educated to choose goodness on his own. It is “not enough that children should be merely broken in; for it is of greater importance that they shall learn to think,” he posits. Accordingly, “moral culture must be based upon ‘maxims’ not upon discipline; the one prevents the evil habits, the other trains the mind.” For Kant, punishment only deters, while training secures the youths future moral soundness by making it “that he should choose none but good ends.” This youth will then be free, Kant asserts, as he will have learned the lifelong lesson of seeing good as an end in itself. Thus, Kant would embrace a rehabilitative approach to juvenile justice that maximizes the moral potential of each youth. He would, in turn, denounce retribution for relegating adolescents to a childish state, from which they will be permanently incapable of making the right decisions.

From this discussion, it is evident that for Locke, Rousseau and Kant, the critical determinant of a youth’s virtue is the environment in which he is educated and nurtured. According to Locke, “nine parts of ten [men] are what they are, good or evil, useful or not, by their education.” Kant corroborates this view when he writes, “[man] is what education makes him.” For these theorists, education molds the child, towards virtue or vice. It follows then, that they would agree with the first tenet of the original juvenile court: an improper rearing is to be blamed for juvenile transgression. In this framework, youth are passive actors who possess negligible agency
to improve on their upbringing. Accordingly, Locke, Rousseau and Kant would perceive children to be necessarily less culpable than adults. The current retributive function of the juvenile court reveals that contemporary legal theorists do not share this notion of environmental determinism. Rather, today blame is generally considered to lie with the offender. In a society where youth is treated as a nearly autonomous state, juveniles are held wholly accountable for their actions.

Within this retribution camp, however, there exist present-day theorists like Barry C. Feld and Andrew von Hirsch who blend the juvenile culpability model with a more protective, nurturing approach to juvenile sentencing. These theorists assert that by the very nature of their youthfulness, juveniles are inherently less culpable than adults. According to Feld,

Developmental processes affect adolescent’s quality of judgment and self-control, directly influence their degree of criminal responsibility and deserved punishment, and justify a different criminal sentencing policy. While young offenders possess sufficient understanding and culpability to hold them accountable to their acts, their crimes are less blameworthy than adults’ because of reduced culpability and limited appreciation of consequences and also because their life circumstances understandably limit their capacity to learn to make fully responsible choices.29

Similarly, von Hirsch argues that while juveniles should be subject to just desert sentencing, their deserved sanction should be greatly reduced from the adult equivalent for three reasons. First, like Feld, he maintains that adolescents have a reduced culpability due to their underdeveloped capacity for moral reasoning, self-impulse-control, and resistance to peer pressure. Second, he claims that punishment is “more onerous” for youths than adults, as it interferes with their schooling, socialization, nurturing and self-esteem.30 Lastly, von Hirsch agrees with Rousseau and Kant that youth is the time for learning to live freely. “Because adolescence is a time of testing,” he contends, “we must have tolerance. Learning autonomy requires some leniency to make mistakes.”31 For Feld and von Hirsch, all of these concerns – juveniles’ lesser culpability, “punitive bite” and the need for tolerance – diminish as the youth advances through adolescence and presumably gains in maturity. Consequently, Feld recommends the use of “a sliding scale of criminal responsibility” in sentencing, whereby “younger adolescents bear less responsibility and deserve proportionally shorter sentences than older youths.” 32 Hence, they seek to divide the juvenile period into a series of age categories with corresponding age-appropriate penalties. This model challenges the rigid sentencing split imposed by separate juvenile and adult courts. Thus, Feld and von Hirsch call for the dissolution of the juvenile court as we know it.
The question of whether there should in fact be a separate juvenile court has long consumed public policy debate. Beyond the rehabilitation-retribution dichotomy, this debate begins with a discussion of whether childhood and adulthood are mutually exclusive life stages. Advocates of a separate juvenile court consider childhood to be a distinct period – marked by discrete capabilities – which render the youth’s culpability categorically different from that of adults. On the other hand, proponents of a single justice system argue that childhood and adulthood blend together chronologically. For them, development occurs along a continuum. Given these contending strands, the traditional liberal theorists would support a separate juvenile court.

These theorists are consistent in their recognition of childhood’s distinction. Rousseau unambiguously divides childhood and adulthood. “Childhood has its place in the sequence of human life,” he asserts; “the man must be treated as a man and the child as a child. Give each his own place, and keep him there.” He also warns against confusing childhood and adult capabilities, claiming that “childhood has its own way of seeing, thinking and feeling; nothing is more foolish than trying to substitute [adult] ways.” Kant, too, is unequivocal in his distinction. “Let a child be clever after the manner of childhood…but not cunning like a man,” he writes; “The latter is as unsuitable for a child as a childish mind is for a grown-up person.”

He warns too that imposing “moral sentences proper to manhood” on a child, “[goes] quite beyond [the child’s] province and [makes him] merely an interpreter.” According to Kant, when a child is held to an adult moral standard, he loses the opportunity to discover and fully comprehend morality for himself and will not learn to choose right of his own volition. Hence, for both theorists, the unnatural blending of adulthood with childhood is a detriment to the child and compromises the integrity of this primary developmental phase.

While Locke is less overt, it can be inferred from “An Essay on the Poor Law” that he would agree with this life stage differentiation. In the essay, Locke bounds childhood by age and prescribes such children to special working-schools. He defines as “children” those “above 3 and under 14 years of age.” Accordingly, “men” are “above 14” and are not subject to any of the protectionism granted children. Thus, Locke, like Rousseau and Kant, categorically distinguishes between the proper treatment of children and adults based on their discrete capacities and malleability. For this reason, the traditional liberal theorists would agree with Feld and von Hirsch that juveniles – by the very nature of their youthfulness – are inherently less culpable in any transgression. Yet, they depart from Feld and von Hirsch when they divide life into two irreducible stages.

Contemporary theorists dismiss this child-adult dichotomy and consequently call for the abolition
of the juvenile court. Feld argues that “the binary distinctions between children and adults that provide…the jurisprudential foundation of the juvenile court ignore the reality that adolescents develop along a continuum.” Accordingly, he argues that the juvenile period should be subdivided into age categories with the youngest of such groups receiving the greatest discount in sentencing and each progressive group receiving less and less discount until the adult standard is reached. This model, he asserts, would require a sole integrated criminal justice system in which “juveniles” simply received “categorical fractional reductions of adult sentences.” Janet Ainsworth also criticizes the current juvenile court, pointing to actual juvenile justice policies as proof that childhood and adulthood intermix in present-day society. Waivers, especially automatic waivers, she claims, discredit the juvenile system by bypassing its jurisdiction and transferring serious adolescent crimes and repeat offenders to adult criminal court for prosecution. “[W]aiver statutes break down the child-adult dichotomy completely,” she maintains, by “assuming that nothing inherent in the nature of children…prevents holding the juvenile offender criminally responsible for breaking the law.” By invoking policy, Ainsworth reveals the institutionalized consensus among present-day thinkers – including those charged with overseeing the juvenile court system – that childhood and adulthood are not mutually exclusive. More importantly, Ainsworth provides an explanation for this re-conceptualization of childhood. Pointing to changed social constructs, she attempts to clarify why contemporary theorists view the developmental process differently than eighteenth and nineteenth century theorists did.

According to Ainsworth, the change in theoretical discourse can be attributed to shifting cultural understandings of childhood. Childhood, she begins, is a “socially-constructed invention,” hence “the definition of childhood – who is classified as a child, and what emotional, intellectual, and moral properties children are assumed to possess – has changed over time in response to changes in other facets of society.” Adolescence, for instance, wasn’t a term used in Locke, Kant and Rousseau’s time. Essentially, children learned and adults worked with a negligible transition period in between. Yet, in the second half of the twentieth century, she explains, “the human life cycle was subdivided into more and more stages.” In the process, “youth” was invented as a new life phase between adolescence and adulthood. As a result of this fragmentation, Ainsworth upholds, it is “harder to see each stage as absolute and dichotomous;” today youth no longer appear “inherently and essentially different from adults.” Vietnam, the lowered suffrage age, the sexual revolution, increased youth consumerism, and the freedom afforded by cell phones and the Internet have shaped cultural conceptions of childhood, Ainsworth would posit.
These and other twentieth century phenomena have cast youths as free-thinking, independent actors in the minds of most Americans. Marc Jans strengthens Ainsworth’s social constructivist argument by pointing to the “ambivalence” of present-day childhood. On one hand, he says, children today are “expected to be autonomous, independent and responsible,” while on the other, “their living situation…supposes dependency and inequality.” Hence, far from being mutually exclusive, the characteristics attributed to adulthood now apply equally to children, and carry the same weight as traditional youthful attributes. “The juvenile court,” Ainsworth asserts, “depends for its legitimacy upon the belief that the young inherently differ from adults in their capacity to make responsible choices.” Thus, this fundamental change in the social construction of childhood motivates Ainsworth to condemn the juvenile court system as “outmoded” and illegitimate.

Taking into account the evolving concept of childhood, rehabilitation appears to be the consistently favored pole in juvenile justice theory. Yet, rehabilitation in its paternalistic nineteenth century form can no longer exist, due to changes in juvenile justice policy and the contemporary cultural environment Ainsworth describes. Rather, a theoretical middle ground, which champions youth reform as the aim of juvenile justice, dominates the present-day discourse. This modern-take on rehabilitation continues the legacy of the traditional liberal theorists, revealing a lasting consensus on the part of juvenile justice theory. Such a middle ground position is exemplified by von Hirsch. Despite his root in the modern construction of childhood, he laments the way that punishment “compromises [the] interests” of juveniles, including their need of “adequate schooling and learning opportunities…a reasonable nurturing atmosphere…[and] exposure to adequate role models.” Similarly, Feld reveals a preference for the protection and reform of delinquents, though he finds exclusive rehabilitation problematic. “[The] state should provide [young offenders] with resources for self-improvement,” he contends; “sentencing and correctional policy must offer youths room to reform and provide opportunities and resources to facilitate young offenders’ constructive use of time.” These arguments, though far from endorsing the total rehabilitation Locke, Rousseau and Kant would support, clearly align with the traditional liberal theorists’ belief that adolescents’ characters are pliable and that moral goodness may be taught through re-education.

Ainsworth demonstrates that the current emphasis on retribution in juvenile justice administration is merely a response to changed cultural norms – whereby youth are held more accountable for their actions and are further integrated into society as autonomous beings. It
follows logically that as children are treated increasingly like adults in society, this treatment has carried over into the courtroom. However, even with the greater independence of children, there is an equally strong nurturing force at work today. Accordingly, Marc Jans labels the contemporary period the “era of the ‘cherished child.’” Youths’ minds are nurtured more intensely and for a longer duration than ever before, he asserts. In the home, parents take an increasingly active interest in their children’s development, while society has witnessed a proliferation of childhood programming, a greater emphasis on education, and an immense increase in college matriculation. Beyond simply discrediting the impact of retribution theory then, an analysis of contemporary cultural norms reveals an invigorated emphasis on education. The dominant public discourse today assumes – like Locke, Rousseau and Kant did – that youth are inherently malleable and is devoted to providing stimulating and nurturing environments in which children’s minds can be cultivated. Hence, the underlying beliefs that would have inspired the traditional liberal theorists to embrace a rehabilitative approach to juvenile justice still resonate today. Even though cultural circumstances have rendered rehabilitation alone inapplicable, a strong preference for a re-education, treatment approach to juvenile delinquency still predominates.

The predilection for rehabilitation is further supported by a class-based argument. The core debate over rehabilitation versus retribution overlooks the issue of class, which is integral to traditional liberal theory. Locke prescribes benevolent treatment and a nurturing educational environment exclusively for elite youth. Rather, for poor children he recommends essentially penal, labor sentences. He considers poverty and delinquency to spring from the same source – “the relaxation of discipline and corruption of manners.” Accordingly, in “An Essay on the Poor Law,” Locke condemns child beggars to the “working school…to be soundly whipped, and kept at work till evening.” While Locke’s aim, “to [restrain] [the poor’s] debauchery,” is rehabilitative in nature, his means – corporal punishment and forced labor – approximate retribution. Kant’s theory also reveals an overt elitism. He prescribes a distinct, more intensive education for “those of high rank” – society’s future “rulers” – and emphasizes the importance of teaching “refinement.” Moreover, in Education, he assumes that the child’s parents are educated and sufficiently wealthy to afford to hire a private tutor. This indicates that his philosophy is oriented towards a well-off, aristocratic audience. Kant does not offer an explicit theory for lower class youth, but it is likely that it would lack the intensive cultivation and protective environment of his elite education.
Present-day juvenile courts deal disproportionately with poor, minority youths. According to Children’s Defense Fund statistics, “[by] the end of the nineties, seven out of ten youth held in secure confinement were African American, Latino, or other minorities.”56 “It [is] a constant fact,” Peter Edelman cites, “that African Americans are overrepresented throughout the criminal justice system, from arrest through incarceration.”57 Retribution, then, is the treatment afforded underprivileged youth in present-day society. They have unduly born the burden of the policy transition to a punitive model. In contrast, the middle and upper classes have evaded the effects of this shift through privilege and careful strategy. According to Edelman, if their child has a problem: people of means can buy their way out, by way of military schools, private psychiatrists, and expensive residential facilities for the emotionally disturbed. Parents with higher incomes can purchase music and ballet lessons and pay for soccer leagues, computer camps, and all of the other out-of-school enrichments that contribute to child and youth development.58

In the present-day as in the eighteenth and nineteenth centuries, rehabilitation-like nurturing is a luxury of the upper echelons. And dominant society is still more rehabilitative to its own than to the offspring of the lower economic classes. That those with means choose to spend their money on the cultivation and reform of their children reveals a clear preference for rehabilitation. Both traditional liberal theorists and the upper classes today, then, prioritize the protective care and re-education of juveniles, and have used the resources at their disposal to avoid retribution.

This class-based argument further supports my claim that a critical mass of both traditional liberals and contemporaries favor rehabilitation in juvenile justice. While Locke, Rousseau, and Kant would unequivocally endorse rehabilitation, present-day theorists also believe that rehabilitative elements are integral in juvenile sentencing. A purely rehabilitative juvenile court would deny the autonomy of adolescents in today’s society, but retribution alone without a benevolent treatment component would deny adolescents’ malleability and future potential. Thus, the middle ground articulated by Feld and von Hirsch is the best reformulation of Locke, Rousseau and Kant’s rehabilitative theories for modern-day society, and should inform the future of the juvenile justice system.

2 Ibid.
4 Ibid.
5 Ainsworth.
6 Ibid.
7 Ibid.
“The Juvenile Court Meets the Principle of Offense: Punishment, Treatment and the Difference it Makes.”

Ibid.


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Rousseau, 290.

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Rousseau, 54.

Kant, 32.

Kant, 93.


Ibid.

Ainsworth.

Ibid.

Ibid.

Ibid.


Ainsworth.

Ibid.

von Hirsch, 228.


Jans, 33.

“An Essay on the Poor Law,” 184

“An Essay on the Poor Law,” 187

“An Essay on the Poor Law,” 184

Kant, 5.

Kant, 29.


Ibid.

Edelman. 328.
I. Introduction

Regardless of the moral standards to which we ascribe, nearly all of us find it perfectly natural to judge one another by the moral content of actions—praising those who act in accordance with what we deem to be “moral” and blaming those who violate these notions. Most of us believe, moreover, that one is entitled to enjoy the fruits of his labor, and that the property which one has earned should therefore receive governmental protection. As we shall see, however, Galen Strawson calls much of these intuitions into question in his work, entitled “The Impossibility of Moral Responsibility.” Specifically, Strawson proposes an argument that “appears to prove that we cannot be truly or ultimately morally responsible for our actions.”1 I believe that Strawson’s reasoning poses a significant challenge to those who believe we are justified in blaming and praising others. This challenge remains compelling regardless of the truth of determinism and raises serious doubts about the common moral beliefs associated with property rights, as exemplified in Robert Nozick’s Entitlement Theory.

II. The Basic Argument

In order to evaluate the idea that moral responsibility is impossible, we must first begin with what Strawson refers to as the “Basic Argument.” According to this argument, when we refer to an action as being free, we are referring to an action that is performed for a reason, as opposed to one performed out of reflex or habit. When one acts for a particular reason, one’s action is a function of “how one is, mentally speaking.”2 To be responsible for an action, then, one must have “consciously and explicitly chosen to be the way one is, mentally speaking, in certain respects, and one must have succeeded in bringing it about that one is that way.”3 Therefore, responsibility derives from a person’s choice to be or act in a certain way and his ability to act in the way he has decided upon. For one to choose to be the way one is, mentally speaking, however, this person must already exist with certain principles of choice “in the light of which one chooses how to be.”4 The idea of responsibility presumes that individuals are able to choose how they are, mentally speaking. Furthermore, this idea implies that to be responsible for such a choice, one must be responsible for the principles according to which the choice was made. For one to be truly responsible for these principles, however, one must have chosen them according to another set of principles. As this line of reasoning suggests, moral responsibility leads to an infinite regression. Strawson therefore concludes, “true self-determination is impossible because it requires
the actual completion of an infinite series of choices of principles of choice. So true moral responsibility is impossible.”

In order to clarify Strawson’s reasoning, it is useful to present an example that reveals the argument’s force. Consider my decision to help a friend in distress. When analyzing such a decision, we would ultimately point to the type of person that I am and the desires that I hold in explaining why I made this decision. Yet this seems to imply that if I am to be truly responsible (and thus worthy of praise) for helping my friend, then I must be truly responsible for the type of person that I am and the desires I hold. In turn, if I am to be responsible for the type of person that I am and the desires that I hold, then I must have decided at some point in my life to be this type of person and hold these desires. To be responsible for this decision, however, I must be responsible for the principles and desires in light of which it was made, and I can only be responsible for these principles and desires if I chose them based on other principles and desires, and so on. In the end, we are led to principles and desires that I attained at birth and for which I cannot possibly be held morally responsible.

In order to better understand this last point, I believe it is useful to frame Strawson’s argument in psychological terms. I was born with biological features over which I had no control and into circumstances over which I had no control. At some point in my life, I reached an age at which I was able to make my first rational decision. Yet I had nothing on which to base this decision except principles that were themselves founded upon my biological features, as well as the past experiences over which I had no control. With these considerations in mind, it is difficult to see how I could be held morally responsible for this particular decision. Moreover, after making this first decision, I observed the consequences and added the experience to my previous stock of knowledge about the world. When presented with a second opportunity to make a rational decision, therefore, I had only my biology, the past experiences over which I had no control, and the consequences of my first decision to guide my choice. Again, insofar as this second decision could be based only on principles and circumstances over which I did not have control, it does not seem I can be held morally responsible for this decision either. As this line of reasoning suggests, it is unclear where to locate source of moral responsibility; every decision I have ever made can be traced back to the circumstances and biological features of my infancy.

One might object, however, that the situation as described is clearly one in which the world is causally deterministic (i.e. in which each person’s life unfolds inevitably such that no one ever possesses the freedom to act otherwise than he in fact does). After all, I seem to be suggesting – and indeed, Strawson seems to be suggesting – that
any human being born with my exact biological features into the exact circumstances in which I was born would inevitably make the same choices I have made. Yet even if the world were indeterministic, it is not clear that this fact would damage the validity of Strawson’s claims. In fact, let us assume that the world is indeterministic such that when faced with very difficult moral decisions, “there is a tension and uncertainty in our minds…which are reflected in appropriate regions of our brains by movement away from thermodynamic equilibrium – in short, a kind of stirring up of chaos in the brain that makes it sensitive to micro-indeterminacies at the neuronal level.”

Multiple neural networks, in other words, are activated when we are presented with conflicting options in times of difficulty. Because we place approximately equal value on each option, however, it is not certain which neural network will prevail. Rather, the decision that we ultimately make is dependent upon undetermined quantum processes at the neural level.

Even if the world were indeterministic in the manner described, it is not clear how this fact would legitimize the concept of moral responsibility. As Strawson asks, “how can the occurrence of partly random or indeterministic events contribute in any way to one’s being truly morally responsible either for one’s actions or for one’s character?”

At this point, we must admit the possibility that society would not – or perhaps even could not – take seriously the idea that moral responsibility is an illusory concept. In fact, we may accept Strawson’s conclusion while nevertheless maintaining that we are justified in morally praising and blaming others purely for utilitarian or other practical reasons. This possibility, however, does not diminish the strength of the Strawson’s argument. As we shall see, moreover, there seems to be a significant sense in which this argument undermines the moral foundations of property rights as typified by Robert Nozick’s Entitlement Theory.

III. The Entitlement Theory

In defining his own theory of distributive justice, Nozick suggests that a particular distribution is just if everyone is entitled to the holdings they possess, and entitlements are valid only when acquired through just means. In order to be just, therefore, an original distribution must first adhere to principles that define the fair appropriation of unheld things. Moreover, whatever arises from a just situation and then acquired through just means must itself be just. Thus, for Nozick, any subsequent (non-original) distribution is just only...
if it develops from another just distribution through legitimate means.

Nozick admits that many distributions are not generated in accordance with the two principles of fair acquisition and fair transfer mentioned above. For this reason, he finds it necessary to include within his Entitlement Theory a principle that defines how instances of past injustice may be rectified. This principle of rectification uses historical information about previous situations and the injustices done in order to determine what would have occurred had these injustices not taken place. Ultimately, correcting past injustice means restoring society to the distribution of holdings that should exist according to Nozick’s first two principles. As Nozick asserts, “the entitlement theory of justice in distribution is historical; whether a distribution is just depends upon how it came about. In contrast, current time-slice principles of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some structural principle(s) of just distribution.”

Admittedly, the idea that each individual is entitled to that which he acquires through just means is appealing, especially in the context of capitalism. However, if we were to adopt the historical approach that Nozick’s theory recommends, we would first need to determine the fair appropriation of unheld things in society. In addressing this point, Nozick first considers the theory of acquisition proposed by John Locke. Locke defined just acquisition of property as applying one’s labor to an unowned object. For Locke, in other words, one takes ownership of an object by using that object in a productive way; this moral right of ownership is then concretized through legal recognition. As Nozick contends, however, Locke’s account “gives rise to many questions,” and the most of important of these involves “whether appropriation of an unowned object worsens the situation of others.”

According to Nozick’s Entitlement Theory, a particular distribution is just only if property is acquired and transferred through just means. One might reasonably argue that if a particular act of appropriation significantly weakens the situation of others, then such an act may in fact be unjust. Because condemnation of methods of acquisition based on the ways in which the acquisition negatively affects other members of society can lead to impractical situations in which citizens are never able to acquire anything, Nozick must define a workable boundary between those negative
effects that justice can tolerate and those that render acts of appropriation unjust.

Locke defines the boundary by declaring that acts of appropriation are just as long as there are enough goods left for others to enjoy. As Nozick contends, however, the situation may not be as straightforward as Locke’s account seems to suggest. After all, “someone may be made worse off by another’s appropriation in two ways: first, by losing the opportunity to improve his situation by a particular appropriation or any one; and second, by no longer being able to use freely (without appropriation) what he previously could.”

According to Nozick, requiring that one’s act of appropriation not deprive others of the ability to appropriate is too stringent a condition, as it would ultimately make any theory of property rights virtually untenable (appropriating and thus taking ownership of a particular good must by definition deprive others of the ability to appropriate and take ownership of the good themselves). Nozick does admit, however, that any adequate theory of justice of acquisition should contain a provision that prohibits the individual from completely depriving others of the ability to use freely what they previously could. With respect to affecting others, therefore, an act of appropriation is unjust only if this act completely deprives others of uses which they had previously enjoyed; so long as there remains some amount of the appropriated resource for others to use, one’s act of appropriation cannot be deemed unjust, even if this act has foreclosed the possibility of others appropriating that resource.

Having thus drawn the boundary between just and unjust acts of appropriation with respect to the negative effects that these acts have upon others, it remains for Nozick to define exactly how it is possible for one to appropriate goods within a modern world in which most goods and resources are not unowned in the Lockean state-of-nature sense. Ultimately, Nozick does not address this question directly. However, based on his commitment to the free market and his characterization of Locke, it seems reasonable to conclude that Nozick believes one is justly entitled to that which he has earned through his own skill and resourcefulness. This view seems to coincide with many of our own capitalist intuitions, and although we may not be able to directly “mix our labor” with previously unowned goods, it seems reasonable to maintain that one is entitled to own what he has created through his own laborious efforts.

IV. Strawson and Entitlement

In sum, therefore, Nozick seems to believe that one is entitled to own those goods whose value he has created through his own skill and resourcefulness, so long as this appropriation does not completely deprive others of the ability to use and benefit from the goods in question. Yet, in
returning to the Strawsonian argument with which we began, there seems to exist a fundamental tension between the belief that one deserves to enjoy the benefits of his labor and the idea that we cannot be held morally responsible for our actions. Can we consistently maintain that one should be entitled to own that which he has acquired through his own resourcefulness, while nevertheless absolving this person of moral praise or blame for the decisions he has made?

In my opinion, the following example suggests that the answer to this question is no. Let us consider the life of Microsoft founder Bill Gates, and for the sake of argument, let us assume that he has acquired his wealth through just means, such that he is entitled to this wealth according to Nozick’s theory. In defending the notion that Gates deserves to keep that which he has earned, one would likely point to the fact that he has created his millions through his own skill and resourcefulness. Before granting that Gates is entitled to these earnings, however, let us also consider the possibility that someone possessing the same degree of skill and resourcefulness as Gates – we might think of this person as an exact clone of Gates at birth – was born into a poor family one hundred years prior to the birth of Gates himself. Let us also assume (quite reasonably, I believe, considering that Gates’ access to modern technology has clearly been instrumental in his success) that the circumstances of this person’s birth prevented him from ever achieving a level of wealth beyond that which was needed to ensure his survival.

Can we possibly maintain that Gates deserves his wealth and that this person deserves his poverty, even though the two were born with identical skills and levels of resourcefulness? As I believe this example reveals, Gates’ success has largely been a matter of historical accident: while his hard work and resourcefulness have certainly played an important role in his success, the circumstances into which he was born were crucial in allowing him to prosper. Moreover, the resourcefulness that Gates has displayed is a skill – like any other skill or personality trait – which can be traced back to the circumstances and biological features of his infancy in Strawsonian terms. Ultimately, therefore, the source of Gates’ moral entitlement is unclear: there seems to be little reason to believe that he deserves to keep what he has earned simply because he was fortunate enough to be born with traits, which led him to become resourceful, and into circumstances favorable to resourcefulness.12

At this point, one might object that I am oversimplifying the example by attempting to equate that which one has earned through skill with that which one acquires through pure luck or chance. In order to decide whether or not skill is collapsible into luck as I have suggested, therefore, let us turn to consider a challenge to
Strawson’s theory offered by Daniel Dennett. In analyzing freedom, Dennett considers whether “it is ‘just luck’ that some of us were born with enough artistic talent, in effect, to have developed ‘good’ characters while some of us have turned out less well.” As we have seen, Strawson appears to answer this question affirmatively. Ultimately, however, Dennett seeks to restore the legitimacy of moral responsibility by drawing an important distinction between luck and skill. According to Dennett, “some talented performers are made, not born; some have diligently trained for hours every day for years on end to achieve their prowess.” Counting himself among the individuals belonging to this category, Dennett suggests that “we gifted ones are good at deliberation and self-control, and so we expect a good deal of each other in these regards.” For Dennett, in other words, most people obtain the ability to question and revise their principles at some point in their lives, and this ability justifies the rest of us in ascribing moral praise and blame to those who possess it. Thus, while moral responsibility may not apply to infants and those individuals that never acquire the ability to question their own values, it does make sense to hold people responsible for rational actions committed in light of principles that these individuals have had the opportunity to question and revise. At first glance, it may seem as though Dennett’s account adequately justifies our penchant for praising and blaming others. Admittedly, there does seem to exist a very important distinction between mere luck on the one hand, and skill obtained through hard work and careful deliberation on the other. The importance of this distinction, however, cannot withstand the regression outlined above towards which moral responsibility inevitably leads us. Let us admit that most human beings do in fact reach a level of maturity that allows them to question and revise the principles according to which they act. The question nevertheless remains how such an individual can be held morally responsible for having the good fortune – or perhaps the bad fortune, insofar as he or she may receive moral blame for actions that might otherwise be excusable – to be born with the capacity to eventually reach this level. Put in Strawson’s terms, if one is to be held responsible for the decision to examine one’s own values, then he must be held responsible for the principles according to which this decision was made. Yet one can only be responsible for these principles if he chose them based on other principles, and so on. Ultimately, the decision to question and revise one’s values and the decisions one makes in light of this decision are no more deserving of praise or blame than the decision to instinctively flee from danger; in either case, one can trace the decision in question back to circumstances and biological features over which the decision-maker did not have control.
Returning to the question of entitlement, I believe this refutation of Dennett calls into serious question the intuition that one necessarily deserves a share of the value he has created through his own entrepreneurial skill. It may indeed be the case that Bill Gates has earned his millions through hard work and resourcefulness, and we may even concede that he made the conscious decision at some point in his life to be a hard-working, resourceful person. That being said, however, it does not seem as though he deserves to reap the benefits of his labor unless he also chose the principles in light of which he made this decision to become hard-working and resourceful. Even if we can say that he did choose to have these principles, moreover, we may nevertheless question whether he chose the principles in light of which this decision was made. Once again, we are inevitably led back to principles which Gates inherited at birth, and as noted earlier, I believe it would be a mistake to suggest that Gates deserves to enjoy the benefits of his labor simply because he had the good fortune of being born with traits that led him to become resourceful into circumstances favorable to this quality.

V. Conclusion

I would like to reiterate that we may accept Strawson’s finding that there exists no true source of moral responsibility while nevertheless maintaining that we are justified in praising and blaming others purely for utilitarian reasons, and a similar case can be made with respect to Nozick’s Entitlement Theory. Indeed, while there may be serious reasons to doubt that one deserves a share of the value he has created simply because this value resulted from his own skill and resourcefulness, property rights of the kind defended by Nozick may nevertheless be worth preserving simply because these rights are instrumental to the success (or perhaps even the existence) of any democratic society. One must be careful, in other words, not to assume based on the argument presented above that property rights are completely without value and thus should be abolished. That being said, however, I believe Strawson’s argument reveals the significant degree to which many of our intuitions regarding justice and entitlement may not be as infallible as we often assume. If we wish to maintain that one is morally responsible for his actions as well as morally entitled to that which he has earned, I believe we must find a way to address the many difficulties with which this argument presents us.

2 Strawson, 212-213
3 Strawson, 212-213
4 Strawson, 212-213
5 Strawson, 212-213
6 Robert Kane, “Responsibility, Luck, and Chance: Reflections on Free Will and Indeterminism,” from

7 Strawson, 223
9 One might also question how we are to define the fair transfer of held things. This question, however, seems more easily answered than the question dealing with original appropriation, and thus it will not be considered here.
10 Nozick, 175
11 Nozick, 176
12 Once again, one might protest that the situation as I have described it is clearly deterministic. As was the case with moral responsibility, however, the possibility that the world is indeterministic does not seem to establish that one deserves that which he has created through his labor. After all, if my decision to work on a new invention rather than sleeping in was the result not of a conscious decision on my part, but rather of undetermined neural processes over which I did not have control, it is difficult to see how I can possibly deserve the benefits of my labor as Nozick would suggest.
13 Daniel Dennett, Elbow Room: The Varieties of Free Will Worth Wanting (Cambridge: The MIT Press, 1984), page 92
14 Dennett, 97-98
15 Once again, the argument is cast in deterministic terms. As we have seen, however, the argument remains quite compelling even if the universe is indeterministic.