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Scholar Section



*U.S. Policy and Iraq:  
Pragmatism and Progressive Ideals*

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One of the most confounding problems associated with U.S. foreign policy is the conflict between policies driven by 'ideals' versus those that use 'realism' as the guiding principle. In the Middle East, the differing socio-centric norms create significant disconnects and conflicts between western perceptions and those predominate in the region. Some attempt to describe this conflict as an Armageddon-like struggle between civilizations for global domination – a grandiose conflict that is overblown and bespeaks more of political predispositions and agendas than knowledge-based understanding of the situation. In fact, this attempt at a macro oversimplification is simple-minded and obscures the far more nuanced reality on the ground. Macro approaches begin with an idea and then pick the facts to support that idea. It is the granularity of the historical context that explains far more about conflict than macro theories based on generalizations colored by socio-centric prejudices.

Conflict results more from differing perspectives driven by socio-cultural and historical experience in a more limited context. In the case of the Middle East, the persistent confusion in the West concerning the difference between westernization and modernity contribute enormously to this misunderstanding. Few societies that developed outside the context of a Western European heritage actually seek westernization in terms of political, social and cultural values; they seek

modernity but within their particular socio-centric context.

The difference is profound, but often totally misapprehended in the West. Since the 18<sup>th</sup> century, these differences have been exacerbated by colonial and neocolonial experiences in the Middle East as traditional societies were confronted and overwhelmed by the military superiority of the West. The West then imposed political, economic and security systems for exploitation on the region. The West assumed that this ability to impose its will at its core was the result of and justified by a fundamental social, cultural and moral superiority – a part of the natural order and progress. In fact, it was a part of a historical shift that was more cyclical in nature – the Gunpowder Empires of the Middle East and South Asia were unraveling just as the nation-states of Europe stabilized, industrialized, and began to expand their trade and influence.<sup>1</sup> It was not moral superiority – it was timing.

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<sup>1</sup> Christopher Bayly, *Imperial Meridian: the British Empire and the World, 1780-1830* (London: Longman Press, 1994): 35-74. The emergence of regional centers of power challenged the three Muslim empires on their periphery. This coincided with the arrival of the Europeans. The Europeans had faced similar challenges in the late 16<sup>th</sup> and 17<sup>th</sup> centuries; Hapsburg Europe had fractured with almost continuous revolts and independence movements that created a Europe of smaller but more cohesive national states. Events in Muslim empires might have taken a similar route had there not been outside interference. The

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Conceptions of progress and enlightenment were dictated by what the West viewed as civilized, moral and ethical. In contrast, the societies of the Middle East were defined as backward, uncivilized, immoral, fundamentally corrupt and lacking in ethics. The industrial revolution with all its baggage was “progress;” the lack of industrialization was “backwardness.” Even as western views of colonial exploitation began to change, a strong element of socio-centric superiority continued to dominate western attitudes and goals.

In some guise, this application of socio-centric ethics as a rationalization for exploitation dominated all forms of European colonial rule. At root was the argument that the West was bringing Christian tutelage and “civilization” to ‘primitive’ peoples. This justified everything from the codified slavery of the Spanish “Encomienda” system; to China and the Opium Wars; to the India mutiny of 1857; to South Africa and the Congo systems that required enslavement of whole peoples. By the mid-19<sup>th</sup> century, indigenous peoples had begun to borrow the language of the West in the form of nationalist rhetoric in an effort to create a consciousness that could be used to resist foreign domination. By the early 20<sup>th</sup> century, classic colonialism became more difficult to maintain; it continued to exist but faced increasing opprobrium.

Using Iraq as a case on point, this article focuses on the conflict between the rhetoric of western ethics and ideals

and the actual requirements of policy execution. The last 60 years of this conflict has been particularly important to the United States. From a contemporary perspective, this conflict continues to dramatically play out in the former states of Iraq and Syria. From the collapse of British colonial system in 1958 through the rise of the Ba’th in 1960s and the wars of the 1980s and 1990s to the Islamic State in Iraq and the Levant (ISIL), the existence of Iraq provides a model for examining the fundamental contradiction between ideals and realism in U.S. policy. It also provides a vantage point from which to evaluate the problems resulting from often well meaning, if misguided and hypocritical, attempts by the United States to apply the ideals and practices of its socio-centric progressive heritage in environments with a dramatically different historical, political, economic and social experience – the absurd and only somewhat overstated idea that inside all peoples “there is an American trying to get out.”<sup>2</sup>

Much of the contemporary American political tableau is in one form or another derived from the Progressive Movement of the late 19<sup>th</sup> and the 20<sup>th</sup> centuries – it transcends the parties. In simple terms, its tenets as they apply to U.S. foreign policy hold that there are certain universal laws or principles that should govern the interaction of nations and groups and that it is incumbent upon the United States to spread those principles. Progressive ideals are part and parcel of the American exceptionalist view but, at the same time, there is an underpinning idea that they are transferable. They are not. The examples of failure are too numerous to

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regional challenge to the empire in Europe was largely internal and thus national states could emerge and solidify; those parallel 18<sup>th</sup> century challenges to the Muslim empires found the new aggressive national European powers entangled in them.

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<sup>2</sup> Stanley Kubrick, *Full Metal Jacket* (Warner Brothers Studios, 1987).

list. The more spectacular include Vietnam, Afghanistan, and Iraq.<sup>3</sup>

The U.S.' involvement in Iraq provides a 60-year window in which to view almost every form of application of American progressive ideals and pragmatism to foreign policy in a more limited setting. It is not the grand generalization but how it was applied on the ground and how the microenvironment provided a building block that helped create a strategic context and perception. This study looks at U.S. foreign policy in four basic forms: (1) errors in policy formulation and analysis distorted by progressive ideals and views that resulted; (2) the selective application of American progressive ideals as a rationalization in order to justify the pursuit of a strategic national interests; (3) the sincere attempt to impose western institutions and ideals on a non-western culture; and (4) the pragmatic pursuit of national interests with little or no regard for ideological justification.

### ***Colonialism, Progressivism and the Creation of an Artificial State – Iraq***

When the British and arguably Winston Churchill created Iraq, in 1920, based on landmass controlled, the Empire was at its height, but it was also entering a new phase. Indigenous officials increasingly formed the backbone of colonial administration requiring a rethinking of policy. The goal was to off-load as much of the burden and expense of administration as possible on a westernized, indigenous elite that was loyal to the empire.

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<sup>3</sup> Daniel Bolger, *Why We Lost: A General's Inside Account of the Iraq and Afghanistan Wars* (New York: Houghton, Mifflin, Harcourt Publishing Company, 2014): Kindle Location 33-99.

Published in 1922, but widely discussed, Sir Frederick Lugard's publication, 'The Dual Mandate in Tropical Africa,' provided a theory of 'indirect rule.' Lugard was focused on Africa but the concept had appeal elsewhere. Lugard continued to assume the political, economic, social and cultural superiority of the West, but it recognized the cost and limitations of direct rule as well as political problems created by the growing influence of liberal and progressive western thought. Lugard argued that the realities of the 20<sup>th</sup> century forced a reliance on "westernized" elements within the society for the colonial system to function. In practice, Lugard's own application of this approach was inconsistent, but he recognized the necessity of employing indigenous administrators in the place of westerners if the Empire was to survive.

Evelyn Baring, or Lord Comer, the British consul general, who ruled Egypt from 1883 to 1907, stated it somewhat differently, "colonial governance was to be decided mainly with reference to what by the light of western knowledge and experience tempered by local considerations, we conscientiously think is best for the subject race, without reference to any real or supposed advantage which may accrue to England as a nation."<sup>4</sup> Of course, Lord Comer took over the administration of Egypt's finances in order to make certain that Egypt's loans to the British and French were paid. The British "conscientiously" thought paying your bills was best for a "subject race" – the bills just happened to be to British companies and the government.

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<sup>4</sup> A.J. Sherman, *Mandate Days: British Lives in Palestine, 1918-1948* (Baltimore: The Johns Hopkins Press, 2001): 15.

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Hypocrisy? Perhaps, but from Comer's narrow western socio-centric view, he believed that he was helping Egypt join the brotherhood of civilized nations in modernizing and paying its bills.

By the early 20<sup>th</sup> century, the role and influence of the United States was becoming an increasingly important issue. The Americans had imperial possessions in the Caribbean and the Philippines, but the U.S. contended that its goal was to ready the indigenous peoples for self-rule when the U.S. deemed them ready. An indicator would be when they looked, thought, and acted as American progressives. This approach was part and parcel of the American Progressive political thought. It had a racial component grounded in Social Darwinism. American progressives believed that after a period of tutelage local political groups would adopt progressive principles and develop national states that would reflect American ideals and practice – nation building.<sup>5</sup> The idea was that Americans had an obligation to spread their lofty ideals even if force was at times necessary.

In the aftermath of the First World War, these ideals were enshrined in Woodrow Wilson's 14 Points. U.S. progressives viewed European imperialism and colonialism as the root cause of the global conflagration of 1914-1918, and in a direct challenge to colonialism, Wilson called for colonial peoples to have an equal say in their future. The British and French rejected Wilson's proposal and the U.S. Senate

refused to participate in the League of Nations; nevertheless, Wilson's arguments and post-war economic realities pressured the colonial powers to change their approach to territorial acquisition -- hence they created the League of Nations' Mandate system. Under this system, the Europeans and the Japanese divvied up the German and Ottoman possessions – the German colonies were relatively simple to parse out, but Istanbul ruled a huge polyglot empire with multiple ethnic groups seeking self-determination.

The French and British carved up the Ottoman territory. Maneuvering was convoluted but generally reflected colonial ambitions that predated World War I as well as those represented by the Sykes-Picot agreement of 1916. Because of the Suez Canal, the British insisted on indirect control of Egypt and direct control of the Palestine Mandate, which included the modern states of Israel, Palestine, and Jordan. The French demanded Syria of which Lebanon was a part. The British demanded control of the Ottoman Mesopotamia as well as a sphere in influence in Iran.<sup>6</sup> The French had little choice but to agree. The British made certain that the Persian Gulf remained a British lake.

This meant that the aspirations of various ethnic and confessional groups were pushed aside often along with common sense. The French had ousted Feisal bin Hussein al-Hashimi, the leader of the 'Arab Revolt' and friend of T.E. Lawrence, from his short-lived throne in Damascus and then took control of

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<sup>5</sup> In the Philippines, the fact that the U.S. fought a series of wars first against Philippine nationalists and then against Muslim separatists and suffered more than 6,000 dead from 1898 to 1913 might have caused some to question the efficacy of this theory but few 'Progressives' knew the extent of the conflict.

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<sup>6</sup> See David Fromkyn, *A Peace to End All Peace: Creating the Modern Middle East 1914-1922* (New York: Henry Holt and Company, 1989). This is generally recognized as the best work on World War I and its aftermath in the Middle East.

Syria. The British installed Abdullah bin Hussein, Feisal's brother, as king of Trans-Jordan and in 1920 created a client state in oil rich Mesopotamia by combining three separate Ottoman provinces: Basra, Baghdad and Mosul. In this new state, Iraq, things did not go as planned.

The Turks administered Basra, Baghdad and Mosul separately because they understood that the three provinces were fundamentally different and that combining them would only bring conflict. The British failed to grasp this fact and after creating Iraq found themselves facing a full-scale revolt in 1921 that cost 1,000 British lives and hefty support from the Exchequer. London needed an alternative.<sup>7</sup> The British had a spare King and a Hashemite at that time so they installed Feisal bin Hussein al-Hashimi (r. 1921-1933) as king and organized a government with its primary support based on the Sunni elites. The British maintained bases and controlled the Iraqi government directly until 1932 and exerted indirect influence until 1958. There were two motivations. The first was to support stability and security in the Gulf and the second was to take over the Ottoman and German oil concessions in this new state of Iraq.

In fact, the formation of Iraq was a problem set within a multitude of other problems, all associated with the reality

on the ground. Taken in aggregate, the Levant, the crescent from Sinai to Damascus to Baghdad to Basra, was majority Sunni Muslim. That was only part of the story. The 'majority' Sunnis were divided in multiple ethnic and tribal groupings. The Kurds of Iraq, Syria, and Turkey were Sunni but ethnically separate from the Arabs and Turks. Palestinians were ethnically and culturally different from the tribal groups in western Jordan and Syria and eastern Iraq. In Syria and Iraq, there were Shi'a and Shi'a offshoot groups – Druze and Alawite as well as Christians and Jews. Under Ottoman administration, this mattered little because it focused on communities; however, the introduction of the mandate system and the creation of Iraq altered the situation significantly. Although the ruling class in Iraq since 1639, the Sunnis in Iraq were now a minority in a newly formed 'national state.'

After Iraq's establishment came demands for independence and sovereignty. As oil discoveries multiplied and production increased, the British faced mounting criticism for the paltry share of the wealth that found its way to Iraqi coffers. King Ghazi bin Feisal al Hashimi (r. 1933-1939) came to the throne upon Feisal I's death. An ardent Arab nationalist, he challenged the British and their long-time Iraqi political ally, Nuri Said, by supporting a coup and military rule. He called for the annexation of Kuwait, another British client state, and criticized the British for not recognizing Palestinian rights during the Palestine uprising of 1936-1939. The British accused him of being pro-Nazi, which usually just meant that he was anti-British and hoped that a German victory would rid Iraq of the British. Ghazi died in an automobile accident in

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<sup>7</sup> In 1922, Churchill having to live with his creation observed, "At present we are paying eight millions [in] pounds Sterling a year [the equivalent of half a billion dollars today] for the privilege of living on an ungrateful volcano out of which we are in no circumstances to get anything worth having." Shannon Monaghan, "Churchill on Iraq: Living on an Ungrateful Volcano," *History News Service* (October 7, 2007):

<http://historynewsnetwork.org/article/43327>

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1939 that many in Iraq believed was arranged by Nuri Said and approved by the British. King Ghazi was succeeded by his minor son, Feisal II, under the regency of Feisal's brother, Abd-al-Ilah bin Ali al-Hashimi, an Anglophile and political ally of Nuri Said.

In 1941, a revolt by Iraqi nationalist military officers and Iraqi Prime Minister Rashid Ali al-Gaylani forced Said, Abd-al-Ilah, and Feisal II to flee Iraq. Both returned after the British defeated rebel elements in the Iraqi Army and restored the monarchy.<sup>8</sup> Britain effectively occupied Iraq from 1941 to 1945. After 1945, the British maintained influence and even indirect control through Abd-al-Ilah, Nuri Said, and eventually Feisal II. In the post war era, Iraq, a British creation, was the only large state in the Gulf where the British were confident that indirect control was working. As the Cold War heated up, the British pushed Iraq forward as the preeminent western ally in the Gulf and, in 1955, a core member of the anti-Soviet Baghdad Pact. The U.S. acquiesced because the Gulf with the exception of Saudi Arabia was a British sphere of influence and Iraq was at least pro-western.

With its progressive heritage, the U.S. tended to be sanctimonious about the Iraq—British arrangement. From an American perspective, the monarchy and Nuri Said, although pro-western, were also British tools that suppressed progressive nationalist movements. Given the tide of Arab nationalism and the rise of Nasserism in Syria and Egypt,

Iraq looked increasingly like a vulnerable neocolonial puppet. There was a predisposition in the U.S. foreign policy establishment to see the viability of states in the region in terms of westernization as opposed to modernization. This resulted in inconsistent, if not flawed, analysis. The monarchy in Iraq collapsed because of a security lapse that might have never repeated itself. In effect, the regime was hit by lightning or it might yet be in place.

The collapse was not the result of some inevitable 'wave of the future.' It had far more to do with preconceived American progressive notions about the inability to differentiate between the pursuits of modernity versus westernization. As artificial and unstable as the monarchy was for its 38 years of existence, the Iraqi republics since that time have been even less stable with the exception of Saddam Hussein's dictatorship. Iraq was most stable under a monarchy and a dictatorship. This fact has some interesting implications for that idea that western ideals and institutions can be applied to non-western societies and cultures. The irony that it would be the United States that destroyed the longest lasting, most stable regime in the history of Iraq - a regime based in theory on the principles of secular nationalism would seem to be a practical joke were it not true. In the 1950s, with carping and handwringing from the sidelines, the U.S. had no better policy alternative.

In a cautionary note from an old British hand in the Middle East, Sir Charles Johnston, the British Ambassador in Amman, Jordan warned, "The Americans should not allow any infantile anti-Monarchist prejudices to blind them to this fact. Monarchy is a

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<sup>8</sup> There are two short but excellent works on 1941. See Geoffery Warner, *Iraq and Syria 1941* (New York: Associated University Press, 1979) and Robert Lyman, *Iraq 1941: The Battles of Basra, Habanniya, Fallujah and Baghdad* (London: Osprey Press, 2006).

very ancient and tenacious principle, in the Arab world.” He went on to say, “It would be naïve to think that, after living with it for millennia, the Arab world is suddenly going to drop it because one Colonel and one Brigadier have shown themselves successful military conspirators in 1952 and 1958 respectively.”<sup>9</sup> Johnston was referring to the coups staged by Nasser in Egypt in 1952 and by Qasim in Iraq in 1958. He was alluding to the growing conviction in the Eisenhower and Kennedy administrations that secular nationalist regimes were “the wave of the future.”<sup>10</sup>

### ***Inheriting the Mantel of the British***

When the Iraqi regime imploded in the nationalist coup of 14 July 1958,

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<sup>9</sup> “Letter from British Embassy Amman (Johnston) to FO (Hadow), 30 October 1958,” Public Records Office (PRO), FO371/134021. Johnston believed that British Embassy in Washington and the Foreign Office were too affected by US pessimism regarding traditional regimes and tended to overlook Washington’s infatuation with Nasser. See also “Letter from British Embassy WDC (Morris) to FO (Hadow), 13 October 1958,” Public Records Office (PRO), FO371/134021, in which Willie Morris in Washington that precipitated Johnston’s rebuttal letter by stating that the US was more than happy to let Britain handle Jordanian affairs until the Glubb dismissal and the termination of the Anglo-Jordanian Treaty. Morris believed that Dulles and Eisenhower viewed the survival of Jordan as not only important, but also a realistic possibility, while NEA believed that British military support for the Amman regime was only a “reprieve” in the process that would lead “inevitably” to a Hashemite collapse.

<sup>10</sup> The term “wave of the future” became synonymous with Nasser and widely used. In interviews with Phillips Talbot, General Andrew Goodpaster, William “Bill” Lakeland, John Badeau and Walt Rostow, each used the term at one point or another to describe the US evaluation of Nasser and the Nasserist wave that seemed to be sweeping the Arab Middle East.

U.S. deference to British ‘experience’ imploded with it. The British would hang on for another decade in the Arabian Gulf but now their influence in the region depended as much on influencing Washington as it did on interfacing successfully in the region. After 1958, the question of how to handle Iraq fell largely on U.S. shoulders. Having reluctantly followed the British lead, the disaster of 1958 would have produced considerable *schadenfreude* were it not for the fact the new Iraqi leader, Abd-al-Karim al-Qasim, derived much of his support from the largest, best organized Communist Party in the Middle East – the Iraqi Communist Party (ICP). Official Washington viewed the coup in Baghdad as the beginning of the end for the remaining monarchies in the region.

Seeing the monarchies and the British methods and role in the Middle East as an anachronism that hindered the struggle against Soviet and Communist expansion, the United States inherited a dilemma. The regimes that the U.S. saw as the progressive “wave of the future” were the regimes most hostile to U.S. interests and policies. In addition, the secular nationalist regimes, particularly Iraq and Egypt, received Soviet military and economic aid. The monarchies and emirates of the region were the most pro-western element, but the U.S. government viewed them as weak, out of touch with the modern world, and likely to collapse. In Washington, the foreign policy community postulated all kinds of liberal western “reforms” that they believed were necessary to transition these societies into modernized, representative, if not democratic, states.

The changed role of the British placed the U.S. in the forefront of protecting western interests with all its



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contradictions. Increasingly two policy issues mattered – Soviet influence and oil in that order. Now progressive ideals and political theory, always hostile to the Communism, provided ideological justification for opposing Soviet interests and allies in the Middle East. Policy that on the surface might violate U.S. ideals and principles but served to undermine leftists was justified in terms of it being a lesser evil than Communism. Problematically, the policymakers often had trouble differentiating between leftists and nationalists and between Pan-Arab socialism and Communism.

Almost immediately this began to play itself out with regard to Iraq and with an on-again, off-again relationship with the Ba’thism and Nasserism. Despite his Soviet support, U.S. views of Nasser were evolving.<sup>11</sup> Nasser had taken an anti-Communist line in the United Arab Republic (UAR) – Egypt and Syria – crushing the local Communist movements. Nasser also began to quarrel with Qasim in Iraq. Nasser saw himself as the leader of the Pan-Arab movement and Qasim had no intention of submitting to Egyptian leadership. Because Qasim obtained much of his support from the ICP, in Washington, some, including Vice President Richard Nixon, openly discussed military intervention. Nasser and the Eisenhower administration found themselves almost of one mind on the subject of Qasim and Iraq.

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<sup>11</sup> At first, there was a problem with the Nasser and Iraq. The first reaction of Washington to the 1958 coup in Iraq had been to assume that Nasser backed it and to send troops to Lebanon and Jordan to prevent coups there. It turned out Nasser was not behind it. The Egyptian leader was as surprised as everyone else. The Eisenhower administration was somewhat embarrassed trying to withdraw the troops that it had sent.

Fearing that Qasim would succumb to a Communist coup, the Eisenhower administration fretted over the course of action to take. On February 17, 1959, a Special National Intelligence Estimate (SNIE) concluded that Qasim lacked the “ability to stem the movement toward a Communist takeover.” The report cast doubt on Qasim being a Communist but concluded that ultimate Communist success was likely despite the fact that the security services and police remained in non-Communist hands.<sup>12</sup> Following a failed Nasserist coup in Mosul, the U.S. embassy reported, “Overt signs point sharply Left. Basic question remaining is whether Qassim (sic) and GOI [Government of Iraq] are too along road to Communism to turn back and whether Iraq consequently is fated to be first Soviet Satellite in Arab World.”

There was a growing urgency in Washington to do something and Nixon wanted to act immediately using either the military or a “Moseddeq-like” operation to replace Qasim.<sup>13</sup> 1959 could have looked like 2003 except Eisenhower, who knew something about the risks of military operations and occupations, was in charge. General Eisenhower (now President Eisenhower) rejected invasion plans or “Moseddeq-type” operations as too risky. The president shared the views of William M. Rountree, the Assistant Secretary for

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<sup>12</sup> “Special National Intelligence Estimate (SNIE), The Communist Threat to Iraq, 17 February 1959,” *Foreign Relations of the United States (FRUS), 1958-1960, Near East Region*, Volume XII: 381-383.

<sup>13</sup> “Telegram from US Embassy Baghdad to WDC, 26 March 1959,” No. 2758, Part 1, Dwight David Eisenhower Library (DDEL), Presidential Papers of Dwight D. Eisenhower (PPDDE), Office of the Staff Secretary, Box 8, Section II: 1-2.

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The revulsion against any government set up under [U.S.] aegis would be so great that it would probably be swept away and its replacement would in all likelihood be a Communist government. Thus for this reason alone we cannot advocate this course, apart from the long standing United States principles which would be violated by what would in effect be unprovoked United States aggression and apart from the catastrophic psychological reaction throughout Africa and Asia which would inevitably portray us as being worse aggressors than the Communists.<sup>14</sup>

Eisenhower was still willing to act but he chose a more sophisticated, alternative covert approach; he would use the Arabs themselves in an attempt to remove Qasim – he set the wheels of the long game in motion. There would be no overt, heavy-handed U.S. involvement.<sup>15</sup>

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<sup>14</sup> “Memorandum from Calhoun to Goodpaster, 15 April 1959,” DDEL, PDDE, Office of Staff Secretary, Box 8: 2-3. Ironically if one changed the word “Communist” to “Islamist”, Rountree’s warning would ring as true in light of the outcome of the 2003 invasion of Iraq.

<sup>15</sup> Nixon was convinced that Iraq was going Communist and that the U.S. had to act in the short term. Believing that the State Department was too passive, he wanted to replace Qasim’s government as quickly as possible and by any means necessary. From his perspective, the US had to be prepared to proceed with military action to replace the Qasim government. At the very least, Nixon wanted a “Mossadegh type operation” with its difficult to conceal footprint to overthrow Qasim and put pro-western military officers in power. With the 1960 election only 18 months away and in the absence of Eisenhower, Nixon tried to assert himself and lay claim to a substantive role in foreign policy. He

Qasim would rule Iraq from 1958 to 1963. During that time, he nationalized British oil possessions, threatened an invasion of Kuwait, and attempted to undermine western allies in the Gulf. In return, the United States encouraged Qasim’s Arab opposition. Qasim found himself besieged by Nasserists and Ba’thists. A young Ba’thist named Saddam Hussein almost assassinated Qasim in a street ambush.<sup>16</sup> Radio stations beamed anti-Qasim propaganda into Iraq creating instability and unrest.<sup>17</sup> The U.S. encouraged and provided indirect support to all of these efforts to the point that Saddam Hussein would later argue that Ba’th came to power on the back of American support and to a certain extent he was correct.

The February 8, 1963 ‘Ramadan coup’ overthrew Qasim but, more importantly from a western point of view, it led to the utter destruction of the ICP. Thousands of Iraqi Communists were killed; thousands more were jailed or fled the country. Iraq’s new president, Abd-al-Salam al-Aref, was a Nasserist.

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instructed the defense officials and military officers present to do a tentative outline for military operations against the regime in Baghdad. “Discussion at the 402<sup>nd</sup> Meeting of the National Security Council, 17 April 1959,” DDEL, DDEPP, AWF, NSC Series, Box 11: 1-11.

<sup>16</sup> Con Coughlin, *Saddam: His Rise and Fall* (London: Harper Perennial, 2005): 25-26. In October 1959, Saddam personally participated in an assassination attempt that wounded Qasim and killed his driver.

<sup>17</sup> King Hussein of Jordan stated “for a certainty” that the coup had US intelligence support and that a “secret radio” provided information on Communists so that they could be “arrested and executed.” In the end, Eisenhower and even Nixon got exactly what they had wanted without overt intervention. Hanna Batatu’s *The Old Social Classes and the Revolutionary Movement of Iraq* (Princeton: Princeton University Press, 1978): 982-987.

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He moved against the Ba'ath outlawing the party. After plotting for five years, the Ba'ath returned to power in the July 17, 1968 "Revolution" led by General Ahmad Hassan al-Bakr and his deputy Saddam Hussein al-Tikriti.

The decade from 1958 to 1968 represents the introduction of the U.S. to a leading role for the West in the Middle East. It had been a tumultuous decade in the Middle East – the coups in Iraq, the revolution in Yemen, the rise of Feisal bin Abd-al-Aziz to the throne in Saudi Arabia, the 1967 Arab-Israeli War – all against the backdrop of the escalating cycle of involvement in Vietnam and numbing reality that American progressive ideals had crashed on the rocks of a grinding, apparently endless conflict. The conflicted progressive idealism of the late 1950's and early 1960's had given way to a more sober realism.

The conflict between progressive ideals and regional realities appeared to be settled in favor of the latter, but like the U.S. agitation against Qasim, it was usually hidden behind the façade of non-intervention, respect for sovereign states, and progressive anti-Communist rhetoric that served as rationalization or for any deviation from progressive principles.

Multiple coups in Iraq had produced a nationalist government under Abd-al-Salam al-Aref that appeared stable and non-threatening to its neighbors. Feisal bin Abd-al-Aziz al-Saud was now King of Saudi Arabia and had set his country on the road to limited yet significant reform. Nasserism had been checked by the odd combination of Saudi opposition to the republican government and support for rebels in the Yemen civil war and Arab-Israeli War of 1967. Nasser was apparently not the 'wave of the future.' In Jordan, King

Hussein had survived every attempt by Nasser and other nationalists to overthrow the monarchy and although his greatest crisis, the civil war of 1970, was yet to come, he had defied all of the pessimistic predictions of the 1950s. The British had announced that they would withdraw from 'east of Suez' no later than 1971, adding more uncertainty to the security situation in Gulf.

Driven by global commitments and particularly Vietnam, U.S. policy in the Middle East had devolved into the so-called 'pillar policy' based on Saudi Arabia, Iran and Israel. The inspirational slogans of the Kennedy administration, whether heart-felt or not, had given way to almost pure pragmatism. The United States had become the primary protector of western interests in the Middle East and the contradictions inherent in that role – ideals were one thing but the real interests trumped progressive principles.

### ***Iraq 1968-1978: Saddam Comes to Power***

The U.S. election of 1968 served to confirm the ascendancy of pragmatism. U.S. policy was described literally as 'realpolitik' with its most ardent advocates, Richard M. Nixon, the President-Elect and his National Security Advisor, Henry Kissinger. Great power maneuvering dominated the Nixon-Kissinger focus as they sought to end the Vietnam War and reach agreements of areas of influence with the Soviet Union and China. The Middle East was very much a part of the global agenda. The situation in Iraq changed just prior to the election.

The July 17, 1968 coup and the eventual consolidation of power by General Ahmad Hassan al-Bakr supported by his kinsman and security chief, Saddam Hussein, changed the

nature of the Iraqi regime. Under Abd-al-Salam and later Abd-al-Rahman al-Aref, Iraq spouted the rhetoric of Arab nationalism but followed Iraqi-centric as opposed to Pan-Arab policies. Internally, the security apparatus headed by Saddam systematically began to eliminate potential pockets of opposition. At the center of the campaign were alleged plots sponsored by Iran and Israel to overthrow the Ba'thist regime. Using a combination of rewards, intimidation and terror, Saddam effectively transformed the Ba'th from a political party to political tool under his personal control. Eventually, Bakr, who had depended on his ties with the army as his ultimate political trump card, found that through patronage and the security services Saddam now controlled the military as well.

The Nixon and Ford administrations with Kissinger dominating foreign policy saw Bakr and Saddam's tactics as an internal Iraqi affair, but the external manifestations of it were troubling. The government in Baghdad appeared to have moved from an Iraqi-centric posture to a more belligerent regional position. In the process, it was seeking Soviet military assistance and flirting with an internal alliance with what remained of the ICP. At least from outward appearances, post-Qasim Iraq under the al-Arefs had now taken an ominously more radical turn. It was a practical matter – the new Ba'thist Iraq was emerging as a potential threat to U.S. interests in the region.

At the same, the new regime came under pressure from the Kurds who, under the leadership of Mullah Mustafa Barzani, sought Iranian support and through military action against Kirkuk halted most of Iraq's oil production for several days. The

Ba'thists were forced to restore the autonomy agreements of 1966 with the Kurds.<sup>18</sup> As Bakr and Hussein consolidated power in Baghdad, a new Ba'thist regime emerged in Syria – in their view a dangerous rival. Friction between the Syrian regime of General Hafez al-Assad and the Iraqi Ba'th intensified the propaganda conflict as each sought to lead the Pan-Arab nationalist movement.<sup>19</sup>

Iraqi internal politics had a decided effect on its external relations. The Shah of Iran took Iraq's anti-Iranian rhetoric and growing relationship with the Soviet Union at face value.<sup>20</sup> What concerned the Shah concerned the Nixon administration. Iraqi socialist and nationalist bombast aside, the relationship with the Soviet Union was an issue of strategic concern in Washington. In retaliation for Iraqi propaganda and support for Arab separatists in western Iran, Tehran abrogated the 1937 treaty that recognized Iraq control over the Shatt al-Arab, the only Iraqi outlet to the Gulf. In early 1974, with backing from the CIA and 'civilian' advisors, the Iranians offered direct support to the Kurds in their struggle against Iraq.

The Iranian support allowed the Kurds to inflict considerable damage on the Iraqi army and prevented the Iraqi army from subduing the Kurdish groups. The war threatened to develop into an open conflict, something that neither Iran nor Iraq nor the U.S. wanted; therefore, secretly with Kissinger's blessing, the Shah began negotiations with the Bakr regime. In March 1975, Iran and Iraq announced the Algiers

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<sup>18</sup> Charles Tripp, *A History of Iraq* (Cambridge: Cambridge University Press, 2002):199-202.

<sup>19</sup> *Ibid.* 210.

<sup>20</sup> *Ibid.* 212.

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Agreement sharing navigation rights in the Shatt. Iranian support for the Kurds stopped immediately and the border with Iran was closed, allowing the Iraqi army to suppress the revolt. Iraq used the carrot-and-stick process to underscore to the Kurdish population the rewards of compliance and downside of opposition.

From the U.S. perspective, the sacrifice of the Kurds was a minor price to pay for having taught the Iraqis a lesson and supported the Shah. In 1973, the Shah had continued to supply the West with oil during the Arab oil embargo. The Shah was also actively supporting the Sultan of Oman in his campaign in the Dhofar region against pro-Soviet rebels. Literally, in Kissinger's view, what was good for Iran was good for the United States in the region. The abandonment of the Kurds was an unfortunate but unavoidable byproduct. The course of action was practical; it was in the strategic interests of the U.S.; it had nothing to do with progressive American ideals or principles.

### *The Crisis of 1979 and the Decade of Realignments*

The year 1978 witnessed the beginning of a series of crises in the region that deeply affected both the United States and Iraq and would bring a decade of realignment. In early 1979 after more than a year of unrest, the Shah's regime in Iran collapsed. In the aftermath, the Ayatollah Ruhollah Khomeini became the arbiter of Iranian policy in a new Islamic state. It was difficult to say whether the Ayatollah hated the United States or Saddam Hussein and the Ba'th regime in Iraq more. It could be argued that by the time of his death in 1989, he would come to hate both equally.

During his exile (1965-1978) in Najaf, Iraq, the Ayatollah found himself basically under the control of Saddam who headed the security apparatus. His hatred for Saddam was personal and political – he had witnessed the persecution and execution of the Iraqi Shi'a that opposed the Sunni dominated Ba'thist regime. There is also some indication that during this exile, Khomeini's unique interpretation of Shi'a Islam and what emerged as "Khomeinism" resulted from his exposure to the struggles of Iraqi Shi'a in attempting to blunt the proselytizing efforts of the Ba'th Party. Although not immediately apparent, Iranian hostility would suddenly put U.S. interests in the Arabian Gulf and Saddam Hussein the same foreign policy boat.

In Iraq, Saddam Hussein was the de facto ruler of Iraq, but President al-Bakr made one last gambit in an effort to retain power; he attempted to engineer a union with Ba'thist Syria. In a November 1970 coup, the commander of the Syrian Air Force, General Hafez al-Assad, staged a coup in Syria and took power in the name of the Ba'th Party. There had been discussions of Ba'th unification for more than a decade. The principle difference was that the Iraqi Ba'th was Sunni dominated and the Alawites a Shi'a sectarian offshoot dominated the Syrian Ba'th. The two sectarian groups were in basic conflict. By 1978, some revolutionary elements within the Ba'th both in Syria and Iraq saw unity as a means to achieve pan-Arab solidarity. From Assad's point of view, it would potentially give him access to Iraqi oil wealth and, from Bakr's perspective, it would change the power dynamic and offset the control exerted by Saddam. In July 1979, Saddam Hussein ousted al-Bakr and

took control as president. He then purged the Iraqi Ba'ath Party of any elements that were not totally loyal to him personally formally instituting what would be a 24-year dictatorship.

By the fall of 1979, Saddam Hussein and the United States were stumbling toward an alliance that would last a decade. Initially it was marked by curiosity as both attempted to understand the other's exact position relative to the realignment in the region. Iraq and the United States still had no formal relations – both had interest sections that were officially recognized under the auspices of another nation who had official relations. Iraq's relationship with the Shah had always been strained, but with the new revolutionary regime in Tehran, the threat posed by Iran took on an entirely new dimension. The fact that 60% of Iraq's population was Shi'a, coupled with the implications of Iran as the champion of revolutionary Twelver Shi'a Islam and a pan-Islamic movement opposed to hereditary rulers, changed the security dynamic for the entire Arabian Gulf.

The impact was no less profound in Washington. The American "policeman of the Gulf" had vanished and the country was increasingly under the control of a Shi'a cleric who had made his reputation for opposing the U.S. presence in and relationship with Iran. Khomeini had obstinately opposed the 1963 Status of Forces treaty between Iran and United States as an affront to Iranian sovereignty. The agreement gave U.S. military personnel in Iran immunity from prosecution under U.S. law. The Ayatollah had also opposed the Shah's 'white revolution' of the early 1960s, a program designed to westernize Iran while undermining his internal

opposition – it was a program strongly supported by the U.S.<sup>21</sup>

In 1979, the Iranian revolution wiped out not only the Shah, but also the key pro-western elements within the government, security services and military. Attempts to influence the situation or work out a *modus vivendi* with the new regime crippled by a lack of intelligence assets among the opposition and particularly the clerical establishment left the U.S. government (USG) flying blind. Given that radical Shi'a clerics hostile to western interests now controlled, the effort to resurrect a relationship with Iran failed. It was a cataclysmic foreign policy experience that left Washington reexamining options in the region.

An issue that made the Iranian situation particularly interesting was that years of ferment in Iran finally came to a head during the Carter Administration. While there were numerous contributing factors, the Ford administration in all likelihood delivered the *coup de grace*. The increasingly megalomaniacal Shah demanded higher oil prices and ignored western pleas including a direct appeal from President Ford to temper his position. In retaliation, the U.S. accepted a Saudi offer to drive down oil prices in return for additional security guarantees and partnering to support the Kingdom.

At the OPEC conference in December 1976, Saudi Arabia called for no price increases and announced that it

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<sup>21</sup> Nikki Keddie, *Modern Iran: Roots and Results of Revolution* (New Haven: Yale University Press, 2003): 147. See also "CIA: Office of Current Intelligence -- Report on Counter-Insurgency in Iran, 23 April 1963," John F. Kennedy Library (JFKL), Presidential Papers of John F. Kennedy (PPJFK), National Security Files (NSF), Komer Series, Box 116A: 1.

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was increasing production by three million barrels per day. Sheikh Ahmed Zaki Yamani made good on his promise to “stick it to Iran.”<sup>22</sup> Iran’s budget was pegged to the higher prices resulting and the shortfall wrecked it. Not even western loans could right the situation that wreaked havoc on the Iranian economy sparking widespread unrest. It was that unrest that led to the collapse of the Shah’s regime.

Interestingly enough, Carter came to office with a ballyhooed focus on human rights and a moral foreign policy. What has in the past been blamed on the human rights policies of the Carter Administration may have actually been driven by the Shah’s attempt to broaden support for the regime and the impending succession. From an American point of view, there was no single event that indicated that the Shah was teetering—he had survived severe crises before and to conclude that he would not survive this one went against 20 years of experience. The CIA analysis saw long-term problems but in the short-term, they were “optimistic” about the survival of the regime.<sup>23</sup> When the collapse did occur followed in November 1979 with the occupation of the U.S. Embassy and the hostage crisis, it was the Carter administration that opened the door to closer cooperation with the antithesis of American progressive ideals – Saddam Hussein’s Ba’thist Iraq.

As the crisis between Tehran and Washington deepened, Iraqi-Iranian relations became increasingly tense.

Surveying the situation and taking into consideration his improved relations with Washington, Saddam decided to act while Iran was in revolutionary chaos. In September 1980, Iraq launched a surprise attack on Iran – a poorly thought out campaign to annex the western provinces of Iran. In particular, Khuzestan included much of Iranian oil resources and a majority Arab population that Saddam intended to annex into Iraq. The attack was poorly thought out and even more poorly executed. By 1982, Iraq had lost all of its gains and was clearly on the offense. The U.S. was just as committed to preventing an Iranian victory and supporting its Arab allies in the Gulf who were committed to Iraq.

From the point of view of interests, the U.S. position was clear. Iran had become an implacable foe and threat to U.S. interests. U.S. interests were firmly tied the security of the Arabian Gulf and thus to the survival of Saddam’s regime. Ayatollah Khomeini by acclimation had achieved the support of the vast majority of the Iranian population – with the exception of elements of the western educated elites and minorities. Carter had tepidly toyed with a foreign policy based on American progressive ideals, and during the crisis of 1979 had moved to a more pragmatic interests-based focus. The Carter administration looked the other way while Iraq introduced the use of poison gas against the Iranians. The Reagan administration with its own progressive push against the Soviet Union – “the evil empire” – brought an even more pragmatic approach to policy. Iranian propaganda represented Iraq as an American puppet state and, de facto, helped push the U.S. toward widening support of Iraq.

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<sup>22</sup> Andrew Scott Cooper, “Showdown at Doha: The Secret Oil Deal That Helped Sink the Shah of Iran,” *The Middle East Journal* (Autumn 2008): 587.

<sup>23</sup> John D. Stempel, *Inside the Iranian Revolution* (Bloomington: University of Indiana Press, 1981): 292-293.

When events on the battlefield seemed to point to an ultimate Iranian victory, the United States began to provide strategic and tactical intelligence and advice to the Iranian military. As the use of poison gas by Saddam mounted, Washington either ignored it or blamed it on the Iranians. By 1987 and 1988, attacks on Iranian cities with Scud missiles and the use of poison gas on both Iranian troops, and in particular their Kurdish allies, had become commonplace. Iraq had also successfully provoked Iran into attacks on international shipping sparking an increasingly sharp military reaction from the United States including the destruction of Iranian oil infrastructure and the virtual annihilation of the Iranian Navy. On land, Iraqi victories enabled by massive resupply and intelligence support had destroyed the offensive capability of the Iranian army. Continuing the war threatened the survival of the Islamic Republic, and Khomeini moved to accept U.N. Resolution 589 calling for a ceasefire.

In the decade following the revolution Iran constructed a long narrative of U.S. perfidy—coups, support for the Shah, and support for Iraq in the 1980 to 1988 conflict. It was the U.S. support for Saddam Hussein and Iraq that drew the deepest resentment. Iranian officials including westernized, U.S. educated ones, deeply resented what they saw as the U.S. role in the Iran-Iraq War (1980-1988). Mohammad Javad Zarif, the former Iranian Ambassador to the United Nations, described it as “criminal.”<sup>24</sup>

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<sup>24</sup> Video teleconference with Iran working group and Mohammad Javad Zarif, Iranian Ambassador to the U.N. 2006. It is the only issue on which many of the “reformers” and “Green

The Iranians saw western support of the Arab Gulf States and in particular the Gulf Cooperation Council (GCC) as increasingly aimed at undermining Iran. Even Khomeini concluded that a continuation of the war merely served to enhance the power and influence of Saudi Arabia and the United States.<sup>25</sup>

These factors coupled with the growing strain on every level of Iranian society sparked increased factionalism within the government and forced Khomeini to agree to a ceasefire and an end to hostilities in July 1988. The hostility toward the U.S. for supporting Saddam, even for supposedly detached officials, was (and for that matter still is) pervasive and personal, and it represents the only shared ideological common ground among Iranian factions for the last thirty years.

Roughly speaking the decade from 1978 to 1988 was one of the more remarkable in the history of U.S. foreign policy in the Middle East. It is not too much to argue that the shocks of 1979 obliterated any real effort on the part of the United States to realign policy with principle. For the purposes of this paper, Iraq and Iran have been the primary focus in trying to understand the regional factors that laid bare the bankruptcy of western ideals and progressive notions in conduct of regional policy – it simply did not work.<sup>26</sup> The destruction of Iran

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Movement” elements agree making it a very difficult political anchor to give up.

<sup>25</sup> Shireen T. Hunter, *Iran and the World* (Bloomington: University of Indiana Press, 1990): 120-121.

<sup>26</sup> This narrative does not even discuss the seige of Grand Mosque in Mecca, the destruction of the American Embassy in Islamabad, the border war in the Yemens between North Yemen and the Soviet proxy on the Arabian Peninsula, the Peoples’ Democratic Republic of Yemen, or the Soviet ‘invasion’ of Afghanistan. There was also the peace treaty between Israel and Egypt that



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drove an alliance with Saddamist Iraq that served to cripple the Islamic Republic for more than a decade. Carter's effort at reintroducing American progressive values into foreign policy collapsed in the face of the necessity to support the Arab emirates and Saudi Arabia in supporting the Iraqi Saddamist dictatorship.

In that regard, Reagan merely took up where Carter left off only without the 'angst'. At the end of the Iran-Iraq War, many assessments of U.S.-Iraqi relations looked toward growing economic cooperation as Saddam moved to rebuild his battered state. The brutality of the Iraqi regime, its use of chemical weapons on the Iranians, and the massacre of Kurdish civilians using poison gas were at first blamed on the Iranians, then conveniently forgotten, and later marked to desperation in the struggle to survive. There were voices that argued that the United States could not associate much less ally itself with regimes that were the antithesis of American ideals, but they were largely ignored. Policy makers understood the realities of the situation – Iraq was the Arab buffer against Iranian expansion in the Gulf. Politically, it was an easy sell; Iran had become the seat of evil in the Middle East and Iranian propaganda just confirmed this view.

In Baghdad, Saddam Hussein drew his own conclusions about the previous decade. He believed that Iraq was now the U.S.' preferred ally in the Gulf. The collapse of Pahlavi Iran and what Saddam viewed as the weakness of the Arab Gulf States left Iraq as the logical replacement for Iran as the U.S.'

principle ally. The analysis was not that far off base. The internal policies of Saddam aside, Iraq had proven itself useful in the ongoing confrontation with Iran. Saddam Hussein failed to appreciate the ambiguity of Iraq's situation. 1978-1988 had been a marriage of convenience in part brought on by Iraq's own poorly thought out, impetuous invasion of Iran. The leadership structure in Iraq in which only one opinion mattered was a source of concern not because it was a dictatorship but because it was a potential source of unchecked bad judgment.

The question remained – would the experience of the war and its cost result in Iraq taking a more constructive approach to its neighbors and the region or would Iraq continue to be a source of instability? Many assumed that answer was the former; others took a more warranted wait-and-see posture. Few actually assessed the Ba'hist regime within the historical context – that would have simplified projections into the future. Saddam had it backward. The West and the United States had supported him because of the threat posed by the Iran revolution and more importantly because of long-term allies in the Arabian Gulf – Saudi Arabia and the Arab Emirates.

### *U.S. Policy and Iraq: Another Cycle of Change*

In the immediate aftermath of the Iran-Iraq War, Iraq faced enormous economic problems and a huge debt – much of it owed to the oil-rich Arab Gulf States. Complicating matters was a precipitous drop in oil prices. In real terms, *i.e.*, adjusted for the inflation, the oil price peaks in the early 1980s have never been exceeded. In other words, at the beginning of the Iran-Iraq War, Iraq

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left Egypt a pariah in the Muslim world and ultimately led to the assassination of Anwar Sadat and the creation of the nucleus of a radical Muslim organization of the future – al Qaeda.

received an adjusted \$70 per barrel; by 1988, the price had fallen to \$15 per barrel. Oil production in both Iran and Iraq had been crippled in the war and now the continued high production rates from the Arab Gulf States compounded the problem. Iran could do nothing about the Arab states as the United States and West had made it quite clear that any interference would have dire consequences. In Iraq, Saddam had a different view.

Because Saddam Hussein made key decisions in Iraq, his view of events was all that mattered. Saddam believed that U.S. support in the war with Iran meant that it now viewed the alliance with Iraq as the key to U.S. policy in the region and that this gave him significant freedom of action. In addition, Iraq with Egypt had pushed the Palestinian Liberation Organization (PLO) toward recognition of Israel in 1989. Saddam, in his campaign against Hafez al-Assad's regime in Syria, supported elements opposed to the Syrian occupation of Lebanon. Iraq was doing its part supporting western interests.

Saddam also saw U.S. unwillingness to save the Shah, the hostage crisis, and reluctance to support its allies in region as sign of weakness. In other words, Iraq could take the initiative in protecting itself with little concern for potential U.S., *ergo* western, interference. Saddam also had a unique view of the events of 1980-1988 as well. He believed that Iraq had saved the Arab Gulf from Iranian domination and the Arab States of the region owed Iraq for saving them. The Arabs in the Gulf believed that Saddam had acted precipitously by attacking Iran with a flawed plan and that they and their western allies had rescued him from his own misadventure. Iraq had paid a high

price but it had been for Saddam's own bad judgment. Immediately upon the war's end, Saddam began to demand that the Gulf States forgive Iraq's debt and cut back on oil production to drive up the price of crude.

In Washington, it is safe to say that no one in a key decision-making position grasped the calculation that Saddam was making. The Arab states of the Gulf had refused all attempts by Iraq to alleviate its growing internal economic crisis. The general view was that the war had chastened both Iran and Iraq, and that while their policies might be problematic, they would be focused on internal problems for the foreseeable future. As Iraq became more vocal in its criticism of the Gulf States, and in particular Kuwait, western analysts and the Arab Gulf viewed it bellicose posturing in an attempt to get concessions.

To be fair, the collapse of the Soviet Empire in East Europe constituted a major distraction as senior policy makers focused on Europe, but it was socio-centric western preconceptions along with a healthy dose of ignorance that drove the misunderstanding of Iraq and its leader. It was inconceivable to American progressive thinking that Saddam would make a rational decision to invade a fellow Arab state. For almost a year, Saddam attempted to get relief from Saudi Arabia, Kuwait, and the United Arab Emirates. At the same time, he claimed that Kuwait was stealing Iraqi oil from a shared field. As his frustration rose, so did the volume and frequency of his claims to Kuwait. From the very formation of the state in 1920, Iraqi leaders had claimed Kuwait arguing that the British illegally separated from Basra province after World War I. It was an

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Iraqi article of faith that Kuwait was in fact part of Iraq; it was also a matter of national interest. Kuwait was the cork in the Iraqi bottle blocking easy access to the Gulf. Now, Kuwait had become an impediment to Iraqi economic recovery and a threat to the regime itself. From Saddam's point of view, the Kuwaitis themselves were insufferable and arrogant betting on wealth and Arab solidarity to protect them. Events would prove that neither were an effective deterrent.

In the United States, preconceived notions of international behavior – those enshrined in the League of Nations and United Nations – reflected progressive thinking dating from the turn of the century. Lines in the sand, no matter how arbitrarily drawn or enforced, were protected by international law. Saddam was arguing that an artificial colonial creation imposed by the British in 1890s on the Ottoman Empire and useful to the U.S. in 1990 was no more inviolable or legal than any other construct imposed by force.

At the Arab Cooperation Council meeting in February 1990, Saddam made it clear that he not only demanded suspension of debt payments but he needed another \$30 billion loan. Kuwait and the U.A.E. refused to bend. In point of fact, Saddam would face far more opprobrium for his execution of an Iranian-born journalist who was a British citizen. Probing a story in Iraq, he was arrested, tried and executed by the Saddam regime resulting in a strong diplomatic reaction from the West that further undermined economic cooperation and support. For the West, killing thousands of Kurds and political opponents was one thing, but killing a western citizen and journalist was quite another and would not be tolerated.

Saddam found himself increasingly condemned in the West.

In mid-July 1990, the Kuwaitis categorically rejected Iraqi claims believing that it was a bluff. The Kuwaitis also ignored as saber rattling the movement of 30,000 Iraqi troops to the border area. The only threat to Saddam's plans was the United States; for months a parade of U.S. officials had assured him that condemnation of the regime was for public consumption and that the U.S. desired closer relations with Iraq. Trying to discern the 'true' U.S. position, he met with U.S. Ambassador April Glaspie in what would become one of the more controversial moments in diplomacy in the history of the Gulf. It is difficult to debate that Glaspie was the wrong person in the wrong place at the wrong time, but her response to Saddam Hussein's query about Kuwait – namely that disputes between Arab states were none of Washington's business – left Saddam with the impression that he was free to act.<sup>27</sup>

A letter from President Bush a few days later arguing against the use of force but calling for more U.S.-Iraqi cooperation probably dispelled any remaining doubts. Saddam expected condemnation and perhaps sanctions, but not intervention.<sup>28</sup> The 1990-1991 Iraq War proved a surprise to Saddam Hussein on multiple levels. Iraqi behavior aroused almost every negative western and American instinct about dictatorships, rulers and societies that rejected western norms of behavior. Having gone from a brutal war with Iran in which the West ignored Iraq's aggression, chemical warfare, and

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<sup>27</sup> Efraim Karah and Inari Rautsi, *Saddam Hussein, A Political Biography* (New York: Grove Press, 2002): 204-216

<sup>28</sup> *Ibid.*

slaughter of Kurdish civilians, Saddam now found himself condemned in terms of high-minded progressive ideals for his actions in Kuwait that in terms of actual destruction and loss of life paled in comparison to what Iraq had done between 1980 and 1988.

Iraq was an aggressive state controlled by a dictator whose policies were a threat to the peace and stability of the region, but the western reaction to Saddam's action were based on western interests, not on ideals and principles. The unprovoked attack on Iran, including the attempt to annex Khuzestan province, the use of poison gas militarily and on civilians, was deemed to further the interests of the West in containing revolutionary Iran. In return, Saddam received the political, economic, and military support that he needed to survive his encounter with the Ayatollahs. The attack on Kuwait ran afoul of those same western interests that Iraq's war with Iran had supported. The paramount U.S. interest in the region is the security and stability of the Arabian Gulf. If that requires condemnation of Iran one minute and support for Iraq the next, then so be it. If in the next moment, Iraqi policy threatens western interests, then the same condemnations will be applied to Iraq.

Policies are about interests, not ideals or principles. From the point of view of human rights, democratic ideals, or ethics, Saddam had always ignored them; survival is all that had ever mattered and it justified anything. The only thing that changed about Saddam between 1980 and 1990 was that his view of survival and interests now threatened western interests and he had to be stopped – it was in the interests of the United States, the West, and stability in the Arabian Gulf.

The abrupt end of the Iraq War allowed Saddam to survive. Intelligence overestimated the damage done to key elements of the Iraqi military, principally the Republican Guard, and underestimated the resiliency of the Saddamist regime. Believing that Saddam was on the verge of collapse, the U.S. encouraged Shi'as in southern Iraq to revolt, Kurds in northern Iraq to revolt, and the Iraqi army to overthrow the regime. The U.S. was now relying on the Iraqis themselves to do what the coalition had failed to do, namely remove Saddam's regime.

The determined reaction of the Iraqi regime surprised Washington. Saddam crushed the Shi'a revolt often within sight of U.S. army units that were ordered not to intervene. A new offensive against the Kurds threatened a huge humanitarian disaster. And, Saddam's security services showed themselves more than capable of handling internal threats from the government or military. Iraq was no longer a threat to the Gulf; therefore, actions of the Iraqi government were once again internal matters that did not warrant intervention, despite the role of the U.S. in inciting the revolts. By the time the coalition declared no-fly zones in northern and southern Iraq, the regime had reasserted control of the south. In the north, the Kurds were able to maintain a level of autonomy.

For the next 12 years, a cat-and-mouse game of low-level military confrontation, sanctions, violations, and propaganda wars ensued. No matter what the Iraqi regime did, destroying the regime was not considered in U.S. interests because it created as many or more problems than it solved. The Iraqi regime by almost any measure was evil, but the evil was contained. For more

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than a decade, the potential that replacing the regime could do more harm to U.S. interests in the region than containing it allowed Saddam to survive – everyone understood that chaos could follow the collapse of the regime. Almost everyone.

The 911 attacks, the destruction of the Taliban regime in Afghanistan, and the hunt for Osama bin Laden brought a renewed focus on Saddam Hussein. It was a convoluted rationale that desperately attempted to link secularist Ba’thist Iraq with the radical Islamic jihadist. Then came the ‘intelligence’ that Saddam had reconstituted his weapons of mass destruction capability and was a direct threat to not only U.S. interests but to the U.S. itself. There was also the personal motivation – George W. Bush, now president, saw Saddam as unfinished Bush family business. The invasion happened, the WMD were never found, and the initial welcome for U.S. forces dissolved into a multisided sectarian war and insurgency against the occupation.

In the course of those first few months of occupation, the Bush administration concluded that Iraq offered an opportunity to bring democratic government to the Middle East. That Bush believed his own ‘spreading democracy’ rhetoric is undoubtedly true. It was an American progressive notion straight out of the world of Theodore Roosevelt and Woodrow Wilson – “the Big Stick” and “making the World safe for democracy.” The belief that western ideals, political forms, and practices were transferable to fundamentally different cultures because the aspirations and ‘rights’ of man were shared values and immutable was simply naïve. U.S. policy had moved from something close to the ultimate in

situational pragmatism to the belief that American ideals could transform the region into a triumph of representative government freeing it from dictators and radical Islamists. It bespoke a naivety that was almost incomprehensible unless one was well versed in the foreign follies of American progressivism.

### ***2003-2014: The Era of Chaos***

The U.S. invasion of Iraq was a high-risk endeavor from the beginning; the execution was a “fiasco,” to borrow Thomas E. Ricks explanation of the invasion and its aftermath. In the lead up to the invasion, most of the senior military leadership had opposed or encouraged containment as the low-risk option. Given the ongoing campaign against al Qaeda two questions arose across the military “Why Iraq? Why now?”<sup>29</sup> The military questioned the weapons of mass destruction rationale – General Anthony Zinni, now retired, was blunt, “There are no weapons of mass destruction programs in Iraq.”<sup>30</sup> The fix was in – the Bush administration had decided shortly after 911 that Saddam Hussein had to go. The idea that Saddam Hussein had WMD and was moving toward a nuclear capability was the rationalization. The invasion quickly took Baghdad but lacked the necessary numbers to really control the country. Lack of clear objectives resulted in U.S. troops standing by while Iraqi riots destroyed the infrastructure of the nation all while others planned an unconventional surprise for the Americans. Bush landed on an aircraft carrier to a banner announcing “Mission Accomplished.” It was premature. The

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<sup>29</sup> Thomas E. Ricks, *Fiasco, The American Military Adventure in Iraq* (New York: The Penguin Press, 2006): 40.

<sup>30</sup> *Ibid.*, 57.

U.S. had focused on ridding Iraq of Saddam but it had no idea how to form a democratic regime.<sup>31</sup>

At its root the problem was the lack of U.S. understanding of Iraq – the lack of understanding of the past created a totally unrealistic set of goals and policies in the present. Paul Bremer, the U.S. appointed head of the Coalition Provisional Authority (CPA), in an effort to create a new Iraq, issued Coalition Provisional Order No. 1 and No. 2. The first banned the Ba’th party and all senior Ba’th officials for public life. Since everyone had to be a member of the Ba’th to hold any position of responsibility in Saddamist Iraq, this order effectively destroyed any vestiges of a functioning government in Iraq.

It assured that the Iraqi government would have to be rebuilt from scratch and that the former Ba’thists would have nothing to lose in undermining the provisional government. The second disbanded the Iraqi army – the only national institution in the history of the Iraqi state. It put 400,000 armed, angry men out of work. It is difficult to conceive of two decisions that could have made an already difficult and precarious position simply impossible. In effect, Bremer had announced the disintegration of Iraq as a functioning state.

Given the context – Iraq and the situation near chaos, Bremer’s orders are almost inconceivable. Almost. Bremer, like the administration that appointed him, believed that the Iraqis once rid of the Ba’thist past would rise to higher level of political existence – an Iraqi version of the American progressive ideal. Bremer then moved to form Iraqi political institutions based on democratic progressive instincts allotting

representation based on sectarian alignment which, combined with the de-Ba’thification order, insured a Shi’a dominated government that would inflame sectarian tension and divisions within the society. To add insult to injury, the CPA supported the privatization of industry and the economy in a country where they had been controlled for decades by the government bureaucracy. It invited chaos and a state where more than a decade later basic services such as electricity and sewage have yet to be restored. Viewed from the socio-centric western perspective of Bremer and the Bush administration, for Iraq to develop properly it had to have a market economy.<sup>32</sup>

Neither Bremer nor his bosses understood that the secular Ba’th Party and its pan-Arab message had been the artificial binding holding Iraq together since 1968. It had suppressed the fractious sectarian landscape and, at least in theory, offered an alternative allegiance structure to blind sectarianism. When the CPA and Bremer transferred limited sovereignty to the Iraqi Interim Provisional Government in June 2004, it enshrined religious sectarianism and completed the process of knocking Humpty Dumpty off the wall. Western liberal democracy simply had no chance to grow in an area that since time in memoriam had been marked by brutal struggles for control. It was not just Iraq – it was three millennia of Mesopotamia existing as a battleground, and progressive liberal democratic wishful thinking was not

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<sup>31</sup> Ibid., 135.

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<sup>32</sup> Michele Keleman, “House Panel Criticizes Shipments of Cash to Iraq,” *National Public Radio* (February 6, 2007). Bremer had \$12 billion in cash shipped to Iraq and \$8.8 billion was never accounted for.

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going to change it. The United States' high-minded ideals would produce a bloodbath of sectarian violence.

By 2006, the Civil War in Iraq had reached a shocking level of bloodletting. The Bush administration was under severe criticism and wanted to see the progress that it had been promising for three years. Shi'a groups controlled the government but President Bush wanted a change and told Ambassador Zalmay Khalilzad to find a replacement for Iraqi Prime Minister Ibrahim al-Jaafari who was having difficulty forming a government. After wrangling, al-Jaafari agreed to go if someone from his Shi'a Islamist Dawa Party replaced him. The embassy came up with the name of Nouri al-Maliki and three months later al-Maliki was prime minister, an Iraqi exile who had spent more than 20 years in Iran and Syria working against Saddam.<sup>33</sup>

Maliki quickly and systematically dashed hopes that he would be a unifying force. For him, Sunnis were "criminals" who had supported the regime. Maliki was an admirer of Abd-al-Karim al-Qasim and his ability to play Iraqi groups against one another to survive. Qasim's overthrow and execution was also an object lesson; he told U.S. ambassador Ryan Crocker, "I have to keep dancing all the time."<sup>34</sup> Maliki was obsessed with his own security and revenge against the Sunnis, but when challenged by

Muqtada al-Sadr and the Mahdi army, an old Shi'a rival, he showed himself willing to take them on as well. It was matter of personal power.

When his party lost the election of 2010 and needed to form a coalition, he made a deal with the Iranians. Qassem Suleimani, head of the Iranian Quds Force, would pressure the other Shi'a groups to support Maliki; in return, Maliki promised to force the removal of U.S. forces from Iraq. The Obama administration grabbed Maliki's demand for an end to immunity for U.S. forces and ran with it, withdrawing all forces by 2011. There was dissent. Many U.S. officials advised that any level of presence was better than none, but like Syria in 2012 Obama wanted out of Iraq. After that point, there were basically no restraining influences on Maliki who immediately turned on the Sunnis ordering the arrest of the Iraqi Vice President Tariq al-Hashemi, and threatening the Kurds. Maliki also made Iraq into his private fief turning a blind eye to the corruption of his son, Ahmed al-Maliki, and his associates and blocking attempts to investigate them.<sup>35</sup> After 2010, Maliki's policies assured the total alienation of the Sunnis and Kurds confirming the end of Iraq.

The heady days of the Bush administration believing that Iraq could be the path to a new democratic Middle East reconstructed on progressive principles was lost in a cyclone of poor decision making driven by progressive American naiveté and ignorance. The cost of western progressive evangelizing: 5,000 U.S. dead, more than \$1 trillion spent, and U.S. interests in the region severely damaged – in Iraq, more than 150,000 dead and the near total destruction of society. The lesson

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<sup>33</sup> Dexter Filkins, "What we left behind," *The New Yorker* (April 28, 2014): 53. Maliki was implicated in the 1981 suicide attack on the Iraqi embassy in Beirut that killed 60 people. The State Department claimed a lack of hard evidence of Maliki's involvement, despite his responsibility for Dawa military operations in Lebanon, and pushed him forward as Prime Minister.

<sup>34</sup> *Ibid.*, 57.

<sup>35</sup> *Ibid.* 60.

relearned by another generation of Americans has been that our socio-centric view of the world creates pitfalls that even the best of intentions cannot avoid. It makes the words of Rountree in 1959 haunting, “The revulsion against any government set up under [U.S.] aegis would be so great that it would probably be swept away”.<sup>36</sup> Not only was the government swept away, but also the state itself disintegrated.

By 2008, the American electorate had concluded that Iraq was a mistake that should have never happened and the Obama administration was absolutely focused on getting U.S. forces out of a no win situation. Obama would learn that attempting to withdraw from a quagmire of one’s own creation is easier said than done. Ignorance of the context also afflicted the Obama administration – it was not just the British creation called Iraq – it was the broader concept of the Sunni Levant. The border was artificial. The same people, mostly Sunni, live on both sides; therefore, when the alienated Sunnis in Syria revolted against the Iranian-backed government in Damascus, there was a ready-made alliance waiting with the alienated Sunnis of western Iraq.

***Conclusion: Ideals and Reality***

The western experience, and more particularly the U.S. experience, in Iraq is a cautionary tale about socio-centric approaches to regions whose historical, political, economic, and cultural context is fundamentally different from that of the West. The operative word is different – neither better nor worse – just different. The remarkable thing about American exceptionalism is that periodically the

U.S. and its leaders apparently must have an experience that demonstrates conclusively how exceptional and non-transferrable the U.S. experience is.

The idea that American progressive principles, ideals, and ethics are transferrable is to say the least naïve – in fact, attempts to apply them elsewhere have resulted in so much destruction and damage to U.S. interests that they verge on criminal. Proponents cite post-World War II Europe as an example of success – they are either ignorant of or ignore the fact that in Germany, for example, National Socialism was a 12-year nightmarish interlude. Germany had political parties and a democratic heritage. Japan also had some experience with democracy in the 1920s but, more pointedly, the U.S. created a political system there that has been dominated by one party, the Liberal Democratic Party (LDP) for almost 70 years. In Russia, which had no democratic tradition, the collapse of the Soviet Union merely brought another authoritarian state despite western efforts to bring Russia into the community of western, democratic states.

In the case of Iraq, the British created the state not out of any liberal impulse to spread democracy in the Middle East – in fact that was the last thing that Britain wanted in the region - it was self-interest pure and simple that drove the British calculation. They wanted to displace the Ottoman Turks in the region; they wanted the oil; and they wanted military bases to protect the oil and access to India. The system of rule was immaterial to them as long as it provided stability. Thus, the unrest and near civil war of 1920 gave way to the establishment of a Hashemite monarchy in 1921. Until 1958, the British used every gambit to maintain first their

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<sup>36</sup> “Memorandum from Calhoun to Goodpaster, 15 April 1959,” DDEL, Box 8: 2-3



## *US Policy and Iraq*

control and later their influence. They never lost sight of what they were trying to do; it was a business proposition. They wanted oil and bases and an Iraqi political system that supported those goals or at least did not seriously challenge them. They understood that historically for 350 years since 1638, Mesopotamia had been ruled through what was a Sunni minority in British-created, Iraq, but a majority within the broader context of the Levant.

The U.S. pragmatically accepted this arrangement. Criticism leveled at the British had more to do with the worries about the stability of the monarchy than with promoting progressive ideals. U.S. calls for liberalization and reform in Iraq were motivated by the belief that that would increase the stability of the regime – it was a necessary development. Thus, even the progressive ideals projected on Iraq had more to do with U.S. perceptions of what it called the ‘wave of future,’ meaning the rise of secular nationalism. The 1958 coup on one hand confirmed the U.S. view of the British supported monarchy and on the other presented a new menace – Communist influence in Iraq.

The struggle against Communism was part and parcel of the American progressive ethos of the Cold War. It was particularly viral during the Red Scare years of the 1950s. The new Iraq of Qasim, the Arefs, and the Ba’th would be judged on its relationship with the Soviet Union. The U.S. would support the overthrow of Qasim and to some degree the rise of the Ba’th as a buffer against Communism and Soviet interests in the region. Although it had a complex local narrative, the struggles in Iraq were strategically viewed as part of the Cold War struggle. When the Ba’th

assumed firm control in 1968, the U.S. backed Iranian plans to use the Kurds to force concessions from Saddam. Pahlavi interests in the Gulf had become a paramount issue for U.S. policy.

The crisis of 1979 changed the entire policy dynamic of the region – Pahlavi Iran was replaced by a virulently anti-American regime led by the Ayatollah Khomeini. The situation was complicated by the Iranian hostage crisis and other crises in the region. The fundamentalist Islamist rhetoric of the Iranian regime threatened U.S. interests and allies across the region. Ba’thist Iraq’s attack on Iran – although it violated all norms of international behavior – put pressure on Tehran that Washington welcomed. As the war turned against Saddam, the U.S. came to view his survival as a key U.S. goal. It complicated the relationship with Iraq, but did little to alter U.S. pragmatism. Iraqi actions against the Kurds, their use of poison gas, and the purges of internal opposition were all more or less ignored in the face of the greater threat posed by Iran.

Even the U.S. reaction to the Iraqi invasion of Kuwait was remarkably pragmatic. Saddam, of course, had to become the image of evil to justify the war but the motivation for the war was fundamental to U.S. interests in the region. Washington could no more countenance an invasion of the Gulf States by Iraq than it could one by Iran. The prosecution of the war focused on Saddam’s ejection from Iraq with the belief that that would be sufficient to topple the regime. Unfortunately for the Shi’a of southern Iraq and the Kurds in the north, this was not the case. Saddam survived, as did his weakened regime contained by sanctions, no-fly zones and

periodic attacks on government facilities. Containment was working.

Then came the Bush administration and 9/11. Despite the lack of a connection between Osama bin Laden and Saddam Hussein following the collapse of the Taliban regime in Kabul, Iraq moved to the top of the Bush administration's list to be dealt with. Most U.S. officials were mystified by the Bush administration fixation on Saddam. Perhaps personally motivated, George H.W. Bush's defeat in 1992 was at least partially related to Saddam's survival and perhaps based in a real concern that Saddam was an imminent threat like Osama bin Laden – whatever the motivation, the U.S. invaded Iraq. The policy goal shifted from WMD to nation building, the very thing that Bush had foresworn in his campaign. No matter what the reason, the U.S. effort in Iraq morphed into an effort to create a democratic government based on western parliamentary principles and a market economy. It was American progressive ideals and thought on steroids in a place where they were highly unlikely to succeed.

The first and foremost miscalculation in U.S. policy toward Iraq was the belief that Iraq was a real nation-state as opposed to an artificial colonial creation. The second defied credulity – namely that Iraq could be transformed into a democratic, free market model for the region. This application of socio-centric views of policy led not only to the disintegration

of Iraq but also contributed to the disintegration of Syria and the rise of the Islamic State in Iraq and the Levant. Around most of the globe when Americans attempt to incorporate their ideals and ethics into policies, the result is disastrous. Arguably, Iraq was better off under Saddam Hussein than it is today as were U.S. interests. Good intentions and progressive ideals brought the deaths of over 150,000 Iraqis and sparked the disintegration of the state.

Coupled with the disintegration of the Syrian state in the Arab Spring, an event that was lauded and applauded in the West as the dawn of a new democratic era in the Middle East, the collapse of Iraq brought the rise of Islamic State of Iraq and the Levant (ISIL) and the spread of Iranian influence – something pragmatic approaches to policy had avoided for five decades. Now the West is horrified and mesmerized by the carnage in the Arab Sunni Levant – the prolific use of negative adjectives to describe events there far exceeds any understanding of the real dynamics, the historical context, and the likely outcomes. It also tends to ignore the well-meaning contribution made by progressives – from the political right and left – touting western ideals and institutions as a solution to the region's problems. Hardnosed pragmatism is the only approach that offers some hope of formulating coherent policies to deal with the ongoing chaos that is now engulfing in the Middle East.

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*On the Ethics of Ag-Gag Legislation and Undercover Investigations*

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In recent years more and more factory farms have been the subject of undercover investigations. As a result, more and more consumers are becoming aware of what the lives of animals are like in these facilities. In response, the animal agriculture industry has been supporting the introduction of “ag-gag” laws, designed to criminalize these investigations, with the aim of mitigating the damage they do to business. I will begin here by discussing the nature of some recent undercover investigations of factory farms in Minnesota. I will lay out some background information about ag-gag legislation and scrutinize some of the main reasons the industry offers in its support. After noting some preliminary objections to particular nature of the legislation that has been offered, I will offer some reasons for thinking ag-gag legislation is morally objectionable by bringing out the benefits of the investigations it means to criminalize. Not only do undercover investigations appear to help prevent some harms to animals, they also help preserve the autonomy both of consumers and big food companies. Most importantly, though, the availability of the materials that result from these investigations can help in the development of our moral sensibility.

**Some Background Undercover Investigations and Ag-Gag Legislation**

In each of the past three years, Mercy for Animals has released video

from undercover investigations of farms based in Minnesota.

In an investigation released in November 2011, we saw how hens are treated at Sparboe Farms, then the fourth largest egg producer in the country (O’Keefe 2012). The footage is disturbing, both because of the way the workers abuse the hens and because it exposes practices the industry regards as standard. We saw chicks having the ends of their beaks seared off without any painkillers, we saw hens confined together in battery cages, we saw chicks being suffocated to death in plastic bags. We saw one worker swinging a hen in circles while her feet are trapped in a catching device and we saw other workers stuffing hens head first into their colleagues’ pants pockets.

In an investigation released in July 2012, we saw how sows and piglets are treated at Christensen Farms, which now bills itself as one of the top three pork producers in the country (Christensen Farms 2013). This footage is different from the Sparboe footage in that it focuses only on standard practices in the industry. It is no less disturbing, however. Here we saw sows confined in gestation stalls, cages so small the pigs in them cannot even turn around. We saw fully conscious piglets being slammed against the concrete floor and then being tossed aside to be left to die. And we saw piglets having their tails cut off and their testicles removed without any painkillers. We got another glimpse

of these standard practices in an investigation of Pipestone Systems, a sow confinement facility, released in October 2013.

It is in response to this sort of footage that “ag-gag” laws have been introduced. These are laws designed, in one way or another, to criminalize undercover investigations. The laws have tended to come in three different forms.

Utah’s version of the law, enacted in March of 2012, makes a criminal out of anyone who “without consent from the owner of the agricultural operation, or the owner’s agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation” (Utah State Legislature 2012). Since the primary evidence undercover investigators gather from their investigations is footage from hidden video cameras, this version of the law criminalizes the gathering of evidence necessary for investigators to do their work.

Iowa’s version of the law, also enacted in March of 2012, targets anyone who “obtains access to an agricultural production facility by false pretenses” or who “makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized” (Iowa Legislature 2012). The practical implication of this is that it makes it illegal for investigators to get a job in an agricultural facility without

disclosing that they work for an animal advocacy group.

Missouri’s version of the law, enacted in August of 2012, requires workers who record what they take to be animal abuse or neglect to “submit such videotape or digital recording to a law enforcement agency within twenty-four hours of the recording” (Missouri General Assembly 2012). In this case, any undercover investigators would violate the law if they remained undercover to gather more evidence after they’ve witnessed the first instance of what they understand to be animal abuse or neglect.

There was an ag-gag bill introduced in Minnesota in 2011 that was similar to the bill passed in Utah, but it failed to make it to committee. In view of Minnesota’s place in pork and egg production, there is every reason to think that it is only a matter of time before another bill is introduced.

### **Practical Impacts of Undercover Investigations**

Before we begin to assess the ethical implications of these kinds of laws, we will briefly consider some of the practical impacts of the undercover investigations they mean to criminalize. These impacts fall into three general areas.

First, these kinds of investigations have helped bring criminal animal abuse charges against and have led to the termination of those caught abusing animals. In 2012, for example, an investigation of Wyoming Premium Farms led to the conviction of five workers caught kicking and swinging live piglets and punching and kicking sows (HSUS 2013). A 2012 investigation of Bettencourt Dairies in Idaho resulted in the termination of five workers caught abusing animals. Three

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of those workers were eventually charged with misdemeanor cruelty to animals (CNN 2012). A 2011 investigation of Butterball resulted in four animal cruelty convictions ([MeatPoultry.com](http://MeatPoultry.com) 2013). And Sparboe Farms fired four workers depicted in Mercy for Animals' undercover investigation (Star Tribune 2011).

Second, these investigations have helped encourage moves by the food industry to drop producers whose workers have been found engaging in animal abuse and to demand that producers phase out standard practices depicted in the investigations. As a result of the Sparboe investigation, for example, Target dropped Sparboe Farms as an egg supplier (Star Tribune 2011) and both Target (HSUS 2012) and General Mills (HSUS 2013b) have announced that their pork producers must outline plans for phasing out the use of the gestation stalls depicted, for example, in Mercy for Animals' Christensen Farms and Pipestone Systems investigations. Moves by these companies are part of a bigger trend. Companies like Sysco, Sodexo, and Costco are all requiring their suppliers to phase out gestation stalls. And it seems the industry is finally heeding the call — large pork producers like Hormel, Smithfield, and Cargill have announced plans for the phasing out gestation stalls (HSUS 2014).

Third, researchers have found that media attention given to animal welfare issues in animal agriculture has been found to have “significant, negative effects on US meat demand,” particularly on the demand for pork and poultry (Tonsor and Olynk 2010). In addition to national coverage, undercover investigations in Minnesota are routinely featured in the local paper

(see, for example, Star Tribune 2011, 2012, 2013) and on the local news (see, for example, KMSB-TV 2014). So these investigations play a role in media attention that gives rise to these negative effects.

### **Industry Response to Undercover Investigations**

It is not surprising that the animal agriculture industry finds these undercover investigations objectionable. The industry worries that the footage released of undercover investigations casts producers in a false light. This worry arises in at least two different ways.

When it comes to the depiction of overt animal abuse — punching and kicking animals, for example — the industry worries that in the released footage there is at least an implicit suggestion that the behavior of who they call “bad actors,” those caught on tape abusing animals, is representative of the industry as a whole. In an interview with NPR, Dave Stuthers, an Iowa hog farmer, stated:

We have a problem with a lot of undercover videos that go into livestock production facilities... looking for things that might be out of ordinary and, I think many times, fabricating things that are not happening on regular basis. (NPR 2012)

When it comes to depictions of standard farming practices (practices, for example, like tail docking, debeaking, disbudding, confinement, and so on), the industry worries that the released footage makes these practices out to be cruel when they are in fact endorsed by those the industry calls “animal care

experts”. Here’s more from Struthers’ NPR interview:

Struthers says one of his friend's farms was secretly filmed. The resulting video showed practices like castration and tail docking and tried to make it look inhumane, he says. But those practices are not secret, Struthers emphasizes, they're legal — and standard in the industry. (Ibid.)

In a piece in the *New York Times*, Kelli Ludlum, director of Congressional Relations for the Farm Bureau, is cited as articulating the worry Struthers has by helping herself to an analogy:

The videos may seem troubling to someone unfamiliar with farming, said Kelli Ludlum, the group’s director of Congressional relations, but they can be like seeing open-heart surgery for the first time. ‘They could be performing a perfect procedure, but you would consider it abhorrent that they were cutting a person open,’ she said. (Oppel 2013)

The suggestion here seems to be that while standard farming practices like castration, tail docking, confinement, and so on may seem troublesome to the untrained eye, in fact, so the story goes, these procedures are to be thought of as being acceptable in the way we might think of surgery to be acceptable. The idea that these practices are troublesome grows out of ignorance and lack of proper training.

Another argument offered by the industry in favor of the quick reporting versions of ag-gag laws is designed to appeal to the very motivations that might have us concerned about the plight of animals in the first place. In an interview

on Democracy Now, Emily Meredith (communications director for the Animal Agriculture Alliance) offers a version of this argument:

If you truly care about animal welfare, you’re not going to wait even a minute to report animal abuse. You’re going to see it, you’re going to stop it, and you’re going to say something. And I think that’s very important to note. This footage is taken for weeks or months. (Democracy Now 2013)

The intended effect of such an argument is to raise questions about the motivations of investigators and to evince a concern for animals on the part of producers.

### **Preliminary Considerations of Ag-Gag Laws and Industry Response to Undercover Investigations**

My sense is that it is fairly easy to see through the industry’s objections to undercover investigations. Seeing how animals are treated on factory farms may well keep people from buying their products. And this is a serious concern for those in business.

While it is certainly true that documented incidences of overt animal abuse do not justify the claim that overt animal abuse is systemic, these abuses evidently happen. The fact that prosecutions and terminations have resulted from these aspects of such investigations is relevant, then, to how we take them.

Perhaps the most disturbing aspect of these videos is their depiction of what have become common practices on farms. Keeping a cat or a dog for months on end in something like a gestation crate or cutting their tails off

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without any painkillers would result in animal cruelty charges. Because of common farming exemptions written into law in most states, these practices are understood to be perfectly acceptable when they are done to farm animals. That tension alone demands some serious reflection. The industry appeals to the endorsement of “animal care experts” as a way to make us feel at ease with these practices. But an inspection of the judgment of these organizations reveals what we should understand by the industry’s notion of “animal care”.

To take a case, the American Veterinary Medical Association tells us gestation stalls help ensure sows get the right amount of food and prevent aggression that arises when sows are raised in groups (AVMA 2014a). These considerations make it appear as though AVMA has the interests of the animals in mind. Mike Hemann, a swine nutritionist for Purina Animal Nutrition LLC reports, however, that the amount of feed sows get is tied to both their short term and long term productivity (WATTAgNet 2012). And it turns out that aggression in group housing systems subsides after only a day or so and that after a week sows form stable social groups (Li 2014). Why would the AVMA see the prevention of such short lived aggression as warranting extreme confinement? Research shows that aggression between sows also poses a threat to the producers’ bottom line. When you introduce sows into groups after they have been artificially inseminated there is a risk that some embryos will not implant (Li and Johnson 2012). The benefits the AVMA sees in gestation stalls seem to have mostly to do with increased productivity, which has more to do with the interests

of the producers than with the interests of the sows.

The analogy to surgery often offered by the industry as a way to insulate what they do from scrutiny is problematic in my view mainly because the circumstances that surround surgeries are substantially different from those that surround standard practices on farms. One main difference has to do with the administration of pain killers in the context of surgery and their notable absence on farms. Another subtler difference has to do with the aims of the procedures in question. Part of what we accept the things surgeons do is because they have the interests of the patients in mind. In the case of the procedures employed on farms, it’s not so much the interests of the animals that guide them but the interests of the producers. This is a distinction that makes an enormous difference in how we might respond.

Apart from the industry’s defense of these laws, there are problems with the nature of each of the different versions of the laws. The ACLU, for example, sees constitutional issues with versions of the laws that punish capturing photos or videos and with failing to disclose on a job application on the grounds that they “punish speech without proof of harm” (ACLU 2013). And even while undercover videos may indeed harm the industry in the way of decreased sales, as the ACLU points out, it is not the photos, videos, or failure to disclose that causes the harm. Rather it is the behavior of the producers captured in those photos or videos.

The third version of these laws — the version that requires mandatory reporting of animal abuse after only a short period of time — makes it impossible for investigators to gather evidence of systemic abuse. This is just

the sort of abuse that has led to prosecutions in the past.

### **Ethical Considerations of Undercover Investigations**

A consideration of the practical impacts of undercover investigations gives rise to a number of familiar ethical considerations that can be raised in support of undercover investigations and in opposition to ag-gag legislation. I will consider each in turn before finishing with a discussion of what I see as another important ethical consideration that speaks against these laws.

It seems clear that overt abuses – beating, shocking, and dragging animals, for example – constitute harms to those animals. To the extent that prosecutions and terminations that result from undercover investigations help to reduce the number of overt abuses animals suffer in being made into meat, either directly by removing from the industry some of the individuals responsible for them or by raising the stakes for those who would engage in such abuse, they seem to be a benefit to animals. Whatever harms come to the farms where such abuse is exposed do not seem to warrant much attention, since those harms flow from behaviors of individuals on the farms. In effect, they brought those harms on themselves.

Things are a bit more complex when it comes to the documentation of standard practices on factory farms. In the case where consumers and big food companies turn away from farms who confine sows to gestation stalls, for example, they are turning away from farms who are doing nothing out of the ordinary and, importantly, nothing that warrants prosecution. Nevertheless, as Bernard Rollin observes, any benefits to productivity producers have enjoyed by confining sows to gestations stalls are

fairly clearly outweighed by welfare issues that result. Sows are naturally inquisitive and intelligent beings who spend a considerable amount of time moving around. When they are confined in gestation stalls they do not get any exercise and they grow terribly bored from lack of stimulation (Rollin 1995, 75-78).

The decision by big food companies and consumers alike to move away from supporting this standard practice holds out hope of benefitting sows who come to find themselves in production. So here too, in focusing on the common practice of confining sows to gestation stalls, undercover investigations play a role in beginning the process of making things a little better for animals.

While some farms may lose business simply following procedures standard in the industry, this does not seem relevant to serious ethical reflection on the issue. Anyone who understands the market sees that customers are not obliged to support whatever practices businesses make use of to produce their goods. Rather businesses need to be responsive to the demands of consumers.

That consumers and food companies such as Target and General Mills are moved to make different purchasing decisions in light of what they find out about the treatment of animals on farms gives us powerful reason to think that undercover investigations help to preserve the autonomy of those who buy animal products. The case is made stronger when we consider that polls indicate 97% of Americans believe that animals deserve to be protected from harm and 64% support passing strict laws to do with the treatment of farm animals



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(Gallup 2008). We even find that a 2012 ASPCA poll suggests that 71% of Americans support undercover investigations and that 64% of Americans oppose ag-gag legislation (ASPCA 2012).

Given the public interest in the ways farm animals are treated, undercover investigations seem especially important in an environment where there are routine and deliberate attempts to keep what goes on in factory farms from the public eye, whether by presenting pastoral images on packaging or granting consumers access to these facilities only by way of sanitized, industry-produced narratives, images, and videos (for a very recent example of this, see the film *Farmland*).

To take a couple of cases, companies like Sparboe Farms and Christensen Farms (two of the factory farms recently exposed in Minnesota by undercover investigations) cast themselves as “family farms” and they claim to treat their animals humanely (See Sparboe 2014 and Christensen Farms 2014). At a minimum, it seems reasonable to think people ought to be able to see what exactly these companies understand by those claims in a way that is unimpeded by their spin.

Andrew Linzey and Priscilla Cohn sketch an argument for the view that consumers have a right to know what happens to animals on factory farms (Linzey and Cohn 2013). If we eat animals, they argue we have an interest in knowing how those animals who are made into food are treated. While they don't develop this consideration in much detail, we might think that this arises out of a concern about whether the ways those animals are treated squares with our values. This concern becomes especially pressing when a great deal of

effort is exerted by the industry to shape perceptions of animal agriculture in a way that misrepresents what happens on industrial farms. A material interest arises when we consider that public money is used to subsidize animal agriculture. If money we provide as taxpayers is being used to help support industrial animal agriculture, should be able to access information about the practices they undertake with our financial support. It's in view of these considerations that Linzey and Cohn argue that the public has a right to know what happens to these animals. Ag-gag laws, they suggest, infringe on this right.

There is another ethical consideration I would like to raise, though it is, I will admit, less familiar than considerations to do with weighing benefits and harms or thinking about issues of restrictions on autonomy or violations of rights.

We might find ourselves rejecting the picture of ethical considerations which makes them out to be principally focused on weighing up harms and benefits, of assessing impacts on autonomy, of fussing over issues of fairness. We need not think that these considerations are not important at all or that they do not have any place in thinking about ethics. We may think merely that their importance has traditionally been overemphasized. We may think, along with Iris Murdoch and (later) John Cook that ethics has much to do with the development of one's moral sensibility, with change and progress, with setting the stage for what we might characterize as a shift in one's moral vision (Cook 1999, 127-129; Murdoch 1971, 16-28).

Cook identifies a number of tendencies of thought that may get in the way of the development of our moral

sensibility (Cook 1999, 117-118). When we are faced with the business of assessing some practice we are engaged in, we may be morally obtuse or naive, unable to imagine or unwilling to engage in the kind of reflection that might suggest there are serious questions to be raised about common practices. We may be willfully ignorant, refusing to take the time required to find out troublesome facts or, once we have found them out, we may keep ourselves from thinking hard about them. We may engage in self-deception, imagining things cannot be as bad for others as we have been told or led to suspect they may be. And we may be gullible, too willing to accept the say-so of people who defend the status quo against those who mean to raise moral issues with it.

The special challenge that comes along with engaging in serious ethical reflection, for Cook and Murdoch, has to do with identifying ways in which our moral sensibility may be hindered. Cook writes:

[M]orality is essentially concerned with ... the self-serving ways in which we see ourselves and others, the dishonest ways we may talk about such matters, and the struggle one must undertake in order to break through to an honest perception of things (Cook 1999, 129).

The material that results from undercover investigations can be seen as a help in the development of our moral sensibility. When you are told that sows live out their lives in gestation stalls or that piglets have their tails and testicles cut off without any pain-killers, it can be tempting to imagine that the animals do not mind it too much, that it cannot be *too* bad. It is another thing altogether, though, to see into the lives of these

animals and to hear animals respond as they are subjected to these practices. In giving us unvarnished presentations of the lives of animals on factory farms, undercover investigations help by assisting our imaginations and by inviting us to be critical of the narratives surrounding standard practices in the industry. They keep us from remaining ignorant by confronting us with what we have others do to animals on our behalf. They check our attempts at self-deception, by making real for us the contrast between the industry's claims that they treat animals humanely the way that treatment manifests itself in the lives of animals in these facilities. These undercover investigations can slow us down in our willingness to accept conventional views about animals raised for food.

### **Conclusion**

I have discussed the nature of some recent undercover investigations of factory farms in Minnesota. I have offered background information about ag-gag legislation and scrutinized some of the main reasons the industry offers in its support. I noted some preliminary objections to particular nature of the legislation that has been offered and I offered some reasons for thinking ag-gag legislation is morally objectionable by bringing out the benefits of the investigations it means to criminalize. Not only do undercover investigations appear to help prevent some harms to animals, they also help preserve the autonomy both of consumers and big food companies. Most importantly, though, the availability of the materials that result from these investigations can help in the development of our moral sensibility.

## *On the Ethics of Ag-Gag Legislation and Undercover Investigations*

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## *The Gun Thing Again*

**John Helgeland**

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Two quite memorable encounters with firearms are particularly significant to me, and there are many from which to choose.

I was six years old and our family was out on the Iowa farm of my grandparents. Suddenly there was the racket of crows holding court. Grandmother told Dad to get the rifle and see what could be done about it. Not wanting to miss out on anything, I tagged along, standing there as Dad levered a round into the chamber. He took aim and fired, producing a cone of smoke that was maybe ten feet long – lots of smoke. All of the crows, except one, took off; the one on the ground had been perched on the top of a pine tree. That gun, a Marlin .32 rimfire lever action with an octagonal barrel was no doubt obsolete. Grandmother complained (it was her rifle) that it was nearly impossible to buy ammunition and that was in the 1940s.

“Magic,” that is what it was. No other word will cover it – and my dad stood ten feet tall. Sometime later I was allowed to fire it – missed the tomato can but could see the dust kick up way out in the plowed field. Any gun is capable of producing effects “out there” so part of its mystery is its capacity to control space. Not always, but sometimes the gun is able to control life, too – crows, coyotes, rabid skunks. It is when it comes to controlling human life that the gun becomes notorious.

Hot nights in south Chicago at the University twenty years later I could frequently hear gunshots both distant

and close in. That stretch of 61<sup>st</sup> Street near our apartment was territory between the Devil’s Disciples and the Blackstone Rangers.<sup>1</sup>

One night there were two gunshots very close by and shortly followed by a woman’s pathetic screams. Cautiously looking out of the window I could see a young man lying on the sidewalk across the street and a hysterical woman shaking his body – his mother, maybe a sister or girlfriend. There was a brief reference the next day in the *Sun Times* that the young man did not make it. That, too, is part of the reality of firearms. Places for guns make a great difference.

An Iowa cornfield, a crisp beautiful November day, a march along the rows with Dad, cousins, friends – it’s my first day allowed to shoulder a shotgun on an actual pheasant hunt. Of course, I had been properly trained, disciplined, to be responsible and memorize all the rules. Always watch where the barrel is pointed, never cross a fence with a loaded weapon, never a round in the chamber when in a car. I had seen what it looks like when a shotgun hits a watermelon up close; that could be my head or someone else’s. Every year the state of Iowa had one or two fatalities hunting; someone had forgotten one of the rules.

Now I am a North Dakotan and I find much the same; relatively few firearms accidents and even fewer

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<sup>1</sup> Incidentally, that apartment is about a mile south of President Obama’s house.

homicides with guns. If one would take seriously the warnings of urban commentaries about guns it might be expected that our state would be up to our knees in blood for all the guns within our borders. Indeed, there are guns of all kinds everywhere. Sport shops have walls lined with rifles and shotguns while there are revolvers and semi-automatic pistols in the many display cases. We have our gun shows which cover two floors of the Fargo Civic Center. Weekend newspapers contain notices of auctions in North Dakota and Minnesota. An informal counting will reveal many more auctions offering shotguns and rifles, much less often pistols, than not any. Auctioneers will say to include a few guns in an auction if one wants to swell the crowd – even if the sale is primarily about china, quilts, farm machinery, or office furniture. If you like guns it pays to watch the ads for there are frequently valuable collector's items if one is acquainted with that market but sometimes junk, as well.

Given the background of guns everywhere, where are we going with this catena of observations? Just this: North Dakota has both the lowest homicide rate and the lowest number of homicides in the United States. I once interviewed about forty individuals in the penitentiary, people convicted of murder or attempted murder. These interviews were part of a study about the religion of homicide that was developing. Perhaps half, no more than that, had used a firearm to commit their crime. Several had employed a baseball bat, several used lead pipes, more with bare hands and one even had smothered his victim with a pillow. With all the firearms in the state or our region you would think....

It cannot be left unsaid that items as powerful and potentially destructive as firearms should escape legislative controls. Even many towns on the frontier required cowboys to check their weapons when in the city limits.<sup>2</sup> Out at the ranch the sidearm was a necessary tool put to a variety of uses. Problems arise, however, when it comes to the Federal government writing rules for America. There is a great difference between an Iowa pheasant hunt and a Great Plains antelope or deer hunt on the one hand and a gun fight on 61<sup>st</sup> Street on the other. It is no stretch of the imagination that one must have the means to dispatch a rabid skunk in the barnyard. My sister-in-law lives in the Black Hills and has seen cougar footprints around her place. She is not a "shooter" and is not fond of guns. The family wishes she would make concessions for the sake of need be.

Any legislation of the one-size-fits-all category is likely to leave a sizeable constituency mostly unhappy. It will not do as in some nations where one must "prove the need" and "take a course" to have a gun which might be "locked up at the hunting club." When it comes to legislation the Iowa barnyard of my grandparents is an entire planet away from 61<sup>st</sup> Street. There are, in the issue of guns and many others as well, a number of Americas, not just one.

Some of conclusions are possible. First, is the theme of symbolism. No one doubts that firearms are replete with symbolism. Symbols separate the gun as a tool from all other tools. People might visit someone to inspect a gun collection, but to show off a hammer or a screwdriver is a joke. As

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<sup>2</sup> Gunpowder and alcohol do mix, but they leave a horrible aftertaste.

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Paul Tillich (*Dynamics of Faith*) tells us that a symbol participates in a reality that transcends the actual physical reality of an object. Depending on the viewer a gun calls up power.<sup>3</sup> It also involves history: a Kentucky rifle, a Colt .45 of 1873, the US Army Colt of 1911, or a Winchester 30-30 all recall episodes in the history of America, either on the frontier or as a remembrance of many wars. It would be an artificial task to separate the history of a war from the weapons used to fight it.

Some objects are so rich in producing so many symbols that the word describing them is “polyvalent.” The multiplicity of symbols attracts people displaying diverse interests. The aspect that comes just after historical interest is aesthetics. Look for the beautiful grain in the stock, often made of fine walnut. There, too, is the design of the weapon, made to fit in the hand holding it. In one’s hand or drawn up to one’s shoulder, the beautiful gun makes sighting it on a target natural and effortless. In the production of expensive guns, care is taken to correctly blue the metal or to employ the most skilled craftsman (or woman) to flawlessly engrave the metal, or at least, this was a consideration from times past. Now, lasers making no mistakes are used. Such operations produce the fetish of price.

Where the issue of aesthetics rises to the surface is in the legislation restricting from the civilian market certain “military-looking” weapons. Their finish is intended not to reflect the sun – non shiny black – and rustproof. These don’t naturally attract the eye because they have a plethora of protrusions – pistol grip stocks, a rail on the top for attaching sighting scopes,

night vision optics, or laser sights. On the muzzle end is a flash suppressor and a bayonet lug. Not pretty in the least. Ironic, though, is the *symbolic* assumption that these protrusions serve to make the weapon more lethal. Maybe, maybe not. The only feature our service rifles include which makes them more lethal is the switch converting the weapon from semi to full automatic. The full automatic is not available in the normal civilian market and is permitted only with complete background check and steep licensing fees. Shot for shot these rifles are less powerful than what deer and elk hunters carry in the field. The standard NATO caliber, the 5.58mm, in many states is not even permitted for big game because of ethical considerations: it has the capability of producing a less-than-lethal wound which would, after the animal escapes, produce an eventual death accompanied with lingering suffering. Thus, guides tell their clients that they, therefore, must use “enough gun” especially if hunting the “dangerous game” variety.

My eye doctor, by the way, told me not to fire a rifle with major recoil, say over 3000 foot pounds of energy needed for rhino, hippo, and elephant because it might result in a detached retina. Since I do not expect to do this kind of hunting it is not a problem. We have the weapons in town: they are expensive and, until their first encounter with a barbed-wire fence, very beautiful.

The 3000 foot pounds reference, however, brings to mind another aspect of the gun culture, namely Pythagoreanism. Visit any gun store for any length of time and one will hear all kinds of numbers thrown around – muzzle velocity, weights of bullets in grains, pounds of recoil, parabolic

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<sup>3</sup> Samuel Colt, it is said, made women equal.

trajectories, calibers in millimeters or hundredths of an inch. This, obviously, is no place for the mathematically challenged. It is the environment of a cult, like those of ancient mystery religions.

The last argument I heard along this line was about whether it would be better to have a .44 magnum or a Winchester 30-30 if you encountered a polar bear. Absurd! Run to the closest sports shop and “buy enough gun”, that was my solution, but the disputants didn’t see my humor. They were in a real world, to them somewhere “out there”.

Fantasy is what we are involved with in the numbers, aesthetics, history, and symbolism realms. A symbol has the capacity to create a religion, at least in the definition of Clifford Geertz including 1) a system of symbols which 2) establishes moods and motivations 3) conceptions of an order of existence with 4) an aura of factuality that 5) seem realistic. How is this all (1-5) come together? It would appear that the various aspects of firearm involvement focus primarily but not exclusively around *The American Rifleman*, the monthly publication of the National Rifle Association (NRA). To peruse one issue will bring one into immediate contact with all the elements listed above and including an additional theme that being the fascination of how guns work. This involves both the mechanical performance of the various guns reviewed and the ballistic, down range and terminal performance of various bullet designs. Americans definitely display a fascination with mechanical systems and the gun is but another example.

Because the NRA has been outstandingly successful at bringing all

these elements together it has, in actuality, created a religion. Nationally, probably internationally as well, there exists a community of like-minded followers of gun science and gun lore. Attempts to regulate or to curtail in any way the gun culture are met with the theme of persecution and martyrdom. The gun culture is on the side of those who require protection and defense. Any attempt to impose regulation amounts to big government forcing itself on those who need firearms to defend themselves. Some academics such as the sociologist Gary Kleck and the economist John Lott have produced scholarly articles and books to argue that much crime has been thwarted at the hands of civilians who have arms, if not actually firing one. Once again we are reminded of the symbolism of the firearm. Every issue of the *American Rifleman* has a one page feature titled the *Armed Citizen* where a crime has been stopped in progress by brandishing, wounding, or killing someone attempting great wrong. Each account has the homeowner/victim coming out on top.

Does the term “religion” seem to be going too far in this discussion? Not if one reads the November 2014 issue of *The Lutheran*. On page 3, Rev. Peter Marty writes a regular column. The title of his column in the aforementioned issue is “Guns in a Culture of Idolatry.” The highlighted quotation in this, “If Martin Luther’s definition of a god has any enduring truth to it – ‘a god is that to which we look for all comfort and take refuge in every time of need’ – the gun has risen to achieve godlike prominence.” If one finds the term “religion” somewhat odd in this conversation, then his term “culture is perhaps to be preferred. Bruce Lincoln’s chapter on “Culture” in the *Guide to the*



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*Study of Religion*<sup>4</sup> is most helpful in dissecting various elements of culture.

So what is the work which culture performs? First, it creates reality. Every culture, or every subculture, authenticates itself by encoding presuppositions in a language that is appropriate to it.<sup>5</sup> The more the tyro hears this conversation the more the thought grows that what is reference is not equipment, practice, nor technique that actual humans have developed over time, but a kind of sacred myth from the basement of time as Mircea Eliade would have put it. If one submits as a disciple might do then the secrets are divulged piece by piece. As children educated in school which shapes and focuses their thoughts, so the gun subculture produces its disciples and engrafts in their minds not only stories and judgments about equipment, techniques, and style, but also meta-judgments about the meaning and purpose of firearms in American history. What does the firearm mean in this context if not the efficient weapon that made this country what it is, stories from the sniping of a British general in the Revolution to Admiral Yamamoto who refused to entertain the thought of a Japanese invasion of America. Said he “You cannot invade America: there is a rifle behind every blade of grass.”

The culture takes shape piece-by-piece and in so doing it creates ideology to fight ideology. An ideology, to quote Peter Berger, is a “worldview tied to a vested interest.”<sup>6</sup> To the theme that “there is evil everywhere so pack a

weapon” comes from the response that “the only evil out there comes from those who are armed.” Both are wrong. Both, however, have their different worldviews which demand greatly differing responses. “Ideology produces mystification,” said Karl Marx. Language builds a hedge around an ideology so that prying minds do not begin the downhill course of demystification. The legal and medical professions employ large doses of language which began as Latin and Greek. The firearm subculture uses American military and frontier history combined with Pythagorean mystery to fend off the unconvinced. This argot is the basic building block to a subcultural ideology. Demythologization “ain’t just for the Bible anymore.”

Here the process of demythologizing or demystification has great ethical value by removing any ideology from its transcendent status. So the gun can become, through its symbolic reality, an ideology in itself. Sure, it can be used ethically and affectively but only at the hands of a responsible and ethically conscious human being.

Could we speculate about how culture and symbolism actually controls the use to which a gun will be put? Because it could be said, as economists do, that guns are durable goods; guns are not going away. So, even a flintlock from Revolutionary war times could be lethal, yet one might never think about using one for that purpose. It is not often that there are movies about bygone times to suggest a flintlock for homicide – better hung over a fireplace and left there.

Entertainment media can be powerful to suggest how guns might find uses in producing mayhem. We might

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<sup>4</sup> Ed. Willi Braun and Russell T. McCutcheon, London: Cassell 2000: 409-422.

<sup>5</sup> See above – the Pythagorean style gun talk in the sports shop.

<sup>6</sup> Berger, Peter and Thomas Luckmann, *The Social Construction of Reality*. Garden City: Doubleday, 1966.

argue that, without the media modeling mayhem, little would actually occur. We must not underestimate the media's capacity to create reality. Symbolism is indeed part of that reality.

For example, some time ago a congressman introduced a bill to control a certain type of a weapon. A representative of the NRA, however, complained that no such gun existed or ever would. Where, he asked the congressman, had he ever seen such a weapon? Sure, it was on *Miami Vice*. Ridiculous, but it does underscore the point that the media has immense power to create reality that is an illusion: some think that it is necessary to be constantly armed because this is a dangerous world. It is dangerous, but it is easier to convince someone that is so in Manhattan, or Chicago than in the cornfields of Iowa or the woods of Minnesota.

There are other means to control society than by legislation. For example, I like watching old movies on TV. There, of course, everyone was smoking, indeed smoking in places where we would now find it gauche to the maximum. In the 1940s it was "cool" to smoke, but now it is "unhealthy", "inconsiderate" or a problem to cease. No law has accomplished what many would have tried to write into law. That is, smoking was largely curtailed as a matter of symbolism. Still today, gunfights in the movies make it look like a great adventure. The symbolism is

unfortunately lopsided. The movies do not show consequences. Consequence, of course, is a major theme in any ethical analysis. We need the world picture of, say, a person with a bullet-produced spinal cord injury who will never get out of a wheelchair and perhaps in addition has constant pain on that account. There have been instances of someone shot someone justifiably, according to the law, but who has gotten relief in a civil suit. There went the shooter's pension; two injuries one bullet. A wheelchair is a powerful symbol and an equally powerful reality.

There are a number of books on the market relating to concealed carry permits, covering how to shoot, when to shoot, what kind of weapon or ammunition to employ, "in the pants" holsters, purse holsters, and so on. Invariably the last chapter, however, will be about what to do or say when the police arrive. They will be there not to congratulate you for shooting a scumbag but to gather evidence to present to the state's attorney. The better the lawyer the higher the fees. And what if it turns out that your victim did not deserve to get shot? And from ethical, theological, philosophical perspective, does anyone deserve to be shot? Such considerations, indeed, may be enough to put one at a severe disadvantage in a situation that requires one to shoot to preserve one's own or some innocent person's life.

Yup, we have come a long way from Grandfather's backyard.

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*Can Race and Sexual Orientation be Morally Relevant  
Employment Characteristics?  
The Responsibility Criterion Reconsidered*

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The standard view of racial differences is that membership in a particular race is morally irrelevant to a person's moral status, his actions' morality, and his moral desert.<sup>1</sup> That is, the mere fact that a person has a racial characteristic has no bearing on morality, although socialization factors might make race an important component of a person's identity. Instead it is only the person's acquired character traits and adherence to relevant ethical standards that confer moral merit or demerit to the person. Merit can also accrue to an individual through racially neutral factors, such as ability to perform well in a job, but merit is never about characteristics that are beyond the control of the agent and for which the agent should not be benefitted or stigmatized. These ideas are the base of the Responsibility Criterion, which states, roughly, that businesses and others may treat people differently in ways which profoundly affect the latter's lives only on the basis of features for which they are responsible.

There are those, however, such as Bernard Boxill, who argue that race can be a morally relevant factor in decisions and evaluations, especially in hiring certain groups of people. In fact,

in affirmative action cases, some individuals should be treated differently primarily because they are a member of a particular race, and *that* membership is valued, almost as a merit, in the market over other racial memberships. In other words, being of a particular race can create merit or demerit for a person in such a way that that the person can be legitimately harmed or benefitted, in part, due to a characteristic that is beyond the control of the individual, and for which the person valuing the characteristic would generally be censured by those who value equality.

In this paper, I will first explicate Boxill's argument against the Responsibility Criterion, and then show how some difficulties raised by Kwame Anthony Appiah's intrinsic racism definition affect Boxill's argument. After showing that race can be a meritorious factor,<sup>2</sup> I will then argue that the same principle applies, for the better and worse, in regard to non-heterosexuals. Next, the Responsibility Criterion will be re-formulated to better capture the spirit behind it, which will eliminate most, but not all, of the disturbing conclusions Boxill's argument entails. Finally, a set of guidelines will be developed for when a

<sup>1</sup> Richard Wasserstrom disagrees; "Race is not, in our culture, like eye color. Eye color is an irrelevant category in that eye color is not an important social or cultural fact about individuals...To be black rather than white is not like that at all." (Wasserstrom 1986, 46)

<sup>2</sup> Boxill states, "It is true, of course, that color is not, precisely, merit. But to insist on strict definition in this context is to cavil." (Boxill 2006, 463) Although this distinction is too quickly glossed over, for the purposes of this discussion I will adopt Boxill's equivalence.

professional, business, or business person may profit from clients and customers' bigoted actions.

### **The Color-Blind Principle**

There are well-intentioned individuals who make claims not to have noticed someone's skin color, when evaluating or discussing another person. These assertions arise primarily in situations in which the person being discussed belongs to a race other than the speaker's. Color-blind claims are intended for the good because what the speaker is implicitly trying to state is that race is morally irrelevant to him and will not be taken into account when the speaker is making decisions. That is, if the person cannot see race, then race cannot play a part in his judgment. In addition, not only is this color-blind individual attempting to make the person or group of people to whom his remark is addressed feel accepted, welcomed, and especially valued as a person or people, but the speaker is conscientiously trying to achieve or maintain a status that morality demands of him, *viz.* not being a racist or racialist.

However well-intentioned race-blind statements are, to be color-blind is actually to disrespect those the speaker is trying to assure of the speaker's respect, as Boxill and others recognize. First, if race is a morally irrelevant criterion in the situation, then there is no need to make such an assertion in the first place. In fact, speaking in this manner shows the speaker's discomfort with the subject that belies the intended result of assurance. Race does seem to matter for some reason to the speaker. Perhaps, the speaker has made political correctness more important than honest interaction with the person addressed, and the speaker needs to reassure himself that he

does not hold racist or racist beliefs. But by making race an explicit issue, the speaker is hypocritical in regard to what he claims and is actually doing. If the speaker's color-blind statement is true, then it makes one wonder how the speaker was ever able to recognize his audience in the first place as a member of the race that would trigger that audio response. Does the speaker say that he does not see race to everyone he encounters, or only to those with the "correct" skin color or stereotypical features?

In fact, being color-blind in human interactions is an implausible moral position to take. How a person looks physically helps us to identify those with whom we are acquainted from those with who we are not. The common sense conclusion is quite clear. If one does not recognize color or other physical features in other individuals, then many of us would never be able to begin a conversation with a vast number of acquaintances who would be unrecognizable to us unless we had the opportunity to gather much more data about them.

Second, and much more importantly, color-blindness claims or actual color-blindness shows a callous disregard for the people being addressed on a number of grounds. Many significant events in our lives can be traced to our skin color and physical features, especially if we are raised or live in a society that places a great deal of value upon them. The existence of white privilege is real,<sup>3</sup> for example, even if, at times, its power has been overstated by zealous equality advocates. White privilege does affect how people are treated in business and other avenues of human interaction.

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<sup>3</sup> See Wildman 1996, chapter 2.

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Climbing a corporate ladder, for instance, might be made more difficult if a person is of a race that is not mainstreamed in the company's power structure. (Wildman 1996, 26-8)<sup>4</sup> For example, the bonding executives do in social events might not be as readily achieved for individuals whose partner does not fit the traditional framework that allows for more seamless interactions.<sup>5</sup>

The mere fact that a person has the "wrong" attributes cannot help but affect how an aware individual views herself. (Du Bois 1997, 228) Although skin color, and sexual orientation, for that matter, should not matter in most positions, the individual knows that it does matter. She realizes that she might not be as competitive as others through no fault in her skills merely because she does not look "right" in the traditional way. These perceptions are bound to have an impact on her self-esteem and relationships with others, which of course are part of what defines her as an individual. In addition, there are other causal factors based on skin color and other physical features that will influence who the person is and how the person has been treated in the past, e.g. racial profiling and other types of stereotyping. If these actual influences on identity are not recognized, such as the person being unethically oppressed merely due to being a member of a particular group of people, then the person cannot be treated as she deserves.

Moreover, although the individual addressed might not have

been benefitted or burdened in any way based on his skin color, not to understand that the person could have been treated in a particular way due to that skin color is callous.<sup>6</sup> This judgment does not mean that the mere fact that a person looks a certain way entails that the person has stereotypical characteristics, for example, being oppressed - that would be illicitly introducing a form of racial assumptions into all human interactions. But the possibility the person has been treated in a way that might be common to individuals of the group to which the person belongs has to be entertained and possibly brought into decision making as far as is appropriate in the circumstances. The possibility of a certain type of treatment makes it the speaker's duty to find out how the speaker's audience wants to be interacted with, although this information gathering can be done without explicit questioning. To assume that the person's skin color and experiences based upon it do or do not matter to the person without consulting the person first disrespects the person's intrinsic value and life narrative. To be color-blind without permission, therefore, is to disrespect who the person is.

Color-blind policies also have their place in society. For example, if a person is looking for the best surgeon, and the only thing that counts is the surgeon's skill, then it is irrelevant whether she is of a certain race. (Boxill 2006, 461) Pure merit is the only criterion to be used in decision procedures based on undiluted ability, which requires a color-blind policy, otherwise talent cannot be recognized in an appropriate way, and efficiency is not

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<sup>4</sup> The same holds true for non-heterosexual relationships. (Woods 1993, 55)

<sup>5</sup> However, considering social groups as a whole, white privilege tends to be worse overall since it favors many who have already been too advantaged, while disfavoring too many who have been disadvantaged for too long.

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<sup>6</sup> The same argument applies to sexual orientation, age, and any other factor that is legitimately part of who the person is.

served. (Cohen 1979, 229) In the vast majority of circumstances in one's life in which merit is achieved merely from the ability to function in whatever desirable role one is playing, such as befriending people, hiring, firing, working with others, etc, skin color is a morally irrelevant characteristic and should be treated as such.

Although in real world situations it makes sense, at times, to treat people differently based on race, doing so violates the Responsibility Criterion<sup>7</sup> or RC:

**RC:** People can be treated differently in ways which profoundly affect their lives only on the basis of features for which they are responsible. (Boxill 2006, 461)

If the criterion is true, then favoring one person over another based on race in love relationships, affirmative action programs, and similar discriminatory behavior is morally wrong. Since people have no control over their skin color, then one cannot treat them differently in ways that will significantly alter their lives, such as being given a job based on race. RC, thus, would require color-blindness in all human interactions that significantly alter someone's life because race, and sexual orientation as well, cannot confer merit or demerit on an individual.

Besides those listed above in private interactions, there are instances in which skin color and other racially associated features matter in an adequate decision making process for employment and businesses. If casting a movie on Martin Luther King, Jr.'s life, then it would be a grave insult to use a white actor for the part of King when there is

an equally skilled black actor available.<sup>8</sup> The part demands a black actor, which means that casting someone of another race would be disrespectful to the black actor, the black community, the overall community, and the memory of Reverend Dr. King.<sup>9</sup> Here a color-conscious policy is required, which will treat people differently based, in part, on their race, but it does so in an ethical manner. For example, no one is illicitly injured by casting the black actor because he will be playing the part of a black man; having a specific skin color is therefore part of the job description. The white actor will have no legitimate cause to complain because he did not have an essential feature for the role.

Granted that there are times in which race should not be part of a business decision procedure, in many other cases people make decisions based upon it that affect their fundamental well-being. Besides the innocuous justified discrimination stated above and others similar to them, race can be a legitimate factor in more serious situations. Suppose that a potential client is in dire need of a fiduciary to take care of his interests. Although the person is making decisions based on what most people would label morally irrelevant considerations, the situation, as Boxill argues, confers merit on features for

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<sup>7</sup> This formulation is from Frankena's "Some Beliefs about Justice," (1977, 49).

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<sup>8</sup> Of course the more problematic case is a hypothetical that asks what would happen if a white actor had the greatest ability to play the part. With many fine black actors, such a situation is highly improbable. If it was likely, then racial sensitivity to the social value of Dr. King's memory would play a significant role in the decision procedure.

<sup>9</sup> It would be equally unacceptable to put a woman in the role.

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which a person, i.e. the potential fiduciary, is not responsible.<sup>10</sup> Moreover,

it may be perfectly just to discriminate between persons on the basis of distinctions they are not responsible for having. It depends on whether or not the discrimination serves a worthy end. (Boxill 2006, 462)

In other words, it is morally permissible to discriminate based on skin color in certain situations. Some black clients, for example, want only black fiduciaries, where a fiduciary is a professional a client hires to seek her best interest because the client does not have the specialized knowledge or desire to do the work herself.<sup>11</sup> (Ibid, 463) In instances in which the client makes decisions based on someone being black, the potential fiduciary being black has greater merit for her than being a member of any other race through no responsibility of the latter's.

Besides providing a viable alternative to level playing field justifications for affirmative action, Boxill's argument for race based merit is a practical one that incorporates personal autonomy and free markets in the justification for a worthy end. First, if we believe the plausible idea that we should increase the total amount of a good a society enjoys through free

markets and all that is entailed by them, and that clients should receive whatever they think is the best service for them, then the autonomous choices consumers/clients make must be respected even if we would not make similar decisions. Respecting autonomous decisions not only treats the individuals making them in the proper manner, i.e., as autonomous entities, but also creates better markets as people transact more efficiently. (Ackerman 1980, 178) Of course, a person's individual choice might not be, in reality, the best for that person. However, even bad decisions give each consumer in the market additional information so that she can make better decisions about her welfare. The consumer making the bad decision should learn from it. Other consumers see the decision, and then try to avoid it. If each person in the market becomes a better evaluator of personal services, then the society as a whole profits from the increased overall utility. In addition, a market functioning in this manner will satisfy justice, which "is concerned not only with increasing the total amount of good a society enjoys, but also with how that good should be distributed among individuals." (Boxill 2006, 463)

In order for a fiduciary to fulfill efficiently her task of seeking her client's best interests, then she must first make the client trust her. The reason why trust is a necessity should be obvious: in order to be told all the information the fiduciary needs so that she can understand her client's best interests as the client sees them, the latter has to be willing to reveal all relevant sensitive, personal material to his fiduciary. In medicine, for example, if the patient does not trust his doctor, then he will not tell her sufficient

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<sup>10</sup> Boxill does not call people who favor a particular race merely on skin color racists or racialists, but it is hard to see why they would not be because they are assuming some form of racial essence in their decision making which has no bearing on reality.

<sup>11</sup> This phenomenon is not unique to any race. Many people of a certain race want fiduciaries of the same race because they feel more comfortable with them, trust them more, or have beliefs about members of the same race that make the former believe that the latter can do a better job in pursuing their interests.

information for her to make the best diagnosis. If he, for instance, is too shy to inform a woman about the pain he suffers while he is urinating, then she will not know that testing to discover the symptom's source is required. Without recognizing the medical condition, the fiduciary cannot start her client on the best course of treatment for his ailment. Other professional services, such as legal, financial, and other business services, require similar disclosures of sensitive, private information.

Perhaps due to cultural biases or past histories, some people believe that they will receive the best service only from members of a particular race. The favoritism does not entail that a person of a particular race will favor other members of his race, but he might. Some whites have been known to prefer Asian over white fiduciaries due to a stereotypical belief that Asians are superior deliverers of white collar services. Others might favor their own race on the grounds that they think that there is a community between people of the same race, or somewhat more rationally, that a member of that race will better understand the needs and communications of another member of that race, although this is not necessarily true. For example, a Latino might prefer another Latino as a fiduciary because the client thinks Latinos have a shared knowledge of the Latino community that will facilitate interactions between the two. People of other races will not receive the same type of immediate trust from the client as a member of the preferred race will. Hence, merely on the grounds of the efficient delivery of services, race can matter in people's autonomous decision procedures.

Although it is not explicitly addressed in Boxill's argument, there

seems to be a further conclusion justified by his reasoning, which on the grounds of consistency, must also be accepted if we accept Boxill's argument. We correctly call clients who prefer a certain race for their fiduciary foolish people, at the very least, and racist, at the very worst. However, in actual world situations, what sort of market system do we want in place for dealing with these individuals?

Suppose that a white male in an emergency room refuses the services of a black physician on call, even though the patient is in dire need of treatment. The bigot wants the white physician instead of the doctor against whom he has an unreasonable bias. We could argue that the racist should be forced either to receive treatment from the black doctor or no treatment at all – perhaps the hospital policy would state that the rotation between black and white doctor cannot be altered, and if someone has an objection to this system, then he should seek help in a different venue.

Although the rejection might satisfy our desire for the guilty to be punished for his evilness and wrong action, the retribution, if we respect the value of human life and flourishing, is not worth the price that must be paid. The racist would-be-patient is an unethical agent in regard to being a bigot. No one disagrees with that. But he does not deserve death or severe suffering merely because he is acting unethically or has an evil trait. In this situation, he should receive the white doctor's services as long as that physician does not sacrifice anything of comparable value by treating the racist, e.g., there is someone with a more severe injury the white physician must treat. (Singer 2006, 255)



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We can acknowledge that both the white and black doctors can despise the racist, as long as doing so does not interfere with the performance of their duties, but as fiduciaries, they have to act in his best interests. One must leave him alone, while the other must serve him. Although it is not a utopian system, a market that is able to fulfill efficaciously even these repugnant desires and work with illicit beliefs will be more efficient, just, and autonomous, overall, than one that imposes retribution that would be appropriate only in an impossible market where all people act rationally at all times to maximize their self-interests, and which will in turn, maximize social utility, liberty, and autonomy. In other words, the discrimination would be just because it satisfies Boxill's requirement of a "worthy end." (Boxill 2006, 462)<sup>12</sup>

What is more worrisome for those who want a society based primarily upon acquired character traits rather than accidental characteristics is how the society should express its disapproval. Instead of public condemnation of some sort, it might be morally licit only to condemn privately bigots for seeking out fiduciaries with whom they feel comfortable. If the action is public, then the individual might not go to a fiduciary he can trust with all relevant private information because his bigotry precludes him from trusting the fiduciary. Social pressure on an individual can be immense, especially if the person already feels vulnerable for being outside the social norm. The result of the bigot's reluctance to

disclose could very well lead to a worse condition that would have been prevented had the public not condemned the individual.

In addition, a fiduciary or anyone speaking privately with the bigot about her bigotry might also make the latter ashamed to do what she needs to do. The stigma of even one person with power chastising the racist might be too much emotional injury for her to bear. In order to avoid it, she might not seek help when she needs to do so. In many cases, it is best to address potential problems before they develop into serious conditions that force agents to seek the help of a professional and cost much more to address and remedy, if the latter is possible. The fiduciary also has to be careful about expressing an opinion on racial matters in fear of not being able to establish, harming, or losing the client's trust. Although counter-intuitive to what we might think is right – telling agents when they are wrong that they are wrong and why, so that they will have reason to change their mental states or behavior, or so that others can learn from the situation – honesty might make acting in this manner worse for society and its citizens than remaining silent and enduring the client's morally repugnant actions.

From these three premises we can draw three conclusions. First, although we and our society should work to change the actual world into a better place, given current conditions, people ought to receive service from members of the race they have selected on the grounds of justice, autonomy, and utilitarianism. Second, having a certain skin color or having the appearance of being of a particular race makes a person, at times, better suited for a job than people without that characteristic.

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<sup>12</sup> I am unsure if Boxill would agree with this conclusion. For him, it seems as if the discrimination has to be done with good intentions and motives, but this additional moral factor is not addressed in his article.

That is race can confer merit of a sort. Finally, the responsibility criterion is false because there are real situations in which one should be treated differently based on a characteristic the person has and for which the person is not responsible.

A conclusion about non-heterosexual fiduciaries and others can also be drawn from this argument. Assuming that being non-heterosexual is a characteristic for which a person is not responsible – and all the legitimate evidence points in that direction – then being non-heterosexual may make a person more meritorious than she otherwise would be in non-bigoted situations, on the mere grounds of her sexual orientation. This fact means that those who are more comfortable with non-heterosexuals as fiduciaries should be allowed to choose them over heterosexuals even though sexual orientation ought not confer additional merit in more ideal world situations. Of course, the contrary is true as well, if the client wants professional services only from heterosexuals. However, if Boxill is right about the Responsibility Criterion and race, then the argument works equally well for business decisions regarding sexual orientation or any other characteristic morally similar enough to it.

Moreover, those fiduciaries that go along with the normally unethical situation by providing requested services can have clean hands even though their merit comes from an ethically poisoned source, as we will see in more detail later. Although the client is making decisions based on accidental features a person possesses, and not the person's actual ability to seek the client's best interests, the fiduciary is not responsible for her normally irrelevant characteristic

making her more meritorious than she would be in situations in which the client did not make decisions based on race or sexual orientation. As shown above, the fiduciary is doing the right thing in a less than desirable situation. Hence, those professionals who serve the bigoted do nothing wrong even though they know they are being advantaged primarily due to a characteristic beyond their control.

### **An Intrinsic Racism Response**

For Appiah, a person instantiates intrinsic racism, as opposed to extrinsic racism, when she differentiates morally between members of different races because she believes that each race has a different moral status, quite independent of the moral characteristics entailed by its racial essence, or the essential characteristics each race has. (Appiah 2006, 487) For intrinsic racists, belonging to a race is sufficient reason to prefer a member of that race over a member of a different race. For example, if, instead of a decision being made solely on the grounds of ability to fulfill the position's requisites, a white is given a job out of a solidarity caused by shared racial membership, then the hired employee has been provided unethical preferential treatment based on race. This action, of course, is unjust because it illicitly benefits one person, and wrongly harms another.

There is some connection between Boxill's argument against the Responsibility Criterion and Appiah's intrinsic racism definition. If a person feels that a member of his race should be favored over those from other races merely because he is of that race, then Boxill's argument would entail that it is morally permissible to advantage members of that race because being of that group is a merit in the particular situation. Thus, the person making the

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decision to hire a fiduciary based on fellow membership in a race is an intrinsic racist, whom Appiah condemns, but race would be a merit for the favored individual, and the action sufficiently just if it serves a proper end, according to Boxill's argument. Therefore, there is a tension between these two positions on merit that needs further philosophical investigation.

According to Appiah, there have been unsuccessful attempts to defend intrinsic racism. First, some argue that races are sufficiently similar to families to excuse any favoritism an agent might show to those of her own race. (Appiah 2006, 493) After all, families exhibit bias in preference of family members to which no one takes exception. In fact, it is an expected, and at times, obligatory way to act. Mothers, for example, should favor their child over the children of strangers, *ceteris paribus*, and reasonable agents would reasonably look askance at mothers who failed to act in that manner. However, Appiah contends that families and races are too dis-analogous for any conclusions that apply to families to have reasonable probability of applying to races as well. There are none of the real nurturing relationships which are fundamental structures of families and to family members' identities that are also the basis of relationships among members of a race; therefore, this argument can be easily set aside, as Appiah does.

More controversial is the *De Gustibus* defense which claims that favoring one race over another is a matter of taste, much like preferring one type of food over another. (Appiah 2006, 492) For example, a person can have an appreciation of anchovies that many others do not share. Given the ethical neutrality of aesthetic judgments, the

anchovy lover has done nothing wrong by favoring the tiny fish, and those who do not share his love for them have not violated any ethical principle or mandate by disliking them. Even outright loathing is morally permissible in matters of taste. Since favoring one race over another is much like these aesthetic judgments, this defense contends, favoring one's own race or others is permissible because it is morally neutral.

Although Appiah's rejection of this defense is a strong one, it still is incapable of doing the work he desires of it, especially when considering Boxill's argument. Appiah is correct that the actual difference in treatment of people is based on false beliefs involving ethics, not about what tastes better or is more aesthetically pleasing, neither of which matters in morality. That is, the *De Gustibus* defense might work for aesthetic judgments but is fallacious in morality. The applicants might not look the way the potential employer aesthetically favors, but their looks are irrelevant to their job skills. By not using true merit to make important choices, those who would have had jobs or other beneficial positions in a fair world will not receive them through no fault of their own. In other words, intrinsic racism violates the Responsibility Criterion in a way that aesthetic decisions and actions do not, and we can intuitively conclude that RC is correct in these cases.

There is, however, a worrisome puzzle about attraction that supports Boxill, while undermining Appiah, which should be considered at this point. This conflict will be both useful and harmful to the argument that non-heterosexuality can have merit. When a moral agent is seeking a significant-other, there are a variety of

characteristics that must individually or in concert be present for a potential partner to be found rationally acceptable - if the person is using a primarily reason based decision procedure - or emotionally desirable - if she is using a more traditional, emotion driven procedure. For example, for some people, the potential mate must possess a certain sense of humor, a certain physical build, not be abusive, and so on in order to be found attractive. Most importantly, for all people, the potential significant-other must be appealing enough to the seeker so that a romantic relationship can be formed, which of course, entails some sort of desire for the other person be present, although it might not have sexual attraction elements to it. In the real world, it is obvious that not everyone can fulfill the necessary or important characteristics an agent seeks in a partner. This fact means that many individuals will not suit the seeker's aesthetic tastes. In turn, the seeker's preferences entail that some people will not be treated equally to others who will have greater merit in the circumstances merely due to characteristics for which they are not responsible, and for some that are acquired. Although it is shameful, race is often one of the deciding factors for one person to find another attractive. For Boxill, race can legitimately confer merit, while for Appiah, it should not.

So is Appiah or Boxill right in attractiveness and race? Appiah would win this argument provided that our attitudes toward attractiveness are determined in part by how we are socialized. If people are taught that race is morally irrelevant in a diverse society, then there is no necessary deal-breaking factor in regard to race and who will be attractive to whom. Basically, it would

not matter what a person's race is in this society, which reflects that race should not matter. If a society were built along non-racist lines, then people's character would be more important in the selection of a potential partner than their irrelevant physical characteristics, such as race.

However, it is at this point where we begin to see the race analogy begin to break down vis-à-vis sexual orientation. What do we want in a significant-other? If a person's attraction is based on race, then it seems there is at least some evidence to believe that there is something morally wrong in making decisions about potential partners based on it. On the other hand, sexual orientation does not lend itself so readily to the same conclusion. Sexual orientation seems to be more the result of genetics, environments, or some combination of factors we still do not understand fully that are beyond the ability of individuals to control, regardless of how they are socialized. Heterosexuals and non-heterosexuals cannot change their orientation, unlike many racists. A heterosexual male, for example, will not want, in normal circumstances, to have another male as a partner even if the character of the latter is perfectly in keeping with what the former seeks in a female. Moreover, children must be trained to be racist, while sexual orientation is not learned in the same way, if it is learned at all. After all, many children are raised in communities in which non-heterosexual orientation is not openly present, yet some of these very children are non-heterosexual. If sexual orientation was determined solely by one's upbringing and community, then the community's heterosexuality would make it impossible for children to be non-heterosexual. Therefore, unlike being of

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a particular race, being a particular sex or having a particular sexual orientation does have merit when it comes to picking mates, even though the person possessing the characteristic is not responsible for it.

Furthermore, if one person is favored over another merely on the grounds of being a particular sex or having a particular sexual orientation by someone making a choice about a romantic relationship, then no rejected candidate has legitimate grounds to complain about not being selected. That is, if a homosexual male had a choice between a heterosexual female and homosexual male, both of whom are very attractive individuals in their own right, and who are interested in being the former's life partner, then the heterosexual female is unjustified in claiming that she has been unethically discriminated against by being rejected on the grounds of a characteristic over which she has no control. Much as in the case of an actor for the Dr. King role, one of the essential significant-other qualifications is sex and sexual orientation, neither of which the woman has through no fault of her own.

Here is an example in which the Responsibility Criterion fails, and unlike the race issue raised by Boxill, there is no obvious objection to the discrimination practiced by the person seeking a significant-other. That is, a person hiring a fiduciary on the basis of race is morally repugnant. People selecting mates from particular races are generally much less socially problematic, as many see it, but the practice still should make us squeamish about the racial discrimination inherent in it. A person who operates on a racist or racialist basis is blameworthy for her prejudicial actions. However, it

makes little sense to condemn the actions of a person who, for romantic relationships, selects someone to whom he is attracted over someone to whom he cannot be attracted based on factors outside his control. One cannot be voluntary in any meaningful way, while selecting someone based on biased, ignorant, at best, beliefs about race can be avoided.

Of course, if a person cannot overcome his biases in regard to racial preferences, then the person may permissibly discriminate when selecting a significant-other, much as heterosexuals and non-heterosexuals may. Although the preference is not based, even in part, upon genetic factors, the social conditioning might be so engrained that it cannot be overcome, even with patient attempts to re-program the individual's mind. That is, some beliefs are too deeply embedded to ever be overcome, and denying them the opportunity to have a significant-other in their life is too great a penalty to inflict on the bigoted person. However, if the person can change her racist beliefs without sacrificing anything of comparable moral worth, then the person must do it in order to become a better person. If this conclusion is legitimate, then in consequence, Appiah's rejection of the *De Gustibus* argument would succeed in situations in which the person can change, but not in cases in which change is virtually or actually impossible.

Appiah's rejection of the *De Gustibus* defense does not simultaneously defeat Boxill's argument against the Responsibility Criterion and preference making race or other generally morally irrelevant characteristics meritorious. Recall that the racist is making decisions about

fiduciary relationships, i.e., who should be the racist's fiduciaries. In these situations, it is not merely a matter of taste as to who will be selected. Instead, the choice is based on the racist's view that the potential fiduciary's race has some legitimate bearing on how well the fiduciary will succeed in working for the client's best interests. It might be that the client thinks that members of his race will treat him better due to the mistaken belief that members of the race take better care of each other than they would members of other races. It could be the result of the client's stereotypes about the person the client selects. But what it is not based upon is any aesthetic quality. Therefore, although favoring someone of a particular race or sexual orientation for a job is likely in many cases to be something we do not want people to do, the favored person does have greater merit than those who do not share the relevant trait. Moreover, since the favored person is at no fault for being favored, then all things considered, even if the discriminated against person is actually better for the client's long term interests, favored professional does nothing wrong by becoming the fiduciary and receiving benefits the person discriminated against does not receive.

### **Reconciliation**

It is at this stage that we should note the overall argument's state of affairs. Although intrinsic racism is morally wrong, as all right thinking people would agree, the Responsibility Criterion, which would prohibit intrinsic racists from being justified in their racism and people benefitting from it, does not work in many important cases. The result is that a person may be treated differently based on race, or sexual orientation, or on any grounds that the

client decides is meritorious. The person who receives the seemingly undeserved benefits based upon natural characteristics he possesses does nothing wrong by receiving these benefits, contrary to what our moral intuitions or desires might tell us.

There might be ways to avoid this undesirable result. First, the criterion could be considered to cover too great an area of possible situations if it is not limited to specific human interactions, for instance, the business world. When seeking someone who will be an agent's significant-other or have some other private relationship with the agent, then the criterion could be irrelevant. Business relationships, on the other hand, would be treated as public interactions requiring stringent moral public standards. The difference between the two is based upon the power that business relationships have and the need for businesses to uphold high moral standards to further their interests and help maintain trust in the market system.

Of course, it will be a bit unsettling to narrow the set of situations only to those which the criterion applies because there are clear cases of bigotry in regard to race in selection of one's mates or friends, but the problem raised for the criterion on the grounds of sexual orientation is too strong to ignore. The Responsibility Criterion might not apply to every aspect of life; so to provide some better grounding for it, limiting its scope could strengthen its power.<sup>13</sup>

Since business seems to be one of the most important areas in which the criterion would apply, for the sake of argument, I will limit it to the business world with its markets, fiduciary

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<sup>13</sup> A similar move restricting RC to the distribution of income is noted and rejected by Boxill. (Boxill, 2006, 462)

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relationships, financial transactions, and so on. The business version of the Responsibility Criterion is:

**RC1:** In the business world, people can be treated differently in ways which profoundly affect their lives only on the basis of features for which they are responsible.

In business, rational actions and beliefs are generally preferred because they lead to more efficient markets over the non-rational actions and beliefs found in the realm of personal, private relationships. Moreover, sheer ability is generally thought to be the best way to evaluate a person, and that ability will lead to the most efficient way of doing business. Hence, the Responsibility Criterion as formulated in RC1 seems best suited for the public world of business. RC1 remains silent for cases in which an agent is looking for a significant-other or in a relationship with such a being due to the fact that a personal life and its relationships are outside the criterion's scope. On the other hand, the criterion states that favoring a person based on race or sexual orientation is unethical in markets because those features should have little impact on an employee's ability to perform her function as well as she can. Therefore, neither of those characteristics nor any other non-acquired ones may be used in making business decisions of any type.

The attempt to limit the criterion's scope does remove some of the problems encountered in initial attempts to use it, but still leaves substantial difficulties unresolved, to its detriment. First, there is something decidedly bad about people who make decisions about personal relationships on the basis of race, and it is wrong to discriminate in this manner even though

the agent's taste favors members of a particular race. RC should apply to those situations as well. Second, and more importantly, there is not often a clear demarcation between markets and the private realm. Since, for example, many people find others to date while they are working, either at conferences, at the same business, at other businesses, and so on, there is no obvious way to distinguish which actions are covered by RC1 and which are not. Although there are some actions that fall clearly in either the public or private realm, too many will be in both.

Instead of focusing on making an illicit and indefensible division between two or more worlds, the lack of control a person has over his or her sexual orientation can provide a plausible way to revise the original criterion to be better able to handle real world business and other situations. Assuming that people can change their racial beliefs, which will in turn alter their actions, but cannot change their sexual orientation, then the new criterion will take into account the person's power over her mental states or lack of it. The new criterion is:

**RC2:** People can be treated differently in ways which profoundly affect their lives only on the basis of features for which they are responsible, or if the agent who treats them differently cannot alter the desires/beliefs that cause the agent to treat these individuals differently.

If an agent's unwarranted racial views can be changed to more ethically acceptable ones, then she cannot use the added exception clause to justify her prejudicial actions. On the other hand, if she *cannot* alter her beliefs, then the compulsion might even make what the

agent does something that is not an action, but merely a programmed event. Compelled people behave much as some animals are trained to perform certain tricks. Provided that freedom and free will are in some way necessary for an action to be an action, a complete deficit of freedom and free will entail that no action occurred even though a moral agent did it. Just as we do not hold accountable the mentally ill who cannot control their activities in areas in which they have to great an irrationality, we cannot hold responsible those who act out of desires or beliefs outside their ability to change.

The lack of control clause is beneficial in a significant way, but encounters problems of its own. As Appiah argues, there are people who have cognitive incapacities or false consciousness, which render them unable to alter their ideologies or the beliefs that make them racist. (Appiah 2006, 488) For them, RC2 would entail that racist actions would be permissible. Those more qualified for positions would fail to be awarded them on the grounds of being the wrong race as determined by the human resource person. In addition, those who discriminate illicitly based on sexual orientation would also be able to shield their actions by making reference to the exclusion clause provided that they also had psychological defects that precluded them from altering their ideologies. For example, a woman might not receive a job merely due to the fact that she is a lesbian and the person interviewing her has an immutable hatred of homosexuals.

One way to solve this problem is to adopt Appiah's method for dealing with inveterate racists. Special care needs to be taken by a bigot in situations

that might be marred by the person's unwarranted bias provided that the person has been offered evidence that her reasoning in this domain is distorted by prejudice, and the distortion conforms to a pattern that suggests a lack of impartiality. (Appiah 2006, 490) In other words, the psychological conditions that limit the person's ability to be non-bigoted cannot be changed, but how those conditions affect others can be mitigated to produce an ethical result for all relevant stakeholders. Perhaps hiring decisions will have to be decided by committee or someone who does not suffer from the psychological defect. Or procedures need to be put in place that do not allow the bigoted person to know anything about sexual orientation, race, or any other characteristic that will illicitly affect the person's decision.

Although this approach can work, it surrenders too quickly on the ability to change issue. Change seems to be under a person's control, according to Kantians. If we truly think that people are not born racists and have freedom and free will, then they should be able to change, although it will be difficult for them. More importantly, if someone cannot efficiently do the job for which he is hired because of some moral defect such as racism, then it makes little sense to expose the company to possible lawsuits or hurt its competitive advantage by using resources to prevent the bigot from following his illicit biases. The bigot should be reassigned or terminated in order for someone who does not need additional resources to do the job to fill the position.

Another solution is to alter the Responsibility Criterion once again. The criterion merely, and too broadly, states that people can be treated differently in ways which profoundly affect their lives



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only on the basis of features for which they are responsible. The principle is intended to address distributive justice in isolation. But a more inclusive moral grounding works better to achieve the desired results of permitting people to be advantaged at times based on otherwise morally irrelevant characteristics and forbidding unethical bias and biased actions. Rather than worrying solely about distribution of society's benefits and burdens, a central reason why distributive justice is important should be incorporated in the Responsibility Criterion. The oversight is a lack of clarity on the difference between illicit discrimination and permissible discrimination. The ability to discriminate is required for people to be able to make any judgments at all - such as being able to distinguish between this chair and this table - or part of warranted relationships - such as favoring one's loved ones over others, *ceteris paribus*. To discriminate illicitly is to treat an intrinsically valuable entity in the way it should not be treated, i.e. it disrespects at least one intrinsically valuable agent affected by the action. The new Responsibility Criterion is:

**RC3:** People can be treated differently in ways which profoundly affect their lives only on the basis of features for which they are responsible, or if doing so does not disrespect anyone affected by the action, where disrespecting a person is a failure to recognize the intrinsic value of the person *qua* person with his or her own needs and legitimate desires.

RC3 is superior to the criterion's previous versions because it covers all areas of human endeavor without prejudice, as well as addressing distributive justice as a way to respect

intrinsically valuable entities as they should be. In addition, RC3 makes a clear distinction between ethical and unethical discrimination that allows for actions that unwarrantedly benefit or injure others to be classified as violations of the principle, while not condemning those that benefit others due to positive relationships or factors outside of the agent's control, such as sexual orientation. Thus, an actor who is denied the role of Martin Luther King, Jr. because he is white cannot decry the action based on this version of the criterion. It is not the actor's fault that he does not have the appropriate skin color and features, but he is not being disrespected as a person when he is denied the position. No person is disrespected by not being considered for a position for which he is not qualified. In fact, if the actor was hired, it would disrespect those who care about who King was, although it would not disrespect King himself.<sup>14</sup>

When choosing significant-others, a person can be respected or disrespected by the choice. Suppose that there are two individuals interested in being a man's significant-other, and that both have identical characteristics except for a difference in race. If race is a factor in the man's choice, then both potential mates have been disrespected. One has been disadvantaged due to a characteristic that is morally irrelevant to whether or not she can fulfill the requirements of being a good significant-other, while the other is given advantage she does not deserve. In both cases, the actual value of the individual is unrecognized because one is given too

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<sup>14</sup> Taking an Epicurean position, the dead cannot be benefitted or harmed because there is nothing to benefit or harm. The memory or image can be altered, but that is not who the person was.

much merit, while the other is given too little.

However, if the difference between the two candidates is sexual orientation, then neither is disrespected by the man selecting the person with a compatible orientation. One candidate, due to having an incompatible, immutable orientation, is not a legitimate applicant for the position in the first place. In fact, if he selected the incompatible person for some reason - perhaps he is trying to pass himself off as having that sexual orientation - then he would disrespect the chosen individual because he would be denying him or her the ability to fulfill his or her sexual orientation and have a bond with someone who can be a true significant-other. In fact, it is a brutal piece of deception that would constitute domestic psychological abuse and require an argument to justify it. (Cooley 2007, 170) Furthermore, as in the case of the agent who makes a selection based on race, the deceptive agent treats himself as a mere means by allowing himself to be a person who would treat others as a mere means. That is, he degrades himself by not recognizing and pursuing his value as a moral agent. He instead debases himself by holding unethical beliefs and acting upon them.

Returning to Boxill's case of the racist client and fiduciary, RC3 is violated in different ways, but what should be done about it is relative to the various scenarios. First, any client who makes a decision about a fiduciary based on the fiduciary's sexual orientation, race or other morally irrelevant characteristic violates RC3 because the client is not only treating fiduciary candidates differently, but also not respecting them for who they are. Although these morally irrelevant

characteristics may confer merit in the client's mind, they actually do not alter it in any way. Hence, the client's violation of RC3 is unjustified. A potential fiduciary's sexual orientation should matter only if it actually does affect the person's ability to pursue the client's best interests, which in some corrupt societies, it might. Suppose that people of a certain sexual orientation are prejudicially treated, which makes their acting as a fiduciary less likely to be successful in pursuing the client's best interests. It is in these rare circumstances that the client may make a decision based on sexual orientation which does not violate RC3. As long as the client respects the spurned candidate's intrinsic value as it should be respected, perhaps by feeling regret that circumstances are unfortunately what they are, he can choose the fiduciary with the market preferred sexual orientation.

Once again from the argument on free markets above, even if a client making decisions about who should be her fiduciary is wrong and bad, it does not follow automatically that anyone should do anything about it, unless there is a violation of the law or is ethically warranted. Suppose that the individual who is benefitted by the bigotry is especially needy of the business, while the rejected candidate is not - he has plenty of work from which to make a healthy profit. The former must have the contract to be able to meet his needs, while the other candidate is doing well enough so that all of his needs - and many of his desires - are fulfilled. Even though the benefit stems from an evil source, in this case the beneficiary does not violate RC3 by accepting the tainted business. Provided that he respects everyone affected by his acceptance for the value the person has, then his work

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for the bigot is ethical. He seeks the best interests of his client, while knowing what the moral defects are in the same person. The fiduciary understands that he has been benefitted unfairly. But his need justifies him in taking the advantage because he knows his intrinsic value, and must maintain that value, out of respect for who he is as an end in himself. Finally, the person who did not receive the client's business is understood by the chosen fiduciary to have been treated unethically, and the proper recognition and amends made to the former if appropriate. The fiduciary might even have to resolve to sever ties to the client when doing so does not affect the needs of the fiduciary, but the main point here is that accepting a commission based on someone else's violation of RC3 does not necessarily violate RC3.

However, if the benefitted fiduciary does not need the bigot's business, then accepting it would violate RC3. As long as there are other fiduciaries who can fulfill the client's desires, the fiduciary would be taking business he knew he did not deserve and did not need. If he takes it, then he is overstating his own intrinsic value while undervaluing the rejected fiduciary's value. Therefore, the former would become morally responsible for the harm committed to the rejected fiduciary. Even if the client would seek out another, less scrupulous individual who would accept his biased decision, and never give his business to anyone who is of the "wrong" sexual orientation, by accepting the bigot's business, the fiduciary no longer has clean hands. A fiduciary, in these situations, is similar to someone who would willingly launder money made from mob activities. Each is indirectly responsible for the wrong

done by the bigot because each has mediated the consequences of the action. The intentional mediation without necessity, hence, shows that the fiduciaries have agreed to be part of the wrongful actions.

There is one other type of situation that allows a fiduciary to take the bigoted client's business without violating RC3. No one would disagree that there are times in which even the most hateful of people need services. If the fiduciary cannot reject the client without sacrificing something of comparable moral worth, then the fiduciary does not violate RC3 by being benefitted based upon her morally irrelevant characteristics. Suppose that a potential client's tax information has been left in such disarray by the client's former fiduciary that the client cannot rectify it himself. However, if he does not deal with it immediately, he will be penalized severely by the tax authority. Also assume that there are only two tax accountants who can straighten out the mess: one of which is heterosexual and the other, non-heterosexual. The client will not work with the non-heterosexual. In this case, the heterosexual tax accountant does not disrespect the non-heterosexual accountant by taking the bigot's business. The costs to the client, if the former refused, would be too extreme for the client to allow him to be respected in the appropriate way. If we rightly concede that even homophobes and other bigots have intrinsic worth as people, and should not be harmed unjustifiably, then turning down the commission disrespects the client's value as a person. It sacrifices too much of moral worth. If we think about refusing the offer as a way of punishing the bigot, then the punishment extracted would be too great for the offense

caused, although the offense is a serious one.

Moreover, the greater the need on the client's part, then the stronger the case that it is ethical according to RC3 to accept the client's business. For example, if it is a matter of the client's health and there are no other professionals who can do the job, then a physician may permissibly take the bigot as a patient without violating RC3. Of course, if there are others more suited or the need far less pressing – e.g., the client wants non-reconstructive plastic surgery for trivial reasons or minor assistance with financial decisions – then the more likely it will be that RC3 will be violated if the client's requests are fulfilled by the fiduciary. Where to draw the line between which injuries are great enough to justify working for a bigot and which are not is difficult to know. However, given the intrinsic value of people and the harm that should be avoided in order to respect the intrinsic value of people, bigots should be given the benefit of the doubt that they will not give to others.

### Conclusion

Although it would probably be a much better world if no one discriminated against anyone else based on unwarranted stereotypes or other false beliefs, the actual world has members who do just that. The fact that they are not as good as they can be or act unethically does not entail that those benefitted by their wrong actions and biases have done anything wrong by taking the work from the bigots. Moreover, if we respect the value of people as people, then bigots must be treated far better than they do to others, at least in situations in which not helping them harms them to too great a degree.

However, just because bigots act unethically and do not fulfilled their potential as minimally decent people, it does not follow that ethical fiduciaries should allow bad things happen to them. In fact, if the harm caused to the bigot is greater than the evil done by the bigot, it becomes more likely that there is a duty to help. Therefore, although it is never morally permissible to treat people differently unless the situation calls for it, sexual orientation can confer unearned merit. Moreover, those who benefitted from bigotry do not always have something for which to apologize.

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*Carr and Business Bluffing-Lying: Making the Separation Thesis Work*

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What ought to be the relation between ethics and business? R. Edward Freeman and others have coined what they call the separation thesis (ST) that claims that the two, in some ways, are unsuited for one another and are at cross-purposes.<sup>1</sup> Milton Friedman seemed to assume a version of this view when he expressed concerns about corporate social responsibility. (Friedman 1970) Robert Solomon refers to the view as the myth of the amoral business. (Solomon 1997) And it is not just a characterization discussed among academics; its origins, I suspect, are in the business community.

There is some truth to the idea that ethics and business are somehow separate and sometimes conflict. In a descriptive sense there are plenty of recent examples. What is interesting about ST is the normative question it raises. Should business be thought of as separate from or independent of ethics? What are we to make of this rather sketchy suggestion? If there is some sort of separation between them, how might we account for it?<sup>2</sup> In his "Is Business Bluffing Ethical?" Albert Carr suggests a way of sorting it out. (Carr 1968) He does not defend a version of ST but what he does say raises some interesting implications for such a defense.

In one respect, Albert Carr's thesis rests on an accurate description of how business sometimes operates. His analogy with poker seems especially appropriate between competitors. Business is sometimes an aggressive and highly competitive activity. To survive and flourish one needs to be tough and, when necessary, "take the gloves off" when dealing with one's competitors. If one is not willing to get her hands dirty (when necessary) by pushing the rules and taking measures that one would not take outside a business context, then one will not survive. Within legal limits, one does what it takes. If not, the competition will. This captures the existential condition of every business.

But Carr pushes the analogy too far and in doing so displays some confusion about ethics, business, and even poker.<sup>3</sup> I want to point out a few of the confusions in Carr's piece and

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<sup>3</sup> With any issue in applied ethics one must make a number of theoretical assumptions, many that need defending. For my purposes I am going to assume that there exists a moral community (MC) that consists of moral agents. Moral agency is a requirement for membership. What constitutes moral agency quickly gets controversial, but it is not necessary that be addressed here. I will assume it has something to do with the nature of the moral agent, some set of characteristics that distinguish members from non-members. Some of the familiar candidates include reason or sentience. Ethics consists of a set of rules that govern some of the behavior of members of the moral community. Relevant behavior will involve our relations with other members as well as ourselves.

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<sup>1</sup> Freeman has discussed the ST in a number of articles. See Freeman 1994, 2000.

<sup>2</sup> Sandberg discusses nine versions of ST. See Sandberg 2008.

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suggest an alternative reading that may leave some life in the separation thesis. One problem involves Carr's analogy. Not only does it gloss over important differences between business and a game like poker, it also involves a confused notion of ethics. Another difficulty stems from Carr's apparent disregard of the fact/value distinction. On numerous occasions Carr moves from the descriptive to the normative without realizing the challenges involved in making that inference.

Carr finds the relation between business and games like poker significant. Business in general shares certain features with a game. For Carr one important feature involves ethics. Games have their own rules. Not just the rules that define the game and how to play it, but rules about what is fair in the game. Bluffing, for example, is fair in some games even if it is frowned upon in other contexts. One might try to take this fact about games as a basis for a claim of separation between business and ethics. If we are dealing with games and each have their own strategy and rules, then each game is independent and separate from the others. For that to work, however, one not only has to take business to be a game but ethics as well. Carr does not make that claim and instead uses expressions like "religious" ethics or "personal" or "private" ethics. Although he does not refer to any of those as games, the labels suggest a narrowing of scope. If religious ethics or personal ethics are one thing and the ethical requirements of business another, then it might make sense to talk of a separation. Each have their own game-specific rules.

This is a compartmental view of normative ethics. Ethical principles, rights, and obligations have a context or

role-specific application. If I think about the different roles I have in my life they often come with their own set of rules. As a father I need to handle a certain situation this way, as a son there are different considerations, as an employee there is another set of rules to consider but as an employer I should factor in these concerns, and so on. For any moral principle, how it applies will depend on the relevant circumstances. Most, if not all, versions of universalism – and relativism – will agree with that much. But Carr seems to push this a bit further. The application of ethical values depends not only on the particular details of the situation, but on the type of situation or context. For Carr context-types include business, your personal/private life, a religious tradition, and, presumably, others. On this view a moral value may be inadmissible right from the start, or sticking with the poker analogy, some moral principles are not allowed at the table.

All this smacks of ethical relativism. But I do not think the position Carr has in mind is best understood as a version of relativism.<sup>4</sup>

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<sup>4</sup> Sometimes Carr does not sound like a relativist. Near the beginning of his article he says the basis of private morality is a respect for truth and the closer a business person comes to the truth, the more they deserve respect. In "Can An Executive Afford a Conscience?" Carr sounds even less relativistic. The tension between the demands of business and ethics is not a conflict of rules, but a conflict of duty. In "Bluffing" Carr does not suggest an analogy between business ethics and religious ethics (or personal ethics), despite the fact that they are both goal-directed and rule-governed? Business ethics has its own set of game rules and strategy, therefore, religious ethics has its own game rules and strategy. But that conclusion moves religious ethics away from universality and I do not think Carr wants to do that. Relativism involves two claims. One recognizes the sort of

Carr seems to assume he can base his compartmentalism on the notion of a “game.” The deceptive practices of a skilled poker player, he says, should not reflect on the player’s private morality. Not because the requirements of private morality, as such, are irrelevant. This is not about private morality for Carr. It is about the requirements of the game and games like poker and business have their own special ethics.

I do not think Carr’s use of a game model will get him very far. He overextends the meaning of “game”. Is there a game of war, for example? Or what about the game of life? It is not clear but Carr seems to have in mind any rule-governed activity designed to achieve some end and many activities that lend themselves to that description are not commonly thought of as games or even game-like.<sup>5</sup> But even if we grant Carr some conceptual leeway on that point, there are more difficulties.

Consider Carr’s analogy between business and poker. Rules in business are more fluid than rules in a game like poker. Game rules are constitutive – they determine what the game is and how it is played.<sup>6</sup> They determine the parameters of game-space within which all game relevant action and activity take place. Business “rules” or practices need to be more sensitive to changing circumstances. Games have fixed ends and fixed ways to get there. Business aims for sustainability (however that is

understood), but that goal is itself a means to the more inclusive end of human well-being. Economic activity is goal-orientated where the overall end is, in some sense, outside the activity itself. With a poker game it is different. In learning the rules of that game and how to play, the point of activity is made clear. Similarly with games like baseball and golf. A game creates its own space and within that space the participants conduct themselves according to specific rules for a clear purpose. Once the purpose has been achieved, or at least the time allowed has passed, the game is over. The whole point of the activity has come to an end. That is not the case with business. Beyond profit, market growth, and other factors necessary for a business to sustain itself, the overall end of business is not to be found within business itself. But with games it is different. It is hard to imagine watching a game of poker or baseball, understanding how the game is played, and yet still wondering about the point of it all. And this would not be a question about the value of the activity, which is another matter. I understand how the game is played, what the rules are and so forth, yet I do not understand why the participants are doing what they are doing. That suggests I really do not understand the rules of the game.

Games are exclusive in a way that business is not. How to start, play, and end the game are established by the rules. For example, the point of that discard was to get a different card that might work into a full house which could win the pot. If I am lucky and win the pot, the game is over. Winning the pot was the overall end and now that game – or at least that hand – is completed. Business does not have such clear boundaries. To understand the

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compartmentalism Carr is assuming and the other, accounting for the first, denies the existence of universal moral truth. Carr flirts with the first without embracing the second.

<sup>5</sup> Especially the more supple the rules. Examples might include a stage play, a concert performance, an exercise plan, or a diet.

<sup>6</sup> Koehn (2008) makes the same point. There are no fixed game rules in business, only conventions and guidelines.



overall point of business I have to look outside the “space” business creates for itself. Someone might argue that games serve a similar function in that playing the game serves the interests of the participants and observers in some way and that is the overall end of the game. But I am suggesting that such a function is incidental to the game itself. Not so with business.

In the game of chess the latter stage is referred to as the *end-game*. In general, let us consider the outcome of the end-game the cumulative effect of game strategy. How the end-game is played and what counts as a successful outcome are defined by the game rules. I am suggesting that business has no rule-defined end-game. That does not mean there is no point to the activity. The business goals surrounding sustainability are an essential part of that activity. But those goals have a subordinate role if we are searching for the business equivalent of an end-game. To understand the significance of business in a full sense we need to see it in a larger context.

Another way to get at the difference I am after might be to consider Carr’s use of the term “strategy.” Business has its own brand of ethics, Carr claims, and those kinds of decisions are in essence strategic decisions a game-player has to make in order to be successful in the game. But strategy in this sense presupposes a clearly defined and rule-governed end-game. Although games like chess, poker, and baseball are designed that way, business is not. Business cannot give a complete account of itself the way a game like poker can. Poker need only explain its own rules. One can see this if one compares the consequences of bad strategy in each activity. In poker the

consequences stay in game. You lose the hand. In business the consequences can extend much farther – and often do. A bad business decision can impact the lives of stakeholders in many ways. Business strategy is connected to the world in ways that game strategy is not. This is so because business activity is different in kind from games. Imagine putting together a five-move strategy to capture my opponent’s queen and in doing so I start a process that eventually results in her losing her job. And suppose rule-governed strategic moves like that commonly led to consequences that could not be played out on the board yet were clearly tied to playing chess according to the rules. Strange scenario, but if it occurred I would conclude, at the very least, that I did not completely understand the game.

Strategic decision-making is primarily descriptive. Strategy presupposes a goal or end-game. Once that is established then strategy is about the means required to attain the goal. The goal carries the prescriptive force; strategy determines and explains how to get there. Carr says a wise business person will understand the need to behave ethically as a matter of business strategy. For the business person, treating stakeholders decently is a strategic decision, not an ethical one.<sup>7</sup> But to suppose that an ethical decision is a kind of game strategy is to lose sight of the primary objective.

Some rules and strategy are game-centered in the sense that the content of the rule is designed to

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<sup>7</sup> Notice how strategic decisions become a kind of second-level decision. Why should I engage in this kind of first-level behavior? In raising that question, I am inviting some second-level reflection on the issue. Carr sees the need for this in business, but he does not see it as an example of ethical decision-making.

facilitate game-playing and the relevant strategy is fashioned to win. The rules have a specific telos pointing toward the end-game. Whatever prescriptive force the rules possess is derived from that source. There are other rules that are more person-centered. Person-centered rules have a different function. They are not teleological in the sense of pointing toward an external goal. Some are designed to protect the moral standing of members of the MC, regardless of the goals being sought or what game is being played. Being attached to the agent, so to speak, they have a much greater range than game rules and the prescriptive force they carry is derived from the relevant features of moral agency.

Carr uses the term “ethics” ambiguously. In one sense the “ethics” of a game might consist in playing the game by the rules. One could say that if you want to play the game correctly then play by the rules. But “correctly” here does not have any moral prescriptive force. Either the conditional is tautologous or it might mean that if you really want to enjoy the game then follow the rules. Game rules are all about playing the game. If someone is not interested in playing, then the rules do not apply. I can sit out a hand of poker and be dealt back in for the next game. Excluding relativism, such a move is not possible in ethics.

Carr might have another sense in mind when he speaks of the ethics of religion or the “ethical ideals of civilized human relationships.” These labels suggest a greater range than that found in game ethics. An ethical “ideal” has a universal ring. For those who defend the separation thesis the concept ‘law’ is sometimes used to gloss over this ambiguity. While the game-rules for

business are positive laws with limited jurisdiction, moral laws are thought to be universal. The ST seems to want it both ways. The kind of ethical compartmentalism Carr suggests uses the law for its limited scope to designate game boundaries while, at the same time, treat the law as a sort of stand-in or representative of morality – which is universal.

Carr says that “cunning deception and concealment of one’s strength and intentions, not kindness and open-heartedness, are vital in poker.” (Carr 1968) But the deception and concealment in poker takes place against a background of shared assumptions about the purpose of the game (to make money, to have fun with friends, to engage in an entertaining activity with others, etc.) and about the appropriate ways to play the game – not the rules as such, but how to play by the rules. These background assumptions bring in moral values. Carr seems aware of that at times. He speaks about the “gentlemanly” poker player and contrasts her to the cheating poker player, as well as the unethical poker player. The “gentlemanly” or ethical player will not play in cahoots with others at the table, or try to smear the reputation of other players, or hold back chips owed. She will not hide cards up her sleeve or try to use marked cards. That sort of thing, Carr suggests, would be seen as worse than unethical. All this interjects a moral dimension in the game. Yet, Carr insists, poker has its own brand of ethics. To be successful one must learn how to play the game and how to put together winning game strategy. If playing by the rules of the game conflict with the ethical standards used in church or in our private lives, then we should remember the boundaries

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and not judge a player's behavior by inappropriate standards. To do so would be a kind of moral category mistake. All that suggests that what Carr calls religious ethics or a person's private ethics is itself a game with its own rules and strategy. If so, then ethics has lost its universality.

Another frustrating aspect of Carr's ethical reasoning is his neglect of the fact/value distinction. In the first few paragraphs of the article, having raised the ethical issue of bluffing in business, Carr cites some examples of bluffing and says that the "essential point . . . is that the ethics of business are game ethics, different from the ethics of religion." (Carr 1968) We are not told what the relevant difference is and why it is important, but Carr's use of the adjective "different" carries an implicit value claim. Carr goes on to talk about the difficulty some business people have when their business practices run afoul of the ethical standards they take seriously outside of work. Guilt and stress can result and the way to mental health and *ethical justification*, Carr says, "rests on the fact that business, as practiced by individuals as well as by corporations, has the impersonal character of a game – a game that demands both special strategy and an understanding of its special ethics." (Carr 1968) Here again, Carr uses language like "impersonal character" and "special" to carry a value claim. "The game is played," Carr says in the next paragraph, "at all levels of corporate life, from the highest to the lowest," as if the mere practice somehow serves as a good reason for claiming the game should be played. At the end of his discussion on the poker analogy, Carr says:

Poker's own brand of ethics is different from the ethical ideals of civilized human relationships. The game calls for distrust of the other fellow. It ignores the claim of friendship. Cunning deception and concealment of one's strength and intentions, not kindness and open-heartedness, are vital in poker. No one thinks any worse of poker on that account. And no one should think any worse of the game of business because its standards of right and wrong differ from the prevailing traditions of morality in our society. (Carr 1968)

Again, what *should* be the case seems to rest exclusively on what *is* the case – without any explicit reason.

In business one easy way to slide from the descriptive to the normative is via the law. In a sense, laws provide a descriptive base on which I can support my ethical claims. Of course, to get ethical justification from the law it is necessary that the law itself is ethically justified and determining whether that is the case is not a legal question. But neither should it be a business question. "So long as a businessman complies with the laws of the land . . . , he's ethical," Carr quotes one executive. With Carr's mouthwash example another executive says:

We broke no law. We're in a highly competitive industry. If we're going to stay in business, we have to look for profit wherever the law permits. We don't make the laws. We obey them. . . . We're not in business to promote ethics. . . . If the ethics aren't embodied in the laws by the [people] who made them, you can't expect [business] to fill the lack. (Carr 1968)

But all that seems to ignore the distinction between using an ethical rule and justifying its use. Suppose our lawmakers do “embody” ethics into the law. Take the FCPA and its prohibition against bribing foreign officials. Once the prohibition becomes law then it is another rule that has to be taken into account by relevant stakeholders. That law takes on a strategic function which, in a sense, is purely descriptive – one of the rules of the game. When a CEO complains that she did not make the rules so if the rules are somehow ethically deficient do not expect her to do anything about it, she is suggesting a division of sorts. But it need not be a difference in kind like Carr’s notion of game rules and strategy imply. It may be a division of labor.

The rule-makers have one job and the players have another. The rule-makers need to consider the ethical justification of the rules they put in place and doing that adequately means thinking about moral agency and the moral community.<sup>8</sup> If the players start changing the rules, chaos would result and the game cannot be played. To be an effective manager, the CEO might argue, it is critical she not lose sight of that. Expending resources toward ethically evaluating business law is not part of the job, nor should it be.<sup>9</sup> But,

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<sup>8</sup> A common distinction found in applied ethics is between “morality” which carries the individual point of view and “social ethics” which takes up a collective point of view. An adequate moral analysis of any issue should include both. In “Bluffing” Carr focuses on the individual point of view. For instance, Carr does not seem to recognize any moral difference between the individual lying about his age on his resume and a company using a cheap form of potentially harmful alcohol in their mouthwash.

<sup>9</sup> The CEO seems to be using something like Sandberg’s third and fourth versions of the

again, the prescriptive side is ambiguous. There is both a practical and ethical side to “should” here. The CEO no doubt has the former in mind. If we want business to function as intended and provide us with the ends we are after, then this is how it should work. But if we want business to function ethically and the ends or goals of business to be, minimally, ethically permissible, then we will not turn to the CEO qua CEO. We will insist she put on her rule-makers hat. Doing that adequately means taking a larger perspective and considering the interests of all members of the MC. If engaging in a certain type of economic activity is in the best interests of all moral agents generally, then we have an explicit moral reason to offer in support of business.<sup>10</sup>

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separation thesis: Matters of business and matters of ethics are regarded as separate and this is as it should be. Sandberg 2008.

<sup>10</sup> Ethics and business intersect in another way also. The universality of ethics not only determines the final end, so to speak, but it also generates a duty of moral consideration toward the participants involved. Whether I am in business, education, or medicine I ought to treat the people with whom I interact with the kind of ethical consideration a fellow member of the MC deserves. So each discipline may have its own rules and ways of achieving what it’s after, but participants ought to engage in those activities ethically. So given that all this is about protecting and promoting human well-being (the final end), a minimal number of ethical constraints will come into play any time members of the MC interact. I think we would be hard pressed to find much separation in that respect. But as MC members begin to interact in more complex ways (many activities with their own unique end-game) and it becomes easy to lose sight of the overarching end, one can lose perspective and start to believe that activities such as law, medicine, and business are done for their own sake. When this happens the separation between ethics and, in this case, business seems greater than it really is.

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Is there still any room for the separation thesis? Yes and there is enough room to understand why some in business still insist that Carr has a good point. The separation between business and ethics is on the applied side. It is due to a division of labor between using an ethical value and justifying one. The private ethics - business ethics distinction is really a point about the application of the relevant rules. There is no reason why two different games could not share some rules yet use them differently. Take on a fuller stakeholder perspective. No longer see it in terms of a conflict between alternative “games”, each with their own rules, but instead as a challenge for the moral agent as she deals with the applied side of moral values. The same general moral principle can sometimes conflict on the application side. In Carr’s case, I have obligations to multiple stakeholders and sometimes some of those obligations will conflict. In business, I might even have conflicting obligations to the same stakeholder. A large part of the difficulty in making good ethical decisions is to get things proportionately right. We are especially vulnerable to this kind of failure when one of the factors in conflict is our own interest. In any case, using the stakeholder model, there is no need to make a distinction between private ethics and game ethics.

Business is separate from ethics in that while working in the shadow of a larger ethical end, business operates according to its own rules some of which can conflict with other kinds of activities operating under the same shadow. Education, medicine, and the law are all designed to improve the lives of MC

members and sometimes the way they go about it can seem at odds. That is because each has its own subordinate end and the means needed to achieve those different ends can conflict. In medicine we may have to cut off the hand used to swear to tell the truth in a court room. Or as a juror I might have to disregard factors that I would find relevant in the classroom. Each activity suited for its own end yet all steered to the same goal.

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