

Unpublished Talks on Philosophical Themes

The following pieces, with two exceptions, come from talks given at philosophical symposia or colloquia that were not embarrassingly bad (as far as I can judge), but which I never succeeded in developing into publishable papers – even though it seemed to me at the time that I should probably do so. That is true even of those that appear to be written up as drafts of complete papers. Ideas from some of them have shown up in other forms in other aspects of my work. But not just as they were originally presented – again with some exceptions noted below. They are in chronological order.

Gathered at the end are ones for which I have not yet found copies. So they do not yet have hyperlinks. And not included here at all are talks that were completely restricted to the topic of the day on which they were given, or which by prior agreement were published in conference proceedings.

["Constraints on Contracts,"](#) comments on Alistair Macleod's, "Distributive Justice, Contract and Equality," Symposium, Eastern Division, American Philosophical Association, December, 1984. I remember sitting in the hallway, after this session, trying to figure out how to use what I had said in response to Macleod's provocative paper as the basis for something quite ambitious – namely a paper in "moral contract theory" grounded in the legal theory of contracts, and the social contract understanding of political and social institutions. Unfortunately, this ambition collided with a succession of other large projects (the *Reciprocity* book, work on the first edition of the *Encyclopedia of Ethics*, and a sharp turn toward eudaimonistic moral theory and the book on stoicism that ultimately came out of it. As a result, I more or less stopped writing on philosophy of law topics unless specifically asked, and only intermittently returned to this topic on moral contract theory. What I have of it now, after all these years, is a set of notes appended to the beginning of my original comments on Macleod. It's a mess. But it is still interesting to me.

["Lives and Liberty: Comments on Rachels and Ruddick,"](#) at the VPI & SU Conference on Autonomy, May, 1987. I include this largely for two reasons: first because I have been greatly helped by a distinction these authors made in their paper (and earlier as I recall) between biological and biographical lives; and second because short parts of my argument that one can have a good life without liberty show up in two places almost word for word (with appropriate acknowledgment) in my 1992 paper "Good Lives: Prolegomena," and in my 1999 book (and its 2017 Revised Edition) *A New Stoicism*.

[Windboitel, Ladislav](#) (1644-1701). This is one of the exceptions mentioned above. It does not come from an unpublished comment, or preparation for a paper that remains unpublished. Instead it comes from the early stages of work on the first edition of the *Encyclopedia of Ethics*. It is undated, but probably comes from 1987. By that time the editorial board and I had worked out the list of entries and authors we wanted, and my coeditor and I had worked up stylesheets and guidelines for authors doing various sorts of entries. There was no email – or at least none that most philosophers had access to. So all mailings had to be done in hard copy and sent by post, not only within the United States but to various places in Canada, the United Kingdom, Europe, Australasia, and so on. After most of the authors had been recruited, and the guidelines mailed, I received an urgent request from more than one of the authors doing short biographical entries, and/or short topical entries wanting examples of various kinds of entries. I already had an example or two of a topical entry. But none of a short biographical entry. I was more than a little annoyed at myself for not anticipating this reasonable request, and annoyed also that I couldn't easily fulfill it. Not to mention easily do another mailing that sorted out all and only the authors doing short biographical entries. So I decided to deal with my annoyance by writing a fictional

piece that could be taken as an example. It turned into a piece of satire. This is the result. I got no complaints about its adequacy as an example. Rather, I got several requests that I somehow slip it into the *Encyclopedia* for a little comic relief. Peter Heath's article on "Nothing" for Paul Edwards's massive 1967 *Encyclopedia of Philosophy* was cited as a precedent. My coeditor, a Berkeley-educated librarian, persuaded me against it.

"Dominion and the Egalitarian Extension Argument," comments on Gerald Postema's paper at the VPI & SU Conference on Liberty, Equality and Fraternity, April, 1989. This comment, on an elegant paper by a distinguished philosopher, eventually yielded a long paper from me called "Community, Dominion, and Membership." *Southern Journal of Philosophy* 30 (1992): 17-44. It is included in the notional volumes of my selected papers elsewhere on this website – specifically in Volume 1, paper 9. Its first endnote acknowledges Postema's paper as an inspiration, but the analysis and argument in what eventually became my Dominion paper there is very different than what was in this comment. Some people who liked the comment did not much like the paper inspired by it.

"Pure Personal Revenge, " Comments on Jon Elster's "Norms of Revenge," *Ethics* Conference on Norms, University of Chicago, May, 1989. Elster's article "Norms of Revenge" was later published in *Ethics*, July, 1990, Vol.100(4), pp. 862-885. During the editorship of Brian Barry, and then Russell Hardin, *Ethics* regularly put together symposia based on small, invited conferences on predefined topics. An associate editor was sometimes assigned to organize these conferences, and sometimes also assigned to give prepared comments on one of the papers at the conference – not for publication in *Ethics*, but just for the purpose of discussion at the conference. I was an associate editor of *Ethics* from 1985-2000. At this conference on norms I was asked to make some informal comments on Elster's paper, for no reason I can recall other than that I had published a book on the norm of reciprocity, which (on its negative side of returning evil for evil) has an obvious connection to norms of revenge. I spoke from sketchy notes, briefly. But as is my habit when I do comments on other people's papers, I wrote up a paper in a more formal way. I found two copies of the paper in my computer files in antique WordPerfect files. One of them is without endnotes, and the other has some sketchy endnotes – which I probably added after the conference just to remind myself later of some of the sources. The link here is to the copy with endnotes. I never expected to publish it, nor do I want to. But it is an interesting topic, and the angle I took on it remains interesting to me.

Privacy, Necessity, and the Constitution. 1991. I have no memory of my reason for writing this paper – though its March 26, 1991 date suggests that it might have had something to do with a spring conference, perhaps at the APA. But it is not mentioned in my CV, and this is the only copy I have of it. I usually keep copies of at least some early as well as finished versions. This is obviously neither the earliest version nor the finished one – if it was ever finished before being abandoned. There is a curious footnote referring to the Senate confirmation hearings for Justice David Souter, which took place in 1990, which I remember finding very interesting because Souter seemed to have read (and adopted) a general approach to the philosophy of law indebted to Ronald Dworkin. But that certainly wasn't sufficient motivation for working out a proto-paper like this. I can now imagine why I dropped it. But not why I started it. So like the satirical piece on Windboitel above, this probably doesn't belong in this list of unpublished commentaries. Nonetheless....

Law is Local: Comments on a Critique of Ronald Dworkin's *Law's Empire*, Virginia Philosophical Association, October, 1994. Unfortunately I do not have a record that indicates whose paper I am responding to. There is some indication that it might have been a paper from Chris Natiochia, then a graduate student at the University of Virginia. But I can't be sure, and I have been unable to locate him. That is unfortunate, because I obviously thought it was a very good paper. And it obviously provoked me into me into rethinking some things in a way that has stuck with me ever since. It certainly took me away from the work I was doing on eudaimonistic ethics, and doubtless delayed the reading I was doing in ancient Stoic fragments. This general topic in philosophy of law had been simmering for almost two decades, but after HLA Hart died in 1992 my impression is that it really heated up. That impression evidently never motivated me to go more deeply into the topic, however.

All or Nothing: for Stoicism. 1999. This was a discussion-starter for a symposium on contemporary applications of classical moral philosophy for an audience of 30 or 40 faculty and students at the Catholic University of America in Washington, DC. There were at least three others on the panel who gave similar opening presentations which were, as I recall, somewhat less aggressive than mine. Two of them had written skeptical reviews of my stoicism book in the preceding year, and I had that in mind as I drafted this talk in December of 1998. The presentation was in February, 1999 and I had fully intended to revise it beforehand, but other things intervened. I think I probably softened it somewhat in my presentation. But maybe not.

“Social Contract Theory and the Tough-Crowd Problem: Comments on Martha Nussbaum's ‘Justice for Mentally Disabled Citizens’” was given at a symposium Pacific Division Meetings of the American Philosophical Association, March, 2003. Nussbaum's paper was part of the manuscript of what became her 2007 book *Frontiers of Justice*. The paper in my files was too long to read at the APA symposium. So although I sent it to Nussbaum in advance, I indicated the parts I intended to delete for the reading – or put into an appendix. Some of that appendix shows up in footnotes to the 2005 paper mentioned below. Since Nussbaum's manuscript (and eventual book) is part of an effort to replace mutual-advantage social contract theories in the Rawlsian tradition with a capabilities approach to justice, my comment was meant to argue that a social contract theory could be stronger than she supposes. She will remain unconvinced, I think, until I can better come to grips with the application of mutual life and advantage theories to international justice worldwide. She is correct, I think. Solutions to the tough crowd problem look very different in the overpopulated, underdeveloped parts of the world than they do in my implicit, much more restricted, frame of reference.

Reciprocity (But I Repeat Myself). October, 2003. A paper given to the annual meeting of the Virginia Philosophical Association. This is a restatement, with some significant new twists, of the conception of reciprocity developed in the book *Reciprocity* (1986). The identification of what I call "the tough crowd problem" and what it requires of mutual advantage theories of justice plays a prominent role here, as it did in the previous paper (the comments on Martha Nussbaum) given in March of the same year. This paper, however, is much more preoccupied with the details of the *conception* of reciprocity, its absence in Rawls's theory despite his use of the *general concept* of reciprocity. There are many other differences between the two papers, and it is this one, rather than the previous one, that is the more substantial predecessor of the paper "Justice, Reciprocity, and Disability" that was eventually published in *Ethics* in 2005. See Volume 1 of my online Selected Papers.

"Virtue, Health, and Eudaimonistic Psychology" Developed from a talk prepared for the Working Conference on The Philosophical History of Character Strengths and Virtues, The University of Pennsylvania, September 2-4, 2004. The original plan was to assemble a collection of papers by philosophers assessing the massive book by Peterson and Seligman on work in positive psychology. This was a proposal for a draft of my chapter for such a book. The presentation on which it is based can be found [here](#). The book never materialized.

Habilitation, Health, and Agency: a Response to Jonathan Wolff and Avner de-Shalit's *Disadvantage* was given at an "Author Meets Critics" session, Central Division Meetings of the American Philosophical Association, April 18, 2008. Note that this paper was an early precursor to my book *Habilitation, Health, and Agency: A Framework for Basic Justice* (2012). I wasn't thinking about writing a whole book about habilitation at this time in 2008, but my first try at a journal article on the topic was not a success, and I grudgingly decided I needed to say good deal more, rather than less. A book length manuscript emerged in late 2009 or early 2010, but still needed work.

Agency and Collaborative Dependency: Comments on A New Manuscript by Silvers & Francis was given at a symposium honoring Anita Silvers, at the Pacific Division Meetings of the American Philosophical Association, April 1, 2010. Both Silvers and Francis have been long time long-distance colleagues who have helped me immeasurably to improve my work on property rights, medical ethics, and the crucial place disability should have in theories of justice. That doesn't mean we agree on everything, of course. And in this comment –

for reasons unrelated to their manuscript – I was in a rather cranky mood about the importance of shifting conversations about disability rights to conversations about duties we all have as human beings. See pages 10-12, where I make what I call a dyspeptic comment. This caused a bit of a stir in the audience, some of whom told me afterward that they were astonished by my turn toward Hobbes. But I have been getting increasingly committed, as a matter of public policy at least, to going back to a strong endorsement of human duties as a starting point. Human duties to others yield consequences for human rights, of course. But "what we owe each other" (as Scanlon puts it) is a much different discussion than "what we can demand from each other." Putting the duty question first, I think, puts questions of justice on a better footing from which to derive strong accounts of human rights. I have been pushing this line since before 2005, to little avail as far as I can tell. I need to be a better stoic about this, because it is certainly not among the things that are within my control.

"A Pluralistic Theory of Property," comments on Stephen Munzer's paper of the same title, Symposium, Central Division, American Philosophical Association, April, 1988.

"Individual Actions and Group Effects," comments on Bart Gruzalski's paper of the same title, Colloquium, Eastern Division, American Philosophical Association, December, 1982.

"Hard Choices Are Enough," comments on Jeffrie G. Murphy's "Consent, Coercion and Hard Choices," at The University of Virginia Law School, October, 1980.

"Justice in Transfer," comments on Bart Gruzalski's "Nozick on Buying, Selling and Trading," at the VPI & SU Conference on Human Rights, May, 1980.

"Theories of Human Nature," comments on Milton Fisk's "A Social View of Human Nature," at the Oberlin Colloquium in Philosophy, April, 1980.

"Comments on Jeffrie G. Murphy's 'Blackmail: A Preliminary Inquiry.'" Special Colloquium, Eastern Division Meetings, American Philosophical Association, December, 1979.