

# **Victimless Crimes: Where Are Their Victims?**

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## INTRODUCTION

This piece advocates drastic changes in American criminal law. If the changes which I offer are adopted, many activities which today are considered criminal will no longer carry the consequence of prosecution and penalization by the government. The activities to which I refer are commonly known as "victimless crimes," which I define simply as acts prohibited by the law that have no victim. Every participant in these illegal activities is willing and consensual, and therefore no participant is a victim of a crime nor a perpetrator of a crime against another. Examples of victimless crimes which will be discussed are prostitution, the use and distribution of illicit drugs, gambling, obscenity and pornography.

These acts have been made criminal based on the belief that they cause a detriment to society. In turn, this belief is based on the premise that the good of society is the ultimate goal, regardless of the wishes or rights of the individuals in society. This is a false premise, and many of the premises which lead to a conclusion that society is more important than the individual are also false. As society is a conceptual entity comprising of individuals, the good of society can never be more important than the good of the individuals who form that society.

This essay will not consist of a series of aimless statements about rights of individuals; every conclusion will be proven by validation of every premise. Also absent will be arguments focusing on the impracticality of legislation against victimless crimes, as the focus of this piece is the *immorality* of such legislation. The dichotomy which modern culture has constructed between the "moral" and the "practical" is a false dichotomy, and I will demonstrate that a moral philosophy is one that can and should be practiced rather than ignored. Furthermore, it is *never* the government's role to legislate the private lives of its citizens who consent to such activities. Performing a task as large as changing such a significant portion of the criminal law, however, first requires that the

philosophy behind it be changed. Without fully comprehending the reason behind changing the law in the first place, there is no barrier to keep the law from sliding back into its present flawed state.

In her address to the graduating class of the United States Military Academy at West Point in 1974,<sup>1</sup> Ayn Rand<sup>2</sup> explained the role of philosophy in living with an integrated view of existence:

You have no choice about the necessity to integrate your observations, your experiences, your knowledge into abstract ideas, i.e., into principles. Your only choice is whether these principles are true or false, whether they represent your conscious, rational convictions—or a grab-bag of notions snatched at random ...

[T]he principles you accept ... may clash with or contradict one another; they, too, have to be integrated. What integrates them? Philosophy. A philosophic system is an integrated view of existence. As a human being, you have no choice about the fact that you need a philosophy. Your only choice is whether you define your philosophy by a conscious, rational, disciplined process of thought and scrupulously logical deliberation—or let your subconscious accumulate a junk heap ... thrown together by chance, but integrated by your subconscious into a kind of mongrel philosophy and fused into a single, solid weight: *self-doubt*, like a ball and chain in the place where your mind's wings should have grown.<sup>3</sup>

Rand discredited all of the modern Western philosophers who preached that the universe is full of contradictions, that existence is subservient to one's consciousness, that logic is flawed, or that the good of society must be elevated above the interests of the individual, by simply demonstrating that none of these philosophers could keep their ideas within the constricted and contradictory boundaries they set. Finding no philosophy in existence which properly integrated reality and man's capability for noncontradictory thinking,

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<sup>1</sup>Ayn Rand, *Philosophy: Who Needs It*, in PHILOSOPHY: WHO NEEDS IT ("PWNI") 1-11 (1982).

<sup>2</sup>Ayn Rand (1905-1982) was a best-selling novelist as well as the originator of her distinctive philosophy, which she called Objectivism (discussed in detail *infra*).

<sup>3</sup>PWNI, at 5.

Rand structured one which begins with the primacy of existence (as opposed to the primacy of consciousness propagated by Christ and Hegel) and logically concludes that the individual is absolute, which she named *Objectivism*.

Having studied most of the major philosophies and religions of the world, Objectivism is the only philosophy I have seen that upholds consistency, reason, morality and happiness as goals which attainable by man. This does not mean that Objectivism is the “burning bush” and Ayn Rand is our Moses; however, it is the philosophy which most accurately describes the world in which we live and the reason with which our minds can function. I intend to apply Objectivist principles toward my ultimate goal of proving that legislating against victimless crimes is immoral because such legislation denies the absolutism of the individual.

Upon her death in 1982, Rand designated Leonard Peikoff<sup>4</sup> as her intellectual heir, and his treatise *Objectivism: The Philosophy of Ayn Rand*<sup>5</sup> ("OPAR") is the only comprehensive statement of Rand's philosophy. OPAR is based on a lecture series given by Dr. Peikoff given in 1976 which Rand endorsed and at which she also appeared and answered questions.

One crux of the philosophical discussion in this essay is the importance of definitions. The truth or falsehood of any given statement depends on the truth or falsehood of the definitions of its terms.<sup>6</sup> Since definitions describe the essential characteristics of existing concepts, it is of critical importance that what is implied by

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<sup>4</sup>Leonard Peikoff, Ph.D. is a professor of philosophy, and Miss Rand's chosen intellectual heir.

<sup>5</sup>Leonard Peikoff, *OBJECTIVISM: THE PHILOSOPHY OF AYN RAND* ("OPAR") (1991).

<sup>6</sup>Ayn Rand, *INTRODUCTION TO OBJECTIVIST EPISTEMOLOGY* ("IOE") 47 (1967).

each word be kept in its proper context. Definitions are properly employed, however, not to describe every detail of a certain concept, but rather only the essential elements of its nature.<sup>7</sup>

Many legal philosophers have dodged the issue of philosophy, believing instead in arbitrary laws, and sometimes even in leaders who follow arbitrary whims. Most of these philosophers, because of those beliefs, are left to conclude that laws are neither good nor bad; they just exist. This is not true, though; laws are man-made, and as man's creation they can be evaluated. What makes a law good or bad? This question begs several questions. What is the purpose of having a legal system? What is good, and what is bad? And to whom or to what?

Laws serve the purpose of allowing men to live in society as rational beings, as opposed to savage cannibals. Man must exercise its rational capabilities because reason is man's distinct means of survival, and man's life is the standard of value. Reason is capable to man because of man's ability to form concepts out of the data which his sensory perception collects. While all men have the capability of using reason, however, such use is volitional. Therefore, reason does not come automatically; each individual is responsible for the employment of this faculty for himself.

This essay will strictly apply reason and logic from only valid premises. The validity of every premise will have a foundation in irreducible primaries and axioms.<sup>8</sup> Once the conclusions are drawn and it is apparent that my conclusions are very different from those who have formed the criminal law, the piece will demonstrate the falsity of

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<sup>7</sup>*Id.* at 45.

<sup>8</sup>"Identify your starting points, including the concepts you take to be irreducible, and then establish that these *are* objective axioms. Put negatively: do not begin to philosophize in midstream. Do not begin with some derivative concept or issue, while ignoring its roots." OPAR, at 139.

the premises on which the present laws lie. No proposition will be offered with the catch that it be accepted solely on faith. Faith amounts to nothing more than a renunciation of reason and logic. Faith demands that, despite what you see in front of you with your own eyes, hear with your own ears, and witness with your own consciousness, you discard all such perceptions in favor of unquestioned beliefs in another's words. Faith will allow an otherwise rational person to accept contradictions in the universe. A true, valid, rational and moral philosophy accepts *no contradictions and no compromises*, and Objectivism is the only philosophy which meets these criteria. Objectivism begins with the fundamentals, and logically progresses via true and valid premises until the conclusion is drawn. All conclusions, whose premises are both true and valid, are also true and valid.

Essentially, Objectivism holds: see with your own eyes. Think rationally with your own mind. Understand with your own mind. Work on behalf of yourself, and accept the fruits of your work on behalf of yourself. Live your life for yourself; do not let others live your life for you, and do not live others' lives for them. In the words of Galt's credo in *Atlas Shrugged*: "I swear by my life and my love of it that I will never live for the sake of another man, nor ask another man to live for mine."<sup>9</sup>

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<sup>9</sup>Ayn Rand, *ATLAS SHRUGGED* ("AS") 680 (1957).

## I. Metaphysics: Existence Exists

### A. The Basic Axioms: Existence, Consciousness, and Identity

All philosophies must decide: where does one start? Objectivism is a logical philosophy, in which every true and valid conclusion has true and valid premises. All premises must be reduced to its fundamentals in order to establish their validity. Therefore, the study of Objectivism begins with the fundamentals, at the beginning. The fundamentals are axioms, which are identifications of irreducible primaries. Axioms cannot be proved, but rather they are the basis of all proofs. Though they cannot be proved, axioms defeat those who argue against their validity or existence by the very fact that any opponent must assume those same axioms in order to deny them.<sup>10</sup>

The first thing which a person notices about any person, thing or idea is that it *is*, or that it *exists*. Existence is the most irreducible axiom, and the first thing which can be said about existence is that it exists.<sup>11</sup> Existence includes all existents, or all in the universe that is. In order to ask any other questions, there must first be something to discuss. Anyone who denies that existence exists has relied on the axiom itself in his argument, for such a person could not exist to make any such argument.

That we are capable of understanding that existence exists and of perceiving existence demonstrates the second axiom: that consciousness exists.<sup>12</sup> Consciousness is

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<sup>10</sup>"When [a man] declares that an axiom is a matter of arbitrary choice and he doesn't choose to accept the axiom that he exists, he blanks out the fact that he has accepted it by uttering that sentence, that the only way to reject it is to shut one's mouth, expound no theories and die." AS, at 965.

<sup>11</sup>*Id.*; OPAR, at 4.

<sup>12</sup>*Id.* at 5. *See also* AS:

"Existence exists—and the act of grasping that statement implies two corollary axioms: that something exists which one perceives and that

the faculty of awareness—the faculty of perceiving that which exists. If an object exists, then it is capable of being perceived by a conscious being. However, an object must exist in order for consciousness to perceive it. Also, one must possess consciousness in order to perceive an existent. An object may exist without being perceived by a conscious being, but a conscious being requires consciousness of the existence of that object in order to perceive it.<sup>13</sup>

A third axiom is implicit in the first two: the law of identity. To *be* means to be *something*. Or, as Aristotle put it, A is A.<sup>14</sup> Every existent in the universe is an entity, and every entity has an identity, whether such identity has been defined or not. The identity of an existent is the sum of all of its characteristics. An existent is itself; and an existent without its characteristics is not itself. Rand formulated the interrelation of

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one exists possessing consciousness, consciousness being the faculty of perceiving that which exists.

If nothing exists, there can be no consciousness: a consciousness with nothing to be conscious of is a contradiction in terms: before it could identify itself as consciousness, it had to be conscious of something. If that which you claim to perceive does not exist, what you possess is not consciousness.

Whatever the degree of your knowledge, these two—existence and consciousness—are axioms you cannot escape, these two are the irreducible primaries implied in any action you undertake, in any part of your knowledge and in its sum, from the first ray of light you perceive at the start of your life to the widest erudition you might acquire at its end. Whether you know the shape of a pebble or the structure of a solar system, the axioms remain the same: that *it* exists and that you *know* it."

AS, at 942.

<sup>13</sup>"Inherent in saying '*There is something—of which I am aware*' is: '*There is something—of which I am aware.*'" OPAR, at 5.

<sup>14</sup>See Aristotle, METAPHYSICS, Book IV, Chapter 3: "For the same thing to hold good and not to hold good simultaneously of the same thing and in the same respect is impossible. . . . This ... is the firmest of all principles." Lines 19-24.



existence and identity in a revolutionary construction: existence is identity.<sup>15</sup> For a thing to exist, it must be something and have an identity as that something. A thing which is not itself is a nonexistent, and such a thing does not exist. Though existence is identity, there is a significant difference between existence and identity, which lies in their respective perspectives: existence is concerned with that "it *is*" (versus "it *is not*"), whereas identity is concerned with that "it is *this*" (as opposed to "it is *that*").<sup>16</sup> Without recognition of both an object's existence and identity, there can be no further investigation into the matter.

The three basic axioms, existence, identity and consciousness, are self-evident, and they can be easily demonstrated in a single statement: "There is something of which I am aware." *There is*—existence; *something*—identity; *of which I am aware*—consciousness.<sup>17</sup> These axioms are not subject to definition; one need only look and point to demonstrate their validity.<sup>18</sup> There are no contradictions. If an object exists, then it cannot be said that it does not exist. If A is A, then A cannot be something that is not A.

However, the self-evidency of these axioms does not automatically grant to conscious beings the ability to understand them. Primitive men, having no knowledge of philosophical identification, did not progress beyond implicit knowledge of axioms. A primitive man possessed the knowledge making him capable of understanding that he existed and that he had a conscious mind, as well as the ability to identify which kinds of existents he could eat. Yet such a man could not turn this implicit knowledge into a coherent philosophy.

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<sup>15</sup>AS, at 942.

<sup>16</sup>OPAR, at 7.

<sup>17</sup>*Id.*

<sup>18</sup>"Axioms are *perceptual self-evidencies*. There is nothing to be said in their behalf except: look at reality." *Id.* at 8.

Inability to form a coherent philosophy is not restricted solely to the primitives; philosophers of our age, having the knowledge handed down by Aristotle and other philosophers, still profess that there is no such thing as existence, consciousness, identity, or any combination of these three. Such men claim to defend truth by stating that truth can never be known. When it is made apparent that in their denial of the basic axioms they have in fact accepted and reinforced them, they still maintain that an object right in front of them does not exist, or that an object can exist as something other than as itself. When it is pointed out that such a statement is a blatant contradiction of reality, they claim that contradictions exist and that they have every right to contradict themselves if they wish. At this point, such a person, wishing only to be allowed to think whatever he wants and be correct at the same time, has renounced the power of reason in favor of a thoughtless void.

A corollary of the law of identity is the law of causality. When one is able to grasp the concept of identity as apart from entities, one can observe by sense perception that objects of a given identity act in a certain way. These actions which a given entity perform give the entity its identity. An existent of a given identity may only act in accordance with its nature; if it acts against its nature, then it is not that which it is, and since existence is identity, it cannot exist. A thing cannot act against its nature, since A is A. An entity of a given identity will act in accordance with its nature because its nature caused that act and required it to act in such a way.<sup>19</sup> Thus, since contradictions cannot exist, an entity of a given identity will always act in a certain way, affirming the law of causality. If a man jumps straight up in the air, he will always return to the earth, since by his nature man is heavier than air. The only way for man to jump without falling back to earth, assuming that there is no significant change in gravity, is if he could act against his

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<sup>19</sup>*Id.* at 14.

nature. Since contradictions cannot exist, and man is man, a man who jumps will always return to the earth.

Causality is a corollary of identity. It is not itself an axiom, since axioms are irreducible and causality can be reduced; nor is it a theorem, since theorems require proof, unlike corollaries. Rather, a corollary is "a self-evident implication of already established knowledge."<sup>20</sup> The law of causality is the first of many intermediate corollaries which eventually lead to most of the truths in the universe. The law of causality does not cause anything to happen; it merely recognizes that existents of a given identity act in accordance with their nature. On the other hand, nothing (or no one) caused causality, and no one or nothing caused nature. Causality is completely independent of man's consciousness, whether or not man chooses to recognize it.

Consciousness is a means of perceiving existence, not a power to create or alter existence. If a man closes his eyes to the world around him, the world does not cease to exist. Likewise, a man may choose to ignore the world around him and allow his consciousness to create an entirely new existence around him. Such a foreclosure on observance of existence can never lead to an alteration or removal of the existence around him. This is called the "primacy of existence," meaning that existence exists regardless of the consciousness which observes existence.<sup>21</sup> Those who hope to close their minds to reality and thus create an existence ascribe, knowingly or not, to the idea of "primacy of

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<sup>20</sup>*Id.* at 15. *See also* Peikoff, "The Philosophy of Objectivism" Lecture Series (1976), Lecture 2: "Many of the most important truths in philosophy are neither primary axioms nor theorems susceptible of discursive proof; rather, they are corollaries—most often, corollaries of axioms."

<sup>21</sup>OPAR, at 18.

consciousness," meaning that consciousness can create existence.<sup>22</sup> A man who believes in the primacy of consciousness may allow contradictions in his "reality"; after all, it is he who has the power to decide what is real and what is unreal. However, since consciousness is a means of perceiving existence, existence must exist before it can be perceived by a conscious being. Belief in the primacy of consciousness allows consciousness without existence. As elaborated earlier, consciousness requires consciousness of *something*; a consciousness conscious of nothing but itself is a contradiction.

Rand was the first philosopher to state that consciousness possesses identity in its fullest form: identity is what makes consciousness possible.<sup>23</sup> Since consciousness is one's faculty of perceiving existence, one's consciousness possesses the identity of that

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<sup>22</sup>See PWNI, at 24-25 (detailing the difference between the primacy of existence and the fallacy of the primacy of consciousness).

<sup>23</sup>IOE, at 82; OPAR, at 51.

This view is in stark contrast with the Kantian relation between consciousness and identity, which holds that consciousness should not have identity, and since it does consciousness is invalid. Peikoff further illustrates the Kantian position:

"We cannot escape the limitations of a human consciousness, the argument observes. We cannot escape our dependence on human senses, human concepts, human logic, the human brain. We cannot shed human identity. Therefore ... we cannot gain a knowledge of reality. In other words: our consciousness is something; it has specific means and forms of cognition; therefore, it is disqualified as a faculty of cognition. . . .

"What sort of consciousness *can* perceive reality, in the Kantian, anti-identity approach? The answer is: a consciousness which perceives no-how; a consciousness which is not of *this* kind as against that; a consciousness which is nothing in particular, i.e., which is nothing, i.e., which does not exist. This is the ideal of the Kantian argument and the standard it uses to measure cognitive validity ..."

OPAR, at 49-50.

one's faculty of perceiving existence. This necessarily means that consciousness is limited, since an infinite entity cannot possess identity. Therefore, the fact that man is not omniscient does not negate his consciousness, but rather it affirms consciousness.

B. The Metaphysically Given as Absolute

Objectivism holds that reality can be neither good nor bad; no value judgments can be made concerning existence. Rather, existence, which is metaphysically given and cannot be created nor destroyed by man's consciousness, just is. The metaphysically given, as it is immutable and not subservient to man's actions, is absolute.<sup>24</sup> The metaphysically given can be easily distinguished from that which is man-made as: the metaphysically given *must* exist, whereas the man-made *can* exist.

Man's ability to create is limited; man cannot create something out of nothing, or otherwise stated as existence from nonexistence. Rather, man's creativity derives from his ability to rearrange or integrate existents into an original order. While the ocean is metaphysically given, the boat which sails across it is man-made. Man's creation, while it may be new to nature, still must follow the rules of nature.<sup>25</sup> As Rand writes: "To rebel against the metaphysically given is to engage in a futile attempt to negate existence. To accept the man-made as beyond challenge is to engage in a successful attempt to negate one's own consciousness."<sup>26</sup> Indeed, the inability to properly differentiate that which *is*

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<sup>24</sup>*Id.* at 23-24.

<sup>25</sup>"The metaphysically given cannot be true or false, it simply *is*—and man determines the truth or falsehood of his judgments by whether they correspond to or contradict the facts of reality . . . . The metaphysically given is, was, will be, and had to be. Nothing made by man *had to be*: it was made by choice." PWNI, at 27.

<sup>26</sup>*Id.*

because of man's creation from the metaphysically given which *had to be* is a philosophical pitfall which traps the nondiscerning mind.

Man's creation is not necessarily good or bad; but it is subject to value judgments of good and bad. Therefore, as one area of man's creation, man's laws may be good or bad, depending on whether they obey the laws of nature. Laws are not required for man's survival, just as boats are not required for man's survival. However, just as boats allow man to cross the ocean and thereby enhance his progress as a civilized race, laws also may work to enhance man's civilization. Obviously, in cases such as Nazi Germany and Soviet Russia, laws do not always work to the benefit of man. The legal philosopher must ask: what makes a law good or bad? The answer to this question lies not in an arbitrary whim of a dictator or the consciousness of a witch doctor, but in the basic axioms and their respective corollaries.

#### C. Rejections of the Basic Axioms: From God to Kant

As discussed earlier, many philosophers refuse to accept some or all of the basic axioms of existence, consciousness, and identity. Some of these rejections amount to nothing more than "But I don't want to accept it!" Such a person will never accept reason either and should only be ignored. However, other arguments against the basic axioms are much more elaborate, though they are equally flawed.

The most prevalent of these arguments in Western civilization is that which holds that God (or any supreme being) is the creator of the universe and of all living things on Earth. Whether it be the Judaeo-Christian God, the Muslim Allah, or the polytheism of Hinduism, religions of this category assert the belief that their supreme being or beings created the Earth, the creatures on it, the sun and the moon, and that these supernatural gods dictate the future of the universe either by their determination of who is good and evil or by "destiny". In addition, each religion of this type has its own peculiarities which separate it from the others in form, yet not in substance.

The first of three principal similarities among all of these religions is that their supreme being created existence out of nonexistence. For example, Christianity's tale of the formation of the world, stated in the Book of Genesis, plainly reads: "In the beginning God created the heavens and the earth . . . . And God said 'Let there be light,' and there was light."<sup>27</sup> These very beliefs attempt to deny that existence exists. The second of these three similarities is that all of these religions require their followers to accept their propositions solely on faith. Whereas Objectivism demonstrates its basic axioms by pointing at things around us, such religions find their evidence of their beliefs in blind acceptance of the words of another. Such believers point at things around them, state that these things exist and that they are conscious of them, yet they insist on inquiring: "But where did the earth come from? Where did life come from? After all, someone must have created the universe." These questions implicitly contain the false premise that existence is created, and deny the primacy of existence in favor of primacy of consciousness. The universe was not created; it simply was. Existence exists. No consciousness can create existence, whether it be the consciousness of a man or of a supernatural being. Since existence cannot be created, a supernatural being which creates existence cannot exist in reality.

The third similarity between these religions is a derivation of the second. Since the existence of these supernatural beings which created and control the universe must be accepted on faith, believers in such religions confuse the metaphysically given and the man-made. These religions all have their roots in primitive man's attempt to understand the universe, before the evolution of the knowledge of the physical sciences. The prime example of the self-evidency of existence conquering the belief in supernatural beings is Galileo's thesis that, contrary to the teachings of the Roman Catholic Church, the Earth in fact is not the center of the universe, or even of the solar system. Once science began to

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<sup>27</sup>Genesis 1:1,3. HOLY BIBLE.

catch up with man's desires to understand the universe, the corresponding beliefs previously established by these religions could be dispelled. However, the Church instead coerced Galileo to renounce his scientific discoveries in favor of belief in a supernatural being. In other words, the Church tortured Galileo until he was willing to accept that A is not A, that consciousness has primacy over existence, and that existence is not metaphysically given but is a whim of God.

Peikoff invalidates God as such:

"Is God the creator of the universe? Not if existence has primacy over consciousness.

Is God the designer of the universe? Not if A is A. The alternative to 'design' is not 'chance.' It is causality.

Is God omnipotent? Nothing and no one can alter the metaphysically given.

Is God infinite? 'Infinite' does not mean large; it means larger than *any* specific quantity, i.e., of *no* specific quantity. An infinite quantity would be a quantity without identity. But A is A. Every entity, accordingly, is finite; it is limited in the number of its qualities and in their extent; this applies to the universe as well ....

Can God perform miracles? A 'miracle' does not mean merely the unusual .... A miracle is an action not possible to the entities involved by their nature; it would be a violation of identity."<sup>28</sup>

Peikoff concludes: "Every argument commonly offered for the notion of God leads to a contradiction of the axiomatic concepts of philosophy."<sup>29</sup> And, since contradictions cannot exist, any notion of such a God must be invalid.

Whatever was left in man's mind of the basic axioms that Christianity and other such religions could not destroy, it was this which the "Age of Enlightenment," led by Immanuel Kant, aimed its missiles.<sup>30</sup> Kant divided the universe into two distinct worlds: the "phenomenal" world, which consists of physical reality, sense perception, and

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<sup>28</sup>OPAR, at 31-32.

<sup>29</sup>*Id.*

<sup>30</sup>*See generally* Immanuel Kant, A CRITIQUE OF PURE REASON.



science; and the "noumenal" world, which is a higher reality than is knowable to man. Though it is the phenomenal world which man can observe, Kant teaches that physical reality is a delusion. According to Kant, man has a built-in power to label or categorize physical reality and that he perceives reality in the only way possible for it to be perceived. The reason why two people see the same rock in front of them as a rock is not because the rock *is* a rock, but because both share a *collective* delusion. The rock really is not there, but man cannot help but see the rock because of such a permanent collective delusion.

As physical reality is not actually real, the noumenal world, which is the "real" reality, is unknowable to man. Kant grants to man no power to perceive reality as it exists, but only the ability to perceive reality in a very limited sense. Thus, when a man sees a rock in front of him, his mind is deluding him. Rand describes this denial of man's perceptual ability as: "a negation, not only of man's consciousness, but of *any* consciousness, of consciousness as such."<sup>31</sup> She then analyzes his argument: "[M]an is *limited* to a consciousness of a specific nature, which perceives by specific means and no others, therefore, his consciousness is not valid; man is blind, because he has eyes—deaf, because he has ears—deluded, because he has a mind—and the things he perceives do not exist, *because* he perceives them."<sup>32</sup> Essentially, Kant's metaphysics denies consciousness as a means of perceiving reality, but instead asserts the role of consciousness as the creator of reality. And since reality is unknowable, one must accept his noumenal world as true based on faith, despite one's consciousness.

The materialists, of whom the champion is Marx, do not doubt existence as such, but rather they assert that consciousness is not a reliable faculty for perceiving that existence. They doubt the ability of man's consciousness to perceive existence, not

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<sup>31</sup>Ayn Rand, *For the New Intellectual*, in FOR THE NEW INTELLECTUAL 31 (1961).

<sup>32</sup>*Id.*

because existence is an illusion, but because to allot such a power to man is to make man's consciousness a supernatural being. Like Kant and believers in God, the materialists believe that consciousness is opposed to science; the materialists, however, opt for the other side of the false alternative. To the materialists, the workings of man's brain is nothing more than electromagnetic workings. B.F. Skinner ventures so far as to claim that language is nothing more than "verbal behavior."<sup>33</sup> Such a statement is just one of many attempts by the materialists to reduce every existent to weights and measures, just as a physical scientist would. Consciousness cannot be measured as such; therefore, it does not exist to the materialists.

The argument by the materialists against consciousness is easily invalidated. If the answers to all questions can be measured quantitatively, then how does one measure a question, or an idea? The realm of ideas and of consciousness cannot be measured as such, yet they certainly exist. Materialists wish to learn about philosophy by means of physics, chemistry and biology, while they deny every thought in their minds as nothing more than a biological occurrence. Ironically, in denying the existence of consciousness, they perpetrate the fallacy of the primacy of consciousness over existence. Whereas Kant assumed perception of existence to deny existence, materialists assume consciousness to deny the existence of consciousness.

The basic axioms, therefore, cannot be denied without affirming them.

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<sup>33</sup>See B.F. Skinner, BEYOND FREEDOM AND DIGNITY 122 (1971).

Skinner also writes: "Without the help of a verbal community all behavior would be unconscious. Consciousness is a social product." *Id.* at 192.

## II. Epistemology: Reason

Epistemology is the study of the nature and means of human knowledge. The Objectivist epistemology holds that certain definite processes must be performed if man is to acquire knowledge. One cannot just formulate an idea and call it knowledge simply because he wants it to be knowledge. Knowledge is the knowledge of reality, and since existence has primacy over consciousness, one can gain knowledge only from conforming to existence.<sup>34</sup>

Also, since epistemology deals with human knowledge, it must be tailored to the human consciousness. Although animals also have consciousness, their knowledge is automatic and strictly sensory in nature. On the other hand, human knowledge, though based on sense perception, is conceptual in nature. Furthermore, man's conceptual function is not automatic; he must choose to use his mind conceptually in order to succeed. Thus man must learn how to use his mind, by finding a means of cognition which is fitting to his mind.<sup>35</sup> Objectivism holds that a child who is newly born has a consciousness with a *tabula rasa*, or a clean slate. Man is not born carrying any knowledge into this life. All of the conceptual knowledge that one acquires is based on the evidence gathered by one's sensory perception.

### A. Sense Perception and Volition

The validity of the senses is an axiom, though it is not independent of the axiom of consciousness. Consciousness is the awareness of existence, but the senses are the primary means of that awareness; if consciousness is axiomatic, then so are its means are

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<sup>34</sup>OPAR, at 37.

<sup>35</sup>*Id.* at 38.

awareness.<sup>36</sup> The senses work automatically—external objects interact with and affect the sense organs, which then deliver its perceptions to the brain via the nervous system. There is no opportunity for the senses to alter or withhold the perceptual data it transmits, nor may the senses respond to something that is not there. The senses respond only to actual entities which act on those sensory organs in a given way.<sup>37</sup>

A sensory illusion demonstrates the reliability of the senses. For example, a coin dropped in a glass of water appears substantially larger than it did before it was placed in the water. Though the same coin appears one size outside the water and a different size inside the water, the senses did not fail to provide evidence of the size of the coin. However, since the senses are automatic functions, eyes cannot understand the difference in the contexts between the two percepts. The only thing the eyes can do for human knowledge is provide the brain with as much sensory data as possible. It is for the brain to understand that water reflects light rays differently than does air and that this is what causes the coin to appear larger when dropped in water. The senses will tell what they perceive, but they cannot tell what it is that is there. Once the senses offer the evidence before them, it is up to the mind to decide what is there. Sensory illusions, thus, are not the failure of the senses, but of the mind to discern the object before it.<sup>38</sup>

Different people, with different sense organs, may observe the same objects differently. For example, a color-blind man will not see a red object as an object that is red, but rather as one that is grey. This difference is not a result of different objects being viewed, but rather by different eyes performing the viewing. A man who sees an object

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<sup>36</sup>*Id.* at 39.

<sup>37</sup>*See* Bertrand Russell, THE PROBLEMS OF PHILOSOPHY (doubting the validity of the senses, and hence of all reality perceived by the senses).

<sup>38</sup>OPAR, at 40. For an example of dropping context when processing sensory data, *see* George Berkeley, "Three Dialogues Between Hylas and Philonous."

as red would say: "When that object acts upon my eyes, I perceive that object as red."

These differences in perception, Peikoff states, are inconsequential. Sensory perception offers the basis for concept formation, but once concepts are formed by the mind, a color-blind man can understand concepts like color the same as a man with normal vision.<sup>39</sup>

There are two stages of man's sensory awareness: those of sensation and perception. A sensation is defined simply as the sense organ's awareness of a certain stimulus. All conscious organisms experience sensations; however, simple organisms such as amoeba cannot organize those sensations, whereas humans are able to retain many different sensations and integrate them into perceptions. Rand defines a perception as "a group of sensations automatically retained and integrated by the brain of a living organism, which gives it the ability to be aware, not of single stimuli, but of entities, of things."<sup>40</sup> Eventually, humans experience perceptions directly, as they have already performed the integration of the sensations into those perceptions.<sup>41</sup>

Existence exists, but man is not required to be aware of that existence. His senses will respond to external stimuli, but it is not automatic that man should understand the nature of the universe around him. This is where volition enters man's consciousness; man must voluntarily choose to use his cognitive faculties in order to gather knowledge of reality. The primary choice presented to man, as Rand states it, is "to think or not to think."<sup>42</sup> Man must actively choose to focus his mind if he is ever to become fully aware

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<sup>39</sup>OPAR, at 42-43.

<sup>40</sup>Ayn Rand, *The Objectivist Ethics*, in THE VIRTUE OF SELFISHNESS ("VOS") 20 (1964).

<sup>41</sup>OPAR, at 53.

<sup>42</sup>"[M]an is a being of volitional consciousness. Reason does not work automatically; thinking is not a mechanical process; the connections of logic are not made by instinct.

of reality. Focus is not thinking; rather, it is the precursor to the process of thought.<sup>43</sup> Thus, it is improper to ask "Why did I focus?" There is no "why"; before I could consider any other ideas, I chose to focus.<sup>44</sup> Though the choice to focus may seem automatic, it is anything but that. One who does not choose to focus his mind, or chooses to focus it only partially, will never utilize the full capabilities of his mind, and eventually he will find it extremely difficult to focus.

In addition to the choices of focus or out-of-focus, there is a third option: evasion. Rand defines evasion in *Atlas Shrugged* as:

"the act of blanking out, the willful suspension of one's consciousness, the refusal to think—not blindness, but the refusal to see; not ignorance, but the refusal to know. It is the act of unfocusing your mind and inducing an inner fog to escape the responsibility of judgment—on the unstated premise that a thing will not exist if only you refuse to identify it, that A will not be A so long as you do not pronounce the verdict 'It is.'"<sup>45</sup>

Peikoff differentiates the evader from the out-of-focus man as such: one whose mind is out of focus *does not work to see*, to think, or to understand, whereas one who evades

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The function of your stomach, lungs or heart is automatic; the function of your mind is not. In any hour and issue of your life, you are free to think or to evade that effort. But you are not free to escape from your nature, from the fact that *reason* is your means of survival—so that for *you*, who are a human being, the question 'to be or not to be' is the question 'to think or not to think.'" AS, at 939.

<sup>43</sup>"The choice to activate the conceptual level of awareness must precede any ideas; until a person is conscious in the human sense, his mind cannot reach new conclusions or even apply previous ones to a current situation. There can be no intellectual factor which makes a man decide to become aware or which even partly explains such a decision: to grasp such a factor, he must already *be* aware." OPAR, at 59.

<sup>44</sup>*Id.* at 60.

<sup>45</sup>AS, at 944.

focus *works not to see*, not to think, or not to integrate his sensations and perceptions.<sup>46</sup> The process of evasion cannot amount to anything productive; it can only destroy man's mind.

Focus is the primary choice, but it is only the first in a series of choices that a volitional being makes. Man must still retain his focus if he wishes to proceed with an orderly thought process, and he must identify a purpose toward which to direct that orderly thought. However, whether the choices man makes regarding his thinking are right or wrong, the fact remains that his direction was chosen and not necessitated. Man's actions, consequently, are caused by his thoughts and decisions. Though causality applies to volitional beings, however, man's consciousness is not directed to think in a certain way similarly as nonvolitional beings or inanimate entities act in accordance with their identities. Man responds to circumstances by choice; there was a reason for his actions. However, he could have acted differently if he so desired. For instance, a hungry man chooses to eat and that choice results in a satiation of his appetite, yet he could have chosen not to eat. Thus his choice is the cause of the resulting action, and the fact that he was hungry is merely a sensory response to the stimuli in his stomach.

The principle of volition is a corollary of consciousness, for volition could not be possible except to a conscious being. It is an axiomatic concept as well; to ask for proof of volition necessarily requires acceptance of the existence of volition.<sup>47</sup> The primary opponent of the concept of volition is the school of determinism,<sup>48</sup> which claims that man

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<sup>46</sup>OPAR, at 61.

<sup>47</sup>"A validation of ideas is necessary and possible only because man's consciousness is volitional. This applies to any idea, including the advocacy of free will: to ask for its proof is to presuppose the reality of free will." *Id.* at 70.

<sup>48</sup>*See* Joel Feinberg, REASON AND RESPONSIBILITY 328 (1978):

"The dilemma of determinism can be stated thus:

has no choice in his actions but rather his destiny is predetermined. The dilemma of determinism does not allow for the existence of volition except to deny it in the second premise as a result of indeterminism. However, despite their attempt to evade human volition, their argument requires the acceptance of volition in order to deny it. If man was predetermined to think and act in a certain way, how did a proponent of volition come to believe in volition, or a determinist to believe in determinism? The very fact that a determinist chooses to believe in determinism over volition demonstrates that volition exists in a conscious man's mind.

#### B. Concepts

Though sensory perceptions are the bases for human knowledge, it is man's ability to conceptualize which enables him to understand the nature of the existence around him. An animal may recognize a tree when it sees it, but man can understand attributes of all trees. Animals react automatically to situations based on its instincts, whereas man is able to decide between various courses of action. This type of understanding is possible only because of the conceptual power of human consciousness.

Rand describes the evolution of the concept "existent" in the human mind as undergoing three distinct stages. The first is recognizing an *entity*; and the second is recognizing that a particular entity has an *identity*. The third stage, the formation of *units*, is distinctly human and occurs when various entities are differentiated according to certain attributes of its identity and then those similar attributes are integrated into a new category. A unit is defined as an existent regarded as a separate member of a group of

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1. If determinism is true, we can never do other than we do; hence, we are never responsible for what we do.
  2. If indeterminism is true, then some events—namely, all human actions—are random, hence not free; hence, we are never responsible for what we do.
  3. Either determinism is true or else indeterminism is true.
  4. Therefore, we are never responsible for what we do."



two or more similar members.<sup>49</sup> Rand explains that the formation of units is a human process, but not a subjective one.<sup>50</sup> The cognitive tool that makes the process of isolating units possible is *abstraction*, which is "a selective mental focus that takes out or separates a certain aspect of reality from all others (e.g., isolates a certain attribute from the entities possessing it, or a certain action from the entities performing it, etc.)."<sup>51</sup> The use of concepts serves to economize units, making it possible for man to acquire many more concepts.<sup>52</sup>

The human mind would not be able to retain such an enormous amount of abstractions, if not for the use of words. A word is a concrete symbol that represents a concept and joins the sum of several similar attributes into one concrete.<sup>53</sup> Since only concretes exist, any concept which exists must exist in some way as a concrete. Rand defines language as: "a code of visual-auditory symbols that serves the ... function of converting concepts into the mental equivalent of concretes."<sup>54</sup> Objectivism accepts

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<sup>49</sup>IOE, at 6.

<sup>50</sup>"[T]he concept 'unit' involves an act of consciousness (a selective focus, a certain way of regarding things), but that it is *not* an arbitrary creation of consciousness; it is a method of identification or classification according to the attributes which a consciousness observes in reality .... Thus the concept 'unit' is a bridge between metaphysics and epistemology: units do not exist *qua* units, what exists are things, but *units are things viewed by a consciousness in certain existing relationships*." *Id.* at 6-7.

<sup>51</sup>*Id.* at 10.

<sup>52</sup>Numbers are the prime example of such unit-economy. For example, once one learns the concept "ten," he has no need to express that concept in the form of ten separate units. OPAR, at 105-107.

<sup>53</sup>*Id.* at 79.

<sup>54</sup>IOE, at 10.

Aristotle's definition of a concept as that which refers to all the similar concretes in a certain class of entity.

Mathematics, the science of measurement, has a necessary relationship to the formation of concepts, as it establishes a quantitative relationship between two concretes: the existent being measured, and the existent which is the standard of measurement or unit.<sup>55</sup> It is by this method that humans can relate to enormous quantities such as a light-year.<sup>56</sup> Rand, in forming the connection between measurement and concept-formation, identified the key similarity between the two processes: the similar concretes differ only quantitatively, and a concept is formed when the quantitative measurements are dropped.<sup>57</sup> As Rand states it: "the relevant measurements must exist in *some* quantity, but may exist in *any* quantity."<sup>58</sup> Though shape and color cannot be measured in units as other attributes of measurement, they can be reduced to a kind of shape or a shade of

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<sup>55</sup>The unit being employed in measurement must be appropriate to the entity being measured; e.g., it would be incorrect to measure length in grams. IOE, at 7.

<sup>56</sup>"The former [the object being measured] may range across the entire spectrum of magnitude ...; the latter, the (primary) unit, must be within the range of human perception." OPAR, at 81.

"The purpose of measurement is to expand the range of man's consciousness, of his knowledge, ... beyond the direct power of his senses and the immediate concretes of any given moment. . . . The process of measurement is ... a process of making the universe knowable by bringing it within the range of man's consciousness, by establishing its relationship to man." IOE, at 8.

<sup>57</sup>"A concept is a mental integration of two or more units possessing the same distinguishing characteristic(s), with their particular measurements omitted." *Id.* at 13.

<sup>58</sup>*Id.* at 12.

color.<sup>59</sup> It is for these reasons that Peikoff describes mathematics as a window that reveals "man's method of extrapolating observed data to the total of the universe."<sup>60</sup>

Higher level concepts cannot be abstracted from direct perceptions; rather, they must be abstracted from other abstractions. Concepts of consciousness make up the bulk of these higher-level concepts, since they cannot be formed without building on previously abstracted existential concepts. Concepts of consciousness have two key attributes which serve as the Conceptual Common Denominator: the content of awareness, and the action of consciousness with respect to that content.<sup>61</sup> These concepts, like existential concepts, can be measured; the units for this type of measurement are content and intensity. In this context, content ultimately relates to something external, but intensity is measured comparatively, in terms such as scope, hierarchy, and degree.<sup>62</sup> This class of concepts can be measured as well, though such a task requires an appropriate standard of measurement.<sup>63</sup>

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<sup>59</sup>In measuring attributes such as color or shape, Rand employs a term called the "Conceptual Common Denominator" (CCD) and defines it as "The characteristic(s) reducible to a unit of measurement, by means of which man differentiates two or more existents from other existents possessing it." *Id.* at 15.

<sup>60</sup>OPAR, at 90.

<sup>61</sup>"To form concepts of consciousness, one must isolate the action from the content of a given state of consciousness, by a process of abstraction. Just as, extrospectively, man can abstract attributes from entities—so, introspectively, he can abstract the actions of his consciousness from its contents, and observe the *differences* among these various actions." IOE, at 30.

<sup>62</sup>*Id.* at 31-32.

<sup>63</sup>Rand disburses with opponents of measurement who ask "Can you measure love?" by exploiting the simplicity of the standards of measurement suggested by such opponents:

*Definition* is the final step of concept-formation, and it serves "to distinguish a concept from all other concepts and thus to keep its units differentiated from all other existents."<sup>64</sup> As a definition includes only the *essential* characteristics of a concept, man must determine which are the fundamental characteristics upon which a concept is based.<sup>65</sup> Definitions, like all other concepts, are contextual; they are determined within

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"Measurement is the identification of a relationship in numerical terms—and the complexity of the science of measurement indicates the complexity of the relationships which exist in the universe and which man has barely begun to investigate. They exist, even if the appropriate standards and methods of measurement are not always as easily apparent nor the degree of achievable precision as great as in the case of measuring the basic, perceptually given attributes of matter. If anything were actually 'immeasurable,' it would bear no relationship of any kind to the rest of the universe, it would not affect nor be affected by anything else in any manner whatsoever, it would enact no causes and bear no consequences—in short, it would not exist. . . .

"The motive of the anti-measurement attitude is obvious: it is the desire to preserve a sanctuary of the indeterminate for the benefit of the irrational—the desire, epistemologically, to escape from the responsibility of cognitive precision and wide-scale integration; and, metaphysically, the desire to escape from the absolution of existence, of facts, of reality and, above all, of *identity*."

*Id.* at 38-39.

<sup>64</sup>*Id.* at 40. "An objective definition, valid for all men, is one that designates the *essential* distinguishing characteristic(s) and genus of the existents subsumed under a given concept—according to all the relevant knowledge available at that stage of mankind's development." *Id.* at 46.

<sup>65</sup>"'Fundamental' here means the characteristic responsible for all the rest of the units' distinctive characteristics, or at least for a greater number of these than any other characteristic is." OPAR, at 99. *See also* IOE for Rand's definition: "Metaphysically, a fundamental characteristic is that distinctive characteristic which makes the greatest

the confines of available human knowledge: "man *cannot* know more than he has discovered—and he *may not* know less than the evidence indicates, if his concepts and definitions are to be objectively valid."<sup>66</sup> Definitions may change accordingly as man gathers new knowledge, but the concepts upon which those definitions are based remain stable; otherwise, man would not be able to relate new knowledge to that already gained.<sup>67</sup>

C. Objectivity

Concepts are not a phenomena solely of existence or of consciousness, but rather out of a special relationship between the two. The process of abstraction could not exist without consciousness, and since consciousness is a faculty of perceiving existence, man's conceptual faculty must adhere to reality.<sup>68</sup> Man, therefore, cannot project his concepts outward separate from reality, nor can he conceptualize automatically. It is this relationship between existence and consciousness that makes concepts *objective*.<sup>69</sup>

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number of others possible; epistemologically, it is the one that explains the greatest number of others." IOE, at 45.

<sup>66</sup>*Id.* at 46.

<sup>67</sup>OPAR, at 104.

<sup>68</sup>*Id.* at 111.

<sup>69</sup>"[Concepts] represent reality as processed by a volitional human consciousness." *Id.* at 112. Peikoff continues with this line of reasoning in explaining the status of definitions:

"Since definitions *are* condensations of observed data, however, they are determined by such data; they are not arbitrary; they flow from the facts of the case. In this respect, ... definitions are "empirical" statements, and reality *is* the standard of what is essential.

Definitions are statements of factual data—as condensed by a human consciousness in accordance with the needs of human method of cognition. Like concepts, therefore, essences are products of a volitional

Peikoff describes the role of objectivity in human knowledge: "The objective approach to concepts leads to the view that, beyond the perceptual level, *knowledge is the grasp of an object through an active, reality-based process chosen by the subject* .... Human knowledge, therefore, is the *grasp*, not the creation, of an object."<sup>70</sup> This explanation manifests the relationship between existence, a volitional consciousness and concept-formation in acquiring human knowledge—what is needed, however, is the method of performing this process. That method is logic, which Rand defines as "the art of *noncontradictory identification*."<sup>71</sup> As reality permits no contradictions, neither can the method of grasping reality. All acquired knowledge must be integrated *within the proper context* without contradiction—if a contradiction exists, "check your premises. You will find that one of them is wrong."<sup>72</sup> Logic is the method which allows *proof*,

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relationship between existence and consciousness; they too (properly formed) are *objective*."

*Id.* at 113.

<sup>70</sup>*Id.* at 118. Peikoff further illustrates the relationship of objective concepts to reality:

"To be 'objective' in one's conceptual activities is volitionally to adhere to reality by following certain rules of method, a method based on facts *and* appropriate to man's form of cognition." *Id.* at 119.

<sup>71</sup>AS, at 943. See also OPAR, at 118-19 (Peikoff's colorization of the logical process):

"To grasp [an object] ... is to *identify*. . . . The ability to define that identity in explicit terms is ... the task of conceptual cognition, expressed in every question the mind can ask. Every type of question reduces to 'What is it?' For example, 'Why did a certain event occur?' means: 'What is the nature of the cause?' 'How?' means 'What is the process?' . . . . Consciousness is a faculty of discovering identity. . . .

The law of identity acts as a bridge linking existence and consciousness, or metaphysics and epistemology. The law defines the basic rule of method required for a conceptual consciousness to achieve its task. In this regard, the law tells man: identification must be *noncontradictory*."

<sup>72</sup>AS, at 315.

which is the process of reducing a proposition to irreducible axioms and sensory evidence.<sup>73</sup>

Knowledge is hierarchical: this means that every higher-level concept or proposition which man wishes to integrate into his base of knowledge must be reduced to irreducible primaries—that is, axioms or sensory data.<sup>74</sup> All propositions which are valid can be ultimately reduced to an axiom or a percept, as man's only direct contact with reality is through his senses. Only by retracing the proper hierarchy of premises may propositions be proved.<sup>75</sup> Since proof requires this reduction, any valid philosophy must begin precisely with the basic axioms and build logically upon them.

On the epistemological level, there are in particular two distinct schools of philosophy which reject the objective view of knowledge: intrinsicism and subjectivism.<sup>76</sup> These two schools derive knowledge from exactly opposite sources; which makes it ironic that they commit the same mistake. Intrinsicism holds that concepts are intrinsic in reality and learned automatically by merely exposing oneself to an entity, thus denying the volitional consciousness of man's conceptual faculty. In this way knowledge is "revealed" to man. On the other hand, subjectivism denies the ability

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<sup>73</sup>OPAR, at 120.

<sup>74</sup>"A hierarchy of knowledge means a body of concepts and conclusions ranked in order of logical dependence, one upon another, according to each item's distance from the base of the structure. The base is the perceptual data with which cognition begins." *Id.* at 131.

<sup>75</sup>*Id.* at 138.

<sup>76</sup>*See* AS, at 961-62; IOE, at 53-54; OPAR, at 142-151; Ayn Rand, *Philosophical Detection*, in PWNI 12-22; *see also* G.W.F. Hegel, PHILOSOPHY OF RIGHT; David Hume, AN INQUIRY CONCERNING HUMAN UNDERSTANDING; Immanuel Kant, A CRITIQUE OF PURE REASON; Bertrand Russell, THE PROBLEMS OF PHILOSOPHY, Chapter I.

to know reality altogether; rather than grasp reality, each man creates his own reality through projecting his conceptual faculty outward. Both of these theories accept the false premise that consciousness has primacy over existence. Intrinsicists, though they intend to uphold reality over the human consciousness, succumb to this fallacy by denying the volitional nature of the formation of concepts—they want fact without choice, and they project their unrealistic wish outward. Subjectivists, however, want choice without fact. This is especially true of pragmatists, the champions of subjectivism. They hold that the conceptual faculty is completely unrelated to external reality, and as a result only arbitrary desires of a consciousness (whether it is an individual or "collective" consciousness) are possible. Intrinsicists hold that concepts exist only externally; subjectivists hold that they are purely a product of consciousness. Neither understand that concepts are objective, the bridge between existence and human consciousness. And it is only with this understanding that man can acquire knowledge upon a contextual, hierarchical, and logical foundation.

D. Reason

Reason is the faculty of organizing perceptual data into concepts by using the method of logic.<sup>77</sup> Reason does not require proof, not because it is axiomatic, but because it serves as the faculty of proof. Without using reason, nothing can be proved. Since it uses logic, reason is based in existence; as logic is the art of noncontradictory

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<sup>77</sup>"[R]eason is the faculty that enables man to discover the nature of existents—by virtue of its power to condense sensory information in accordance with the requirements of an objective mode of cognition. Or: reason is the faculty that organizes perceptual units in conceptual terms by following the principles of logic. This formulation highlights the three elements essential to the faculty: its data, percepts; its form, concepts; its method, logic." OPAR, at 152.



identification, reason organizes the noncontradictory concepts which are formed objectively from valid sensory data. Its relationship to existence is its own validation.<sup>78</sup>

Emotions are not a valid source of knowledge because they have no direct link to man's ability to perceive existence. An emotion is a response to something which one perceives; but in order for the emotion to arise, one must first have some sense of the thing's identity, and second evaluate it.<sup>79</sup> This process, though it may seem automatic because man is capable of processing data rapidly, entails thought, logic, and reason. Thus, when it appears that one has a conflict between his thoughts and his feelings, what is actually occurring is a contradiction being maintained by differing ideas in one's head.<sup>80</sup> Feelings are a result of man's thought process, and if man's thoughts are consistently organized without contradiction, then his feelings will be noncontradictory as well. If man permits his emotions to control his thoughts, he will have no ability to reduce his knowledge to reality.<sup>81</sup>

Arbitrary statements are neither true nor false, but as they are completely devoid of evidence, they are necessarily invalid.<sup>82</sup> The supporter of the arbitrary will defend its truth or validity with the dare: "Prove that it *isn't* true." Such a challenge is ridiculous, and it is used equally by believers in God, human sacrifice, and space aliens hiding in television sets as the telepathic image of a household pet. Proof is a positive process: you prove by reduction to existence, not to nonexistence. The arbitrary is worse than the false, because at least the false may be recognized in relation to the true by one who uses

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<sup>78</sup>*Id.* at 153.

<sup>79</sup>*Id.* at 154.

<sup>80</sup>*Id.* at 157-58.

<sup>81</sup>*Id.* at 159.

<sup>82</sup>*Id.* at 163-65.

his cognitive faculty. Belief in the arbitrary requires a man to renounce his cognitive faculty altogether, to ignore the reliability of his sensory data, and to worship a zero.<sup>83</sup>

Man's consciousness is limited, not omniscient. Mystics use this fact as a base for their belief in an omniscient power; skeptics use it to profess that none of our acquired knowledge is trustworthy. Objectivism, however, takes man's limits as just that—man's consciousness has identity which is limited but capable of volition, concept-formation, and reason. As a faculty which uses logic, reason is man's power of acquiring knowledge contextually and hierarchically. Once a piece of knowledge has been logically proven, "then it is valid and it is absolute—*contextually*."<sup>84</sup> The claim that absolutism and context are in opposition is a product of a misdefinition. "Absolute" is taken to mean an isolated fact with no relationship, when it should be defined as a valid conclusion drawn from valid premises in the proper context.<sup>85</sup> At the point when "the conclusion ceases to be a hypothesis and becomes knowledge ... a conclusion is *certain*"<sup>86</sup>—that is, its premises can be reduced to the evidence of the senses. Certainty is contextual also, for it depends wholly on the context of the evidence supporting that status.

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<sup>83</sup>*Id.* at 163-171.

<sup>84</sup>*Id.* at 174.

<sup>85</sup>"The modern definition of 'absolute' represents the rejection of a rational metaphysics and epistemology. It is the inversion of a critical truth: *relationships are not the enemy of absolutism; they are what makes it possible.*" *Id.* at 175.

<sup>86</sup>*Id.* at 178. "A conclusion is 'certain' when the evidence in its favor is conclusive; i.e., when it has been logically validated. . . . There are, therefore, no longer any grounds for doubt." *Id.* at 179.

As stated earlier, mystics and skeptics stand apart as the worst renunciators of reason.<sup>87</sup> Mysticism, Peikoff explains, is an implementation of intrinsicism, since it holds that knowledge can exist independently of reason, concepts, or sense perception. Mystics uphold faith in a supreme being as the source of all knowledge, as one is expected to "just know" something. Skepticism, on the other hand, is the result of a subjective view of concepts. Since reality is unknowable, nobody can be certain of anything. Both viewpoints can be reduced, not to reality, but to a feeling: "I want"; however, neither the mystic nor the skeptic wants to completely renounce reason, but rather just to be relieved of it when it is a burden on the mind.<sup>88</sup>

Reason, by use of logic, enables man to use his conceptual faculty to gain knowledge of the world around him. However, reason is merely a tool of human cognition; it will not tell a man what to do with the knowledge he has acquired. Reason itself will not tell a man how to live, how to decide what is good or bad, or how to feel; that is the role of ethics in philosophy. But reason is the means between reality and the

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<sup>87</sup>*Id.* at 182-86. See also Leonard Peikoff, *The Analytic-Synthetic Dichotomy*, in IOE 88 (describing the false dichotomy between logical truth and factual truth—those who deny logical truth ultimately deny man's conceptual faculty, and those denying factual truth ultimately deny human consciousness altogether).

<sup>88</sup> "No one seeks to reject reason completely. What many men do seek, however, is not to be ... 'strait-jacketed' by reason all the time, in every issue, twenty-four hours a day. It is to these men that mystics and skeptics alike offer a sanction and a loophole. 'We all have the right,' they say in effect, 'to our own approach, our own subjective beliefs or doubts, as an occasional supplement to reason or breather from it. The rest of the time we will be perfectly rational.' This means: 'We want a deal, a middle of the road. We want to take *some* feelings as tools of cognition. We want a compromise between reason and emotionalism.'

In reason, there can be no such compromise."

OPAR, at 184.

answers to these questions. Only by adopting a rational code of ethics can man survive according to its nature.

### III. Ethics: Egoism

#### A. Reason as Man's Basic Means of Survival

Though entities in this universe can be classified in so many ways, there is one fundamental division which cannot be blurred: that between animate and inanimate. Entities which are classified as animate possess one attribute in common—*life*. Animate entities may lose that attribute if they die, but they will not return to life. The life function is not random at all, rather it is consistently directed at a specific goal, which is maintaining life.<sup>89</sup> Every living organism has its own life-supporting actions, no matter how advanced the organism is. Man survives not with brute strength or instincts, for man has a volitional consciousness capable of concept-formation and knowledge. Instead man survives by using reason.

As a conceptual being, however, man's actions are not automatic. He does not find his food or clothe himself by merely making contact with his surroundings. He must learn what foods will sustain his nutrition, how to clothe himself, how to construct shelter.<sup>90</sup> Man must gain this knowledge by using his reason as his primary tool. Man is

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<sup>89</sup>OPAR, at 189-90. *See also* AS:

"There is only one fundamental alternative in the universe: existence or non-existence—and it pertains to a single class of entities: to living organisms. The existence of inanimate matter is unconditional, the existence of life is not: it depends on a specific course of action. Matter is indestructible, it changes its forms, but it cannot cease to exist. It is only a living organism that faces a constant alternative: the issue of life or death. Life is a process of self-sustaining and self-generated action. If an organism fails in that action, it dies; its chemical elements remain, but its life goes out of existence."

AS, at 939.

<sup>90</sup>"[T]he automatic values provided by the sensory-perceptual mechanism of its consciousness are sufficient to guide an animal, but are not sufficient for man. Man's

not given any other tools, such as spears to hunt animals for food or blades with which to skin animals for clothing. Rather, man uses reason to acquire knowledge concerning his needs, and through this application to the facts of the situation, he uses his creative mind to invent new tools to achieving that goal. This practice has been man's trademark throughout history, whether it refers to the Industrial Revolution or to the first man to put flint to stone. Man could not survive otherwise.<sup>91</sup>

Just as every entity has its own identity, and as every man has his own consciousness, so does every man apply his reason on his own. There is no such thing as a "collective consciousness"—consciousness is an attribute of the individual, and it cannot be shared or merged in any way. No man may think for any other, just as he may not eat or sleep for another.<sup>92</sup> Men may share their knowledge, but only because each individual has the capability of acquiring for himself the knowledge already formed by another.<sup>93</sup> Man's ability to share knowledge enables him to progress by building upon the base of knowledge handed down by others. But that step past the knowledge acquired from others, had to come from the thought of one mind. When many work together on one project, the project is the product of many individual thoughts, produced by individual thinkers.

Since every man possesses his own volitional consciousness, he must form concepts on his own and apply reason on his own. Each man is responsible for the

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actions and survival require the guidance of *conceptual* values derived from *conceptual* knowledge. But *conceptual* knowledge cannot be acquired *automatically*." VOS, at 21.

<sup>91</sup>See Ayn Rand, THE FOUNTAINHEAD 679-80 (1943).

<sup>92</sup>*Id.* at 680.

<sup>93</sup>"Every concept, like every conclusion, has to be formed by someone, then understood by others through a rational process, if it is to be of cognitive use to them." OPAR, at 199.

thoughts that he produces. Each man is the ruler of his own mind. The ultimate power each man has, as an organism with a volitional consciousness, is the power of choice. Reason is man's guide to choosing which thoughts and actions will serve his goal of sustaining his life. Each man must then answer for himself: what should I do to sustain my life?

B. Value

The field of ethics must answer three basic questions: "For what end should a man live? By what fundamental principle should he act in order to achieve this end? Who should profit from his actions?"<sup>94</sup> The Objectivist ethics answers these questions, not by following arbitrary beliefs detached from reality, but rather from logically following the valid premises established earlier in metaphysics and epistemology.<sup>95</sup> Man has a volitional consciousness and is capable of conceptualization, and he must use his reason in order to survive *qua* man. But the question which remains is: how should man use his reason?

The crux of any discussion of ethics is the term "value," which Rand defines as "that which one acts to gain and/or keep."<sup>96</sup> Value is possible only to a living organism which possesses volitional consciousness and can act in self-preservation.<sup>97</sup> Since the fundamental alternative to any living organism is life or death, existence or nonexistence,

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<sup>94</sup>*Id.* at 206.

<sup>95</sup>For a fuller discussion of the Objectivist ethics, *see* VOS, at 13-39.

<sup>96</sup>*Id.* at 16.

<sup>97</sup>"The concept 'value' is not a primary; it presupposes an answer to the question: of value to *whom* and for *what*? It presupposes an entity capable of acting to achieve a goal in the face of an alternative. Where no alternative exists, no goals and no values are possible."

*Id.* at 16. *See also* AS, at 939.

the ultimate value to any living entity is its life.<sup>98</sup> Every other value man holds, if he is to adopt a consistent and rational code of values, serves to sustain his life, for his life is the standard of value. This code of chosen values is what Rand calls morality,<sup>99</sup> a term which Peikoff defines as "the science of human self-preservation."<sup>100</sup>

Man's code of morality, if it is to preserve his life, must be maintained consistently throughout his life.<sup>101</sup> Man, the only creature capable of conceptualization, must use his mental ability to identify that which will sustain his life, or else he will suffer the consequences.<sup>102</sup> For a code of morality to satisfy man's needs, it must uphold man's life as its standard of value, be based on reason (as his distinct means of survival),

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<sup>98</sup>VOS, at 17; OPAR, at 212.

<sup>99</sup>"Man has to be man—by choice; he has to hold his life as a value—by choice; he has to learn to sustain it—by choice; he has to discover the values it requires and practice his virtues—by choice." AS, at 940.

<sup>100</sup>OPAR, at 214.

<sup>101</sup>*Id.* at 214-19.

<sup>102</sup>*Id.* at 214-15. *See also* VOS:

"Man's life is a continuous whole: for good or evil, every day, year and decade of his life holds the sum of all the days behind him. He can alter his choices, he is free to change the direction of his course, he is even free, in many cases, to atone for the consequences of his past—but he is not free to escape them, nor to live his life with impunity on the range of the moment, like an animal, a playboy or a thug. If he is to succeed at the task of survival, if his actions are not to be aimed at his own destruction, man has to choose his course, his goals, his values in the context and terms of a lifetime."

VOS, at 26.



and therefore ultimately on man's existence *qua* man.<sup>103</sup> Thus, "if one chooses to live, one must hold reason as a *value*."<sup>104</sup>

As "value" is that which one acts to gain and/or keep, "virtue" is "the action by which one gains and keeps it."<sup>105</sup> Therefore, since reason is the value which makes every other human value possible, the virtue which is the application of the value of reason is *rationality*,<sup>106</sup> which Rand defines as "the recognition and acceptance of reason as one's only source of knowledge, one's only judge of values and one's only guide to action."<sup>107</sup> Just as there is no "timeout" period for man to renounce reason, likewise rationality is a practice which must be consistently maintained through the entire course of man's life by relentlessly pursuing new knowledge and integrating it without contradiction. To relax from rationality, or to evade it, for even a short time is to act against self-preservation and eventually leads toward only one end: death.

The answer to the first question posed in this section—for what end should a man live?—is: life. The answer to the second—by what fundamental principle should he act in order to achieve this end?—is rationality. The answer to the third—who should profit from his action?—follows logically from the first two answers. If each man must choose his course of action and his values in order to maintain his life, and rationality, an attribute of the individual, is his primary virtue, then there can be only one proper beneficiary of a

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<sup>103</sup>"'Man's survival *qua* man' means the terms, methods, conditions and goals required for the survival of a rational being through the whole of his lifespan—in all those aspects of existence which are open to his choice." *Id.*

<sup>104</sup>OPAR, at 220.

<sup>105</sup>AS, at 939.

<sup>106</sup>OPAR, at 221.

<sup>107</sup>VOS, at 28.

man's values and actions: *himself*.<sup>108</sup> Consequently, Objectivism upholds *egoism*, or the pursuit of rational self-interest. Peikoff validates this conclusion by demonstrating that egoism is "a *corollary* of man's life as the moral standard."<sup>109</sup>

"Egoism" is a term which has undergone many perversions in the course of the history of philosophy. The primary example of this corruption is Friedrich Nietzsche's irrationalist denial of morality in *Beyond Good and Evil*,<sup>110</sup> in which the author invents a "superman" who was born to rule and, by determination of his birth as such, is permitted to enslave others who are subject to his every whim.<sup>111</sup> Objectivism flatly rejects this philosophy as well as its categorization as an advocate of egoism, since egoism is the pursuit of *rational* self-interest and not the pursuit of whim.

In the pursuit of rational self-interest, there is no place for sacrifice.<sup>112</sup> Sacrifice is incompatible with a moral code of values, for morality requires that man hold his own life as the standard of value and sacrifice requires man to forfeit his values for something less or even for nothing at all.<sup>113</sup> Regardless of whether it is demanded that one sacrifice for

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<sup>108</sup>OPAR, at 230; VOS, at 27-28.

<sup>109</sup>"Only the alternative of life vs. death ... creates the context for value-oriented action .... and only self-preservation ... can be an ultimate goal .... The alternative with which reality confronts a living organism is its *own* life or death. The goal is *self*-preservation."

OPAR, at 230-31.

<sup>110</sup>See generally Friedrich Nietzsche, BEYOND GOOD AND EVIL.

<sup>111</sup>A whim is "a desire experienced by a person who does not know and does not care to discover its cause." VOS, at 14.

<sup>112</sup>A sacrifice is "the surrender of a greater value for the sake of a lesser one or of a nonvalue." Ayn Rand, *The Ethics of Emergencies*, in VOS 50.

<sup>113</sup>"'Sacrifice' does not mean the rejection of the worthless, but of the precious. 'Sacrifice' does not mean the rejection of the evil for the good, but of the good for the sake of the

the good of others or for others to sacrifice for the good of one, a morality based on sacrifice necessarily demands a victim—and the sacrificial lamb which this morality demands is man's mind.<sup>114</sup> Since man's reason is his basic means of survival, as an attribute of the individual, if he sacrifices it for any purpose he disengages his own consciousness from reality and transforms his life into a crapshoot. This stands true not only for the genius or the idiot, but for *every* man. Every man must be selfish with his mind as well as with his body. Every man is an end in himself.

In order to determine an object's value, one must utilize the process of evaluation. Values are similar to concepts in that the good of an object to man is objective—that is, the evaluative process requires an existent and the use of man's consciousness. Value is not inherent in an object, nor does man derive value from a nonexistent. Thus, just as with concepts, there are intrinsic, subjective and objective theories of values.<sup>115</sup> The severance of values from man's consciousness by the intrinsicists is the source of the concept "duty" as a reason for following a code of morality, whether that duty is imposed by God or by some other supernatural force like Kant's noumenal world. On the other hand, the

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evil. 'Sacrifice' is the surrender of that which you value in favor of that which you don't." AS, at 953.

<sup>114</sup>"To tell such a man to surrender his values is to tell him: surrender your judgment, contradict your knowledge, sacrifice your *mind*. But this is something a man dare not sacrifice." OPAR, at 232.

<sup>115</sup>"The intrinsic theory holds that the good resides in some sort of reality, independent of man's consciousness; the subjectivist theory holds that the good resides in man's consciousness, independent of reality.

.... The objective theory holds that *the good is an aspect of reality in relation to man*—and that it must be discovered, not invented, by man." Ayn Rand, *What is Capitalism?*, in CAPITALISM: THE UNKNOWN IDEAL ("CUI") 22 (1967).

subjectivists' evasion from finding value as part of an object leads to arbitrary values as well as arbitrary concept-theft, and ultimately to the implementation of physical force. This statement applies equally to Nietzscheans, hedonists, and Marxists. As value is possible only to a living organism presented with the alternative of life or death, and as value is value of something, value is objective.

C. Virtue

Rationality is the primary virtue, meaning that all other virtues are the descendants of rationality.<sup>116</sup> There are six "derivative virtues" of rationality: independence, integrity, honesty, justice, productiveness, and pride.<sup>117</sup> Just as rationality requires man to grasp reality, as opposed to a nonreality which one creates with his consciousness out of stolen concepts, so also do the six derivative virtues necessitate a recognition of the primacy of existence<sup>118</sup>.

The virtue of independence is "one's acceptance of the responsibility of forming one's own judgments and of living by the work of one's own mind."<sup>119</sup> The independent man has a self-sufficient mind and body. This does not mean that he retreats into isolation from others. Rather, it means that he is the creator and producer of his own sustenance and of his own morality. The antithesis of the independent man is the parasite, or the "second-hander,"<sup>120</sup> who chooses to live not by his own means of survival but by

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<sup>116</sup>VOS, at 27-28.

<sup>117</sup>OPAR, at 251; VOS, at 27-30.

<sup>118</sup>*Id.*

<sup>119</sup>*Id.* at 28.

<sup>120</sup>"Second-hander" is a term used by Rand to describe those who pass off the work of others as their own. This passing off is the only way a man can live when he does not create or produce anything on his own.

the work of others. Parasites can be subcategorized into two groups: the moochers and the looters. Moochers beg for their sustenance by giving sob stories in hope of receiving unearned benefit, while looters resort to the criminal and take by force. The independent man uses his own reason to draw his own conclusions and then acts on them. There is no other way for man to survive *qua* man.

Integrity is "loyalty in action to one's convictions and values."<sup>121</sup> As a corollary of rationality, integrity requires man to uphold his own values rather than sacrifice them for anything less. Once a rational man has drawn a valid conclusion, he must act accordingly with that conclusion. He must not compromise his values, under any circumstances: "To be evil 'only sometimes' *is* to be evil. To be good is to be good *all* of the time, i.e., as a matter of consistent unbreached principle."<sup>122</sup> If one makes a single sacrifice, he has totally breached his integrity; therefore, just as reason requires total commitment to reality, integrity requires total commitment to reason.

Honesty is the "refusal to fake reality."<sup>123</sup> This means that one must never evade reality, regardless of the circumstances. One must always incorporate all available facts when drawing conclusions. To change the facts in one's mind is possible, but such a change will cause no change in the facts of reality. To lie to oneself, even once, is to become a liar. A lie does not cause a change in reality: instead it is the product of "*a denial of reason and reality*."<sup>124</sup> Since honesty means total honesty, it is an absolute.<sup>125</sup>

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<sup>121</sup>OPAR, at 259.

<sup>122</sup>*Id.* at 266.

<sup>123</sup>*Id.* at 267.

<sup>124</sup>*Id.* at 273. "*Just as, in epistemology, irrational mental processes detach a conclusion from the realm of cognition; so, in ethics, irrational action detaches a goal from the realm of evaluation.*" *Id.*

<sup>125</sup>*Id.* at 274-76.

Justice is "the virtue of judging men's character and conduct objectively and of acting accordingly, granting to each man that which he deserves."<sup>126</sup> The preachers of sacrifice wish not only to have victims, but also the sanction of their victims. When others act against a morality proper to man, it is the virtue of justice which requires a rational man to pronounce his moral judgment on them. The moral man who upholds his rationality must do so all of the time, because "so long as men have to make choices, there is no escape from moral values; so long as moral values are at stake, no moral neutrality is possible. To abstain from condemning a torturer, is to become an accessory to the torture and murder of his victims."<sup>127</sup> Ayn Rand disposes of the Christian credo "Do not judge, that ye be judged also," and replaces it with "*Judge, and be prepared to be judged.*"<sup>128</sup>

Productiveness is "the recognition of the fact that productive work is the process by which man's mind sustains his life, the process that sets man free of the necessity to adjust himself to his background, as all animals do, and gives him power to adjust his background to himself."<sup>129</sup> This virtue enables man to create his own existential values according to his own rationality. Productiveness is the virtue which drives man forward to create and produce to the extent of his abilities-and anything less would be a compromise of his rationality.

Pride is the recognition of the fact "that as man must produce the physical values he needs to sustain his life, so he must acquire the values of character that make his life worth sustaining-that as man is a being of self-made wealth, so he is a being of self-made

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<sup>126</sup>*Id.* at 276.

<sup>127</sup>AS, at 946.

<sup>128</sup>VOS, at 83.

<sup>129</sup>*Id.* at 29.

soul."<sup>130</sup> As productiveness is the search for perfection in man's existential value, pride is the ambition for moral perfection. Pride does not permit the half-way, the almost, or the moral compromise. Perfection cannot accept compromise, and therefore any man who does accept compromise is sacrificing his pride. This is a sacrifice which no rational man makes.

D. Moral Versus Practical: False Dichotomy

A morality which is properly suited to the preservation of man's life must be practiced.<sup>131</sup> If self-preservation is man's goal in life, if morality is the science of human self-preservation, and if a rational code of values is the only morality which will further the interests of self-preservation, then it should be obvious that a rational morality *must* be practiced in order to survive *qua* man. Objectivism holds not only that morality must be practiced, but that only a morality of selfishness is capable of being practiced.<sup>132</sup>

The dichotomy between the moral and the practical has been sustained since the dawn of philosophy—based on premises which are either distorted, arbitrary, or false. Ultimately, the cause of this dichotomy is the divorce created between mind and body, the

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<sup>130</sup>AS, at 946.

<sup>131</sup>"[The concept of 'practical'] pertains to the adapting of means to ends in any field. . . . The 'practical' is that which reaches or fosters a desired result. Since the concept denotes a type of positive evaluation, it presupposes a standard of value. The standard is set by the result being pursued." OPAR, at 326.

<sup>132</sup>"In the Objectivist approach, virtue is (by definition) the means to value. The notion of a dichotomy between virtue and efficacy is, therefore, senseless. To pursue rational goals by rational means is the only way there is to deal successfully with reality and attain one's goals. To be moral in the Objectivist definition *is* to be practical, and it is the only way to be practical." *Id.* at 327.

mind being analogous to morality and the body to practice. This dichotomy requires man to accept one of two alternatives: either to worship the mind by desecrating the body, or worship the body by desecrating the mind. The "moralist" or "idealist," as assumed by this dichotomy, believes that one must ignore his body and all worldly interests in order to attain spiritual purity. Not surprisingly, this is the morality which most intrinsicists uphold, since according to them everything in this world comes automatically while man's spirit will one day rise out of the body. On the other hand, the "realists" (a group comprising mostly of pragmatists) "dispense with ideals, absolutes, moral principles"<sup>133</sup> and instead pursue a life devoid of a system of morality.<sup>134</sup>

The ability to divorce mind from body is just as arbitrary as the idea of collective consciousness; there is no factual basis for the belief in this dichotomy, but nevertheless its proponents continue to maintain it. The evidence which is offered to support this conclusion is twofold: first, the fact that man's consciousness is limited and thus he cannot know everything,<sup>135</sup> and second, his life is not eternal and thus cannot be treated as a standard of value.<sup>136</sup> Man's mind cannot continue to live on when the body dies, and nor can his body live if he renounces his mind. His brain will continue its automatic functions such as breathing, but once his mind will not let his body eat, his body will die shortly afterward.

The alternative offered by the moral/practical dichotomy, just as that of the mind/body dichotomy, is false. There is a third alternative, which Objectivism offers:

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<sup>133</sup>*Id.*

<sup>134</sup>"The alternative is: be good without earthly purpose, or seek ends while ignoring the necessary means. In other words: commit yourself to virtues, *or* to values—to causes *or* to effects—to ethics *or* to life." *Id.*

<sup>135</sup>See Section II-C *supra*.

<sup>136</sup>See Section III-B *supra*.



practice the virtues which your values preach. If reason is man's basic means of survival, and rationality is his most precious virtue, then only the practice of a rational code of morality will further man's self-preservation. Man must use his reason to discover value objectively, and practice virtues which help him gain and keep what he values. If a moral code does not support man's values, then it cannot be practiced. However, it is wrong to conclude that no moral code can be practiced, just as it is wrong to support any moral code based on the sole premise that it can be practiced. But it is true to state that a rational code of morality sustains man's values, and hence it not only *can* be practiced, but *must* be practiced if man is to survive *qua* man.

The moral/practical dichotomy is exemplified by the philosophy of altruism; this is especially ironic because altruism claims to be a "moral philosophy" which should be practiced. The dictionary denotation of altruism is simply "unselfish concern for the welfare of others."<sup>137</sup> Rand's definition, however, captures the philosophical essence of what altruism means:

"The ethics of altruism has created the image of the brute, as its answer, in order to make men accept two inhuman tenets: (a) that any concern with one's own interests is evil, regardless of what these interests might be, and (b) that the brute's activities are *in fact* to one's own interest (which altruism enjoins man to renounce for the sake of his neighbors). . . .

There are two moral questions which altruism lumps together into one 'package-deal': (1) What are values? (2) Who should be the beneficiary of values? Altruism substitutes the second for the first; it evades the task of defining a code of moral values, thus leaving man, in fact, without moral guidance.

Altruism declares that any action taken for the benefit of others is good, and any action taken for one's own benefit is evil. Thus the *beneficiary* of an action is the only criterion of moral value—and so long as that beneficiary is anybody other than oneself, anything goes."<sup>138</sup>

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<sup>137</sup>THE RANDOM HOUSE DICTIONARY, 1980.

<sup>138</sup>VOS, at vii-viii.

It is this philosophy which not only permits sacrifice, but *requires* it. Since one cannot be the beneficiary of his own actions, anything he produces is evil unless he sacrifices it to others. Therefore, altruism must hold that it is also immoral to perform any task which serves to sustain one's own life, since oneself would have to be the beneficiary of that action.

This argument against altruism presupposes a premise that was proven earlier: that man's life is the standard of value. But altruism holds the beneficiary of one's sacrifice to be the standard of value. If man wishes to live, then he wishes to be the beneficiary of his own actions—and this is what altruism ultimately holds to be the greatest evil: man's life. Altruism is a disease of the mind, but diseases of this kind destroy its victims differently than bodily diseases. Philosophies such as altruism require an unusual nourishment in order to continue its infectious destruction: *the sanction of the victim*.<sup>139</sup> It takes only one word to defeat altruism: "No."<sup>140</sup> A producer who consents to his self-immolation has granted to the altruists his sanction for their robbery, but altruism cannot survive if man is willing to assert his willingness to live. Man must realize that his life is not evil, but that his life has value *to him*. And man must realize that the preservation of his life is a moral end. The implementation of a moral code into action, therefore, is also moral.

E. The Initiation of Physical Force as Evil

Vice is the opposite of virtue; if virtue is the practice of that which furthers man's rational self-interest in life, then vice is that which opposes rational self-interest. As demonstrated earlier, rational self-interest does not mean that any act is permissible if it maintains one's life, but rather that one has the right and the responsibility to sustain his

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<sup>139</sup>See AS, at 972-73.

<sup>140</sup>*Id.* at 973.

own life.<sup>141</sup> It is immoral to sacrifice one's values, but it is evil to demand that another sacrifice his values for any reason.

It is only natural that people disagree, and even people who are acting with complete rationality will sometimes disagree based on each person's limited knowledge of the pertinent facts. There must be a method of resolving these disputes, and this method must be proper to reasonable men if it is to further man's long-term interest in the preservation of his life. There are two distinct modes of dispute resolution: persuasion and force. Objectivism advocates persuasion based in reason, and flatly condemns any initiation of force for any purposes.<sup>142</sup>

The virtue of rationality encourages people to work in concert with one another. A system of division of labor enhances self-sufficiency, and it not only fosters greater productivity, both for the individuals and the society comprising of those individuals, but it also provides leisure time which only occurs because not every man must raise his own cattle and crops and build his own house. Even in disagreement, it is of much more benefit to the rational man to resolve disputes through reason, since rational men never have a conflict of interest. Since reason is man's basic means of survival, it would be an act against his life for a man to renounce his reason in times of disagreement with others.

The initiation of the use of physical force against another is an emphatic renunciation of the power of reason and hence is the most horrendous vice a man can practice. Initiating force against another not only fails to serve a fruitful purpose, but it serves to destroy the values of another. This holds true whether force is initiated against a man or his property, because the effect remains the same: it "negates and paralyzes his

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<sup>141</sup>See Section III-A *supra*.

<sup>142</sup>OPAR, at 310.

victim's *mind*."<sup>143</sup> It is impossible for man to follow the judgments of his reason when he is under attack:

"A rational mind does not work under compulsion; it does not subordinate its grasp of reality to anyone's orders, directives, or controls; it does not sacrifice its knowledge, its view of the truth, to anyone's opinions, threats, wishes, plans, or 'welfare.' Such a mind may be hampered by others, it may be silenced, proscribed, imprisoned, or destroyed; it cannot be forced; a gun is not an argument. . . .

The same principle applies to all men, on every level of ability and ambition. To the extent that a man is guided by his rational judgment, he acts in accordance with the requirements of his nature and, to that extent, succeeds in achieving a human form of survival and well-being; to the extent that he acts irrationally, he acts as his own destroyer."<sup>144</sup>

A rational man's cognitive abilities are suspended by the use of force against him; this is why a man can be forced to do many things, but he cannot be forced to think.<sup>145</sup> A rational man can only perform cognitive tasks when his mind is free to perceive reality and to draw the conclusions he knows to be true.<sup>146</sup>

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<sup>143</sup>*Id.* at 311.

<sup>144</sup>CUI, at 17.

<sup>145</sup>"It is impossible for a man to engage in a cognitive undertaking or to reach a cognitive result, such as an idea, while brushing aside logic and reality. Yet this is what the criminal who seeks to force a mind demands of his victim. The victim, therefore, has only one recourse (if he cannot escape): to cease functioning as a cognitive entity." OPAR, at 311-12.

<sup>146</sup>"This is why the greatest eras of human history have always been the freest; it is why science, art, invention, and every other expression of fresh human thought fail to arise or vanish in a dictatorship. Just as a man cannot abuse his own mind with impunity, just as he cannot without wrecking his cognition begin to evade, accept the arbitrary, default on integration, or defy his sense perceptions; so he cannot escape the consequences when others seek to force on his mind the same abuses." *Id.* at 312.

The quintessential example of how the use of force annihilates reason is that of Galileo. Subsequent to publishing papers that, contrary to the teachings of the Catholic Church, the earth is not in fact the center of the universe, the Church found Galileo guilty of heresy, a crime against God. He was ordered to renounce all of his work in astronomy if he was to be "forgiven" by God. In reality, this meant that Galileo was imprisoned for his discoveries, until he professed that the earth was the center of the universe and that all of his research was performed by Satan who possessed his mind. Essentially, Galileo was forced to say that A is not A-but he never believed it, and affirmed his astronomical discoveries shortly before his death.

*The Communist Manifesto* is another prime example of how the initiation of physical force is employed in order to achieve the goals of unreason. The entire pamphlet can be summed up in one sentence: the bourgeois have; therefore, we will take what they have from them. At the outset Karl Marx identifies different pairs of opposing classes—"Freeman and slave, patrician and plebeian, lord and serf, guildmaster and journeyman, in a word, oppressor and oppressed"<sup>147</sup>—but his oversweeping generalization does not hold true by the facts of history. While Marx's desire to obliterate oppression is a noble one, he never attempts to understand that which is the essence of oppression. Instead, he takes a blind swing at the piñata and finds that the source of oppression is wealth—not just any wealth, but privately-owned wealth, wealth of the *individual*. Since individual wealth is the source of oppression in Marx's view, it is not surprising to hear him say: "You must, therefore, confess that by 'individual' you mean no other person than the bourgeois, than the middle-class owner of property. This person must, indeed, be swept out of the way, and made impossible."<sup>148</sup>

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<sup>147</sup>Karl Marx and Frederick Engels, *THE COMMUNIST MANIFESTO* 9 (1848).

<sup>148</sup>*Id.* at 25.

By making such statements Marx equates wealth *stolen* with wealth *earned*—a substantial moral difference which is left ignored by the *Manifesto*. If an individual gained his wealth by theft, then such a person has no moral right to retain that wealth; for theft constitutes an initiation of physical force against another, and any force used against him to regain that property would be an act of retaliation. However, if that wealth was earned by an individual's independent productiveness, then Marx's call to "expropriate the expropriators" would amount to a theft of the property of the individual, or an initiation of physical force. But Marx never seeks morality; his call is for the "proletariat ... to wrest ... all capital from the bourgeoisie." Thus, communism amounts to nothing more than common thievery.

Ethics can show man how he should live his life, both as an individual and as a member of society. It requires that every individual identify his own values and develop his own morality accordingly. However, as not every man will develop the same morality, and as men disagree in their relations with each other, it is apparent that a system of rules must be adopted by the members of a society to serve as protection for the individuals. These rules must serve the sole purpose of protecting individuals from the initiation of physical force, whether that force be initiated by members of the society or foreign invaders. It is for the service of this purpose that government is necessary. The role of government belongs to the realm of politics.

#### IV. Politics: Individual Rights as Absolute

The philosophic branch of politics is formed based on the ethics of a society, and ultimately the epistemology and metaphysics of that society as well. This statement is true for any system of government; just as one person's ethics represents his judgments concerning how he should live his life, the political system of a society represents the beliefs of how members of that society should live together. This discussion will consider the role of a *proper* system of government—and then refute ideas which have erroneously guided the political thinkers of the last three millennia.

##### A. Rights

A right is "a moral principle defining and sanctioning a man's freedom of action in a social context."<sup>149</sup> Though the concept of rights is rooted in morality, it is a "logical transition from the principles guiding an individual's actions to the principles guiding his relationship with others," and it carries a rational code of ethics into the social context of politics.<sup>150</sup> As such, "Individual rights are the means of subordinating society to moral law."<sup>151</sup> Rand's definition of a "right" implicates the role of the individual in the nature of the concept; she intentionally uses the phrase "a man" without omitting the article "a" to prevent any possible confusion. This is because the individual is absolute, and therefore one's moral principles, and one's consciousness, are individual. As such, there is no other type of right possible but an individual right.<sup>152</sup>

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<sup>149</sup>Ayn Rand, *Man's Rights*, in VOS 108, 110.

<sup>150</sup>*Id.* at 108. "Politics ... is an application of ethics to social questions." OPAR, at 350.

<sup>151</sup>VOS, at 108.

<sup>152</sup>"The term 'individual rights' is a redundancy: there is no other kind of rights and no one else to possess them." VOS, at 117.

Man's rights are derived, not from God or from society, but from the law of identity. "A is A—and Man is Man."<sup>153</sup> As the individual is absolute, as reason is each man's basic means of survival, as morality is the science of human self-preservation, as a morality suitable for man does not permit the initiation of physical force, so rights act as a proper intermediary between how man should act for himself and how man should act toward others. Thus, the concept of rights is a valid conclusion logically drawn from the aforementioned premises, and individual rights are *objective* and *absolute*.

As rights are individual, each man's rights belong to him—they are his selfish possessions, and as such are based in the ethics of egoism. There is no such thing as a collective right which is owned by all members of a collective; a group can have no rights except for the individual rights of its individual members.<sup>154</sup> Since rights are inherent in man's nature, it is incorrect to say that rights are created by anyone or anything. Rights exist only because man uses reason; since all human beings have the capacity to use reason, all human beings have all rights. This statement implies two derivative statements. First, rights are exclusive to human beings because of their use of reason, and as other animals do not use reason, on that basis, animals have no rights. Second, since man is a creature of inseparable mind and body, no right is separable from the rest. Rights concern action, and it is impossible to possess any right without being able to act accordingly on that right.<sup>155</sup>

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<sup>153</sup>AS, at 985.

<sup>154</sup>Ayn Rand, *Collectivized "Rights"*, in VOS 118, 119-20.

<sup>155</sup> "Just as man can't exist without his body, so no rights can exist without the right to translate one's rights into reality—to think, to work and to keep the results—which means: the right of property. The modern mystics of muscle who offer you the fraudulent alternative of 'human rights' versus 'property rights,' as if one could exist without the other, are making a last, grotesque attempt to revive the doctrine of soul versus body. Only a ghost can exist without material property; only a slave can work with no right to the product of his effort. The doctrine that 'human rights'



Man has one fundamental right: the right to life.<sup>156</sup> Since man's life is the ultimate value by which all other values are measured, the right to life must also be the ultimate right from which all other rights are derived. Since one must take an active process in sustaining and preserving his life, "the right to life means the right to engage in self-sustaining and self-generated action—which means: the freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life."<sup>157</sup> The three principal corollaries of the right to life are the rights to liberty, property, and the pursuit of happiness.<sup>158</sup> It is through liberty, property, and the pursuit of happiness that man lives qua man.

The right to liberty means that every person, in order to live as a human being, must have the freedom to take actions which will further his life. The right to property is necessary for man's life because man is a self-sufficient creature who lives by his own productiveness.<sup>159</sup> As happiness is the purpose of man's self-preservation,<sup>160</sup> the right to the pursuit of happiness is the only way for man to reach his desired goal in his life.

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are superior to 'property rights' simply means that some human beings have the right to make property out of others; since the competent have nothing to gain from the incompetent, it means the right of the incompetent to own their betters and to use them as productive cattle. Whoever regards this as human and right, has no right to the title 'human.'"

AS, at 986.

<sup>156</sup>"The right to life means the right to sustain and protect one's life." OPAR, at 352.

<sup>157</sup>VOS, at 110.

<sup>158</sup>OPAR, at 352.

<sup>159</sup>"Since man has to sustain his life by his own effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of his product, is a slave." VOS, at 110.

<sup>160</sup>"To live for his own sake means that *the achievement of his own happiness is man's highest moral purpose.*" *Id.* at 30.

Every human being has these rights. Thus, the right to liberty does not grant one man the right to enslave another. Nor does the right to property grant one man the right to take the property of another.<sup>161</sup> Likewise, the right to the pursuit of happiness is not the same as the right to happiness—as with the right to property, it is the right to take actions whose consequences produce one's happiness. If one attempts to exercise his rights at the expense of another's rights, then it is not a proper exercise. It is implicit in the concept of rights that *all* rights belong to *all* human beings, and the denial of any right to any person is a denial of the nature of rights.

The rights of the individual are positive rights; this means that one has a right *to* something, such as the right *to* life, etc. The recognition of the individual's rights by others with whom he comes in contact, however, are negative in nature; one has the right *from* being enslaved, or *from* having his property taken.<sup>162</sup> Since rights are only possible in a social context among human beings, the right of the individual from violation of his rights is extremely crucial to the exercise of his right to life.<sup>163</sup> There is only one means of violating the rights of another: the initiation of physical force.<sup>164</sup> The use of persuasion, however irrational it may be at times, always leaves the other party free to

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<sup>161</sup>"Bear in mind that the right to property is a right to action, like all the others: it is not the right *to an object*, but to the action and the consequences of producing or earning that object. It is not a guarantee that a man *will* earn any property, but only a guarantee that he will own it if he earns it. It is the right to gain, to keep, to use and to dispose of material values." *Id.* at 110.

<sup>162</sup>*Id.*

<sup>163</sup>"Any undertaking that involves more than one man, requires the *voluntary* consent of every participant. Every one of them has the *right* to make his own decisions, but none has the right to force his decision on the others." *Id.* at 114.

<sup>164</sup>*Id.* at 111.

disagree or to preserve his judgment. However, the use of force compels man to act against his rational judgment by making him choose which values he will sacrifice.<sup>165</sup>

As rights are objective, the respective views that rights are intrinsic and subjective suffer from the same flaws as their arguments that concepts and values are either intrinsic or subjective. Whereas Objectivism finds the source of rights in man's identity and in the primacy of existence, both subjectivists and intrinsicists hold that rights are created. The intrinsicists, led by the mystics, state that rights are a gift from God—which means that man's rights can be taken away at the whim of God. On the other hand, the subjectivists of the social variety hold that rights are the creation of the collective, which is a continuation of the view of the "collective consciousness." Subjectivists such as pragmatists and Nietzscheans have no need for rights, since they do not recognize such a concept of morality first. Belief that rights are created, either by God or by men, denies the very existence of rights, since they represent nothing more than "permissions" granted to men which may be taken away at any time.<sup>166</sup>

#### B. Government's Role as the Protector of Rights

Rand defines government as "an institution that holds the exclusive power to *enforce* certain rules of social conduct in a given geographical area."<sup>167</sup> The word "enforce" is emphasized for two particular reasons. First, a government does not have the power of creating or destroying rights, for rights are inalienable to man so long as he uses reason. As a product of society's individual members, government only has the power to recognize or ignore the rights of those individual members. Second, the term implies that

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<sup>165</sup>*Id.* See also Section III-E *supra*.

<sup>166</sup>See OPAR, at 361.

<sup>167</sup>Ayn Rand, *The Nature of Government*, in VOS 125.

the government is the servant of the rights of its people, since enforcing rules necessarily requires obedience to those rules by the enforcer.

Another essential of the definition of government is the term "exclusive." A proper government is created so that the rules will be enforced *objectively*, as opposed to by the arbitrary whims of any individual member or group of a society. In a rational society, when individuals disagree they must not resort to the use of physical force against one another to resolve their disputes. If each citizen enforces his own interpretation of the laws, then any such society would be in a constant state of civil war.<sup>168</sup> The exclusive enforcement power is placed in the hands of a government because, as the servant of the members of a rational society, government's interest is only furthered if the rules of nature are enforced objectively. In a societal context, the evil action sought to be restrained is the initiation of physical force. Therefore, it is government's role not only to protect its members from that initiation, but also to refrain from such encroachments itself.<sup>169</sup>

"A government is the means of placing the retaliatory use of physical force under *objective control*—i.e., under objectively defined laws."<sup>170</sup> This is the concept which the Founding Fathers understood when they coined the phrase "a government of laws, not of men." The laws which empower government action must be narrowly tailored, therefore, because the scope of action permissible to government is limited to the retaliatory use of force. However, the title "retaliatory use" does not necessarily make such use of force retaliatory; it is the response to an initiation of force which makes it so.

Also, before a government employs that retaliatory use, there must be an *objective* determination that force was initiated by the party in question. This requires "*objective* rules of evidence to establish that a crime has been committed and to *prove* who

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<sup>168</sup>*Id.* at 127.

<sup>169</sup>*Id.* at 128.

<sup>170</sup>*Id.*

committed it, as well as *objective* rules to define punishments and enforcement procedures."<sup>171</sup> It is the objectivity of the government which legitimizes its retaliatory use of force.<sup>172</sup> As such, there are only three proper functions of government: "*the police*, to protect men from criminals—*the armed services*, to protect men from foreign invaders—*the law courts*, to settle disputes among men according to objective laws."<sup>173</sup>

If the laws which a government seeks to uphold are not objective, then individual rights are not secure. Whether it be "divine action or congressional action"<sup>174</sup> which dictates a law defying the rules of nature, any law which is nonobjective and therefore in defiance of reason, is anti-life. If a government of nonobjective laws continues to hold the retaliatory use of force, then "a monopoly on the use of force [is] granted to an agency ruled by whim."<sup>175</sup> A nonobjective use of force by a government is subject to the whim of the men in government who may direct that force against anyone their arbitrary whims desire. It is the ability to misuse government's power which makes a "government of men, not of laws" possible. Such a government is not very likely to protect the rights of its members, while it is extremely likely to violate those rights instead.

An objective and properly-functioning government is based on a definite philosophy, but it may play no role in manifesting the practice of that philosophy except within its limited powers.<sup>176</sup> A society of individuals must grant each individual the freedom to think for himself, even and *especially* if it means that people will be wrong at times. Each individual must be sovereign over himself, which means the ruler of his own

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<sup>171</sup>*Id.* at 127.

<sup>172</sup>OPAR, at 364.

<sup>173</sup>VOS, at 131.

<sup>174</sup>AS, at 985.

<sup>175</sup>OPAR, at 365.

<sup>176</sup>*Id.* at 367.

mind and his own body. So long as his thoughts and actions do not constitute an initiation of physical force against any other individual, then the government may not interfere with the freedom of the individual to think for himself, to form his own ideas, and to speak on those ideas. Individuals may also act immorally in the eyes of an objective philosophy, but a government of objective laws has no opportunity to make decisions about immorality, except when a person's immoral act constitutes an invasion of another's rights. Government is the protector of rights, not the dictator of philosophy as such; but by protecting man's rights, government is inherently protecting objectivity in social relationships.

The only form of government which serves the proper functions of government without acting in any unauthorized capacity is *capitalism*, meaning "a full, pure, uncontrolled, unregulated laissez-faire capitalism—with a separation of state and economics, in the same way and for the same reasons as the separation of state and church."<sup>177</sup> "Uncontrolled" does not mean "anarchy" as skeptics are quick to state, but rather it means that each individual has the right to live freely without the government taking an active role in the individual's life or business. Nor does an economy uncontrolled by a government leave the citizens at the mercy of anyone who commits fraud or breaches a contract. Objective law protects individuals' rights to make contracts at arm's length, and a party who reneges on a contract indirectly initiates the use of force against another. When a government intervenes in such a situation, it is acting not as a regulator of trade, but as a legitimate possessor of the retaliatory use of force.

Any form of government which purports to act as a creator, rather than a recognizer, of rights, is denying the nature of rights. The source of rights is the law of identity, and any government which claims that it creates rights necessarily believes that it may take those rights away when it deems it appropriate. The "leash" on individual

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<sup>177</sup>VOS, at 37.

rights which these governments hold may be shorter or longer, but "all insist on *some* leash and on their right to set its length will."<sup>178</sup> Rather than attributing the source of governmental power to the rational consent of all of its members, these governments claim to derive their power from a higher power which transcends the individualistic desires of some of its members. Regardless of how closely these governments attempt to control the thoughts and actions of the individual, all hold their power against man's standard of value—his life—in favor of a statist philosophy which only suffocates man.<sup>179</sup>

In the modern era, Jean-Jacques Rousseau is the primary perpetrator of a political philosophy based in unreason.<sup>180</sup> The "fundamental problem" which he intends to solve in *The Social Contract* is "How to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before."<sup>181</sup> The word selection suggests that Rousseau is seeking a form of government which will protect the rights of the individual members of society and recognize the individual as sovereign over himself, while at the same time placing the retaliatory use of force exclusively in the hands of that government.

However, the solution which Rousseau offers is an absolute aberration and does not reach his objective even slightly. In order to protect the rights of the individual, he

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<sup>178</sup>OPAR, at 369.

<sup>179</sup>"Just as individualism is the politics demanded by reason, so statism is the politics of unreason. Just as a free system of government flows from and then fosters in its citizens a philosophy that accepts reality, the conceptual level of consciousness, egoism, productiveness, and man the self-made sovereign; so an unfree system flows from and fosters the opposite of such a philosophy." *Id.* at 370.

<sup>180</sup>Jean-Jacques Rousseau, *THE SOCIAL CONTRACT* (1762).

<sup>181</sup>*Id.* at 60.

suggests only two paragraphs later that the answer is "the total alienation by each associate of himself and all his rights to the whole community. Thus in the first place, as every individual gives himself absolutely, the conditions are the same for all, and precisely because they are the same for all, it is in no one's interest to make the conditions onerous for others."<sup>182</sup> There is no greater universal contradiction than to hold that the identity of the individual will be fully protected only by the loss of that identity. If Rousseau is correct, then A is not A. But the law of identity permits no contradictions. *The Social Contract*, however, does not permit the slavery of individuals.<sup>183</sup> Instead, it demands the sanction of the victim: a voluntary consent by each individual member to turn over their rights and their individuality to the collectivized whole.<sup>184</sup> If the sanction of the victim is the means of perpetuating a statist government, then each individual maintains the ability to refute the legitimacy of that government. Then the government will topple, so long as individuals recognize their right to their own life.

C. The United States' Recognition of Individual Rights: An Overview

The United States of America is the only nation in the history of the world which was founded upon the premise of the natural rights of man. The Declaration of Independence marks the first statement on behalf of a nation which holds "these truths to be self-evident, that all men are created equal" and that man's rights were superior to the

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<sup>182</sup>*Id.*

<sup>183</sup>"Whether as between one man and another, or between one man and a whole people, it would always be absurd to say: 'I hereby make a covenant with you which is wholly at your expense and wholly to my advantage; I will respect it so long as I please and you shall respect it so long as I wish.'" *Id.* at 58.

<sup>184</sup>"Every member of the community gives himself to it at the moment it is brought into being just as he is—he himself, with all his resources, including all his goods." *Id.* at 65.



whim of any tyrant or state, among which are the right to life, liberty, and the pursuit of happiness. Of course truths cannot be self-evident—truth is established through the process of proof, after first establishing the self-evidency of sensory evidence and metaphysical axioms—but the statement nonetheless rings home. Each man is his own sovereign, as the individual is absolute. Thus, the Founding Fathers reasoned, no king could be morally justified in exercising his will over unwilling subjects; such a king would be violating man's right to life, liberty, the pursuit of happiness, and property. The Declaration of Independence essentially was a celebration of man's rights, as it was the earliest recognition that man's rights come from being man, not by the permission of any ruler.

Representatives from the original thirteen states convened during the summer of 1787 "in Order to form a more perfect Union"<sup>185</sup> between the several state governments. Just as thirteen men who make a contract so that each may benefit and fulfill their rational self-interest, the Founding Fathers sought to create a federal government which would not rule over the states, but merely preside over them. The preamble of the United States Constitution states that the purpose of this Constitution is "to ... establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity"<sup>186</sup>—or, to establish a government which will protect the states from foreign invaders and from criminals, settle disputes through reason, and secure the liberty of each man. As Hamilton writes in Federalist No. 84, "the people surrender nothing; and as they retain everything they have no need of particular reservations."<sup>187</sup>

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<sup>185</sup>U.S. CONST., Preamble.

<sup>186</sup>*Id.*

<sup>187</sup>Alexander Hamilton, *Federalist No. 84* (1788).

The framers of the Constitution wished to include a Bill of Rights which would offer Constitutional protection for a certain number of rights which governments of the past had been extremely prone to violate. The ratification of the Bill of Rights<sup>188</sup> placed strong limits on governmental intrusions into the rights of its citizens. Among other protections offered to individuals, the state and religion were officially separated,<sup>189</sup> the rights to freely speak, publish, assemble peaceably, and to petition the government were secured,<sup>190</sup> and the individual's right to be secure in his property was firmly established.<sup>191</sup> Amendments Five through Eight offer several protections for individuals who are brought to trial for criminal offenses—in order for the government to incarcerate an individual for a crime, the prosecution must first present evidence to a grand jury for indictment of a crime<sup>192</sup> and then prove a defendant's guilt to a jury<sup>193</sup> while recognizing the defendant's right to an effective cross-examination of all witnesses brought against him.<sup>194</sup>

Though the United States is the only country whose Constitution is based in the philosophy of the rights of individuals, there have been instances of blatant denials of rights. The most obvious example is the existence in the past of slavery. The Constitution never employs any form of the word "slave" within its text, but both the

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<sup>188</sup>U.S. CONST., Amend. I-X (1791).

<sup>189</sup>"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S.CONST., Amend. I (1791).

<sup>190</sup>*Id.*

<sup>191</sup>U.S. CONST., Amend. IV (1791).

<sup>192</sup>U.S. CONST., Amend. V (1791).

<sup>193</sup>"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ..." U.S. CONST., Amend. VI (1791).

<sup>194</sup>*Id.*

"three-fifths clause"<sup>195</sup> and the "slave-trade clause"<sup>196</sup> are Constitutional condonations of the most evil practice known to man. The *Dred Scott*<sup>197</sup> case, decided only three years prior to the outbreak of the Civil War, held that the Missouri Compromise, which prohibited slavery in certain United States territories, unconstitutionally deprived a United States citizen of his right to his private property in violation of the Due Process Clause of the Fifth Amendment.<sup>198</sup> The reference to another human being as "property" which should not be deprived of a slaveowner is morally preposterous, and especially because it is from the opinion of a Chief Justice of the Supreme Court. Though it is the most horrifying refusal to recognize the nature of man's rights, it is certainly not the only instance of the United States government failing to protect individual rights. However, this country has managed to progress past its failures by making appropriate Constitutional Amendments, such as the abolition of slavery, granting of suffrage to members of all races and both genders, and the repeal of the prohibition on alcohol.

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<sup>195</sup>"Representatives ... shall be apportioned ... according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." U.S. CONST., Art. I, Sec. 2 [3].

<sup>196</sup>"The Migration or Importation of Such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year [1808], but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person." U.S. CONST., Art. I, Sec. 9 [1].

<sup>197</sup>*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

<sup>198</sup>"And an Act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law." *Id.* at 450.

The Ninth Amendment to the Constitution<sup>199</sup> deserves special attention; it is ironic that it has been a much-ignored provision of the Consitution, specifically because it is so vague. The Supreme Court had a strong occasion to determine the potency of the Ninth Amendment in *Griswold v. Connecticut*.<sup>200</sup> Writing for the Court, Justice Douglas found that there was a federally protected right of privacy contained in the "penumbras" of the First, Fourth, Fifth and Ninth Amendments.<sup>201</sup> Justice Goldberg's concurrence spoke with consistency to the power of the Ninth Amendment: "To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendmnt and to give it no effect whatsoever."<sup>202</sup> The Court has been very wary of any further interpretations of the Amendment, and has reserved its sparse invocations for issues which it finds extreme difficulty in answering without mentioning the Amendment.<sup>203</sup>

Though Constitutional scholars have been debating the issue of the scope of the Ninth Amendment for the last two centuries, none have found an answer which respects the words of the Amendment. Yet it is most plausible to find the literal meaning of the Amendment in the literal words: "The enumeration ... of certain rights, shall not be construed to deny or disparage others retained by the people." This was clearly meant to

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<sup>199</sup>"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. CONST., Amend. IX (1791).

<sup>200</sup>381 U.S. 479 (1965).

<sup>201</sup>*Id.* at 484-85.

<sup>202</sup>*Id.* at 491 (Goldberg, J., concurring).

<sup>203</sup>*See, e.g.,* *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

show that the rights protected in the Bill of Rights are *examples* of rights which shall not be infringed, not limitations on individual rights.

The standard for determining whether a right is protected by the Ninth Amendment should be the same standard by which man chooses value: *man's life* . Rights belong to man because A is A, not because of the acts of government—and the Founding Fathers understood man's rights to be superior to the acts of government when they said: "life, liberty, and the pursuit of happiness." All men have all rights, and the Bill of Rights sought to uphold this statement by having included in it the Ninth Amendment. If all rights were not preserved and protected by the government, then some rights would be violated. Any government which condones the violation of any rights of its individual members without offering adequate protection for those rights is not fulfilling its purpose.

At first glance, this approach to reading the Ninth Amendment may appear to be overbroad and an authorization for the judiciary to wrest the legislative power from the Congress. The error in this critique is twofold. First, the legislature is authorized to "make all Laws which shall be necessary and proper,"<sup>204</sup> including laws which will secure the rights of its individual citizens. But no legislature is authorized by the Constitution to violate the rights of any American. And if such a violation is committed by the Congress or the President, then the courts must strike down that law as a violation of the Ninth Amendment to the Constitution. Second, it is the role of the judiciary to interpret the Constitution and the laws of the United States,<sup>205</sup> but this does not mean that the courts are limited to interpreting laws which are published by legislatures. Judges also decide cases and controversies based in common law, and in the absence of a statute or Constitutional provision to direct the ruling of an interpretation of law, the judiciary must

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<sup>204</sup>U.S. CONST., Art. I, Sec. 8 [18].

<sup>205</sup>See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

decide the case based on man's rights—and decide in favor of protection of the rights of the individual. Any other reading of the role of the judiciary would be contrary to its purpose: to settle disputes rationally.

Each branch of the United States government is sufficiently empowered to protect the rights of its individual members. However, the government has imposed many laws upon its citizens which are illegitimate—not only because they do not serve to protect individual rights, but because they *infringe* upon individual rights. These governmental actions are made possible in a country such as the United States only by the consent of the majority will of the American voters. It is necessary to understand the arguments asserted by the proponents of such legislation; for these laws were passed by people who intended to protect the nation, and the arguments must be analyzed in order to demonstrate their fallacies.

## **V. Victimless Crimes and the American Criminal Law**

### **A. History of the Victimless Crime**

A "victimless crime" is an action which does not violate the rights of any member of a society and yet is prohibited by the criminal law. Victimless crimes are activities in which all participants are willing and consensual, or they may even be performed in the absence of any other individuals. If convicted of a victimless crime, a citizen will likely be fined, incarcerated, or possibly both. The existence of victimless crimes in the American criminal law creates an apparent contradiction. If it is the role of the government only to protect man's rights—that is, to protect individuals from other individuals who attempt to initiate the use of physical force—then how should victimless crimes be categorized? If the individual is his own sovereign, then what is the purpose of a law which does not permit the individual to act upon himself as he should choose? These are the questions one must ask when deciding whether the concept of "a government of laws, not of men" is upheld when victimless crimes are considered crimes against the state.

#### **1. Prostitution**

Prostitution has been quipped "the earliest profession" for good reason. Since the beginning of trade among the first humans, the one offering which could be exchanged and did not require either productive labor or ownership of any property was one's body. This was especially true of one's sexuality, which the primitive man understood to be a sign of strength.<sup>206</sup> At the dawn of civilization, prostitution was not only a respectable profession for a woman, but in places such as Cyprus it was required for a woman to sell

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<sup>206</sup>Harry Benjamin, PROSTITUTION AND MORALITY 35 (1964).

her services at least once in order to become eligible for the marriage ritual.<sup>207</sup> In some societies where polygamy was permissible, men forewent patronage of prostitutes and instead took multiple wives or even concubines.

The practice was a source of scorn in societies such as that of the Israelites. The Book of Leviticus says: "Do not degrade your daughter by making her a prostitute, or the land will turn to prostitution and be filled with wickedness."<sup>208</sup> Though the Jews were forbidden to seek the pleasures of prostitution from women of their own ethnicity, they often laid with the women of Canaan or other neighboring peoples.<sup>209</sup> As Judaeo-Christianity spread throughout the world, however, prostitution eventually became impermissible by many codes of morality. These societies first attempted to segregate a sector of prostitution from the rest of a town,<sup>210</sup> but as prostitution became less tolerable morally, laws were eventually enacted to punish the practice.<sup>211</sup> The culmination of these historical prohibitions lies in Article 251 of the American Law Institute's Model Penal Code.<sup>212</sup>

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<sup>207</sup>*Id.* at 36.

<sup>208</sup>Leviticus 19:29, HOLY BIBLE.

<sup>209</sup>PROSTITUTION AND MORALITY, at 39.

<sup>210</sup>"Prostitution in the towns is like the cesspool in the palace. Do away with the cesspool, and the palace will become an unclean and stinking place." Thomas Aquinas, SUMMA THEOLOGICA.

<sup>211</sup>"Under Charlemagne and Frederick Barbarossa ... laws were enacted against prostitutes with penalties including capital punishment. . . . In France in the Thirteenth Century ... all prostitutes were ordered driven from the country, following confiscation of their belongings." PROSTITUTION AND MORALITY, at 53-54.

<sup>212</sup>"Section 251.2 - Prostitution and Related Offenses

(1) *Prostitution*. A person is guilty of prostitution, a petty misdemeanor, if he or she:



## 2. Narcotics

Regardless of whether the drug is marijuana, heroin, alcohol, caffeine, or nicotine, every civilization has enjoyed consumption of products which stimulate (or stifle) a certain function of the human anatomy. The first English settlers in Virginia who discovered tobacco marveled at the pleasure of inhaling its smoke, and they immediately learned how to farm it properly so that they could trade it to their brethren in the Old World. European explorers traveling to the Orient in search of spices and exotic cloth also discovered opium upon their arrival. The consumption of alcohol is detailed as a celebratory drink in *The Epic of Gilgamesh*, the earliest literary work of Sumeria, the earliest civilization.

The first American laws prohibiting the use of certain narcotics resulted from a number of factors, ranging from the desire to empower physicians and pharmacists with regulations that would give them financial benefit to "the desire to demonstrate to the world that it [the United States] had exemplary drug laws."<sup>213</sup> Congress first took action by passing the Pure Food and Drug Act in 1906, which required medicines traded in interstate commerce to identify any narcotic content. The Harrison Act of 1914<sup>214</sup> was the first limitation placed by the government on the commerce of drug manufacture, sale or transportation. Further legislation by the Congress included the Uniform Narcotics Act

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(a) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or

(b) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

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(2) *Promoting Prostitution.* A person who knowingly promotes prostitution of another commits a misdemeanor or felony ..."

*American Law Institute Model Penal Code*, 1962.

<sup>213</sup>Robert J. Wicks, DRUG ABUSE: A CRIMINAL JUSTICE PRIMER 107 (1977).

<sup>214</sup>P.L. No. 63-223, 38 Stat. 785 (1914).

(1932),<sup>215</sup> The Narcotics Drug Control Act (1956),<sup>216</sup> and the Comprehensive Drug Abuse Prevention and Control Act (1970).<sup>217</sup> This last measure created schedules for different illicit drugs, as well as the Drug Enforcement Agency to control their widespread production and distribution. The individual states had passed their own laws governing the use of illegal drugs, but the Uniform Controlled Substances Act was passed in 1970 in order to bring state laws concerning this matter into conformity with federal law.

### 3. Gambling

Gambling has existed in one form or another ever since people had property against which they could wager. Dice was a favorite game among the Romans, and many Senators curried favor with their Emperor by intentionally losing to their ruler.<sup>218</sup> Governments began to institute lotteries in order to raise public funds; England created its

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<sup>215</sup>This act was designed to coordinate federal and local record of keeping drug transactions.

<sup>216</sup>This act imposed the following penalties for drug-related offenses:

First Possession	2 to 10 years
Second Possession	5 to 10 years (mandatory sentence)*
First Sale	5 to 10 years (mandatory sentence)*
Third Possession	10 to 40 years (mandatory sentence)
Second Sale	10 to 40 years (mandatory sentence) - or possibly death sentence if seller is over the age of 18 and if the sale is to a minor.

\*Mitigating circumstances cannot be taken into account by the court.

<sup>217</sup>This act superseded all other federal narcotic laws, and among other things it created penalties based on drug classification and type of involvement (manufacture, possession or sale). PL 91-513 (1970).

<sup>218</sup>See generally Suetonius, THE TWELVE CAESARS.

first national lottery in 1569, and the tradition was carried to the New World by the English colonists.<sup>219</sup> The earliest American legislation abolishing gambling was by the Pennsylvanian Quakers in 1682-but the Crown repealed that colonial law in 1705 when the Quakers attempted to enforce it.<sup>220</sup>

Gambling is now forbidden in every state of the union, with provisions made for the maintenance of state-run lotteries and other exceptions. Casinos are permitted only in Atlantic City, New Jersey and in certain cities in Nevada. Horseracing and other such track events are also permissible, subject to heavy government regulation and close scrutiny. The legal prohibition on gambling has forced the activity underground—the Mafia generates an exorbitant income, undeclared in the gross national product and also untaxed, and the practice of gambling has actually increased.

#### 4. Obscenity

Obscenity, or pornography, has been one form of expression censored by governments for as long as governments have made decisions concerning what is appropriate for its citizens to see, hear and read. Though most of his poetry was enjoyed by the Roman aristocracy, Ovid found himself an exile when his work (and his affair with the Emperor's daughter) incurred the disfavor of Caesar Augustus. The limitation or prohibition on the circulation of obscene material has been a cornerstone of European governments, and that prohibition carried over into the American legal system in spite of the First Amendment's protections of speech and of the press. One of the earliest American cases concerning the publication of obscene materials is *Commonwealth of Pennsylvania v. Sharpless*.<sup>221</sup> In that case, the defendants were brought to trial for

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<sup>219</sup>David D. Allen, THE NATURE OF GAMBLING 44 (1952).

<sup>220</sup>*Id.*

<sup>221</sup>2 S. & R. 91 (1815).

various immoralities, despite the absence not only of any statute prohibiting their conduct but also of a clear and concise indictment. On appeal, their convictions were affirmed on the basis that charges such as this could be brought at the common law, and the evidence supported the charges brought against the defendants, regardless of the ambiguity of the indictment.

The landmark *Roth*<sup>222</sup> case held that a federal statute prohibiting the mailing of obscene materials was constitutional and not in violation of the First Amendment.<sup>223</sup> The court, speaking through Justice Brennan, wrote plainly that obscenity is not within the area of constitutionally protected speech or press, and that the standard by which obscenity should be defined is "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."<sup>224</sup> The 1960s produced many different approaches by the Supreme Court in

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<sup>222</sup>*Roth v. United States*, 354 U.S. 476 (1957).

<sup>223</sup>The federal statute provided, in pertinent part:

"Every obscene, lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character; and—

"Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, ... whether sealed or unsealed ...

"Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

"Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable, or knowingly takes the same from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

18 U.S.C. Sec. 1461.

<sup>224</sup>354 U.S. at 489.

regulating obscenity, such as the "I know it when I see it" standard of Justice Stewart,<sup>225</sup> but in 1973 the Court announced a new standard of determining what makes a given material obscene.

In the twin cases of *Miller v. California*<sup>226</sup> and *Paris Adult Theatre I v. Slaton*,<sup>227</sup> Chief Justice Burger that "there are legitimate state interests at stake in stemming the tide of commercialized obscenity .... [T]here is at least an arguable correlation between obscene material and crime."<sup>228</sup> In departing from the *Roth* approach, the Court completely abandoned the "utterly without redeeming social value" standard<sup>229</sup> in favor of a broader test: that the material must lack "serious literary, artistic, political, or scientific value."<sup>230</sup> By the time *Miller* and *Slaton* were decided, Justice Brennan wished to abandon the *Roth* standard which he enunciated sixteen years earlier in favor of one which permits more protection to certain materials. However, he could not bring himself to state the objections which Justice Douglas firmly decreed in dissent:

"[T]he First Amendment makes no such exception from 'the press' which it undertakes to protect nor, as I have said on other occasions, is an exception necessarily implied, for there was no recognized exception to the free press at the time the Bill of Rights was adopted which treated 'obscene' publications differently from other types of papers, magazines, and books."<sup>231</sup>

At the present, *Miller* and *Slaton* are the law in the area of obscenity.

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<sup>225</sup>*Jacobellis v. Ohio*, 378 U.S. 184, 197 (Stewart, J., concurring).

<sup>226</sup>413 U.S. 15 (1973).

<sup>227</sup>413 U.S. 49 (1973).

<sup>228</sup>*Id.* at 57-58.

<sup>229</sup>*See A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966).

<sup>230</sup>*Miller*, 413 U.S. at 24.

<sup>231</sup>*Id.* at 40 (Douglas, J., dissenting).

B. Motivations Behind the Creation of Victimless Crimes

Although there are many reasons why prohibitory laws against victimless crimes have been enacted, they are mostly attributable to two sources: the public morality and the public safety. The "public morality" represents the beliefs of the majority concerning how individuals should behave not only toward each other, but also apart from others. The "public safety" is a phrase which is used for the most part in conjunction with the public morality, except it extends a step further—it implies that the lives and well-being of the non-participating population are at risk because of such activities. In a democracy, the majority is empowered to legislate behavior which is outside the scope of a government pursuing its proper purpose. Therefore, when the majority invokes the public morality or the public safety as a "legitimate governmental interest," such laws as the majority deems appropriate will pass and rule over all.

Of all the victimless crimes, the use and sale of drugs is considered the strongest detriment to society, and hence the potential legalization meets with the strongest opposition. It is the issue of illegal drug use which has produced the greatest domestic incantation of the "public safety" in America, primarily because of concern for "the children." The first outright drug prohibition in the United States was the Eighteenth Amendment's ban on alcohol, which the Twenty-First Amendment repealed in 1933. When the source of all evils was determined to be no longer alcohol but marijuana,<sup>232</sup> the majority was persuaded to first make the drug illegal and then to criminalize it.

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<sup>232</sup>See REEFER MADNESS (Motion Picture Ventures 1936). This film, made in conjunction with the Federal Bureau of Investigation, begins with a brief narrative concerning how marijuana leads to delinquency, sexual perversion, and ultimately to complete insanity and violence.

The issues of gambling and prostitution are less hotly debated; and very little serious opposition has arisen to their prohibition. The prohibition on prostitution in America stems originally from the Old Testament<sup>233</sup> and proximately to the fact that the first English settlers in America were primarily religious separatists who frowned upon the pleasures of the flesh. Likewise, gambling in America was stifled during the colonial era by the Quakers,<sup>234</sup> and since that time games of chance have been considered by the general public to be an outlet for people to squander that which they have earned. Also, the public morality associates gambling primarily with compulsive gambling, ignoring the fact that almost all people participate in some form of gambling without reaching a point of addiction.<sup>235</sup>

The arguments which convinced the majority to prohibit and criminalize obscenity also decried the danger imposed on the public morality by explicit sexual imagery. Such pornographic material, in the estimation of the religious community, directly opposes the morals and values taught by the Bible. As the *Roth* decision outlined,<sup>236</sup> such materials are "utterly without redeeming social value"<sup>237</sup> and are rightfully prohibited under proper statutes. In his rejection of the findings of the Commission on Obscenity and Pornography,<sup>238</sup> President Nixon said:

"I have evaluated that report and categorically reject its morally bankrupt conclusions and major recommendations.

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<sup>233</sup>See supra note 208.

<sup>234</sup>See supra note 220.

<sup>235</sup>Allen, supra note 220, at 30.

<sup>236</sup>See supra notes 222-224 and accompanying text.

<sup>237</sup>See supra note 229.

<sup>238</sup>This commission was established by the 90th Congress on October 3, 1967. Pub. L. 90-100.

So long as I am in the White House, there will be no relaxation of the national effort to control and eliminate smut from our national life.

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The Commission calls for the repeal of laws controlling smut for adults while recommending continued restrictions on smut for children. In an open society, this proposal is untenable. If the level of filth rises in the adult community, the young people in our society cannot help but also be inundated by the flood.

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Smut should not be simply contained at its present level; it should be outlawed in every state of the union. And the legislatures and courts at every level of American Government should act in unison to achieve that goal.

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American morality is not to be trifled with. The Commission on Pornography and Obscenity (sic) has performed a disservice, and I totally reject its report."<sup>239</sup>

President Nixon, the elected representative of the public will, spoke against the extensive findings of this Commission in order to protect what he deems to be the right of the public not to be "inundated by the flood" of obscenity. The President thus manifested his belief that the only way to have a totally free society is to prohibit certain publications and other obscene materials.

#### C. Motivations Behind Retaining the Criminal Status of Victimless Crimes

The criminal status of a given activity does not deter every person who would ordinarily have partaken in such action. Despite the use of the death penalty in certain states for capital crimes such as murder, violence still runs rampant through this great nation. It is at this juncture, when violent crime is at its peak in America, that our leaders tell us that it is more important than ever to get tough on crime. The means to achieving the end of eliminating crime which is offered by government leaders is to impose higher

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<sup>239</sup>Congressional Research Service. Regulation of Obscenity: A Compilation of Federal and State Statutes and Analysis of Selected Supreme Court Opinions, Appendix B. Statement by the President on the Commission's Report. October 24, 1970.



penalties on drug dealers, regulate films and television programming which might not be appropriate for certain audiences, and to assume "family values" as taught by religion. But the arguments in favor maintaining the criminal status of victimless crimes are not limited to citing the "public morality." Violent crimes have come to be associated with the victimless crimes, and the question has arisen concerning the correlation between crimes such as prostitution and drug usage and violent crimes such as rape and murder. The common element between all of these arguments is the fact that the evidence suggests conclusions directly to the contrary of these recitations.

One buzzword that is commonly used by the arguments against legalization of victimless crimes is "the children." President Nixon referred to "the young people" in his denunciation of the Commission on Obscenity and Pornography,<sup>240</sup> and the legislators of America have not hesitated in following that lead.<sup>241</sup> Because of the use of children not only in pornography but also as sexual slaves in an international black market,<sup>242</sup> all consensual prostitution and pornography should also be prohibited.

Another argument which is used primarily in opposition to pornography and prostitution is the prevailing image that women are merely objects of man's whimsical physical pleasures. Feminist writers of this generation point to the past treatment of women as the sexual property of their husbands and claim that women are second-class citizens in America *because* of pornography and prostitution.<sup>243</sup> Andrea Dworkin makes

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<sup>240</sup>*Id.*

<sup>241</sup>*See, e.g.,* Pub. L. 95-225, 18 U.S.C. Sec. 2251 et seq. (Protection of Children Against Sexual Exploitation Act).

<sup>242</sup>*See* Kenneth J. Herrmann, Jr., *International Child Sex Trade*, in *THE SEXUAL TRAFFICKING IN CHILDREN* 140-158 (1988).

<sup>243</sup>*See* Andrea Dworkin, *PORNOGRAPHY: MEN POSSESSING WOMEN* 101-128, 199-224 (1981).

the rash statement: "We [all women] will know that we are free when the pornography no longer exists. As long as it does exist, we must understand that we are the women in it: used by the same power, subject to the same valuation, as the vile whores who beg for more."<sup>244</sup>

Anti-porn activists also point to the physical violence which occurs in the business of pornography and prostitution. Dworkin points to examples such as Linda Lovelace who was forced to act in pornographic films and prostitute herself, literally at the point of a gun.<sup>245</sup> Violent crimes are also said to be caused by the existence of pornography in circulation. In his dissenting opinion in *Memoirs*, Justice Clark wrote: "[S]ex murder cases are invariably tied to some form of obscene literature ... [T]he files of our law enforcement agencies contain many reports of persons who patterned their criminal conduct after behavior depicted in obscene material."<sup>246</sup>

The most vehement defenses of the criminal status of victimless crimes are aimed particularly at illegal drugs. First, it is claimed that drug addicts must steal to support their habits; since the cost of maintaining a habit is higher than any irresponsible addict can handle, the addict is senselessly thrust into crime by the addiction. Second, the health threats which drug users inflict upon themselves is used to support an argument of "legal paternalism," suggesting that individuals are clearly not capable of making their own life decisions. Third, the treatment centers for drug addicts sponsored by the government impose too high a cost on the American taxpayers. Finally, the fact that people are killed

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<sup>244</sup>*Id.* at 224.

<sup>245</sup>Franklin Mark Osanka, SOURCEBOOK ON PORNOGRAPHY 84-87 (1989).

<sup>246</sup>383 U.S. at 452-53 (Clark, J., dissenting).

every day because drug dealers use guns to enforce their own rules upsets Americans so greatly that the public safety is threatened.<sup>247</sup>

Out of all the arguments offered in support of the prohibition and criminal status attached to these activities, there is not one which is valid. These arguments falter for many different reasons, but all ultimately because they do not check their own premises. Some of the arguments accept false premises; others confuse the contextuality of their premises. In some cases the evidence is completely ignored, while in others evidence is claimed only to be an irrelevant bystander to the will of a higher power. All of these arguments lead in one direction: the violation of the right of the individual to be his own sovereign.

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<sup>247</sup>*See generally* David Richards, SEX, DRUGS, DEATH, AND THE LAW 165-68 (1982).

## **VI. The Invalidation of Arguments Supporting the Criminal Status of Victimless Crimes**

### **A. Bad Epistemology**

Epistemology, the study of the nature and means of human knowledge,<sup>248</sup> explains the proper method of achieving the desired end of understanding existence. Man acquires data through the senses and integrates that data into perceptions, and then forms concepts through the process of differentiation and integration. Man then logically organizes his conceptual base into objective knowledge and establishes its validity by using reason.<sup>249</sup> This is the method of acquiring human knowledge; no other method is valid. Any shortcut or failure to employ reason completely results in a fallacious argument.

The most blatant use of bad epistemology is the total renunciation of reason. Any argument which is founded on "But it is in the Bible!" or on any other religious tenet is a prime example. Since A is A and there is no omniscient, unlimited or supernatural being in existence, such a premise for beliefs is not based in reality. Likewise, faith in the existence of any other form of mystical or intrinsic knowledge is allegiance to nonexistence. Denial of the metaphysical axioms does nothing for man's mind except to make it the useless gray matter which the materialists claim it to be.<sup>250</sup>

Another common epistemological error which leaves man's reason disabled is the acceptance of evidence which does not conform to the facts of reality. The corollary of this error is the gathering of insufficient evidence to draw a valid conclusion. It is not always possible to check the validity of every sense perception—if each of us was required to check every premise in the universe, then very little progress would be made because

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<sup>248</sup>See *supra* page 19.

<sup>249</sup>See Section II *supra*.

<sup>250</sup>See *supra* note 33 and accompanying text.

each generation would only repeat the knowledge gained by the last generation.

Therefore, it is permissible to accept certain sensory evidence which cannot ordinarily be perceived by oneself during the course of ordinary life. However, for each piece of evidence which is accepted as such without having been checked by an individual, an contextual bookmark should be placed at that point. If in the future an individual comes to realize that the knowledge gained earlier conflicts with that gained in the future, then that person should checking the validity of the sensory evidence he accepted without checking. For example, if a scientist were to theorize that gravity is an illusory condition which does not really exist on earth, one need only throw an object into the air and watch it return to the earth in order to provide the adequate evidence for refuting such a theory.

Arbitrary statements should be given absolutely no weight however, since they are completely devoid of evidence.<sup>251</sup> Belief in the arbitrary is what "created" God, the collective consciousness, and communism, and their validity was supposedly proclaimed by the statement: "How do you know it is not true?" *It is now the time for the province of law to analyze the evidence and make determinations of real facts.* The only basis for determining what is real is: existence exists. In order to determine what exists and in what identity, it is now the time for the province of law to ask the question: "How do you know it *is* true?"

A third error is the failure to form a logical argument—that is, the conclusion drawn does not follow from the evidentiary data and other premises. This is a problem both of logic and of reason—of logic because contradictions exist within one's base of knowledge, and of reason because of the allowance of that contradiction to continue to exist. A is A, and contradictions cannot exist in the universe. Any individual who wishes to build knowledge pertaining to this universe must first accept the fact that A is A, for

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<sup>251</sup>See supra notes 82-83 and accompanying text.

this fact is metaphysically given and as such is absolute.<sup>252</sup> Since contradictions cannot exist in nature, then they cannot exist in a valid bank of knowledge within man's mind. The application of reason in the process of gathering knowledge is the method of proof by which man can know the truth and validity of his conclusions. Reason is man's faculty of organizing his sensory data into conceptual form by use of logic<sup>253</sup>—and it requires man not only to gather sensory evidence, but also to organize it properly. Any deviation from reason in drawing conclusions based on the facts of reality will immediately result in an invalid conclusion: reason is not a part-time faculty to be used sometimes, but rather it is man's basic means of survival, and his only faculty of determining what will sustain his life.<sup>254</sup>

An example of a misinterpretation of evidence which is used to argue that victimless crimes should be kept criminal is the belief that participation in the victimless crimes cause people to commit violent crimes. For instance, drugs cause addicts to steal to support their habits and drug dealers murder and maim their associates to continue their racket. This argument is epistemologically flawed in two respects. First, drug addiction is not an mitigating factor when determining the guilt of a thief; robbery is a form of initiation of physical force, and it should be punished as such. If the individual is absolute, then he should accept the consequences of his actions. A thief may have the right to his own life, but he never has the right to another man's property to sustain his life. Likewise, a pornographer has the right to retain actors and actresses for his obscene

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<sup>252</sup>See *supra* notes 24-26 and accompanying text.

<sup>253</sup>See *supra* note 77.

<sup>254</sup>See Section III-A *supra*.

films, but he never has the right to violate the liberty of another, as in the case of Linda Lovelace.<sup>255</sup>

The use of violence to enforce the rules of the underworld applies not only to drug dealers, but also to pimps, pornographers and any other racketeers who create the stage for such activity. Though the correlation between the victimless crimes and the violent crimes has been missed by every politician and social activist of the last fifty years, it is painfully obvious nonetheless. *Violence is used to enforce the rules of victimless crimes because these people have no legal outlet.* The law provides courts for settling of disputes between parties concerning issues such as breach of contract, fraud and misrepresentation, and other torts. If the courts were open to hear disputes between drug dealers, gamblers, prostitutes and pimps, the parties could settle their disputes rationally and rely on the authority of the government to enforce the courts' decisions instead of the authority of their own guns.

Critics of legalization of victimless crimes claim that this is unheard of (this statement is ironic, and proof that they have intentionally shut their eyes and ears). Their rallying cry is "But how could you legalize them? You would be legalizing murder and rape! How do you know that violence will not continue even after they are legalized?" The root of these worries is not in reality itself, but rather in fear of reality. First, murder and rape will not be legalized with the legalization of victimless crimes; in fact, murder and rape will be punished with more frequency because the enforcement power of the government will not be squandered elsewhere. It is also common for the police to leave murders and rapes unsolved when they are associated with drugs, prostitution or pornography, for the very reason that the public morality believes that victims in these cases get what is coming to them.

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<sup>255</sup>See supra note 245 and accompanying text.

How can we know that the violence now associated with victimless crimes will not continue subsequent to their legalization? The answer is obvious: *because they are legal*. It is prohibition which causes the rise of underworld chieftains, not the activities themselves.<sup>256</sup> The immediate consequences to legalization of these activities will be the formation of corporations and other companies and partnerships which will provide these goods and services. The critics demand to see the statistics supporting this hypothesis. The answer is that the statistics do not exist, because it is not a hypothesis. In the past when these activities were legal, it was considered virtually self-evident that legality of a given activity would be sufficient incentive for people in the business not to mar it with illegal actions such as physical violence. Why categorize the statistical probabilities of a zero? It is not a hypothesis: there never was violence directly associated with the victimless crimes until they were made crimes and enforced as criminal behavior by the government.

Despite this argument and this evidence in support of it, critics demand proof. But it is not proof they desire, for the proof is right before their eyes and their minds. These critics want only one thing: to believe that A is not A and at the same time be correct in saying it. They want only to be right, without concerning themselves with the thoughts and actions which will grant their wish. Their rationale is the same as that of the person who prides himself on being an intellectual because of the fact that he refuses to think. If only one person exercised this right of refusal to think, then there would not be a problem; that person could have no lasting effect on those who chose to think. But the intellectual crisis exists because most people refuse to think beyond their arbitrary whims. None of them have sufficient confidence in the validity of their own whims, but they derive confidence from the fact that they all have the same lack of confidence.

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<sup>256</sup>The constitutional prohibition on alcohol (1919-1933) is a direct parallel. The rise of men such as Al Capone was made possible by the prohibition.



Consequently, the conception of the "collective consciousness" rises to destroy human knowledge. The answers to our questions are right before us—and we need only to use our own minds to find them.

B. Denial of Individual Rights as Absolute

Since A is A and Man is Man, and individual rights are absolute, no man or group of men has a legitimate claim on the life or work of another. While one's morality may cause him to make a judgment concerning the values and virtues (or lack of them) of another, morality is a deeply personal subject. If a person believes that another is acting to his detriment by pursuing anti-life activities, the corrective method used must be persuasion, not physical force. Rights are the most intimate possession man has, besides his life. While man can live without rights, his life would be like that of any base animal; in order to live *qua* man, man must not only possess rights but also respect them.<sup>257</sup>

Rights are positive in a personal context, but negative in a social context. That is, an individual has the right to his life, his liberty, and his property, whereas he also has moral protection from having those rights infringed.<sup>258</sup> Respect for these rights, however, require a society to recognize them; rights still exist as the possessions of each person regardless, but government recognition is what makes each individual secure in his rights. John Stuart Mill understood how the rights of the individual operated in a social context: "[F]rom this liberty of each individual follows the liberty ... of combination among individuals; freedom to unite for any purpose not involving harm to others: the persons combining being supposed to be of full age and not forced or deceived."<sup>259</sup> Mill agrees

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<sup>257</sup>See Section IV-A *supra*.

<sup>258</sup>See *supra* note 162.

<sup>259</sup>John Stuart Mill, ON LIBERTY 12 (1859).

that because the individual is absolute, he must not only make own decisions but accept the logical consequences of those decisions.

Joel Feinberg attempts to discredit Mill's appraisal of the sovereignty of the individual by claiming that every action a man takes has an effect on another man. If that effect is adverse, no matter how indirect the effect followed from its cause, the actor should be punished by society. The conclusion Feinberg substitutes into Mill's work is: "It would therefore seem that society has a right, on Mill's own principles, to interfere in every department of human life."<sup>260</sup> Mill never drew this conclusion, nor does it follow logically from any of his writings. The irony of this conjured attack on Mill is that this "refuted" harm principle is intermingled in Feinberg's later works which assert the government's right to regulate victimless crimes.<sup>261</sup>

As discussed earlier, government does not create rights; it merely recognizes or ignores them.<sup>262</sup> As the sole possessor of the retaliatory use of force in a society, government must be careful that it only uses force in retaliation and never initiate its use. In the case of victimless crimes, individuals have the right to act as sovereign over themselves, yet the American government asserts the power to deny permission to commit these acts. There is a contradiction in this last sentence—the first statement recognizes the law of identity as the source of man's rights, yet the second allows governments to be the creator and destroyer of rights. It is the metaphysically given

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<sup>260</sup>Joel Feinberg, SOCIAL PHILOSOPHY 31 (1973).

<sup>261</sup>See, e.g., Joel Feinberg, HARMLESS WRONGDOING (1988): "*The Offense Principle*: It is always a good reason in support of a proposed criminal prohibition that it is necessary to prevent serious offense to persons other than the actor and would be an effective means to that end if enacted." *Id.* at xix.

<sup>262</sup>See Section IV-B *supra*.

which is absolute, not the whim of man. The law of identity cannot be changed at the desire of any man or government, and A will always be A.

It is argued by legal paternalists that individuals are not capable of making all of their own decisions, and if permitted to do so people will inflict harm upon themselves. Legal paternalism is practiced not only by all statist governments, but also by the United States government. Philosophers such as Feinberg insist that a middle ground is necessary, and that "we must somehow reconcile our general repugnance for paternalism with the apparent necessity, or at least reasonableness, of some paternalistic regulations."<sup>263</sup> The validity of this statement, however, depends on the validity of the premise that any paternalistic regulations are either necessary or reasonable. This is a false premise by any "reasonable" standards, as the individual is his own sovereign and must be responsible for his own decisions concerning his own life, liberty, property and pursuit of happiness. Feinberg's acceptance of "a little bit of paternalism" is a philosophical compromise—the worst kind of contradiction.

Another sentiment which is expressed more frequently by taxpayers is anger at the cost of treatment centers and other programs financed by federal and state taxes. Such government involvement in the recuperation of the "victims" of victimless crimes does create a contradiction; if these activities are illegal, should the government reward those who participate in them by paying for their treatment at the expense of those who obey the law?

The answer to this question lies in the purpose of a proper government. The role of a proper government is to protect the rights of its individual members, and nothing more. This means that government should protect the right of the individual to take drugs, prostitute one's body, or gamble away one's life savings, for that is the prerogative of the individual. But every individual must also accept the consequences of his own

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<sup>263</sup>Feinberg, *supra* note 260, at 46.

decisions, and no individual has the right to another's property. Drug addicts have no right to demand treatment from other people after they find themselves addicted to drugs. Prostitutes have no right to demand medical assistance if during the course of their prostitution they contract a sexually-transmitted disease. Nor do any of these people have the right to demand health or life insurance from a carrier if no one will offer that insurance. If these happen to be the unfortunate consequences of one's participation in these activities, then that person must accept the responsibility.

Each individual who frowns upon the participation in victimless crimes retains the right to pass moral judgment on those who do-but he does not possess the right to act on that judgment. But if asked for help, he also retains the right to refuse help and to not act on their behalf. If the individual is his own sovereign and is an end in himself, then he may place no demands on any other individual.

C. Pragmatic Arguments Against the Criminal Status of Victimless Crimes

Up until this point, the entire substance of this note could have written under different circumstances, without a prohibition on victimless crimes having previously existed. However, as that prohibition has been intact for several years, and even centuries in the cases of prostitution and obscenity, there is now tangible and uncontroverted evidence that the criminal status of victimless crimes is the *immediate cause* of all related violent crimes. This section is not intended as a buffer to the rest of the argument in favor of decriminalizing victimless crimes, for the rational reader will understand, even in this section's absence, that the moral is the practical and that it is not the role of government to regulate or prohibit these activities. But since the moral is the practical, and since the law of causality is immutable (no matter how hard man tries to defeat it), every cause has an effect. Irrational laws cause irrational behavior within the citizenry. A more appropriate title for this section, therefore, would be "I told you so."

In his review of *America's Longest War: Rethinking Our Tragic Crusade Against Drugs*,<sup>264</sup> Randy Barnett seizes the opportunity to share with his readers some personal anecdotes of violence associated with victimless crimes which he witnessed as a prosecutor in Chicago. Barnett opens with a story about three young men who were looking to buy marijuana and instead were brutally murdered by gangmembers (the author learned this story while a prosecutor from one of the murderers who confessed). After completing the story, he writes:

"The moral of this story: Drug prohibition kills. There was no actual illicit drugs in this story. Drug prohibition 'worked' insofar as the members of the Latin Kings had no marijuana to sell on that fateful night. Yet three young men are dead, because drug prohibition made it impossible for them to buy marijuana from a safe and legal supplier, as they might have bought alcohol or tobacco. Had the local liquor or drug store sold marijuana, these young men would have lived. Perhaps smoking marijuana would have been harmful to their health; drug prohibition was fatal."<sup>265</sup>

In his encounters with stern prohibitionists, Barnett explains that the argument offered most frequently in response to this anecdote is that those three young men deserved to die for their attempt to procure marijuana,<sup>266</sup> and he concludes that "It seems that no facts are sufficient to shake the prohibitionists' faith in this tragic policy."<sup>267</sup>

Barnett also describes situations not only in which he was forced to plea bargain murders because of the massive volume of cases brought on drug charges,<sup>268</sup> but also how

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<sup>264</sup>Randy Barnett, *Bad Trip: Drug Prohibition and the Weakness of Public Policy*, 103 Yale L.J. 2593 (June 1994) (book review).

<sup>265</sup>*Id.* at 2594-95.

<sup>266</sup>*Id.* at 2597.

<sup>267</sup>*Id.* at 2598.

<sup>268</sup>*Id.* at 2595-96.

police and judicial corruption was the principal evil for him to fight as a prosecutor.<sup>269</sup> While these two problems had existed in the past, they did not bloom into an open war on the criminal justice system until the War on Drugs began in 1986 and was blown out of proportion in the 1990s. The finale of his introduction to the review holds that "The case against prohibition is overwhelmingly precise because so many different types of considerations all point to a single solution: the legalization of illicit drugs."<sup>270</sup>

Another effect of the criminal status of victimless crimes is the exponential growth of carriers of the AIDS virus in the United States. Two methods of contracting the virus, through sexual acts and through the sharing of intravenous needles, are areas which overlap with the government's prohibition of victimless crimes. As prostitutes are the primary intermediaries for sexual transmission of the AIDS virus, it is virtually impossible to determine how many are actually infected. If prostitutes had legitimate access to hospitals (their profession provides them with the money to pay their bills—if they are permitted to pay), they could receive proper medical advice and learn more preventative measures against the disease.

Concerning the spread of AIDS because of intravenous drug use, this problem is multiplied by a government ban on the sale of needles except by prescription. It is this prohibition on needles which forces drug addicts to share needles; after all, if an addict can find heroin, why would he be deterred by the need to share a needle with someone else? Alternatively, if needles were legal for over-the-counter purchase at drug stores,

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<sup>269</sup>*Id.* at 2596-97. "The moral of this story: Drug prohibition greatly increases official corruption. Judges, police officers, and prosecutors are all enforcing laws in which there is no civilian complaining witness to provide an external check on police, prosecutorial, and judicial discretion. No outsider knows effectively what is going on in the system."  
*Id.* at 2597.

<sup>270</sup>*Id.* at 2598.

then intravenous drug users could buy their own needles without resorting to risking a contraction of AIDS by sharing needles with other users. (An ironic sidenote to the relationship between illicit drugs and AIDS is that marijuana alleviates the pain and suffering of an AIDS carrier by relieving nausea, yet the government only permits extremely limited purchase and use of marijuana for such purposes. It would be cheaper for these people to buy marijuana illegally!)

In 1986, the Association of the Bar of the City of New York, in an attempt to solve the problem of an ever-increasing rate of drug use, formed the Special Committee on Drugs and the Law to investigate into the matter. Eight years later, the Committee delivered its report, entitled "A Wiser Course: Ending Drug Prohibition" ("The Report").<sup>271</sup> In its introduction the report states that "Despite billions of dollars spent on law enforcement, criminal prosecution, and incarceration during the last 80 years, the United States has made little or no progress toward reducing drug use or solving its 'drug problem.' On the contrary, illegal drug use remains a pervasive and powerful influence in our cities and in the nation at large."<sup>272</sup> Therefore, since "the costs of drug prohibition are simply too high and its benefits too dubious,"<sup>273</sup> the law should take different preventative action, such as treatment and education as opposed to incarceration.

One area in which the Committee found there to be regression instead of progression is the monetary cost of maintaining drug prohibition. The Drug War of the 1980s caused a nightmarish increase in prison population and judicial costs in not only the federal courts and prison system but also that of every state in the union.<sup>274</sup> These

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<sup>271</sup>The Committee on Drugs and the Law, *A Wiser Course: Ending Drug Prohibition*, 49 RECORD 521 (June 1994), .

<sup>272</sup>*Id.* at 524.

<sup>273</sup>*Id.* at 525.

<sup>274</sup> "Our court calendars groan under the burden of ever-increasing new drug

effects have led the Committee to believe that "One of the most tangible, measurable effects of the 'war on drugs' has been the creation of a 'prison state.'"<sup>275</sup> The Committee also expressed disillusionment by the "panoply of intrusions into the lives of United States citizens"<sup>276</sup> which includes the Supreme Court's permissibility of civil forfeiture, double jeopardy, and unreasonable searches.<sup>277</sup> In conclusion, the Committee "opposes

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cases. New York City's Corrections Department estimates that 70 percent of its inmates are charged with drug-related crimes. . . . In 1980 only 11 percent of the total inmate population was incarcerated for drug offenses . . . [O]ur state spent \$195 million in 1992 to confine drug offenders alone. Last year the state's Office of Court Administration requested an additional \$40 million just to cover the expense of drug cases. . . .

. . . . Between 1986 and 1988, there was a nearly 70% increase in the number of persons convicted of felony drug trafficking or possession charges (from 135,000 to 225,000). The number of persons convicted who received state prison sentences rose from 49,900 to 92,500. In 1988, drug offenses accounted for approximately one-third of all felony convictions in all state courts.

The case loads and concomitant costs of managing drug cases in federal courts also have increased substantially over the past decade. In 1982, the budget for prosecution of all federal drug cases in the United States was \$78.9 million; in 1993, the budget was ten times as much—\$795.9 million.

. . . .

Expenses associated with appeals of federal drug cases rose from \$8.2 million in 1982 to \$104.2 million in 1993. . . .

Federal and state judges throughout the United States have publicly expressed frustration with the present laws prohibiting drugs, and some senior federal judges have even refused to sit on drug cases. . . . These judges seek a solution to the 'war on drugs' before the whole judicial system breaks down under the strain."

*Id.* at 527-29.

<sup>275</sup>*Id.* at 530.

<sup>276</sup>*Id.* at 537.

<sup>277</sup>*Id.* (citing, e.g., *Florida v. Bostwick*, 501 U.S. 429 (1991); *United States v. Sokolow*, 490 U.S. 1 (1989)).



the present prohibitionist system and recommends the opening of a public dialog (sic) regarding new approaches to drug policy, including legalization and regulation."<sup>278</sup>

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<sup>278</sup>The Report, at 573.

## CONCLUSION

For the last three millennia philosophers have entertained discussions on the nature of rights. The American legal community, however, has been satisfied to accept morsels of many different philosophies and fuse them into hodgepodge lists of authorities. Such a philosophy is beyond incoherent; not only are all of the premises unchecked, but any two premises picked at random will in all likelihood be contradictory. Liberals and conservatives alike accept these contradictions and then justify them by asserting the need for a "balancing test" on any given issue.

In life, and in philosophy, there is no place for balancing tests. There is a fundamental alternative—life or death—and while man has the ability to choose his thoughts and actions, he does not have the ability to escape the consequences. Existence exists; and consciousness exists as a faculty of *perceiving* existence, not of *creating* it. Just as everything is *something* (identity), every something acts according to its nature (causality). A is A: and it could be no other way, because contradictions do not exist in reality. Man has the power to uphold contradictions in his mind, but to follow a contradictory course is to disobey the laws of nature. Man has a volitional consciousness and can act on any decision he makes, but he must conform to reality if he wishes to live.

Man is a conceptual creature. His knowledge is not automatic, and he has no instincts. But man has the ability to gain knowledge which will sustain his life, as well as the ability to understand logic, the art of noncontradictory identification. Combined with his sense perception, man's abilities to conceptualize and to identify reality give him the power of reason. It is by means of reason that man gains knowledge of human survival and of objective value and virtue. It is by means of reason that man forms a rational code of morality, which he then practices in order to survive. And since it is his own survival which is his highest value, the rational man practices rational self-interest, or *egoism*.

Since every individual is an end in himself, no initiation of physical force is permitted against another. Man's reason, not brute force, is his means of survival, and rational men resolve disputes with reason. It is to protect individuals from the initiation of physical force in a societal context which makes rights necessary to human survival. As such, rights are derived from man's identity, and government is the objective protector of those rights. It is for this purpose only that government exists, and for this purpose only that the government controls the exclusive use of retaliatory force against those who initiate force. If a government determines that it should regulate the activities of individuals which have no effect on nonconsenting adults, then it is acting as a parent and not as a government whose sole responsibility is to protect individual rights. If a government attempts to serve any purpose other than to protect the rights of its individual members, then it is serving an immoral purpose. It then becomes "a government of men, not of laws."