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The Moral Assessment of Corporate Decision Making

In response to a number of widely criticized trends in American economic life—including corporate downsizing and factory relocations, widening income disparities, and changes in worker-management relations—there has been a resurgence of interest in the question of what constitutes responsible corporate behavior. Rejecting the view that business managers are accountable only to their stockholders, many people have argued that corporations also have obligations to their workers, to the communities where they are located, and to society in general. In order to carry out these obligations, managers must be prepared to make ethical judgments as they formulate and assess corporate policies.

There is, of course, no shortage of advice on how best to think about such policies. One source of advice is cognitive psychology. A prominent researcher in this field, Max Bazerman, has designed laboratory experiments to investigate managerial judgment; he has also written about practical problems for managers and business students. Bazerman finds that ethical judgment, including judgment of corporate behavior, is prone to irrationality and inconsistency. Even though he does not propose ethical policies for firms in the way that moral philosophers or ethicists might, he does give relevant advice to managers: his purpose in writing is to tell people how they may alter their judgments, including moral judgments, in order to avoid irrationality.

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To his credit, Bazerman is aware of the difficulties that may attach to finding irrationality in moral judgment. "We are all entitled to our personal judgments about what we think is fair," he cautiously writes. "As a result, most research on fairness has avoided any evaluative statements about the irrationality of judgments of fairness." Nonetheless, Bazerman argues that certain ways of assessing fairness lead to "anger, jealousy, and inefficiency." If "we are to reduce or eliminate dysfunctional perceptions of fairness," he writes, "we need to confront the limits of rationality in these perceptions."

It turns out, however, that the conclusions Bazerman reaches about the irrationality of certain judgments imply a commitment to some implausible moral views. Furthermore, a careful reading of his examples suggests that people who make these "irrational" judgments may have plausible and coherent moral commitments that underlie their responses to corporate decisions. The purpose of this essay is to identify these commitments and consider their implications for understanding corporate responsibility.

Salary Change

Bazerman develops his position about the irrationality of moral judgment in business settings through discussion of a well-known set of experiments conducted by Daniel Kahneman and his colleagues. In these experiments (which we refer to as "Salary Change") each of two groups of subjects was presented with one of the following problems:

Problem A: A company is making a small profit. It is located in a community experiencing a recession with substantial unemployment but no inflation. Many workers are eager to work at the company. The company decides to decrease wages and salaries 7 percent this year.

Problem B: A company is making a small profit. It is located in a community experiencing a recession with substantial unemployment and inflation of 12 percent. Many workers are eager to work at the company. The company decides to increase wages and salaries 5 percent this year.

Among the respondents in the Kahneman experiment, 62 percent thought that the company's behavior in Problem A was unfair. In contrast, only 22 percent thought that the company's behavior in Problem B was unfair. For Bazerman, these findings provide an example of the irrationality he advises managers to avoid. In terms of inflation-adjusted dollars, he points out, the employees in Problem A and Problem B get approximately the same salary. Therefore, the companies in the two problems treat their employees in the same way, and it is irrational (or not "logical") to respond to the two cases differently. In Bazerman's

view, the research subjects should have thought only about how well-off the company's pay policy left employees in terms of real buying power. Since the outcomes for individual employees come out the same in Problem A and in Problem B, Bazerman thinks that attitudes toward the company should be the same in both cases.

We believe that the best way to understand Bazerman's charge of irrationality here is to suppose that he embraces the position philosophers call consequentialism, which holds that the moral rightness of an action must be measured solely in terms of the goodness of the action's consequences. Bazerman suggests that because the consequences for employees in Problem A and Problem B are the same, the two cases are morally on par and involve equally fair treatment of the employees. In judging the comparative moral status of two acts, then, all that matters are the consequences. Because the consequences of employer pay policy are the same in the two cases, it is irrational, Bazerman suggests, for people to see a moral difference between them.

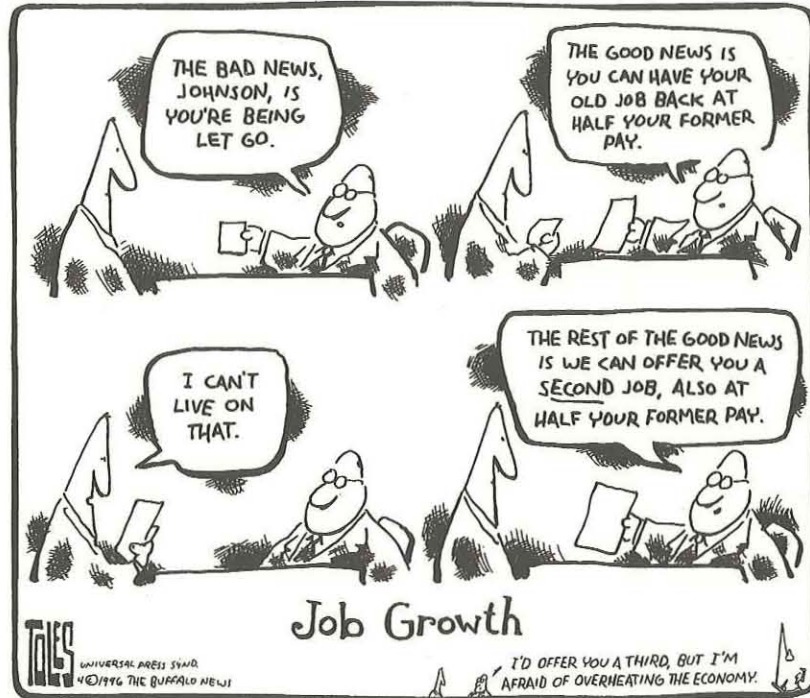
What happens, though, if one does not follow Bazerman in accepting consequentialism as a basis for assessing the rationality of the experimental subjects? In that case, it becomes much harder to justify the charge of irrationality. Once it is acknowledged that moral norms other than the consequentialist might plausibly be attributed to the subjects in Salary Change, the possible grounds for making and assessing corporate decisions without incurring the charge of irrationality prove to be broader than Bazerman's framework allows.

Alternative Norms

What other moral norms might be governing the responses of the subjects in the Kahneman study? One set of alternatives—usually described as deontological norms—have in common the idea that in assessing the moral rightness of an action, one cannot look simply, if at all, at the goodness of the consequences. The coherence and plausibility of deontological norms have been defended by respected moral philosophers, such as Alan Donagan and Thomas Nagel. And social psychologists, including Elaine Walster and Ronald Cohen, have argued that certain deontological norms concerning equity and justice exercise a powerful influence on the judgment and motivation of ordinary people.

Two deontological norms appear to have special potential significance for Salary Change: one concerns causal responsibility and the other concerns rights. Each of these norms suggests a distinctive interpretation of the Salary Change results.

Consider, first, the causal responsibility interpretation. While it is indisputable that neither employees in



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Problem A nor those in Problem B enjoy an increase in real income, the explanation as to why members of each group of employees lose out will differ. An employee in Problem B may explain his bad lot at least in part by saying that inflation is eating up the modest raise that his company gave him. A different explanation is available to an employee in Problem A, however: he may explain that the company took away some of his salary, perhaps at the same time complaining that the company should be helping him out. The nexus of causal responsibility identified in the two cases thus differs: in one case an employee explains his loss by appeal to the ailing economy, in the other case the employee explains the loss by appeal to the firm's action, which directly deprives him of money. Or one might say that in one case the company allows an economic harm to occur, but in the other case the company causes an economic harm.

Notions of causal responsibility are quite ancient, yet retain their credibility for contemporary philosophers working on problems in ethics. In a lucid review of these notions, Samuel Scheffler suggests that they include "the doctrine that individuals have a special responsibility for what they themselves do, as opposed to what they merely fail to prevent."

According to a second deontological idea of moral responsibility identified by Scheffler, one may have distinctive responsibilities (or "special obligations") toward those "to whom one stands in certain significant sorts of relationships." While Scheffler admits that there is no "consensus about the type of relationships that give rise to special obligations," it is clear, he argues, that such relationships play an important role in moral thought. Among these relationships, Scheffler includes friendship, membership in the same trade union, and the relationship of being coworkers. All these relationships seem to involve groups of people with shared interests and mutual dependence. The firm and its employees have this characteristic. So it is coherent to suppose that a firm's relation with its employees forms a basis of special obligations.

We might, then, characterize a deontological moral norm applying to firms as follows. The moral acceptability of a salary change must be measured in part by whether the change satisfies special responsibilities of the firm that would make the change. It counts against a salary change that it compromises special responsibilities that a firm owes, even if such a compromise would be comparatively favorable to the interests of the employees. If the experimental subjects in Salary

Change adopted their judgments of fairness in accordance with this norm, their responses reflected their belief that the nexus of causal responsibility matters morally, that it makes a difference morally whether the employee is economically harmed because the firm causes that harm or because the firm allows that harm to happen.

A similar point may be framed in terms of rights. Suppose that Problem A employees have developed certain salary rights which a pay decrease would infringe, while Problem B employees have no counterpart right to a raise that beats inflation. The existence of these two very different sets of rights will serve as a basis for certain responsibilities to Problem A employees but not to Problem B employees. To the deontological norm of causal responsibility, then, we may add a deontological norm of rights: the moral acceptability of a salary change must be measured in part by its impact on the rights of those affected by it; it counts against a salary change that it compromises individual rights, even if such a compromise would be comparatively favorable to the interests of the employees.

If experimental subjects believe that such rights exist, then consistency would require them to hold different attitudes about the fairness of the company's behavior in Problem A and Problem B. Contrary to Bazerman's suggestion, there would be nothing irrational in their attitudes about the fairness of company behavior.

Preferring the Status Quo

Results that psychologists obtain outside the realm of research into judgments of fairness may have encouraged Bazerman and others to find irrationality in experimental responses to Salary Change. In issues of valuation, for example, people attach importance to the status quo in ways that seem to defy rational explanation.

One intriguing example of this phenomenon, also investigated by Kahneman and his associates and discussed by Bazerman, is the endowment effect. Experimenters presented coffee mugs to a roomful of people, informing some of the people that they had just been given one of these mugs (and thus had just become mug owners) and the others that they were not being given the mugs. They then asked mug owners the price at which they would be willing to part with the mug, and asked the non-mug owners how much they would be willing to pay for the mug. Interestingly, the set of prices varied profoundly between owners and non-owners. Yet it hardly seems plausible that a mug's value varies so radically depending on whether one happens to own it or not.

Now plainly, whether you sell the mug and hence lose it, or whether you buy the mug and hence gain it,

there is some departure from the status quo. What psychologists claim to have discovered, however, is that as a general matter, people seem to regard it as more valuable to avoid going below the status quo than to improve over the status quo. One might suppose, then, that psychologists have discovered a broad-ranging pathology of human cognition: that subjects display irrationality in the way they tend to overvalue the status quo.

The difference in attitudes toward the company behavior in Problem A and Problem B might also be regarded as an instance of this pathology. Lowering income brings employees below the status quo; it causes a loss. Not giving a raise to keep income at pace with inflation, on the other hand, is merely not allowing one to make a nominal gain over the status quo. Because people irrationally see a loss, other things equal, as worse than failure to realize a gain, they will, researchers suggest, irrationally see the pay cut as worse than the failure to give a raise.

If the difference in attitude toward Problem A and Problem B is based on an irrational judgment regarding the status quo, it seems frivolous to defend it in terms of an entrenched and innocent preference for

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deontological as against consequentialist norms. But there is good reason to resist finding pathology here. Nobody has demonstrated that according special status to the status quo always signals error. Indeed, it seems quite plausible that sometimes the existence of a status quo is a source of special rights.

Consider the case of organ transplants. Suppose that society can take Fred's organs and give them to Tom, Dick and Harry. If it refuses to impose such a loss on Fred in order to achieve a gain for the others, it is not because society irrationally values avoiding loss over securing gain. It is instead because Fred has a right to his organs, and it is wrong to violate that right even if doing so might result in a rather sizable social gain. By protecting Fred's rights, society may be protecting the status quo, which involves saving fewer lives rather than many, but protecting the status quo seems a very different kind of activity here than in the case of valuing coffee mugs.

While not every status quo arrangement may be a source of rights, it seems inescapable that some of them are. The issue of rights presents a complication that is simply not at issue in the mug case. Even if, as Bazerman and his colleagues suggest, it is sometimes

irrational to attach more value to losses than to gains in simple market exchanges where nobody's rights are threatened, in cases where moral issues are at stake, the status quo may represent interests that society reasonably chooses to protect and which therefore form a basis of individual rights.

Corporate Responsibility and Philanthropy

Despite limitations on the analyses cognitive psychologists offer, it is important not to underestimate the significance of their experimental results. These results reveal much about the nature of the choices that managers confront. The relevance of the results can be demonstrated by reflecting on a typical problem for bank executives deliberating over issues of corporate responsibility.

Consider the social responsibility campaign of Chase Manhattan Bank. Like most large firms, Chase Manhattan is not shy about making the case that it scores high on the scale for responsible corporate conduct. For example, the bank publishes a *Chase Manhattan Corporate Responsibility Annual Report*, in which it lists activities intended to demonstrate its commitment to corporate responsibility. In 1993, the brochure documented about fifteen hundred charitable actions, mainly donations of money. These donations amounted to nearly \$10 million, roughly one percent of the bank's pretax income for the year.

The brochure is fascinating not only because of the large number of charitable actions it mentions, but also because of the enormous diversity of charitable activities it describes. In 1993, for example, these included \$500 for the purchase of bicycles for New York City Police to patrol a park; \$500 for the Connecticut Association for Mental Health; \$1,000 for the Chesapeake Bay Foundation; \$500 to People Against Sexual Abuse, Inc.; \$500 to the Chinatown Day Care Center, Inc.

One may infer from the brochure's title that the executives who approved it regard the brochure as an argument that the bank is a responsible corporation. Still, aside from some broadly aspirational remarks, the brochure contains little more than a very long list of charitable actions. This raises the question, How far does a heterogeneous list of good deeds go toward demonstrating corporate responsibility? Should we understand corporate responsibility as simply giving lots of money to lots of worthy causes? If so, then corporate responsibility might be viewed in terms of what we will call the "Lofty Strategy": if one gives lots of money to lots of really good causes, then, other things equal, one gets a high score on corporate responsibility.

What makes the Lofty Strategy appear lofty, no doubt, is that it exhibits an apparent commitment to impartial altruism: Chase Manhattan plainly purports

to be altruistic, at least in the weak sense that it engages in charitable acts aimed at advancing the interests of others. Chase Manhattan also seems to be impartial, because the interests it aims to advance are not those of people with whom it stands in some special relation, but instead people who are particularly needy. The rationale that underlies the Lofty Strategy should now be familiar. The Lofty Strategy seems to conform to a consequentialist moral norm, because it seems to identify the morally acceptable choices simply in terms of the amount of good done, and not in terms of satisfying obligations arising out of special relationships.

Despite the obvious appeal of the Lofty Strategy, some of the experimental evidence cited above raises doubt about its psychological and moral adequacy, and about its prospects for satisfying deeply entrenched social ideas of moral decency. The Salary Change results, for example, suggest that an executive deliberating about how to conceive of his bank's social responsibility must seriously consider an alternative to the Lofty Strategy—an alternative that we will call the "Involved Strategy." According to the Involved Strategy, a bank, in crafting its policy for corporate responsibility, should consider not merely how much good it does, but also whether it satisfies special obligations it incurs through its commercial activity.

How should we expect a bank which accepts the Involved Strategy to behave differently from a bank which accepts the Lofty Strategy? The key idea is to focus on the moral significance of the harm one causes or the rights one affects, even when these notions cannot be reduced to purely consequentialist considerations.

Suppose, for example, that Acme Bank's policy conforms to other bank policy in the community, which recognizes a presumption of financing only highly collateralized loan applicants. Also suppose that this policy, while not amounting to an illegal policy of redlining, has in fact led to a disproportionate number of loan denials to members of minority communities, and that economic development languishes in minority communities. As things stand now, one might plausibly explain the economic difficulties of minorities in these communities at least partially in terms of bank loan policy. It then becomes arguable, on deontological grounds, that Acme should recognize responsibility for this suffering and has a special obligation to help out.

Not all deontological arguments relevant to assessing bank responsibility bear on disadvantaged classes. Arguably when banks make people vulnerable to harm, they have a responsibility to protect them when the harm materializes, even if it is not strictly speaking the bank's fault that the harm occurs. Suppose that a bank engages in a robust policy of issuing credit cards

to college students. Although for the vast majority of these students, it turns out that getting a credit card through these programs is beneficial, suppose that some college students are not yet mature enough to handle credit, and that these students overextend themselves. Even if the bank violates no law by issuing cards to these students, one might reasonably impute to the bank a special obligation to aid students through credit counseling or related programs.

It may be that banks like Chase Manhattan are following policies that reflect the Involved Strategy, even as they hand out charitable contributions in accordance with the Lofty Strategy. If so, then it is striking that Chase Manhattan, in its report on corporate responsibility, chooses to mention only the latter activities. The bank apparently thinks that philanthropy of the kind described in the annual report is a central component of responsible corporate behavior. But its fulfillment of special obligations may be just as important. When a business pursues the Involved Strategy, it acts consistently with the deontological intuition, arguably expressed by experimental subjects in Salary Change, that causal responsibility and respect for individual rights matter in assessing corporate responsibility.

—Alan Strudler and Eleonora Curlo

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Silencing the Past: Public Monuments and the Tutelary State

This essay is concerned with a kind of censorship that falls outside the usual understanding of that term. In particular, I will be asking if the state itself should ever be subject to censorship—i.e., prevented, perhaps even by the force of law, from articulating certain sentiments.

Typically, when one considers the subject of censorship, especially if one is a liberal, one almost reflexively calls up the basic drama of the state invoking its legal powers—and the threat of punishment underlying the law—to suppress, and thus to silence, a "private" party who wishes to express herself. If this is the

paradigm case, then the literally almost paradigmatic response for most liberals is to express appropriate dismay about the threat posed by the state, and to adopt as a corrective a notion of the state as limited to presiding over—and seeking to safeguard—a "free marketplace of ideas." What this means, especially for Americans imbued with the tradition of Holmes and Brandeis, is that the state simply sets neutral procedural rules for an otherwise unfettered competition of ideas. In Owen Fiss's canonical statement of this ideal, the state is required to act "as a high-minded parliamentarian, making certain that all viewpoints are fully

and fairly heard." It must refrain not only from "choosing among viewpoints," but also from structuring the public debate "in such a way as to favor one viewpoint over another."

To be sure, neutral regulation may have consequences for particular speech. To deny a group the right to block traffic in order to mount a demonstration is to make it less likely that the group's views will in fact be communicated to an audience, but, or so the standard doctrine has it, the basis of this regulation is "content neutral," targeted not at *what* is said but only at *how* it is said. The state would presumably act against the obstruction of traffic even were the demonstrators rallying in favor of the most popular of causes.

The State as Participant

This view of the state as merely the benignly neutral traffic cop presiding over "robust" exchanges between and among private citizens is, I believe, quite naive, in part because it fails to notice the extent to which the state itself speaks. While such a view gives prominence to the state's role as a disinterested, somewhat distant, *regulator* of the intellectual and cultural marketplace, it pushes to the margins any recognition of the state as an active *participant* in that market. Yet state authorities—whether Presidents giving major policy addresses or teachers using state-mandated textbooks within the public school system—regularly articulate, in behalf of the state, highly contestable and completely unneutral views about important political and cultural

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matters. The danger of silencing those who disagree with the state's views comes, most often, not from any plausible fear of classic censorship—that is, overt punishment for offering views repugnant to state authorities—but, rather, from being "drowned out" by the superior resources often available to the state.

The state may benefit from having more *economic* resources to devote to articulating its position than do its opponents. But one should be aware that not the least valuable of the resources available to the state is the ability to *legitimate* certain arguments merely by virtue of its being the state that is offering them. From this perspective, the main threat posed by the contemporary Western state is that it will become an overweening *tutor* of the public, and that others who wish to take on this role will be denied legitimacy. In any

event, one might well fear a state that so dominates the marketplace that alternative conceptions of the public good will find themselves not so much silenced—at least in the specific sense of becoming legally unsayable—as marginalized.

Those fearful of a tutelary state may even suggest that state speech itself on occasion be subject to censorship, even if, from a traditional liberal perspective, it sounds willfully paradoxical to speak of the state as the object of censorship rather than the agency that (usually illegitimately) censors others. It is possible, though, to read the United States Constitution as limiting the power of either the national or state government to profess certain views. The easiest example would involve the First Amendment's ban on the

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"establishment" of religion. A majority of the current Supreme Court, led by Justice O'Connor, has interpreted this as, at the very least, prohibiting the "endorsement" by the state of explicitly religious points of view. Thus, I think most (though in fact not all) constitutional scholars would agree that Congress could not constitutionally legislate the addition of "In Christ is our Redemption" to the flag or the coinage.

In other cases, the constitutional status of government speech is more controversial. What about adding "Devoted to White Supremacy" to the American or a state flag? This example is not as arbitrary or outlandish as it might sound; indeed, it is central to an example I consider later in this essay. There is a non-frivolous argument that an affirmation of white supremacy would violate the anti-subordination principle that many view as the core of the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment. To the extent that our government is indeed founded on a principle of "equal concern and respect" for all members of the polity, any such expression in the name of the state would be not only censurable, but, even more to the point, the proper object of judicially mandated (because constitutionally mandated) censorship.

Sacred Space

I have suggested that the state acts in relation to the intellectual marketplace not only—indeed, increasingly rarely, at least in the United States—through the negative acts of overtly silencing by threat of punishment those with given views, but, perhaps more sig-

nificantly, through the *affirmative* acts of speaking in behalf of the people, or community, in whose name it claims to rule. In the age of the activist state, governmental speech, even when lacking the formal status of law, is a pervasive method of cultural regulation. Two obvious examples are programs in civic education, where the metaphor of the state as tutor is most clearly

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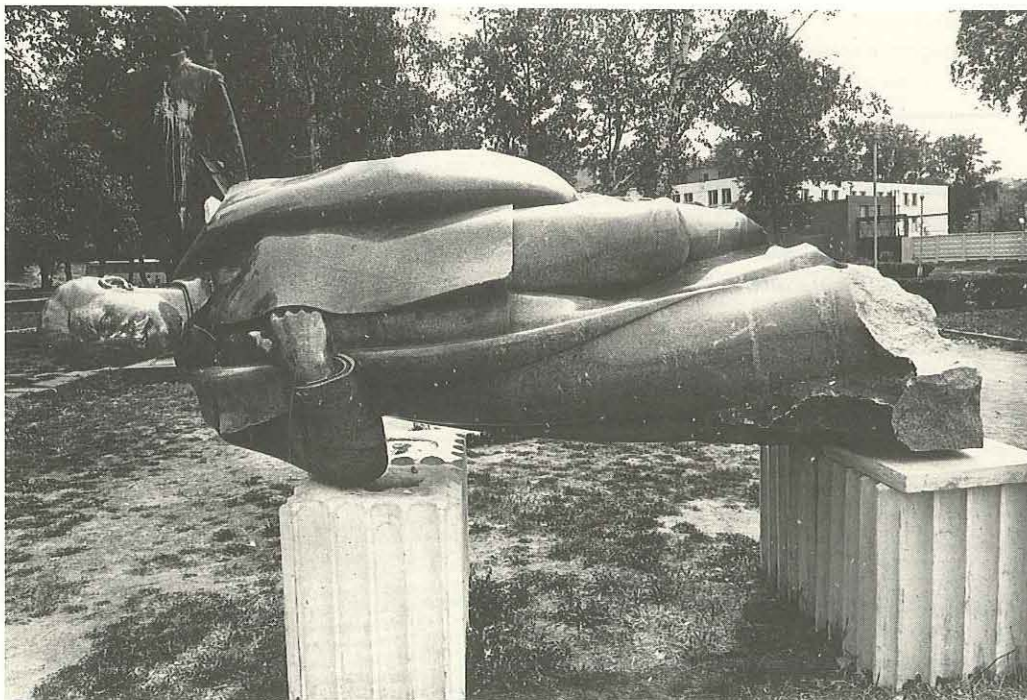
instantiated, and the phenomena of public monuments, through which the state privileges certain understandings of the community by celebrating particular heroes or sacred events.

"Public," in this context, refers primarily to the placement and ideological function of such monuments. Quite often, of course, they will be funded by the taxpayers, and be "public" in that very fundamental sense as well. Yet it is not at all unusual for private

individuals or groups to finance a monument while seeking, through its display in a particular setting, the state's special imprimatur for its message. From this perspective, the most "public" of all public monuments are those occupying what Chidester and Linenthal describe as a culture's "sacred space," such as Capitol grounds, official cemeteries, or important parks or streets. They serve as the icons within the civic religion that, as Rousseau argued, helps to maintain any political order. But then, for just this reason, the placement of a statue or commemorative plaque in these public settings can be a source of intense controversy. I shall explore one example in some detail.

The Liberty Monument

In New Orleans stands what for most persons is an obscure monument to an obscure incident. The Liberty Monument celebrates the 1874 Battle of Liberty Place, described by an admiring local historian as "The Overthrow of Carpet-Bag Rule in New Orleans—September 14, 1874." Members of the appropriately named White League engaged in the violent overthrow of the existing Louisiana government, composed of an alliance of Republican whites and newly



Komar and Melamid, "Fallen Stalin." From Monumental Propaganda, a traveling exhibition organized and circulated by Independent Curators Incorporated (ICI), New York. Reprinted with permission of Independent Curators Incorporated.

enfranchised African-Americans. Thirty-two lives were lost on both sides, with about three times that many persons injured. The ousted administration of Republican Governor Kellogg was in fact reinstated by force of federal arms, but it was only a matter of time until the Compromise of 1877 resulted in full-scale restoration of conservative white rule as sought by the White League, with attendant consequences for the future of African-Americans.

Immediately following the battle, with the partisans of the White League in apparent control of the state (of which New Orleans was then the capital), the *New Orleans Daily Picayune* saluted the downfall of the Kellogg regime (which, in the words of the editors,

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had "collapsed at one touch of honest indignation and gallant onslaught") and called for the erection of a memorial to the eleven whites who had died in behalf of the insurgency. The New Orleans City Council formally agreed in November 1882, when it passed an ordinance renaming the area of the battle as "Liberty Place" and authorizing the erection of a monument "in honor of those who fell in defense of liberty and home rule in that heroic struggle of the 14th of September, 1874." By 1891 these hopes were realized with the construction of an obelisk near the Mississippi River at the foot of Canal Street, a principal street in the city. (New Orleans had seven years earlier erected a giant monument to Robert E. Lee that continues to preside, entirely unobscured, over Lee Circle.) The Liberty Monument included the names of those White Leaguers who gave their lives in attacking the hated mixed-race government, as well as the names of some of the League leaders. According to Judith Kelleher Schafer, a leading historian of the incident, the 1891 dedication of the monument initiated what became a yearly parade thereafter each September 14, with suitable wreath-laying ceremonies to honor the civic heroes.

Lest anyone unaccountably fail to get the intended message, the city, using artisans supplied by the federally funded Works Progress Administration, added in 1934 two plaques setting out the official version of events. On one side of the base was chiseled, "United States troopers took over the state government and reinstated the usurpers but the national election in November 1876 recognized white supremacy and gave us our state." On the opposite side appeared, "McEnery and Penn, having been elected governor

and lieutenant governor by the white people, were duly installed by the overthrow of the carpetbag government, ousting the usurpers Gov. Kellogg (white) and Lt. Gov. Antoine (colored)."

As one might well expect, the Liberty Monument has remained a source of controversy in New Orleans, especially as African-Americans have become a dominant political force in the city. In 1974, for example, Mayor Moon Landrieu agreed to the placement near the monument of a brass plaque describing the battle as an "insurrection" and noting that the controversial language carved on its base had not in fact been part of the original 1891 monument. Most important, no doubt, was the plaque's additional message that "the sentiments expressed are contrary to the philosophy and beliefs of present-day New Orleans," a statement itself raising delicious political and philosophical questions. Is New Orleans an entity that can have a "philosophy and beliefs," and, if so, how precisely does one identify what they are, or who is authorized to speak performatively as to their content? One wonders also if it is possible that the statement, whatever its accuracy at the time of installation, was chiefly designed to *create* the consciousness that it purports to describe. In any event, there is no doubt that New Orleans adopted an overtly tutelary role in attempting to limit somewhat the pernicious consequences of the

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Liberty Monument, lest the citizens be tempted to treat the words chiseled upon it as an authoritative enunciation of the meaning of the event that was, after all, being commemorated.

When Ernest Morial became the first black mayor of the city in 1981, he attempted to remove the monument, but was stopped from doing so by the majority white City Council, which forbade the moving of any monuments without its consent. (Does the Council therefore merit an award for fending off the forces of censorship?) The Council did, however, authorize the removal of any offensive wording on the monument (so maybe it doesn't deserve an award after all). Smooth granite slabs were then placed over the 1934 additions, presumably obviating the need for the plaque's renunciatory sentiments.

During the late 1980s the administration of a second black mayor, Sidney Barthelemy, tried to remove the monument permanently from view during the course of general riverfront reconstruction, when it had been

taken down from its Canal Street location. However, an interesting alliance of traditionalists, historical preservationists, and white supremacists successfully blocked the effort. Nevertheless, the monument was ultimately moved from its original spot to a decidedly more obscure setting about a block away, where it

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now languishes out of the sight of most of the tourists who crowd Canal Street and its fine shops, casinos, municipal aquarium, and vistas of the Mississippi. It remains in the area at all only because of a consent agreement between the City and the State Historic Preservation Officer, based on federal historic preservation laws, that the monument remain in the general vicinity of the battle.

Once again, though, the "official" story changed, for now there was yet another large plaque placed on the monument itself: "In honor of those Americans on both sides of the conflict who died in the Battle of Liberty Place. A conflict of the past that should teach us lessons for the future." What these lessons are is left wholly unarticulated. The voice of the tutor is quite muffled, leaving the monument to "speak for itself." We may reasonably wonder if this really represents progress over the 1974 point-and-counterpoint between the chiseled words on the base of the monument and the revisionist plaque, an exchange that at least educated the careful reader as to the ideological stakes behind the ascription of meaning to the Liberty Monument.

The Nature of Historical Memory

During the height of the controversy in New Orleans, when the monument had been removed from its original site but when its fate had not yet been decided, the noted Yale historian Robin Winks attacked those who were calling for its destruction. He took direct issue with those who viewed the struggle over its appropriateness as a "clash between those who look to the future and those who hang on to the past, or even more sharply put, between racists and those who regard race as irrelevant." Instead, he suggested, the struggle was really about the nature of historical memory. Different concepts of history were at war, Winks wrote. The first "holds that society should never forget any part of its past," that "it is wrong to purge the record of past events." Winks characterized

the contrasting view by evoking the classic negative example of the "Great Soviet Encyclopedia," which was continually revised in accordance with the desires of successive ruling elites. Not to put the monument back up, the historian declared, "would be an act of the clearest Stalinism, of intellectual vandalism."

For Winks, however, the real issue was not whether to keep the monument standing but, rather, where to put it. He agreed that it was not appropriate to restore the monument to its Canal Street setting, where, despite the best arguments of the historic preservationists, it constituted "an insult to most of the present population of New Orleans." Instead, Winks argued for placing the monument in a museum, presumably (since no one defends the Liberty Monument as art) a history museum. In support of this proposal, Winks offered the example of Zimbabwe, which, upon its creation as a successor-state to Rhodesia, was faced with the issue of what to do with the "great statues of Cecil Rhodes, Lord Salisbury and others who dreamt of empire." The new regime's solution was not to "deny the significance" of these figures "to the history of

*Suppose the new government of Russia were
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modern Zimbabwe." Instead, they moved the statues from the great public places of the capital and deposited them "on the grounds of the nation's new national archives and museum, a clear statement that the figures spoke to the past, not to the future."

Even if Winks is right to say that complete destruction of these monuments is unwise (whether or not it is "Stalinist"), one might obviously wonder if the state should be content to count on their placement in a museum setting to convey the proper message. Suppose that the Zimbabwean example were followed by the new government of South Africa, with the result that Afrikaners could continue to see mighty monuments to their ancestors, though in museums rather than in great public squares. Suppose the new governments of Russia, Poland, and other countries formerly ruled by Communists were to place various statues of Lenin, Stalin, and others in the equivalent of Communist theme parks, where parents could bring their children and impart to them whatever lessons they wished. In these cases, would adoption of the Zimbabwean solution necessarily be beneficial in the struggle to extirpate racist or Communist sympathies? It takes little imagination to extend the comparison to

Germany and Japan, following their defeats in World War II. Would one have been altogether comforted had the postwar regimes moved any public statuary of Hitler, Tojo, and their minions to the carefully tended grounds of a state museum where they would stand, without further adornment or explanation, for the presumed edification of onlookers?

Subverting Official Stories

Perhaps one might want the statuary to be accompanied by various "educational" plaques and other materials that specify who is to be considered heroic and who villainous. But, of course, anyone who has drunk from the postmodernist well (or, perhaps, anyone simply with common sense) knows how easily such official stories can be subverted by viewers. Unreconstructed Southerners (or Afrikaners, Communists, etc.) might well continue to treat even statuary enclosed in a museum as iconic and to teach their children quite different lessons from those desired by state authorities. Indeed, the tutelary inscriptions might be pointed out to the young as direct evidence of hegemonic oppression rather than offered as the right way to understand the monuments. "Political correctness," the desire for which is a part of all political regimes, including liberal ones, is all too easily subverted in all but the most totalitarian of settings.

So how should a contemporary non-racist respond to the Liberty Monument? My immediate answer is, "with caution." That is, I remain highly uncertain that there are any useful general norms that offer much help. I have little doubt that the removal of villains' statues from public space—or, for that matter, the cancellation of a traditional "official" parade or wreath-laying ceremony—is a form of regulation designed to inculcate in the citizenry a "correct" civic consciousness. I am less sure that this should be described as "silencing," since private individuals and organizations presumably remain free to organize marches and other ceremonies on their own, just as they can place monuments on private property. In any event, I cannot cogently offer general criticisms of states that engage in such regulation; for I cannot imagine a state that does not devote at least some of its energies to exactly that, even if it otherwise tolerates relatively unfettered private discourse. Moreover, I am happy with the state's playing a tutelary role, at least so long as I am happy, enough of the time, with the state's substantive decisions as to whom to honor (or dishonor).

But that, obviously, is the rub. Will our response to the expressive acts of the tutelary state simply depend on whose cultural symbols are being affirmed or supplanted? One would like to say no, especially if one is a liberal yearning for suitably neutral standards that enable us to transcend our own substantive politics

when considering who is fit for public honor. But I don't know what those standards are. I find myself thinking of Justice Holmes's reminder that "general propositions do not decide concrete cases." What this means, among other things, is that there *are* times when the proper response to the sacred symbols of a prior political regime is to destroy them, that we certainly are *not* obligated to preserve them in places of honor or, perhaps, even in the disinfected space of a museum.

—Sanford Levinson

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Sources: Owen M. Fiss, "State Activism and State Censorship," *Yale Law Journal*, vol. 1087 (1991); Stephen H. Schiffrin, "Government Speech," *UCLA Law Review*, vol. 565 (1980); Mark G. Yudof, *When Government Speaks: Politics, Law, and Government Expression in America* (University of California Press, 1983); *Allegheny County v. A.C.L.U.*, *Greater Pittsburgh Chapter*, 492 U.S. 573 (1989); *Capitol Square Review and Advisory Board v. Pinette*, 115 S. Ct. 2440, 2451 (O'Connor, J., concurring); Jesse Choper, *Securing Religious Liberty: Principles for Judicial Interpretation of the Religion Clauses* (University of Chicago Press, 1995); Akhil Reed Amar, "Comment: The Case of the Missing Amendments," *Harvard Law Review*, vol. 124 (1992); Robert Post, *Constitutional Domains: Democracy, Community, Management* (Harvard University Press, 1995); "Introduction" to *American Sacred Space*, edited by David Chidester and Edward T. Linenthal (University of Indiana Press, 1995); Joe Gray Taylor, *Louisiana Reconstructed 1963–1877* (Louisiana State University Press, 1974); Judith Kelleher Schafer, "The Battle of Liberty Place," *Louisiana Cultural Vistas*, vol. 8, no. 17 (1994); Royal Brightbill, "Reconstruction Era Battle Still Being Fought in New Orleans," *United Press International* (October 20, 1989); Christina Cheskalos, "Monument Debate Divides New Orleans," *Atlanta Constitution* (December 15, 1992); Robin W. Winks, "A Place for Liberty Monument," *New Orleans Times Picayune* (August 17, 1992); Will Kymlicka, *Multicultural Citizenship* (Clarendon Press, 1995).

Commemoration and Disavowal

Sanford Levinson is "highly uncertain that there are any useful general norms that offer much help" in deciding whether or how a state should preserve public monuments that were erected to express sentiments it now rejects. Clearly, the decision depends to a large extent on how odious those sentiments now appear, and on how hurtful they are to members of the present-day community. But the complexity of Levinson's examples suggests that these may not be the only considerations. A state may have reasons other than a fetishistic devotion to its past for preserving, or at least declining to destroy, a public monument whose original sentiments are contrary to present-day "philosophy and beliefs." The events or person memorialized may have come to be valued for different, less objectionable reasons. Or the history of the monument itself may be worthier of commemoration than the events or person it was erected to honor.

Even if a monument has not acquired a meaning or history worthy of commemoration, its destruction may not be the most felicitous way of disavowing the sentiments it expresses. The state's complicity or acquiescence in the evils glorified by the monument may make its destruction an act of hypocrisy or bad faith; the state may do better to leave the monument standing as a reminder or reproach. And even if the state is not complicit in those evils, it may have less melodramatic ways of distancing itself from them.

These are general considerations, in the sense that they can be applied to many or most controversial public monuments. But their application requires highly specific knowledge, both of the past that a given monument commemorates and of the monument's own history. This will become apparent if we return to the case on which Levinson focuses: the controversy over New Orleans' Liberty Monument.

The city administration which erected the monument in 1891 intended it to celebrate the restoration of white supremacy to New Orleans and the conquered South. Clearly this was still its dominant meaning in 1934, when an inscription to that effect was added. But with the passing years, the monument may have come to symbolize something more—not the restoration of white supremacy, but the sadness and singularity of a region that for generations identified itself with lost causes that were rarely worthy of its extravagant devotion. The gradual disappearance of the South's

distinctive, poignant character evokes bittersweet feelings even in Southern liberals, feelings that the monument, with all its misdirected grandiosity, may appropriately express. (Anyone who doubts that such regret is possible should listen to Livingston Taylor's rendition of "Dixie," which turns a brash anthem of secession into a haunting lament for an unrecoverable past.)

But while a symbol like a monument or anthem can undergo a significant shift in meaning, the passage of time is not always sufficient to redeem it. The obvious example is the Confederate flag. Defenders of the flag's continuing display at Southern statehouses insist that it no longer symbolizes white supremacy, but rather the defiant particularity of the region; that it has become a symbol of resistance to the oppressive norms of a homogeneous national culture. This defense fails, however, and not merely because of an unfavorable balance of negative to positive associations. It is not only that the flag continues to remind African-Americans of their subordination, but that their subordination has always been justified by a perverse appeal to liberty—by those who called for state nullification of federal law in 1835, by those who fired on Fort Sumter in 1861, and by those who seized power in New Orleans in 1874. It is the liberty of the oppressor that the Confederate flag continues to celebrate.

Is this also true of the Liberty Monument? I suspect so, for several reasons. Certainly it is hard to see in the 1874 uprising any virtues a decent society would wish to honor. Unlike, say, the charge of the VMI cadets against the Union batteries at New Market in 1864, this was no display of reckless courage against formidable odds. The insurrectionists significantly outnumbered the state militia and local police, and they laid down their arms as soon as federal troops arrived in force. McEnery, whom the insurrectionists "duly installed" as Governor, left New Orleans before the uprising to avoid arrest if it failed and surrendered to federal officials the day after he returned. The White League, which organized the insurrection, had recently been implicated in the massacre of unarmed prisoners.

More broadly, while the Civil War and its aftermath were the occasions for heroic resistance in much of the South, they were experienced more as farce than tragedy in New Orleans. The city surrendered early in the war after a brief naval assault; its resistance consisted of little more than angry editorials and rude ges-

tures by society ladies toward passing Union troops (a form of defiance which prompted General Benjamin Butler's famous order that any woman caught engaging in such incivilities was to be treated as a common prostitute).

For better or worse, the secessionist struggle did not provide the defining moments for New Orleans that it did for so much of the South. The character of New

While the city can repudiate the racist ideology expressed by the monument, it cannot so easily undo the harm inflicted by that ideology.

Orleans owes less to what it shares with the region at large than to what distinguishes it: its exuberant affirmation of French and Caribbean influence long after the Louisiana Purchase. A city that can celebrate its disdain for conventional norms with a monument to Jean Lafitte, or to Storyville, hardly needs to commemorate a bloody putsch by white supremacists.

Although the 1891 monument celebrates events that should be a subject of municipal shame, it might be argued that the monument itself has acquired a history worth preserving. The protracted public controversy over its fate may, ironically, have enhanced its symbolic value. The accretions of meaning have been literal as well as symbolic: since 1891, the monument has acquired inscriptions at its base, granite slabs covering those inscriptions, and an explanatory plaque at its side. (The additions make the position of the preservationists ambiguous. Do they want to preserve only the 1891 monument, the 1934 inscriptions, exposed or covered, or the 1989 plaque?) These additions memorialize a struggle no less interesting than the one the monument was erected to commemorate. But this second Battle of Liberty Place lacks the epic character or moral clarity required to transform the monument into something besides a symbol of racist militancy.

For similar reasons, it would be premature for the city to relegate the Liberty Monument to a museum. Over time, a monument may become less a transparent symbol of past events than an historic artifact in its own right. This transformation from symbol to artifact may be hastened by social and political changes that attenuate its symbolism. In the case of the Liberty Monument, however, these changes have not been sufficiently profound to bring about such attenuation. The sentiments behind the monument are still too powerful, and the wounds they have inflicted too fresh, for the government to treat it as an inert artifact.

So, what should the city do? It has already taken an appropriate step in declining to restore the monu-

ment to its previous place of prominence. The official disclaimer put up by the Landrieu administration is fitting, if stilted. The question is whether the city should take the further step of destroying the monument, or at least removing it from public view.

A more modest alternative might be to end public upkeep. A sign could be posted like those placed along country roads that turn from pavement to dirt: No State Maintenance. A policy of official neglect would preserve a painful reminder of a shameful legacy, without seeming to express approval or even qualified admiration of that legacy. What it would express is a shared determination not to forget. The monument would remind an only recently desegregated city of how fragile and incomplete the liberation and empowerment of African-Americans has been.

But a policy of official neglect is not without risk. The city would have to decide whether it would permit private groups to maintain the monument, and what, if anything, it would do to prevent private individuals from destroying it. On one hand, to permit private maintenance of the monument is to risk giving inspiration to the moral heirs of the White League. On the other hand, continuing the public display of a decaying monument while preventing its maintenance by private groups might be even more of an affront to those who value the monument as an historic artifact than simply hauling it off to a warehouse or junkyard.

Perhaps, then, the monument should simply come down. But if so, it should not be removed in a triumphal spirit. For while the city can repudiate the racist ideology expressed by the monument, it cannot so easily undo the harm inflicted by that ideology. There is a disturbing but unmistakable connection between the oppression of African-Americans in 1874 and their impoverishment in 1996. A community that daily confronts the enduring legacy of white supremacy should treat the removal of the monument as a somber, not a festive, occasion.

—David Wasserman

Sources: Joseph G. Dawson, *Army Generals and Reconstruction: Louisiana, 1862-1877* (Louisiana State University Press, 1982); Rufus P. Browning, et al., *Racial Politics in American Cities* (Longman, 1990).

Disowning Knowledge: Issues in Genetic Testing

Last fall in Chicago, at a conference sponsored by the Alzheimer's Association and the National Institute on Aging, doctors and researchers met to discuss an ethical dilemma that has grown increasingly familiar as advances in diagnostic techniques outstrip the therapeutic abilities of the medical profession. The meeting focused on the use of a medical test for a particular heart condition—a test that can also, in some cases, predict with 90 percent accuracy whether someone will develop Alzheimer's disease by the age of 80. Should patients tested for the heart condition be told of their risk of contracting Alzheimer's disease, when there is little if anything medicine at present can do to prevent or ameliorate the condition?

Some people, including many of those attending the meeting, believe that the answer to this question is no: if the information is of little therapeutic value, it's of little value to the patient as well. It is wrong to burden the patient with troubling news when there is little or nothing that the physician can do about it.

At this stage in the history of medical practice, we may well be surprised to encounter such a response. Over the past few decades there has been an intense

of health professionals deciding whether a patient should know his or her medical condition is now routinely criticized in bioethics courses. Nonetheless, the advent of genetic testing appears to have provoked a resurgence of paternalistic thinking, especially in those cases where doctors can detect the genetic condition associated with a particular disease but are as yet unable to prevent or treat that disease.

The association between a genetic condition and a disease, and so the type of information a genetic test reveals, is subject to considerable variation. With results from the test for a specific mutation at the tip of chromosome 4, we can predict with near certainty whether an individual will suffer from Huntington's disease, a severe late-onset neurological disorder, but we can't yet tell when the disease will occur. With information from the test for mutations of the BRCA1 gene, we can, in particular situations, conclude that an individual has a susceptibility to a specific type of breast cancer, but we don't yet know what other conditions must be in place to trigger this susceptibility. With information from the test discussed in Chicago—a test that detects the presence of the apolipoprotein E genotype—we can, in particular situations, conclude that an individual is at an increased risk of contracting Alzheimer's disease, but there is still some controversy about the relative importance of this risk factor.

Recent concern has largely focused on these last two tests. At the Chicago meeting, the issue was the disclosure of certain additional information from a test already administered. In other cases, professional organizations, as well as some advocacy groups, have proposed limits on the very availability of certain genetic tests. It is argued that tests for certain conditions should be restricted to research settings for the time being and not offered routinely or to all.

Are these proposals based on medical paternalism? Or can restrictions on genetic testing be defended on other grounds? I wish to examine possible justifications for limiting testing, distinguishing between those that are paternalistic and those that are not. I shall then consider the reasons and responsibilities that might influence patients in deciding whether to be tested or to receive genetic information.

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effort to articulate and defend a person's right to be informed of his or her medical condition. Not so long ago, this right was not widely acknowledged. Health professionals generally assumed that, in the case of certain diseases, patients didn't really want to know. Moreover, even if they did want to, they wouldn't really understand the diagnosis; and even if they did want to know and could understand, they would be so psychologically harmed by the information that the result would likely be, if not suicide, then a clinical depression that would interfere with any sort of available care. Over the years the arguments attempting to defend this medical paternalism have been carefully examined and successfully undermined. The very idea

Grounds for Restrictions

A discussion of reasons for restricting genetic testing should begin by acknowledging that there is no *right* to genetic testing. A right to be informed of test results (assuming that such a right exists) would not entail a right to *be* tested. And a "right to health care" (in the usual ways that phrase is understood) is not taken to include a right to have every diagnostic test, including genetic tests, performed. But though there is no right

*Though there is no right to genetic testing,
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to genetic testing, a decision to withhold or restrict certain tests should be based on good public reasons (as opposed to private, economic reasons). This is especially true in the case of genetic tests, since in many cases genetic testing facilities, e.g., those connected

with teaching hospitals, are supported, directly or indirectly, with public funds.

Reasons for restricting certain kinds of genetic tests can be divided into two broad categories. One set of reasons focuses on the *time and resources* that would be lost by the inappropriate use of genetic testing. Given the current state of knowledge, the results obtained from certain tests may include such a high number of false-positives or false-negatives, or be so difficult to interpret, that performing these tests would be a waste of the health professional's or laboratory's time, diverting resources from tests that are diagnostically more useful. For example, research has revealed a large number of possible mutations in BRCA1. Unless a woman's family history implicates a particular mutation in the occurrence of breast cancer, there is no point in testing her for that mutation; whatever the test result may be, it will not be interpretable. Thus, a decision not to offer BRCA1 testing to all women would be defensible on the grounds that widespread testing would needlessly draw upon society's limited resources of expertise and technology. Where the best available evidence shows that a given procedure



*"Son, now that you've turned sixty there are a few
things you should know about the family."*

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The New Yorker Magazine, Inc.

would yield no meaningful information, it is entirely appropriate, so the argument goes, to restrict that procedure.

The second set of grounds for restricting the availability of genetic tests focuses on claims about the *social or psychological harms* that individuals might suffer from knowing their test results, where these harms are not offset by any corresponding medical benefit. Indeed, in many cases these harms are considered to be so palpable and the medical benefits so clearly nonexistent that it is assumed people would not want to know their genetic condition even if they had the opportunity.

One widely cited harm of knowing one's genetic condition arises from the prospect of discrimination in employment or insurance coverage. Someone with a known genetic condition indicating a susceptibility to breast cancer might be denied a job or a promotion, or denied health or life insurance, because she is regarded as a health risk and therefore as too great an economic risk. This concern about discrimination chiefly provides a reason why *third parties* should not be given

Concern about discrimination provides a reason why third parties should not be given access to an individual's genetic information.

access to an individual's genetic information. Yet an individual may well decide to forgo this information in order to maintain deniability. For example, suppose an insurance contract requires the individual to tell all she knows about her genetic condition, so that discovering that any information was withheld would constitute grounds for dismissing later claims. A person in this situation might well decide to remain ignorant, since she can't be penalized for withholding information she doesn't have.

However, a person can maintain ignorance of her genetic condition only up to a point, since genetic tests are not the only source of information about that condition. Standard family medical histories can sometimes tell a good deal, and claiming ignorance of this history may not be possible. If an individual suffers from Huntington's disease, then his or her children have a 50 percent probability of contracting it as well. If a woman's sister, mother, and aunt suffer from breast cancer, then it is likely that the woman is at greater risk than the general population of contracting breast cancer herself. Furthermore, genetic information is not always bad news. Someone who appears to be at risk for a certain disease because of her family history could discover, and so presumably assure an employer

or insurer, that she is in fact not at risk because her test result was negative. Nevertheless, we should acknowledge that there can be perverse incentives to be ignorant, especially in the absence of appropriate laws

Fears about the burden of knowing speak directly to the question of the desirability of self-knowledge.

regarding "genetic discrimination" or regulations regarding insurance and preexisting conditions.

A completely different harm that is associated with genetic information has to do with the psychological burden of knowing. Indeed, one writer refers to such information as "toxic knowledge." Unlike concerns about employment discrimination or insurance, fears about the burden of knowing speak directly to the question of the desirability of self-knowledge. For some people, the discovery that they have a genetic condition that places them at an especially high risk of suffering certain diseases could so depress them that the quality, joy, and purpose of their lives would evaporate. Moreover, even if the results of a genetic test were negative, some people might experience the reaction commonly known as "survivor's guilt," as they contemplate the prospects of their less fortunate siblings or other relatives.

The applicability of this reason will vary from person to person. Some people might be able to handle bad news calmly and move on, while others might become irrevocably incapacitated. We are individuals in how we each deal with the disappointments and tragedies in our lives. Genetic knowledge might be extremely toxic for one individual but less so for another. Presumably, however, if a person does raise this issue in his own case, it probably applies.

Deciding for the Patient

It is this last set of reasons, when invoked to justify limits on the availability of genetic testing, that suggests a resurgent paternalism with respect to medical information. They involve explicit judgments by medical professionals about what would be good for the patient, where the "good" (i.e., the avoidance of certain social and psychological harms) extends beyond matters of medical expertise. Whatever force they may have as reasons an *individual* might give for not wanting to know genetic information, their persuasiveness weakens considerably when they are offered by third parties as reasons for restrictions on genetic testing. While certain people might be psychologically devastated by their test results, there is no evidence to support the assumption that most people will be so devas-

tated; indeed, such an assumption flies in the face of our commonsense knowledge of people's differences. Similarly, the likelihood that people will confront employment discrimination or insurance problems, and the seriousness with which they regard such a prospect, will vary with circumstances. It is therefore paternalistic to cite these concerns as grounds for restricting genetic testing.

The same can be said of arguments that the results of genetic tests are too complex or ambiguous for patients to understand. Test results may identify risk factors rather than yield predictions; the information may consist of probabilities rather than certainties. In other medical contexts, however, the complexity of information is not accepted as an excuse for taking decisions out of the patient's hands. For example, we require physicians to obtain informed consent before they engage in an intervention. However complex the relevant information might be, usefully communicating it to the patient is a challenge to which the professional must rise.

A rejection of the paternalistic arguments does not yield the conclusion that all genetic tests should be available to the public. As we have seen, restrictions on the availability of certain genetic tests, or of any medical procedure, need not be based on paternalism. For example, none of these comments affects the legitimacy or persuasiveness of the scientific reasons for restricting certain tests.

Unfortunately, some of the professional organizations and advocacy groups seeking to restrict genetic testing have allowed an admixture of paternalism to enter into what would otherwise be sound scientific

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arguments. Instead of simply pointing out that a test for BRCA1 mutations can yield no useful information about most women, they express worries about the "fear" and "panic" that widespread testing might provoke. The first objection to indiscriminate testing is valid; the second is not. By including arguments that would in other contexts be rejected as unwarranted medical paternalism, these organizations have inadvertently ceded the moral high ground to the for-profit laboratories that have rushed in to perform these tests. Whether the labs can provide testing with the appropriate care and counseling is an open question. But efforts to regulate or even comment upon their services are likely to be ineffectual so long as the laboratories can self-righteously affirm the patient's "right to know" against the paternalism of their critics.

Similarly, when the researchers in Chicago tried to formulate a policy regarding the disclosure of test results, paternalistic assumptions clouded the issue. It was agreed that a cardiac test yielding information about the risk of Alzheimer's disease poses an ethical problem for the physician, who must either inform patients of their condition or withhold that information. But there is another alternative: the physician can tell patients, before testing for one condition, that information about another condition will be available. Whether or not to be informed becomes the patient's decision. Indeed, this option is standard in communicating the results of various medical tests, including results where disease is not at issue. The obstetrician performing amniocentesis doesn't typically agonize over whether to inform the couple of the fetus's sex. The couple are simply asked whether they want to know. And in our society at this time, the patient's desire to know or not to know is taken to settle the matter.

A Responsibility to Know

It is mainly those who wish to know their genetic condition who are likely to object to paternalistic restrictions on genetic testing. We cannot assume, however, that most people would fall into this category. In

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one recent study, only 43 percent of research subjects who were offered the BRCA1 test agreed to have it performed. Many who refused the test cited the concerns about employment and insurance that I have already described, while others pointed to the psychological distress that knowledge might bring.

If the challenge to medical paternalism is based on the notion that people should be free to make their own choices with respect to information, then in general the decision not to know should be as fully respected as the decision to know. No one would be in favor of frog-marching people to a genetics lab, having

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them tested, and then compelling them to listen to the results. The widely acknowledged right people have to refuse treatment surely includes a right to refuse diagnostic tests. If some people simply don't want their decisions about how they live their lives to depend upon genetic information, it would seem that they have no reason, and certainly no obligation, to know.

Nevertheless, there are many circumstances in which people might have a moral responsibility to know—a responsibility that grows out of their professional or personal obligations. The case for professional obligations, though limited, is fairly clear. The same reasoning that supports drug testing of individuals in particular professions—air traffic controller, train conductor, airline pilot—also supports claiming that these individuals have an obligation to know their genetic information. If an individual might have a condition that, if manifested, would interfere with his job performance in such a way as to endanger other people, that person has an obligation to know and monitor that condition, whether he wants to or not.

Since most of us are not employed in such professions, however, this obligation attaches to relatively few people. Moreover, most genetic conditions are unlikely to have an impact on the safety of other people. It is difficult to argue that an airline pilot's refusal to know whether she is at special risk of contracting breast cancer would endanger the lives of the passengers.

The ways in which personal obligations may generate a responsibility to know one's genetic condition have not been given comparable attention, even though they are more widely applicable. Most of us are enmeshed in a network of personal obligations and commitments—to families, dependents, loved ones. In many cases, with information about our medical condi-

tion, we can more effectively discharge our obligations, or at least avoid measures that, under the circumstances, may be futile. Consider the case of a 50-year-old parent of minor children who refuses to know whether he is at high risk of contracting Alzheimer's disease within the next ten years. His refusal to know might be irresponsible; it might amount to a failure to engage fully in the (not just financial) planning that is part of a parent's commitment to his children. Whether one has a moral responsibility to know one's genetic condition, and the strength of that responsibility, will depend upon the particulars of the situation. In all likelihood, however, a person's *responsibility* to know will not depend upon the strength of his or her *desire* to know or not to know.

The idea of having a responsibility to know can seem jarring at first. We are drawn to a picture of an individual, faced with the prospect of knowing, weighing how that knowledge would affect her personally. The thought that someone ought to know seems to go against our cultural assumptions, as if such an obligation were an unwelcome interference in the private relationship a person has with her own life. The problem with this picture of solitary individuals contemplating whether to know about their future is that it fits so few of us.

How should the responsibility of knowing be balanced against the possible burden and cost of knowing? There is probably little of use that can be said at this level of generality, since much will depend on the circumstances. The 50-year-old who has minor children, by birth or adoption, is in a different situation from the footloose 20-year-old. In any event it should be clear that if we are to make responsible decisions about accepting or refusing medical information, we must begin by acknowledging that these decisions affect others as well as ourselves.

—Robert Wachbroit

Sources: Gina Kolata, "If Tests Hint Alzheimer's, Should a Patient Be Told?" *New York Times* (Oct. 24, 1995); Rick Weiss, "Tests' Availability Tangles Ethical and Genetic Codes," *Washington Post* (May 26, 1996); American College of Medical Genetics/American Society of Human Genetics Working Group on ApoE and Alzheimer Disease, "Statement on Use of Apolipoprotein E Testing for Alzheimer Disease," *JAMA*, vol. 274, no. 20 (1995); National Advisory Council for Human Genome Research, "Statement on Use of DNA Testing for Presymptomatic Identification of Cancer Risk," *JAMA*, vol. 271, no. 10 (1994); Charles Siebert, "The DNA We've Been Dealt," *New York Times Magazine* (Sept. 17, 1995); Caryn Lerman, et al., "BRCA1 Testing in Families with Hereditary Breast-Ovarian Cancer," *JAMA*, vol. 275, no. 24 (June 26, 1996).

Multicultural Education and the Virtue of Comparative Philosophy

In his book on the notion of courage in Thomas Aquinas and the Chinese philosopher Mencius, Lee Yearley remarks that the study of comparative philosophy fosters in people certain virtues that are of unique importance in the world today. His purposes being elsewhere, Yearley does not go on to give us a completely developed account of what those virtues are or why they are so uniquely important. Nor does he say whether the benefits of comparative study can be conferred broadly as part of a liberal education, or whether they are limited to philosophers and scholars. So I will try to answer these questions for him. As a teacher of, among other things, Chinese philosophy, I have a natural interest in such issues. But beyond that, I think that the questions have a significant bearing on current debates about multiculturalism and education.

What, then, is the virtue of comparative philosophy? Or, to put the question differently, what is the distinctive contribution that comparative philosophy makes to a liberal education? The answer I want to propose is this: comparative philosophy teaches people to think like human beings. In order to explain what I mean by that, I am going to have to do three things. First, I will have to explain what I mean by "comparative philosophy." Second, I will have to give some model of the purposes of a liberal education. And, third, I will have to explain how the former contributes to the latter.

The Nature of Comparative Philosophy

To begin with, what do I mean by comparative philosophy? In the past, many people have thought of comparative philosophy as the search for universals. The Daoist classic *Laozi*, for instance, was first translated into Latin in the eighteenth century as proof that "the Mysteries of the Most Holy Trinity and of the Incarnate God were anciently known to the Chinese nation." (The reference is to Chapter 42, which reads "The dao begets one. One begets two. Two begets three. And three begets the myriad things.") Hume does something similar in his *Enquiry Concerning the Principles of Morals* when he explains divergent ethical systems as alternate expressions of universal human sentiments. A modern example can be found in

William Theodore de Bary's description of Buddhism as "an answer to man's finite condition and his longing for transcendence." In each of these cases, the comparison functions to uncover a universal. In the first case, it is a universal truth: the Trinity. In the third case, it is a universal problem, "man's finite condition and his longing for transcendence," which different people answer differently. And in the middle case it is a universal human nature that manifests itself differently under different circumstances.

The problem with this approach is that the universals tend to be assumed rather than proven. In point of fact, real universals are very hard to find. It is not that thinkers in different traditions disagree. Most of the time they do not even seem to be talking about the same things. (For the purposes of this essay, I will speak interchangeably of thinkers and traditions.) As a result, the universals that we come up with are either painfully forced or else so general as to be almost meaningless: "Confucius and Christianity agree that people should be good," as one student wrote.

This difficulty with the search for universals has driven an increasing number of comparativists in the opposite direction, toward questioning universals and looking instead for *discontinuities*. People functioning in different traditions, these anti-universalists argue, do not simply speak different languages, they think in different terms. Words take their meaning from context and so cannot be taken out of one context and translated into another without having their meanings changed. De Bary described Buddhism as an answer to humanity's "longing for transcendence." But our world is so different from the Buddha's, the anti-universalists contend, that we cannot possibly understand what he would have meant by "transcendence," if he had ever even used the word, which he did not. We cannot make the Buddha speak our language without putting words in his mouth. So rather than try to find similarities between traditions, comparativists of this second sort try instead to reveal differences. Their goal is not to show that apparently different traditions are somehow the same but rather to prove that they are fundamentally different, incommensurable, and untranslatable.

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But there are problems here, as well. Translating between different ways of thinking is not easy but it is clearly not impossible, otherwise we could never learn from other people. Nor is simply pronouncing other cultures "not the same" as our own by itself a particularly valuable lesson. It might be taken as an exercise in cultural humility, but it may just as easily be taken as a demonstration that other cultures have nothing relevant to offer.

The debate between these two approaches is ugly and ongoing, but it is not my purpose to argue for either side. I only bring them up to contrast them to a third alternative, which is the one described by Yearley in his comparison of Mencius and Aquinas. The purpose of comparative philosophy, on this third approach, is not to demonstrate the ultimate unity or diversity of traditions, but rather simply to juxtapose them to one another so as to map out what Yearley describes as "similarities within differences and differences within similarities."

This kind of comparison can take place on many levels. For instance, one could compare specific beliefs and assumptions, such as whether thinkers take for granted the existence of free will or an afterlife. Or one could compare the conceptual structures thinkers use

in formulating their questions, as Yearley does in his analysis of the notion of a virtue in Mencius and Aquinas. Or one could compare the background motivations that inspire and guide philosophical inquiry in different times and places. This is not to say that thinkers in different traditions can always be easily mapped onto one another: there are often incommensurabilities, words or ideas that cannot be easily translated from one context into another. But these incommensurabilities can be identified, their boundaries can be traced, and their significance can be measured.

Learning to do this kind of comparison well requires the development of certain characteristics. It requires the creative ability to project oneself into an unfamiliar tradition and to imagine seeing the world in that way and that way only. It requires a receptiveness to the unexpected. It requires ingenuity in formulating appropriate categories for comparison. And it requires a cultivated judgment to determine when two thinkers are talking about the same thing in different ways and when they are talking about different things altogether.

That is what I mean by comparative philosophy: the sorting out of similarities and differences. The result of such an exercise is not the discovery of universal truths, nor is it the demonstration that no such truths



Northern Qi Scholars Collating Classic Texts (detail).
China, Northern Song Dynasty.
Handscroll, ink and color on silk.
Denman Waldo Ross Collection. 31.123.
Courtesy, Museum of Fine Arts, Boston.

exist: it is merely the mapping out of the different positions relative to one another. Comparative philosophy is purely descriptive in the sense that it does not address the question of who, if anyone, is right: all it does is to stake out the alternatives.

But if this is all comparative philosophy does, to stake out the alternatives without deciding between them, then it seems even less obvious why comparative philosophy should form a crucial part of a liberal education. What good does comparative philosophy

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do us if all it does is to describe the landscape without giving us any guidance through it? I think I have an answer to this question. But I would like to come around to it indirectly, by first considering what a liberal education is supposed to accomplish. To help clarify our thoughts on this matter, let me propose a few different models.

Three Traditions

Speaking in rough terms for the purposes of illustration, one might distinguish between Platonic and Aristotelian models of education. On what I refer to as a Platonic model, the purpose of an education is to impart *knowledge*, in particular, knowledge of what is good, because knowledge of what is good enables people to lead good lives. No one does evil voluntarily, Plato has Socrates argue in the *Protagoras*, but only out of ignorance of the implications of his or her actions. Since it is ignorance that leads to bad choices, it is knowledge that enables people to live well. Now, while I admit the difficulty in pointing out the flaw in the reasoning here—the effort to do so has been one of the most enduring problems in Western philosophy—still, few people believe that knowledge alone is all that people need. Very intelligent people, and cultures, can do very unfortunate things. People need something more than just knowledge to enable them to use their knowledge wisely. And that “something more than just knowledge” is precisely what people look for in a liberal education.

Aristotle offers a different model, in which the primary function of an education is not to impart knowledge per se so much as to cultivate *virtues*, that is, certain habits and traits of character that are useful to people in leading flourishing lives. This strikes me as closer to what most of us think of as the object of edu-

cation, particularly in the humanities and liberal arts: the development of character as much as the simple transmission of information. But even if we accept this notion, that the purpose of an education is the cultivation of virtues, there still remains the question of what virtues we aim to cultivate. Aristotle's list of virtues included courage, generosity, and self-control. He is frequently criticized for basing his selection on the characteristics required of a fourth century B.C. aristocratic Athenian male. While self-control would presumably be to everyone's advantage, by “courage” Aristotle means battlefield courage, which had no applicability to Athenian women. In fact the word translated as “courage,” *andreia*, literally means “manliness.” If we were to ask ourselves what virtues we try to cultivate now, we would probably name things like intellectual curiosity, self-discipline, and tolerance. But how do we arrive at this list? What is our principle of selection? What kind of people are we trying to cultivate?

Let me offer Confucianism as a third alternative that I think will help us to clarify our own purposes in education. The Confucian tradition embraces a model of education that is more Aristotelian than Platonic in the sense that the communication of information is secondary in importance to the cultivation of certain traits of character, though these two things, knowledge and virtue, stand in a very close relationship, as we shall see. The virtue around which the Confucian tradition revolves is called *ren*, which is usually translated as “benevolence” in English. The character for *ren* is composed of two parts, the pictograph for a person on the

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left and the number two on the right—two people, people together, people in community. To be benevolent, for a Confucian, means to participate in the community in both a practical and also a moral or psychological sense. That is, a benevolent person is a contributing member of the community and also identifies her own interests with the interests of the community. Simply being a successful civic leader, for instance, though laudable, does not qualify as benevolence unless one acts out of the right motives. The right motives, however, do not constitute benevolence unless one follows through on them in practice.

The primary community for everyone is the family, which Confucius cites as the “root of benevolence.” But this community can be extended to include wider

and wider circles. The Confucians thought it only natural that one would care most about one's own family, but they saw no reason in principle why this concern could not be extended, in diminishing degrees, to reach all people. Ideally, then, benevolence is participation in the *human* community. Again, this means taking part in the human community not just in one's actions but also in one's mind, seeing oneself not just as an isolated individual nor simply as a member of a particular family or state but as a member of the human race.

With the exception of a few peripheral barbarians, all the humans Confucius knew were Chinese. And all

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the Chinese people, Confucius thought, were bound together by a common tradition, which he referred to as the *li*. The word *li* is usually translated as "rites" or "rituals," and Confucius does use it to refer to everything from grand state ceremonies to minute elements of etiquette and deportment. But he also uses the word in a broader sense to refer to the whole body of history, literature, art, and customs that had been handed down from the Zhou Dynasty.

This body of tradition represented many things to Confucius. For one, it contained the accumulated wisdom concerning such things as statecraft, agriculture, and economics that were crucial in maintaining a well-ordered society. For another thing, it provided a shared set of rules that all the various elements of Chinese society could play by. Most important, it provided the Chinese people with a common language. An education in the tradition made it possible for people to communicate with each other clearly and subtly. "Why is it none of you studies the Odes?" Confucius asks his disciples. "An apt quotation from the Odes may serve to stimulate one's imagination, to show one's breeding, to smooth over difficulties in a group, to give expression to one's feelings... and to acquire a wide knowledge of the names of birds, beasts, plants, and trees.... To be a man and not to study them is, I would say, like standing with one's face directly towards the wall." Perhaps because Chinese is not an alphabetic language and there is no correlation between the pronunciation of a word and its written form, it has a constant tendency to disintegrate into regional and local dialects that are unintelligible to one another even over very short distances. Confucius saw this as a terrible problem for the

obvious reason that communication is a necessary prerequisite to community.

All of this helps to explain the connection between virtue and knowledge in Confucianism: knowledge of tradition, *li*, makes participation in the community, *ren*, possible. Confucius is careful to say that knowledge of tradition does not itself constitute benevolence: simply educating people in a community's tradition does not guarantee that they will feel a part of that community. At the same time, Confucius is equally careful to say that there is no way to participate meaningfully in a community without knowledge of its traditions: a truly benevolent person not only *feels* like a member of the community but also *knows* what that membership involves. Simply feeling like a member without knowing what it means, or knowing what it means without feeling it, is not enough. Virtue and knowledge are interdependent.

Participation in the Human Community

The Confucian notion of education provides us with a very useful point of comparison, both on account of its similarities to our own ideals and on account of its differences. The Confucian goal of humanity as an informed, self-conscious participation in the human community comes very close to what many contemporary thinkers understand as the principal goal of education. E. D. Hirsch's ideal of "cultural literacy," for instance, though not developed along the same ethical and psychological lines, is reminiscent of Confucianism in many respects. The implication is not that, without an education, people are beasts, but that without an education they are isolated in their villages, in their families, in their minds. One of the primary goals of education, both for the Confucians and for ourselves, is to lift people out of that isolation.

The difference, however, is that, unlike Confucius, we do not have a shared tradition to fall back on. Admittedly, some people question whether the Confucians ever really had such a tradition, either. Although Confucius did not discriminate on the basis of social class but accepted as a student anyone who was eager to learn, regardless of his ability to pay, the Confucian tradition never granted equal access to women. And it was open to foreigners only on the condition that they agree to renounce their uncouth barbaric ways. Be that as it may, Confucius certainly thought of his tradition as the common property of all human beings. Whether he was right or wrong about this, the point is that we no longer have the luxury of even kidding ourselves on this issue. The notion of a shared tradition was crucial for Confucius in providing the foundation for community. We share the Confucian goal of community. But one of the great problems for us is how to establish that community in the absence of

a shared tradition. How do we teach people to communicate in the absence of a common language?

And this, I think, is where comparative philosophy as I have described it has a unique contribution to make. Unlike Confucianism, comparative philosophy does not presuppose any one tradition as the human tradition but, quite the contrary, presupposes a diversity. Like a map, comparative philosophy locates traditions relative to one another without needing to establish any one of them as a fixed center. What students walk away with from comparative philosophy is the ability to locate different ways of looking at the world relative to one another, and the disposition to see themselves within this larger context. Our own views, after all, are what they are by virtue of their similarities to and differences from other views. The better we understand ourselves in this way, the better we understand ourselves as human beings.

Understanding oneself in context does not mean simply acknowledging that there are other ways of seeing things. Anyone can do that, with or without the benefit of a liberal education. Thus comparative philosophy is more than simple exposure to other traditions. A person needs to know not just that there are other traditions out there, but what they are and how they stand in relation to his own perspective. Admittedly, this kind of knowledge is potentially infinite, and one could never achieve an exhaustive knowledge of the world's traditions or compare them in every possible way. But the same is true with history, literature, and science: one has to make do with a judicious sampling. The point is that the fully human way of thinking I describe is like Confucian benevolence in the sense that it requires an education.

This way of thinking requires knowledge, but like Confucian benevolence, it is not reducible to knowledge. The goal of comparative philosophy is not simply to inform people of their situation relative to one another, but to habituate them to thinking of themselves in this way. That is why I describe the contribution of comparative philosophy as a virtue rather than as a body of knowledge: its function is to develop certain dispositions and traits of character rather than simply to communicate information.

Many people resist thinking of their own perspective as only one point of view out of many because they feel that doing so would require them to surrender their perspective or devalue it. Thus they worry that study of other traditions will detract from the study of the Western tradition. But this need not be true as long as the study involves systematic comparison in addition to mere exposure. It is only by virtue of comparison that people are able to understand what is distinctive about the Western tradition. People trained only in that tradition, without any points of comparison, would perhaps think like Westerners, but they

wouldn't *know what that means*. Consequently, though they might be mouthpieces of that tradition, they would not be apt defenders of it.

Cultural Understanding and Self-Knowledge

Comparative philosophy has one further virtue: it acknowledges that we are not simple creatures, but rather unique individuals with multiple identities and allegiances. By helping us to sort through these aspects of ourselves, it allows us to come to a much more textured and layered understanding of who we are. Socrates took his cue from the inscription over the Delphic oracle, *γνῶθι σεαυτόν*, "know thyself." Our present position at the confluence of so many great traditions gives us an unprecedented opportunity to know who we are, as Westerners, as moderns, as human beings, and as unique individuals. Comparative philosophy takes advantage of this opportunity which, far from being a repudiation of the Western tradition, is the fulfillment of its highest ideals.

I have said that comparative philosophy situates views relative to one another. But this does not mean that it is committed to moral relativism. Comparative philosophy does not say which views are right or which views are wrong. But it does not say that none of them are right or none of them are wrong. It is simply silent on the issue. The modern world presents us with a dizzying variety of perspectives to choose from. Not choosing among them is neither possible nor, even if it were possible, desirable. What comparative philosophy does is to clarify the alternatives so that we can make our choices among them in the most informed, self-conscious, and human way possible. And this is one of the highest goals we have for a liberal education.

—Paul Kjellberg

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