

Reciprocity, Justice, Stoicism

Volume 1 of 2

Notes toward a Selection of Papers

Lawrence C. Becker

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A stable hyperlink adjacent to the title of a given article and marked [READ FULL TEXT](#) (*both in the table of contents and at the end of the introductions to the various sections*) will take readers directly to the HDA page that gives that paper's full bibliographic citation and the opportunity to read and/or download a PDF copy of that paper.

“I like what you have to say, and I think I agree with it. But I don’t see how I can get an article off of it.”

----- philosophy graduate student to a visiting colloquium speaker

“The trouble is not, of course, men as such... What is wrong is a particular style of philosophizing that results from encouraging a lot of clever young men to compete in winning arguments. These people then quickly build up a set of games out of simple oppositions and elaborate them until, in the end, nobody else can see what they are talking about. All this can go on until somebody from outside the circle finally explodes it by moving the conversation on to a quite different topic, after which the games are forgotten.”

----- Mary Midgley in *The Guardian*, November 28, 2013

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Citations, Acknowledgments, and Links to Publishers

In acknowledgment of the cooperation of the publishers, links to publishers' abstracts of the papers in this volume are below, along with information about their availability.

§1. The General Conception of Morality

"The Finality of Moral Judgments: A Reply to Mrs. Foot," *Philosophical Review* 82:3 (July, 1973) 364-370. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

§2. Reciprocity: Reprise and Extensions

"Reciprocity, Justice, and Disability," was originally published in *Ethics* 116:1 (October, 2005) Pp 9-39. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Afterword: Disability, Strategic Action, and Reciprocity," in Anita Silvers, David Wasserman, and Mary Mahowald (eds.), *Disability, Difference, and Discrimination*. Lanham, Md: Rowman & Littlefield Publishers, 2000. Pp. 293-3031. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"The Obligation to Work" *Ethics* 91 (1980): 35-59. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

§3. Justice: Theories, Property, and Community

"The Moral Basis of Property Rights" in *Nomos XXII: Property*, edited by J. Roland Pennock and John W. Chapman, 187-220. New York: New York University Press, 1980. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Against the Supposed Difference Between Historical and End-State Theories" *Philosophical Studies* 41 (1981): 267-72. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Property Rights and Social Welfare" in *Economic Justice: Private Rights and Public Responsibilities*, edited by Kenneth Kipnis and Diana T. Meyers. Totowa, N. J.: Rowman and Allanheld, 1985. Pp 71-86. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Community, Dominion, and Membership", *Southern Journal of Philosophy* 30 (1992): 17-44. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

§4. Stoicism: Emotion, Health, and Virtue

"Stoic Emotion," in Jack Zupko and Steven K. Strange (eds.), *Stoicism: Traditions and Transformations*. New York: Cambridge University Press, 2004. Pp 250-275. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Stoic Children," in Susan M. Turner and Gareth B. Matthews (eds.), *The Philosopher's Child: Critical Essays in the Western Tradition*. Rochester, NY: University of Rochester Press, 1998. Pp 45-61. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Human Health and Stoic Moral Norms," *Journal of Medicine and Philosophy* (2003) 28:2, pp 221-238. [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

"Stoic Virtue," in Nancy E. Snow (ed.), *Oxford Handbook of Virtue* (forthcoming, 2018) [PUBLISHER'S ABSTRACT AND AVAILABILITY](#)

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Preface: Unintended Constancy

There are elements of intellectual autobiography in the preface to this volume of selected essays, and to some extent in the preface to volume 2. The same is true of the introductions to the essays themselves. For reasons that will soon become obvious, there was no easy way to avoid this. I am making an argument – to myself here first, and secondarily to readers – for a reconsideration of these essays rather than merely for a convenient arrangement of them. The argument depends on the accurate articulation of old intentions about the writing of them, which is a tricky business. Readers who are annoyed by this sort of thing can safely bypass most of it by going directly to the second section of this preface, beginning on page 9.

Good Advice, Wavering Attention

Charner Perry's last bit of advice to me as I left graduate school at the University of Chicago in 1965 was to keep writing, but not to publish much of it. He had been the editor of *Ethics* for many years, in the days when it was an old-fashioned editorial operation and not, as it became in the 1980s, a modern bureaucratic organization. He admitted with a smile that he thought he was developing an aversion to everything in typescript. And he had been one of my dissertation advisors. So his advice got my attention, and I kept writing.

Unfortunately, after a few years I began to disregard the second part of his advice, though I didn't send anything to *Ethics* until he retired from the editorship. By the early 70s my files look as though I had started publishing almost everything I finished writing – at least if lectures and comments on other people's papers don't count. To do so I must have been following advice from another of my graduate professors, Robert Coburn, who told me in vivid terms how to deal with rejections from journals and book publishers. There were a lot of rejections, at first. So I must have been using the part of his advice about turning around outright rejections into same-day submissions to another journal. That stuck with me. But given the fact that many of the published articles now seem too slight to reconsider, philosophically, I must not have been using the part of Coburn's advice about what kind of writing should be submitted in the first place. He put it in the affirmative, but those standards were pretty stringent, as I recall. Perry implicitly said the same thing in the negative, but apparently I wasn't listening to either one of them on that score.

I was listening intently, however, when with his typical heat and eloquence Robert Paul Wolff argued to the assembled graduate students one year that we should not let the profession define our philosophical problems for us – at least not the ones on which we chose to write. If you do that, he said, you will never know when to stop writing, because you will never have the sense of relief that comes from having resolved something that is a genuine existential problem for you. Stick to writing about your own philosophical problems, he said. (I think he also said that if we didn't have any philosophical problems of our own, we should get out of philosophy. But that might be an embellishment of the memory.)

I can confidently say that I have followed Wolff's advice. It seemed sound and important to me then, and it still does. The fact that I have followed it accounts for the fact that the complete list of my published articles looks scattershot, and that my philosophical interests seem suspiciously unsustained. This would be embarrassing if it meant that fifty-plus years of philosophical writing reflects a genuinely disorganized series of philosophical interests. And I confess that over the years, as the list of abandoned topics grew, I have occasionally been troubled by that thought. Why abandon metaethics? Just because the tide started to turn to normative ethics after the publication of Rawls' book in 1971? Why stop writing on philosophy of law, or on property rights? Reciprocity seems a more continuous theme, but why the sudden turn into stoic ethics, and then, apparently, away from it?

It has been hard for me to give a good answer to those questions – mostly because in the thick of things, it has been hard to think about them enough to trace the arc of my work as a whole. Attempts to do so tended to fail quickly in ways that dissolved my interest in them. For example, sometime in 2001, as I retired from full-time teaching, I looked at the possibility of putting together a large book of selected essays. I was in the mood to sum things up, and move on to a long and less demanding old age. But after trying and failing to write a coherent preface for such a book, I gave it up. I also found myself caught up once again in the run-down from a recent monograph (the one on stoicism), and what became the long run-up to *Habilitation, Health, and Agency* (2012). So the summing up seemed premature.

A dozen years later the same summing up motive arose again, and changed into something defensive – something more in line with Charner Perry's advice. The proximate cause was a surprise announcement from Routledge, in early 2013, that they were going to reissue my first three monographs in facsimile editions. My initial reaction was unmixed pleasure. The

books would be back in print (though the paperback edition of *Reciprocity* had hung around), and ultimately in electronic editions as well. Moreover, since this came as an announcement from the publisher rather than a request, there was no possibility for me to update them or write anything new for them. Thus there was no obligation for me even to reread them. So far so good.

But that pleasure was soon replaced by alarm with respect to putting together a volume of collected papers. After all, there were some articles whose disappearance would now be no loss to anyone, or in a few cases should be stamped with a big red *Withdrawn*. But that can't be done without calling attention to them, which defeats the point.

So in a defensive mood, I assembled the materials for an even less coherent volume, without a candid preface like this, but with permissions secured and introductions written. The idea was to leave it among my "papers" (a grandiose term for a few file drawers) as a sort of literary advance directive about what should *not* be republished – namely the papers left *out* of that notional volume. Preliminary advice from others – including but not limited to my resident librarian, coeditor, and possible executor – was decidedly mixed. Thus the advance directive project stalled in late 2013. Three years later it has been transformed into these two online notebooks that will explain, and point readers to, the papers that still seem to me worth reconsidering. It will also save other people time, effort, paper, and money.

No doubt part of the explanation for my wavering intentions about this whole business has to do with the remnants of my Midwestern quasi-Calvinist upbringing. The whole project, in any form, just feels presumptuous. But that can't be the whole explanation. For a long time now, the voice of Calvin from my youth has been inaudible. And there were, it turns out, good reasons all along for me to pursue this project – good philosophical reasons, in the existential sense that has guided my work always, and continues to do so. They were just obscure. It was the possibility of getting a clear picture of them that eventually brought me back to making the attempt.

Pursuing this project in a serious way, rather than in an offhand or defensive way, has been illuminating. The reasons for that are complex, and will emerge in the remainder of this preface and in the preface to the second volume – as well as in the introductions to the articles themselves throughout both volumes. The result, for me, is more than a reissue of previously published material. Rather, it amounts to a reconsideration of that material by way of rearranging it and commenting on it, both in part and in whole. So, to the extent that it was reasonable to

offer the essays themselves to readers in the first place, it now seems reasonable to offer them again, in this new way, for their re-consideration. Here is some of what makes me think this is reasonable. [Go Back](#)

Constancy in Retrospect is Nonetheless Constant

There are bursts of articles in the run-up to and the run-down from each of my five monographs. Sometimes the books clarify or develop the articles, and sometimes the reverse happens. The point is that in retrospect, the articles alone and the books alone fail to come clean about the threads of argument and constant philosophical concerns that run through the whole thing. Taken together, the continuities are blindingly clear. For example:

Skepticism. A concern with defeating moral skepticism is an undercurrent in almost all my work, in one form or another. One way this shows up is in attempts to construct justification procedures that go all the way to a rational foundation – a foundation that explains the way in which moral principles or judgments can be overriding. It also shows up in attempts to handle the seemingly intractable pluralism of moral theories and moral arguments, and of avoiding other conundrums (determinism and responsibility; the is-ought problem) that damage the effort to justify moral judgments. Those were the concerns of *On Justifying Moral Judgments* (1973), and some articles around it, but all the later work keeps checking, revising, refining, and using those results.

Character and agency. Another underlying theme is the attempt to make moral agency and moral character every bit as central to moral theory as utilities, rights, and duties. This shows up in the early work in a meta-ethical context, but also in the work on reciprocity, justice, stoicism, and habilitation. Agency and agent morality are huge topics, and my interest is certainly not yet close to being exhausted – especially in the tantalizing connection between human health and the sorts of agency and virtue that develop from it and are sustained by it.

Contingency. Since I first read John Dewey's *Human Nature and Conduct* (as a sophomore in college) and connected it to Aristotle's remark about not expecting more certainty in ethics than the subject matter allows, I have been highly skeptical of rationalism in ethics, or of moral principles derived from pure practical reason, metaphysical arguments, or theological ones. It has seemed important to me to trace out the ways in which the strength of moral principles, moral reasoning, and moral theorizing is contingent on the range of possibilities and

necessities given by our physical and psychological constitutions, situated in actual or accessible physical and social environments. But I also want to bring that sort of contingency into line with the finality and accessibility of moral judgments. This appears to be an inexhaustible interest for me, and explains a good deal of my writing on specific moral issues (criminal attempt, the concept of a human being, property rights, disability, and basic justice).

In midcareer, I learned from the writings of Russell Hardin just how often moral philosophy fails because it fails to acknowledge the necessarily strategic nature of most human interactions. That is a daunting aspect of the contingency problem – one that has sweeping consequences for moral theory, not least for the finality problem.

Reciprocity. Here I have had success in working out a conception of reciprocity that satisfies my own philosophical interests. I would therefore have stopped writing about it long ago if it were not for the fact that I am also interested in persuading others to abandon the use of the mere concept of reciprocity in moral and political theory, and to adopt instead a robust conception of it – not necessarily my own. This whole project is connected to my insistence that moral philosophy is contingent at the level of normative theory and practice. And it fits nicely with Hardin's point about the strategic nature of moral problems.

Stoicism. I remember having been fascinated by stoicism in my first college course in philosophy. That course was a historical introduction to the field, unusual for the 1950s in that it paid significant attention to the Hellenistic period. But for many years thereafter, I paid no further philosophical attention to stoicism in detail, except for sometimes assigning readings from Epictetus to undergraduates, and then defending those readings against the students' dismissive disbelief. So there is little hint of this as a theme of my work until the stoicism book itself appeared in 1998. But in retrospect, the interest is there from the beginning in terms of my concerns with character, agency, and contingency. It also remains in my recent and continuing work on healthy agency and virtue.

Basic justice. Ideal justice and utopianism have never been significant philosophical interests for me. *Property Rights* (1977) is a book grounded in the real world of law, economics, history, and anthropology as well as theories of justice. The work on reciprocity has a similar basis, expanded to include social and developmental psychology. And in *Habilitation, Health, and Agency* (2012) basic justice is defined, for the purposes of that investigation, in an even narrower real-world way. This has been what has shaped the practical part of my work on justice

for those who are inevitably disadvantaged by contemporary, large-scale social and political systems. Along the way I wrote about rights, economic justice, the obligation to work (including what is now called workfare), taxation, rent control, community, affirmative action, and freeriders. Some of that, but not all, is included in these volumes. I also wrote a few things that mention disability and justice, especially with respect to rational choice theory, and reciprocity, and they are included here. All of this eventually leads to the habilitation book, which is subtitled “a framework for basic justice.”

Disability. What interest I have in the subject of disability has until recently been exhausted by my parallel avocation in and around the world of polio survivors. (I acquired the qualifying disability in 1952, at the age of thirteen.) That avocational work has always been quite public. This is so, in part, just because I have a very noticeable disability. But it is also so because, since 1952, I have periodically agreed to be used as a prop in the effort to fund the work of medical rehabilitation, and the public health efforts to eradicate polio. That has always included some writing on my part as well, some of it semi-philosophical I suppose, but mostly for conferences organized by Post-Polio Health International (PHI), or for their publications. None of this has made its way into my work in academic philosophy except very indirectly (in some pieces on bioethics). In the early 70s I wrote an article called “The Neglect of Virtue,” in part aimed at myself and my own neglect of the topic. I obviously missed the opportunity, in those years, to write a paper on the comparable neglect of disability.

Once disability started to become a test case for theories of justice, I did get interested in it academically in a limited way – and followed the discussion in books, journals, and small conferences. The limited nature of this may come in part from the fact that I don’t “have” a theory of justice in a way comparable to the way in which I have a reconstructed version of Stoic ethics. And so I haven’t had a pressing need to pursue disability as a test case for any particular theory of justice.

Nonetheless, there are four recent papers about disability in these volumes – two in this one, and two the next. They are here because they are part of the run-up to the habilitation book and the run-down after it – in ways that continue to interest me deeply, and philosophically. That is, they are connected to my sustained philosophical interest in basic justice, basic good health, agency, and the habilitation (and rehabilitation) humans require to survive, thrive, and make progress toward ethically good lives. [Go Back](#)

§1. The General Conception of Morality

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Introduction

Bear with me please. There is only one paper in this section, and it is the first paper in the first volume because it has a special importance in my all of my subsequent work in ethics. It almost didn't get written. And the story, while it was the opposite of amusing at the time, is almost amusing now. Without it, I might still be writing about tort law.

During the academic year 1971-72 at Oxford, Philippa Foot gave a course of lectures on the conception of morality. The lectures were fascinating and very ambitious. Parts of them turned up later in her now famous paper "Morality as a System of Hypothetical Imperatives" (1972). Her arguments against various accounts of the purportedly categorical and overriding nature of moral judgments were particularly striking – particularly her use of the apparently categorical imperatives of etiquette as a counterexample. (Americans came in for some good-natured, deadpan ribbing about our failure to understand the categorical prohibition on serving jam with breakfast toast. Jam was categorically reserved for teatime, as any properly raised person knows, she said. This has nothing to do with sweetness, or stickiness, apparently. Syrup is fine for breakfast. It's just that jam is for tea and not for breakfast. It's categorical.)

At one point in the proceedings I wanted to ask her about an alternative explanation for why moral judgments might be overriding – an alternative that is an extension of the good reasons approach to moral justification. I thought it was stronger than the ones she rejected. I didn't have the chance to ask a question about this after the lecture, so I wrote it up in the form of a short letter. I didn't send the letter immediately (thinking, I suppose, that it might have been categorically inappropriate), but rather showed it to H. L.A. Hart, with whom I was studying philosophy of law that year. Professor Hart was interested, and discussed the subject with Mrs. Foot. (I was too young to address them without titles.) They both suggested that I read G.J. Warnock's recent book before taking my argument further. I read the book, but then put the whole matter aside to read more cases in the history of tort law. My clear but false thought was that I had made a more elaborate argument on the subject in the text of my manuscript *On Justifying Moral Judgments*, which was then under review by its eventual publisher. I didn't bother to look at the text of the manuscript.

Foot's paper appeared in the summer of 1972, a month after I returned from England. The proofs of my book arrived shortly thereafter. The content of my letter wasn't there. Instead,

there was only an obscure suggestion of it in Chapter XII (“Why Be Moral?”). Worse, I couldn’t find the letter itself. So I wrote a much more elaborate response to her paper, under the title “The Finality of Moral Judgments” (1973), cited below. People noticed the paper, but not the fact that it was missing from its obvious place in the book, which came out shortly after the paper. There is a reason for that.

The paper makes a case for explaining the overridingness of moral judgments in terms of an all-things-considered conception of the moral point of view. Because I had the advantage of Foot’s full paper in front of me by the time I wrote it, my response is much better than my earlier letter could possibly have been. Moreover, I saw immediately that it wasn’t so much a reply to her paper as a line of argument that had general possibilities for the kind of work I wanted to do in ethics. That conception of the moral point of view has informed all of my subsequent work in ethical theory, including practical reasoning, problems of pluralism, accounts of the virtues, and matters of basic justice. In fact, it is still under development in one of my latest pieces, “Stoic Virtue,” cited here as the last article in this notional volume. Perhaps the lengthiest restatement of it is found in Chapter 1 of *Reciprocity* (1986), where it is dubbed “the general conception of morality” and explicitly contrasted with various “special conceptions,” which are more typical of work in modern moral philosophy.

Nonetheless, the all-things-considered conception of morality has some obvious theoretical and practical problems. One is the criterion of relevance. How do we decide what things can be excluded from consideration in a given case to make it manageable? Another is the problem of priorities. Among the relevant considerations, which ones dominate others if they conflict? And a third is pluralism. How do we deal with competing lines of argument at the same level of priority? Attempts to deal with one or another of these problems are persistent themes in my work, as they must be in moral theory generally if it takes competing lines of argument (e.g., utilitarian, contractarian, eudaimonistic) seriously. And people face the same set of problems if they opt for a special conception of morality – alongside others such as prudence, altruism, egoism, and even etiquette -- *within* the scope of an all-things-considered point of view. Adopting a special conception of morality almost immediately raises the question the question Why be moral? A special conception of morality does not itself answer that question, unless it implicitly invokes an all-things-considered point of view. It seems preferable to me to invoke the more inclusive point of view from the beginning. [READ FULL TEXT](#)

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§2. Reciprocity: Reprise and Extensions

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Introduction

A decade of work on various topics in philosophy of law, much of it on property rights and other topics in legal theory (see below, in §3), finally coalesced into a sustained interest in the role of reciprocity in the justification of nonvoluntary social obligations. This coincided with the emergence of the view that Rawls' theory of justice depended crucially on the general or "thin" concept of reciprocity. What interested me, however, was not the general concept but rather a fleshed-out *conception* of reciprocity. (The distinction between a general concept and a conception comes from HLA Hart, and was adopted by Rawls to good effect in *A Theory of Justice*.) The problem for me was one of working out the details of a conception of reciprocity that seemed justifiable all-things-considered. That venture began in a tentative way in the late 1970s, and the book *Reciprocity* (1986) was the initial comprehensive result, to which I have often returned in other work, both in a virtue-theoretic context and in various areas of practical ethics.

The first paper referenced in this section, "Reciprocity, Justice, and Disability," (2005), paper 2 below, contains a restatement of the conception of reciprocity first given in the book in 1986. It also contains remarks on the usefulness of a full-fledged conception of reciprocity in theories of justice, and the consequences of this for problems of justice and disability. The paper concludes with a somewhat ill tempered screed arguing for using duties rather than rights in constructing theories of basic justice. Antecedents of that screed can be found in the papers on rights in Volume 2 of these selected papers – see particularly "Three Types of Rights" (1980) and "Individual Rights" (1982).

The consequences for rehabilitation policy promoted by this argument are thus much more extensive than those supported by the somewhat earlier argument of "Disability, Strategic Action, and Reciprocity" (2000), paper 3 below. That paper opens with a restatement of some of Russell Hardin's views about the pervasiveness of strategic action in human affairs, and its importance for moral theory. This includes pointing out the distinction between situations of pure conflict, cooperation, and coordination. The paper then points out the way in which public policy debates about the rights of people with disabilities often put us in the mixed situation of the prisoner's dilemma. That in turn leads to the observation that in general, we ought to try to move

pure conflict problems into pure coordination problems. But that is often difficult when the policy debate is framed in terms of rights. When that happens, what often emerges is a version of the prisoner's dilemma that I call the litigant's dilemma. In that dilemma, as in the prisoner's dilemma, the best outcome for each participant is the worst outcome for the other. But for litigants, the second-best option is a settlement which, given the circumstances of litigation, is often available to the parties. This is especially true when the parties are predisposed to behave in accord with ordinary norms of reciprocity. From a practical point of view then, the appeal to rights (insofar as it creates a deadlock between competing rights) can often be avoided if we can get a settlement in terms of reciprocal benefits.

The more robust the *conception* of reciprocity becomes, then, the more promising are such settlements for dealing with disability issues. I returned to that more robust conception in "Reciprocity, Justice, and Disability" (2005) and more extensively in *Habilitation, Health, and Agency* (2012) and a paper that follows that book: "Disability, Basic Justice, and Habilitation into Basic Good Health" (2017). Rather than to move forward into the material on habilitation, however, which is not so much about reciprocity as about its role in describing the circumstances of justice, it will be more useful here to go back to a couple of papers that preceded the *Reciprocity* book.

One of these is "Reciprocity and Social Obligation" (1980), paper 4 below, which outlined the general shape a reciprocity requirement might take in justifying nonvoluntary social obligations, and considered it in relation to utilitarian and social contract theories of justice. It does not do what the *Reciprocity* book eventually does in 1986 – namely connect a much more elaborately defined conception of reciprocity to the justification of an elaborate disposition to reciprocate – in effect, to virtue theory. Nonetheless, some of the elements of the later conception of reciprocity in my work are here, and the (rather weak) argument for the distinctness of reciprocity as a basis for nonvoluntary social obligations makes this worth revisiting for two glaring reasons that explain its weakness.

The first of these is the need to strengthen the role of reciprocity by thinking about it as a naturally occurring social norm, typically expressed in a powerful psychological disposition which makes it a candidate for a "natural" virtue. The *Reciprocity* book addresses that need. The second is the need for getting a satisfactory resolution to the fundamental theoretical dispute about whether reciprocity is to be considered a virtue mainly on consequentialist grounds or on

deontological ones. That issue, along with the question of how to fit virtue ethics into the picture, has been a persistent philosophical problem for me from *On Justifying Moral Judgments* (1973) to the present. This paper acknowledges the problem. *Reciprocity* makes some progress on it. But it seems to me now that I did not really get a good grip on it until I worked through the Stoic account of the development of rational agency and the role of practical wisdom within it. Some of that is found in *A New Stoicism* (1998), and is reworked, mostly without reference to stoicism, in Part IV of the habilitation book. But perhaps the most compact account of this, and the clearest one with respect to the ends to be coordinated and pursued by practical wisdom, is in “Stoic Virtue” (2016) referenced below in §4.

In the run-up to the reciprocity book, however, in the late 70s and early 80s, there was not only the general paper on reciprocity and nonvoluntary social obligation but also two rather elaborate test cases for the role that a disposition to reciprocate might play in practical ethics.

“The Obligation to Work” (1980), paper 5 below, was one of those test cases. It was originally a more explicit part of the reciprocity project, but the actual writing of it turned it into a more general assessment of the justifiability of legally enforceable work requirements, albeit with substantial reference to reciprocity. Its case study aspect involved a good deal of work on comparative legal theory – specifically, in this case, the constitutional work requirements in force at the time in many revolutionary socialist states. The Soviet Union was the leading example, since the work requirement there was vigorously and sometimes brutally enforced through so-called parasite laws. So the thesis of the paper wound up being as much about why work requirements should not be enforced through criminal law as about why there are indeed nonvoluntary social obligations to work.

There have been huge changes in the number and nature of self-described socialist or communist states throughout the world since 1992. Attempting to bring this paper up-to-date would require not only burying oneself in *Oxford Constitutions of the World*, an amazing, constantly updated online resource of English translations of all governmental constitutions worldwide. It would also involve looking at current enforcement practices, and then rewriting the whole paper – which I’m not interested in doing. The alternative is to treat the paper as it stands as a historical study, followed by a philosophical argument. And of course the United States has now changed its welfare system, by statute, into something approximating the Nixonian proposal

of “workfare” mentioned in the paper. See the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 USC 1305.

The other original test case was to be about the obligation to pay taxes. It was never published, though I tried it out at one or two meetings. Ultimately, it led me into the thickets of economic theories of taxation, and a hugely transformed version was eventually published as “Ideal Taxation,” which is included in Volume 2 of these selected papers. When I re-read that paper today, I still find it interesting. But I cannot shake the idea that one of the things it does is to uncover a (small?) part of my mind that is sheer crackpot – a twentieth century single-tax defender. The arguments it now makes are relevant to reciprocity mostly in the sections on equal marginal sacrifice. Since that notion is used in paper 2 above, my first use of it (derived from Mill) may be of some interest in that regard. But the paper no longer belongs in a section devoted to papers on reciprocity. [Go Back](#)

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§3. Justice: Theories, Property, and Community

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Introduction

The papers in this section have the misleading appearance of being either about property rights, or the social welfare provisos attached to property rights, or about a peculiar aspect of communitarian theory. The first three seem to be part of the run-down from the property rights book. The fourth seems to be an outlier. That appearance is only part of the reality.

For one thing, the first three papers in this section are also part of the run-up to the reciprocity book in 1986, and they are as much about the basis of nonvoluntary social obligations generally as they are about property rights. That makes them as central to a theory of justice as to a theory of the property rights within it. The fourth paper (from 1992) comes after the reciprocity book and is about the extent of nonvoluntary obligations beyond the boundaries of the local, civic, and national communities we inhabit. That makes it about the theory of justice also.

Moreover, the first paper in this section, which is suffused with talk about property rights and seemingly nothing else, also reflects my career-long attempt to ground moral and political philosophy in matters of fact about the human condition, and the physical and social environments we actually inhabit. As follows.

“The Moral Basis of Property Rights” (paper 6 below) was drafted while *Property Rights: Philosophic Foundations* (1977) was in press. The paper was presented at a meeting in 1977 and completed for the Nomos volume on property published in 1980. Both the property book and the moral basis paper came out during a spate of vigorous legal and economic analysis of property rights centered on the writing of Ronald Coase among others, and in the context of Robert Nozick’s revival of interest in Locke’s labor argument for the justification of private property.

My property rights book concludes, and the moral basis paper assumes, that the labor argument (in two versions, each heavily constrained), a utility argument (also in two versions), a political liberty argument (drawn from Nozick), and possibly an appropriation argument (traceable to Hegel) are all sound as far as they go. But in the book there are plausible arguments *against* private property as well, especially when the problems of justifying specific sorts of property, or particular pieces of property are considered. This obviously creates a complex theoretical and practical problem of balancing or coordinating the results of these arguments in

cases where they diverge. I address that problem in a procedural way in the book, traceable to *On Justifying Moral Judgments*.

The moral basis paper, however, though it gives a brief summary of the book's results, is situated in the contexts of anthropological and historical analysis of human practices. It is an example of my persistent effort to draw a moral theory up from certain apparent universals in the human condition and modes of human conduct rather than by drawing it down from a priori normative principles. In this respect it is closer in method and intention to *Reciprocity* (1986) and work related to it than to *Property Rights* (1977). Understanding this seems, in retrospect, essential to understanding the contribution the paper makes to the whole body of my work.

Understanding the way in which papers 7-9 fit into my work as a whole will be easier if I mention what I have come to believe is a flaw in the writing of the property rights book. Critical reaction to it was initially a bit puzzling. Some libertarians were convinced that since I found several sound lines of argument for private property, and that two of them were Lockean and another was based on liberty in a way indebted to Nozick, I must be a Nozickian libertarian. They seemed to ignore the significance of the social welfare provisos attached to all of the sound lines of argument in favor of private property. (Nozick, who had kindly read the manuscript of the book, certainly did not make that mistake.) Some socialists, on the other hand, fastened on the social welfare provisos and did not think they were strong enough. They wanted a more explicit recognition that all private property is social in a strong sense. These philosophers, at least in correspondence with me, also tended to think that the many lines of argument for and against private property were more trouble, theoretically, than they were worth.

So subsequently, when I had the occasion to do so, I have tried to emphasize the social welfare provisos. The intention was not always – or ever mostly – to emphasize the way in which *Property Rights* is squarely in the middle of the debate between libertarians and socialists. It was also to broaden the discussion of the work on property rights to justice generally.

"Against the Supposed Distinction between Historical and End State Theories," (1981), paper 7 below, addresses a theoretical distinction drawn by Nozick: the distinction between his historical theory of justice and Rawls' traditional end-state theory. My short paper argues that the social welfare provisos involved in sound justifications of private property ultimately dissolve most of the philosophical significance of Nozick's distinction between the two types of theory – at least in the important context of property rights (holdings). They do that because social

welfare provisos must be written into the historical principles of justice in acquisitions and transfers, and the only way to do that is by appealing to what amounts to an end-state account of justice. The liberty to acquire and transfer property remains, but remains restricted by significant nonvoluntary social obligations.

“Property Rights and Social Welfare” (1985), paper 8 below, reiterates and strengthens the argument about social welfare provisos. It does this by making the point that such provisos “run with the titles” to private property (as Nozick acknowledges), making them quite strong indeed. It also makes them “self-adjusting,” as circumstances change. This expands and strengthens the argument of paper 7 by addressing directly the conflict between libertarians and socialists about how to understand the social nature of property. It argues that a proper understanding of the conflict reduces the stakes for both parties. What seems to be a sharp division of doctrine about the whole “theory” of property is reduced to a difference of emphasis around the edges of a large area of agreement.

(A redeployment of the results of papers 7 and 8 made an appearance in a later response to Richard Epstein in “Rent Control Is Not a Taking” (1989), published in the *Brooklyn Law Review*, but not otherwise referenced here.)

“Community, Dominion, and Membership” (1992), paper 9 below, changes the topic from libertarianism versus socialism to individualism versus communitarianism. It argues that the purported conflict between the two theories (in their relation to theories of justice) is not as sharp as it seems. The goods of group membership – including what communitarians discuss as the social nature of the self, but also the importance of loyalty, tradition, social stability, moral character, and the kind of social embeddedness necessary for a good life – should be recognizable elements of individualism. By contrast, the goods of impartial justice and reciprocity should be recognizable elements of communitarianism.

But there seems to be an especially sharp set of conflicting arguments about conditions for membership in one’s community. (And oddly, I would say now, these conflicts seem to occur as much between individuals themselves and between communities themselves as they occur between the abstract theoretical entities of individualists and communitarians.) These conflicts occur when refugee populations, illegal immigrant populations, international trade agreements, international health or political crises, or other demands from outside a given individual or community threaten to destroy it outright or force it to evolve into something very different. I

argue that the supposed conflicts between individualism and communitarianism are mostly resolvable, theoretically. (I would now add something about the inability of theory to influence practice.) An appropriate recognition of the kind of “dominion” any individual or community can exert over others, together with the demands of self-preservation, impartial justice, and what amounts to reciprocity largely ameliorate the conflict at a theoretical level, even if not at a rhetorical one. [Go Back](#)

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§4. Stoicism: Psychology, Health, and Virtue

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Introduction

I have written a good deal about stoicism since the publication of the first edition of *A New Stoicism* (1998; revised edition, forthcoming in 2017), but it is mostly in the form of correspondence, unpublished lectures, and comments. The four papers in this section constitute everything directly on stoicism that I have published since the first edition of the book, though there is an undercurrent of my Stoic studies throughout *Habilitation, Health, and Agency: A Framework for Basic Justice* (2012).

“Stoic Emotion” (2004), paper 10, is the most ambitious of these Stoic studies. It amplifies the argument in the stoicism book against the charge that stoic doctrine recommends a life characterized by relatively low level, flat affect. It also connects the account of stoic emotion to contemporary neuropsychology and proposes an account of what the genuine philosophical problems about emotion might be in a contemporary version of stoicism. Those genuine problems come from traditional Stoic insistence that emotional states should be appropriate for making progress toward virtue, and for acting virtuously in the circumstances we inhabit. This implies that we need to be able to identify and understand the nature of occurrent emotional states. Ancient Stoics may have underestimated the difficulties involved in the necessary sorts of self-knowledge required for the task. In particular, “liminal states,” such as moods and threshold affective states, pose a stubborn problem in this regard.

But the core of the paper is in the sections on “Virtue and Tranquility” and “Love, Detachment, and Purity of Heart.” [Readers will be able to find these sections in the Commentary to chapter 7 of the revised edition of *A New Stoicism* (2017).] The traditional Stoic objection to the unmodulated passions is that, like running pell-mell downhill, it is hard to stop before doing some damage. That is true enough as far as it goes, but as the ancient Stoics surely must have appreciated, active, effective agents face the problem of getting *started* properly as well as the problem of getting stopped properly. In some circumstances, getting started requires forms of agent energy that include heightened affect – e.g., getting “psyched up.” It is possible to have such affect and still have dispositional control of one’s activity. The question then becomes whether such dispositional control amounts to having the ability to detach oneself from one’s emotional life in a way that compromises love, and makes purity of heart impossible to achieve.

The paper argues that the form of self-monitoring involved does in fact complicate emotional life, but that this complication should be welcomed.

There is one other feature of the paper (and the book) that should be noted. Part of the project of imagining a contemporary form of stoicism involves imagining how ancient Stoicism might have changed over the centuries. That involves reconstructing ancient Stoic doctrine from a disappointingly small surviving portion of what was evidently a massive literature. Scholars working with the ancient texts continue to do this difficult reconstructive work, but the rest of us have to make a lot of undocumented assumptions. Some of those are about Stoic doctrines about emotions, especially the doctrines presumably prevalent during the period of the Old Stoa. Those doctrines might look quite implausible today, but seem to have been substantially modified in the Middle and Late Stoas. Recently, however, the scholarly evidence seems to be closing the gap between even the Old Stoa and contemporary plausibility. A superb book on this topic is Margaret Graver's *Stoicism and Emotion* (2007). If it had been available a decade earlier, it would have strengthened the argument of *A New Stoicism* and this paper significantly.

“Stoic Children” (1998), paper 11, is assumption and inference about ancient Stoic attitudes and practice with respect to children. The article constructs a sketch of a developmental child psychology for the Stoics, relying crucially on what Cicero says about Stoic views. The resulting emphasis on *oikeiosis* parallels the one in *A New Stoicism*, and may thus be a rather exaggerated form of what we would find in the full variety of ancient texts if we had them. But the contrast with Aristotle is interesting, because the Stoics seem to have introduced a genuinely new developmental process, distinct from Aristotelian growth and maturation. And I suppose it is plausible to assume that their educational curriculum for children, if they had one, might have given particular attention to steering development through the workings of *oikeiosis*. But I don't suppose that they were otherwise any more attentive to childhood development and education than other ancient Greek and Roman philosophers.

“Human Health and Stoic Moral Norms” (2003), paper 12, emphasizes the way in which Stoic progress toward virtue just is (at least for part of the way) physically and psychologically *healthy* development as we now understand it. The article goes on to explore the idea that it might be useful for physicians today to reflect on Stoic ethics in a variety of morally problematic cases, including suicide and assisted suicide, euthanasia, and lives worth living. This paper was

written during the time that my philosophical work was turning toward questions of habilitation and healthy agency. So in a remote sense, the paper is a precursor to *Habilitation, Health, and Agency* (2012).

“Stoic Virtue” (2017), paper 13, was written for the *Oxford Handbook of Virtue* edited by Nancy E. Snow. Space constraints were tight, and the paper had to make a plausible case for the ancient Stoic account of virtue in the context of the relevant features of the whole ancient Stoic system, including its theology and cosmology. It was not an opportunity to expand my own peculiar extrapolation of Stoic ethics. The attempt to compress this material and make it clear, as well as to connect it to recent scholarship on ancient Stoicism, was clarifying for me as well, however.

This was especially true about the way in which practical intelligence develops into practical wisdom on the Stoic account. I found this illuminating for a problem that has been a fundamental concern throughout all my work in ethics. This is how best to outline, for the purposes of a moral theory, the sort of uncertain moral development of traits (plausibly called natural virtues and vices) that is evident, *descriptively*, in human beings and brings us both persistent happiness and persistent misery. How to connect the nascent and incoherent ends of those early traits, including practical intelligence, to the possibilities that might be offered by healthy human development in a reasonably hospitable environment – including the development of practical intelligence into a form of practical wisdom (*phronesis*) that has the end of orienting agency toward realizing the ends of the other virtues, but not of the vices. And then how best to construct a challenging, inspiring, and practicable normative theory from those materials that coordinates the sometimes conflicting ends of the virtues. *Habilitation, Health, and Agency: a Framework for Basic Justice* (2012) is also devoted to this task. The final paper of volume 2 of these selected papers is a follow-on from that book. [Go Back](#)

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