University of Pennsylvania Law Review

FOUNDED 1852

Formerly
American Law Register

VOL. 133

JANUARY 1985

No. 2

TOWARD A MODERN/POSTMODERN RECONSTRUCTION OF ETHICS

DRUCILLA CORNELL[†]

*An anarchy of Spirits! Toy-bewitched,
Made blind by lusts, disherited of soul,*

[†] Assistant Professor of Law, University of Pennsylvania.

This Article is dedicated to Mildred F. Kellow (1892-1984).

A number of friends and colleagues have offered me indispensable criticism on various drafts of this Article. I particularly want to thank Regina Austin, C. Edwin Baker, Martha Field, Frank Goodman, Michael Graetz, Courtney Howland, Frederick Kubler, Mihailo Marković, Frank Michelman, Martha Minow, Louis Schwartz, Steve Shiffrin, Barbara Hernstein Smith, and Heinz Lubasz. I am also grateful to Roberto Unger for the intellectual friendship and good will that have allowed us to engage in what has been, for me, an exchange of extraordinary value. Albrecht Wellmer's comments and work in discursive ethics were crucial in helping me to think through more clearly what I meant by dialogism. Lisa Campolo and Adam Thurschwell offered valuable editorial suggestions. JoAnn Burns performed the service of typing and retyping the manuscript with remarkable patience and perseverance.

To Greg DeFreitas I owe the emotional support that allowed me to complete this Article.

To my friend and mentor Richard Bernstein, I owe more than thanks. In the last year and a half, he has read and commented on innumerable drafts. He has provided me with both the understanding and the demanding criticism essential to bringing a long project of this sort to completion. He has exemplified the spirit of dialogism I present in this Article. I also owe to him my introduction into an intellectual community that convenes every year in Dubrovnik. It is no exaggeration to say that without his support this Article would never have reached its current form. Any remaining errors are of course my own.

*No common centre Man, no common sire
 Knoweth! A sordid solitary thing,
 Mid countless brethren with a lonely heart
 Through courts and cities the smooth savage roams
 Feeling himself, his own low self, the whole.*

—Coleridge, *Religious Musings: A Desultory Poem Written on the
 Christmas Eve of 1794*

In his poem Coleridge recounts the futile meanderings of a narcissistic self, a self he broadly identified with the modern liberal subject constituted in the bourgeois democratic revolutions. Coleridge's disgust with the liberal subject, and his despair at the severing of our ties with nature and with one another, express a romantic rebellion against the early stages of modernity. That rebellion finds philosophical voice in Schiller's attempt to come to terms with the horror produced by subjectivity run amuck in the French Revolution. Schiller's romantic impulse and his commitment to the political ideals of the Revolution inspired him to seek the basis for a new vision of reconciliation. He understood his age to be confronted with the fundamental question, "How can we restore the unity of human nature?"¹ The effort to redeem the Revolution's promise of a democratic community life depended, for Schiller, on somehow rejoining what modernity had put asunder.

In the advanced industrial societies, the destruction of ethics and the demise of community life that Schiller and Coleridge feared as all too possible are by now all too real. The doubts that have surrounded recent attempts at ethical reconstruction² are themselves sufficient testi-

¹ F. SCHILLER, SERIES OF LETTERS 85 (1967).

² I deliberately echo Hegel here in calling my project a reconstruction of ethics rather than a reconstruction of morality. In one sense Hegel is close to the Aristotelian notion of *ethos* that defines ethics as the doctrine of what is good and right, which determines the action of individuals as it is rendered universal in *ethos* and norms. The difference is that Hegelian ethics contains the "subjective" aspect of morality, or private conscience. Hegel both incorporates the subjective aspect of morality he saw as the hallmark of modernity and demonstrates the impotence of a subjectivity that can no longer have any ethical reality in life and action. His is a critique of the hegemony of morality as itself a false interpretation of the meaning of the modern subject.

Albrecht Wellmer has recently been very critical of the idea of dialogic ethics in the realm of morality, while accepting it as soundly based in the area of law—or what I would call the ethics of the public realm. See A. Wellmer, Lecture at the New School for Social Research (Oct. 1984). This Article reflects a Hegelian emphasis on collective norms that encompass and indeed give content to the preserved spheres of law and private conscience, or morality. With Hegel, I reject the Kantian separation of law and morality, both of which I rather see as moments of our modern *Sittlichkeit*. As Ritter explains,

The ethical is introduced by Hegel in distinction from the morality

mony to the continuing experience of moral disintegration. The experience itself is not questioned; what is questioned instead is whether anything may be done about it. Or, indeed, whether anything *ought* to be done—for the experience of disintegration has not been greeted with universal dismay. Just as Nietzsche announced the “end of man” with glee,³ so too have recent postmodernists mocked as philosophically confused and politically suspect those who would restore the unity of human nature.⁴ Meanwhile, the very concept of the liberal subject—the notion of a meaning-giving agent distinct from social structure and from linguistic convention—is deconstructed as liberal structures are themselves dereified. Feminists have joined in the deconstructive excursus by pointing out that what has paraded as the universal *essence of man* is merely the male in disguise and by suggesting that “all theories of the subject have been appropriated to the side of the masculine.”⁵

We must remember, however, that the frequent goal of attempts to restore the unity of human nature has been to preserve an ethical vision with which to counter the seeming spiritlessness of liberal society. What is to become of that goal once the legitimacy of reconstruction is denied? Those who spin out competing visions of justice as plurality⁶ or of the good life as the utopia of *jouissance*⁷ encounter difficulty maintaining that goal without incurring the justly criticized demerits of the liberal vision of the subject.

The desire to save the dream of the democratic revolutions and the hope of creating a truly ethical group life make Schiller's project of

(*Moralität*) of the subjective will and its good in the abstract as the absolutely valid laws and institutions, the ethical powers, customs, habitual practices as the general mode of conduct of individuals, social and orderly life, class, corporations, and in summary as institutions which comprise the components of rationality developed and actualized, are therefore the firm foundation of the state and the pillars of public freedom.

J. RITTER, *Hegel and the French Revolution*, in *MORALITY AND ETHICAL LIFE* at 161 (1975).

³ See F. NIETZSCHE, *Thus Spake Zarathustra*, in *THE PORTABLE NIETZSCHE* (W. Kaufman trans. 1954).

⁴ Many postmodern writers have not spoken directly to the problem of ethics. Shortly before his death, however, Foucault indicated that he saw the project of ethical reconstruction as crucial. His goal (admittedly rather vague) was the reconstruction of something like the Greek ethic, with the exception that the exclusiveness of the Greek ethical community would be remedied by a recognition of the pleasure of the other. Foucault's critique is directed at Kantian morality, which he distinguishes from the classical notion of ethics. See *On the Genealogy of Ethics: An Overview of Work in Progress*, in *BEYOND STRUCTURALISM AND HERMENEUTICS* 229 (H. Dreyfus & P. Rabinow eds. 1983).

⁵ Irigary, *The Sex Which is Not One*, in *NEW FRENCH FEMINISMS* 99, 104 (E. Marks & I. DeCourtivron eds. C. Reeder trans. 1984).

⁶ See, e.g., J. LYOTARD, *AU JUSTE* (1981).

⁷ See Irigary, *supra* note 5.

reconciliation a mission of undiminished urgency. Recent efforts to reconstruct our ethical situation have taken up Schiller's problematic in attempting to circumscribe, if not to redefine altogether, the nature of the modern liberal subject. In particular, Alasdair MacIntyre⁸ and Roberto Unger⁹ have extolled their different brands of neoAristotelianism as our best hope against the nihilist alternative. I begin this Article with a critique of their accounts.

MacIntyre shares Coleridge's disgust with liberal subjectivity and retains a hope for reconciliation, Aristotelian in its inspiration. There are problems, however, with MacIntyre's approach. Although MacIntyre is wary of even a modernized version of Aristotle's metaphysical biology, he knows that Aristotle's account of the virtues, which MacIntyre thinks we should restore as the basis of ethics, makes sense only in the context of "the concept of *man* understood as having an essential nature and essential purpose or function."¹⁰ The question becomes whether Aristotle's account, once stripped of its metaphysical dress, offers any but the vaguest guidance.

There is a second problem with MacIntyre's approach. As Hegel long ago reminded us, classical ethics presupposes a primitive level of differentiation of individual from group.¹¹ Liberal subjectivity, however, is not only a part of our modern consciousness but also an important historical accomplishment that should not and cannot simply be negated. One cannot help worrying that MacIntyre's program for the protection of a sheltered community life too greatly diminishes the value of the recognition of the individual subject as a person separate from social role.

And there is a third problem with MacIntyre's approach. What he offers us is a slide show, a sequence of still pictures of competing views of human possibility. The slide-show nature of the presentation explains MacIntyre's difficulty in convincingly showing us how we are to return to Aristotelianism from our current situation—for as MacIntyre understands only too well, the Aristotelian virtues derived their meaning from the historical context in which they arose. Although MacIntyre is persuasive in describing the breakdown of the liberal point of view, his account falters at the crucial point of reconstruction. His negation is not determinate, and as a result his call for a return to

⁸ See A. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (2d ed. 1984).

⁹ See R. UNGER, *KNOWLEDGE AND POLITICS* (1975) [hereinafter cited as R. UNGER, *KNOWLEDGE*]; R. UNGER, *PASSION: AN ESSAY ON PERSONALITY* (1984) [hereinafter cited as R. UNGER, *PASSION*].

¹⁰ A. MACINTYRE, *supra* note 8, at 58.

¹¹ G.W.F. HEGEL, *THE PHILOSOPHY OF HISTORY* 17-20 (J. Sirbee trans. 1956).

Aristotelianism remains abstract. One hears echoed in MacIntyre the note of despair in Hegel's *Phenomenology of Mind*.¹² How can a self cast in the role of the modern liberal subject escape its situation? MacIntyre's approach leaves him in danger of simply offering a vivid addition to Hegel's sorrowful cast of characters—the man of virtue, the beautiful soul, the believer in the law of the heart¹³—each hopelessly trapped in a futile assertion of independence from a corrupt culture.

Unger avoids some of MacIntyre's difficulties but encounters problems of his own. In his first book, *Knowledge and Politics*, Unger tries to modernize Aristotle's theory of development in a manner that shares something with the approach of the early Marx. Human history, Unger there contends, develops toward the realization of our true species being. To the extent¹⁴ that Unger introduces a species subject and a strong *telos*, he no doubt falls into an untenable form of objectivism.¹⁵ The objectivism, however, is inessential to the argument in *Knowledge and Politics*, at least as I would reconstruct it. At times, Unger himself seems to acknowledge in *Knowledge and Politics* that

¹² G.W.F. HEGEL, *THE PHENOMENOLOGY OF MIND* (J.B. Baille trans. 1967).

¹³ See *id.* at 390-412, 664-67.

¹⁴ I use the words "to the extent" advisedly. It would be unfair to read Unger as insisting on the inevitability of the realization of our species nature. Potentiality will not necessarily be actualized; only we can make it happen.

¹⁵ An important caveat must be introduced here. The critique of objectivism should not be taken to mean that one can avoid an account of the objective in the Hegelian sense as a component part of the development of an ethic. Dialogism too offers us an account of what we have become. The methodological difference between the claim made for this account and the claim Unger makes for his vision lies primarily in the divergent modes of justification. The point against Unger is that one must depend on others to validate the account of what we have become. The challenge is to methodological solipsism and not to the possibility—indeed, the necessity—of giving an account of what we have become as an essential aspect of ethics. In this sense Unger is right in asserting that ethics implicates a vision of human nature. This affirmation of the possibility of providing us with a narration of our shared experience separates even a pragmatically justified ethics from the more radical efforts of deconstruction that localize time to the degree that the very notion of a coherent narrative is itself challenged. The affirmation of a narrative account of what we have become in no way denies the historical validity of the analysis that argues that narration, with its reliance on a strong sense of shared experience, becomes increasingly difficult in our ever more fragmented society. It merely asserts that it can never become impossible. As will be seen, my disagreement with MacIntyre does not take the form of a critique of his mode of narrative presentation. The disagreement is instead with his assessment of the value of what we have become as postEnlightenment subjects entangled in individualism. The last section of this Article provides an alternative rendering of our current ethical situation. All three accounts—Unger's, MacIntyre's, and the one offered here—are narrations of the objective in the dialectical historical sense. The point to be made against the Unger of *Knowledge and Politics* is that the justification of the competing vision is pragmatic—without metaphysical underpinning—and dependent on intersubjective validation.

his vision can be justified only on a *pragmatic* reading.¹⁶ His pragmatism takes the form of an advocacy of the creation of a context of undistorted intersubjectivity as the only way to build a system of shared values. On this reading, Unger's theory of organic groups is not an ahistorical portrayal of what we truly and necessarily are, but rather a specification of the conditions under which our political judgments would alone possess ethical authority. Read pragmatically, therefore, Unger need not rely on a revised Aristotelian metaphysics. Indeed, one strength of *Knowledge and Politics* is its attempt to ground the reconstitution of the liberal subject in the changing character of modern industrial society.

Unger's pragmatism, still obscure in *Knowledge and Politics*, emerges more clearly in his recent work, *Passion*. There, Unger straightforwardly acknowledges that we can know the truth of any particular vision of human nature only by assessing what it illuminates about ourselves and what it allows us to realize in practice. The perspective of intersubjectivity, however, has meanwhile ceased to occupy center stage in Unger's work. In *Passion* Unger abandons the effort to reconstruct the liberal subject and instead endorses a romantic Christian view of the subject. Although this view shares something with the Marxist humanists, it does not share their commitment to the ideal of reconciliation—a theme replaced, in Unger's later work, with the theme of redemptive love.

The common thread uniting *Knowledge and Politics* with *Passion* is Unger's belief that we must rely on some substantive view of human nature if we are to develop a meaningful ethical orientation. But this belief is misguided. It endows *Knowledge and Politics* with an unfortunate objectivist strain and pushes Unger's analysis there to so high a level of abstraction that the task of providing us with concrete moral or political guidance is effectively renounced. Nor is it possible to turn an awareness of the ideological character of the reified structural determinants in language and society—an ideological character illustrated in the deconstructive exercises of Jacques Derrida¹⁷—into a substantive vision of the subject, as Unger tries to do in *Passion*. As Derrida has shown, the flip side of the deconstruction of determinate meaning is the collapse of any effort to reconstruct an anthropology.¹⁸

¹⁶ I am defining pragmatism here as antiessentialism or antifoundationalism. See generally R. RORTY, *CONSEQUENCES OF PRAGMATISM* (1982).

¹⁷ See, e.g., J. DERRIDA, *WRITING AND DIFFERENCE* 278-93 (A. Bass trans. 1978).

¹⁸ See J. DERRIDA, *The Ends of Man*, in *THE MARGINS OF PHILOSOPHY* 109 (A. Bass. trans. 1980).

Comparing MacIntyre with the later Unger, one finds the contrast, the either/or, that motivated Hegel to begin his lifelong quest for a mediated reconciliation between the modern liberal subject and the human community. One of Hegel's crucial contributions to the modern ethical debate is his explicit recognition of the intersubjective nature of the ethical world—a recognition that allowed him to rethink the relation between the individual and community in a powerful and suggestive manner. Hegel's grasp of the intersubjective nature of practical reason allows for the move beyond a stark choice between the visions of Nietzsche and Aristotle. In a later section of this Article, I attempt to reconstruct the perspective of intersubjectivity, or *dialogism*, that Hegel presents in the Jena manuscripts.

Hegel rejects the liberal belief in an ego existing prior to its engagement in a social and historical context. The self is rather seen as *constituted by* and at the same time partially *constitutive of* a process of intersubjective interaction. From this dialectic there emerges a consciousness embedded in the principal medium in which consciousness is concretized: language. As speaking subjects¹⁹ and as ethical beings, we

¹⁹ I want to head off the criticism that the very idea of a speaking subject necessarily reinstates constitutive subjectivity and the corresponding reduction of the role of language to its expressive component. The assertion is that it is only a subject "present to itself" that can be understood as the subject of speech. Therefore if the idea of a subject present to itself is deconstructed, so is the idea of a speaking subject. In one of his essays, Derrida seems to make something like this deconstruction. See J. DERRIDA, *Différance*, in *THE MARGINS OF PHILOSOPHY*, *supra* note 18, at 1. But what Derrida deconstructs is the idea that consciousness is separate from language. The Hegel of the Jena manuscripts agrees with Derrida that consciousness is in language. The move from the deconstruction of consciousness outside of language to the conclusion that the subject is always subject to and never the subject of language implies the acceptance of the strict structuralist separation of *langue* and *parole*. Speech is reduced to the dependent stepchild of *langue*, and *langue* is in turn understood as a set of structurally determined conventions to which the subject is "subjected." But once one has deconstructed the radical separation of *langue* and *parole*, as has Derrida himself, the very notion of a strict set of linguistic determinants is undermined. Moreover, the very idea of language as the play of difference opens up the linguistic prison of structuralist convention. If speech is not enclosed in a given set of conventions, it becomes possible to speak of the *work* of speech, to insist on the creative potential of speech's open-endedness. To be subject to speech then ceases to take on the drastic implications on which the structuralists insist. We are left with the dialectical view of speech and of the speaking subject that Hegel presents in the Jena manuscripts.

Nor does Derrida's point that speech as communication is always dependent on writing, see J. DERRIDA, *Signature Event Context*, in *id.* at 307, undermine this perspective. As Heidegger has reminded us, only to those who *belong* to a language does the language grant the possibility of listening and therefore the possibility of speaking. Language is not an instrument; it is our situation. But none of this denies that things can be said, meaning given, and new ways of being in the world articulated. Even the strong reading of Derrida's writing as the historical unconscious that produces disintegration does not deny the existence of shared values or ethical meaning. The argument, if you like, is "over the value" of ethical meaning.

all belong to an historically situated dialogic community.

Hegel's dialogic perspective can be translated into a regulative ideal²⁰ by which we can direct our praxis—an ideal that finds expression in the works of Richard Bernstein, Hans-Georg Gadamer, and Jürgen Habermas. This ideal incorporates the modern recognition of a subject independent of social role without endorsing the specifically liberal notion of the subject. The very notion of dialogue entails a symmetric reciprocity between participants who treat each other not as adversaries to be defeated but rather as partners in a common conversational enterprise. This reciprocity allows for the construction of an ethic of citizenship that reclaims practical reason from the oblivion to which liberal culture has consigned it. In this ethic, the other is not constructed in the opposition of contraries,²¹ nor is our sameness lost in the deconstructive shuffle. Sameness and difference are rather viewed as mutually dependent moments in a conversational relationship. Differ-

²⁰ The Hegel of the *Philosophy of Right* would have criticized the notion of translating the thesis of symmetric reciprocity into a regulative ideal. As Richard Dien Winfield explains,

Unlike such modern thinkers as Hannah Arendt and Jürgen Habermas, Hegel realizes that the interaction of freedom cannot be construed as a non-institutional ideal of unrestrained reciprocal recognition that serves as the legitimating principle for all organs of public life. Doing so only reinstates the foundational dilemmas of liberal theory, once again separating freedom from the reality of justice and supplanting the positing of a prior principle.

To have normative validity of structures of freedom must instead comprise every relation of justice. This means that freedom must not have its measure in a single regulative interrelationship, but rather consist in a self-grounded system of specific interactions.

R.D. Winfield, *The Theory and Practice of the History of Freedom: On the Right of History in Hegel's Philosophy of Right*.

The Hegelian rejection of a regulative ideal reflects, in part, the possessive role allotted to the citizen in the constitution of freedom that Habermas has criticized. As Habermas reminds us, the Hegel of *The Philosophy of Right* presents us with a realized revolution—freedom constituted—without legitimating the revolutionariness of activity itself.

Thus Hegel vindicates for the world spirit precisely that structure of consciousness which he criticized so devastatingly in the French Revolution. The ground thereby is pulled away from under the subjectively oriented concept of revolution, in that, by the interpolation of world spirit, an objectively revolutionary event is comprehended in categories that are borrowed from subjective revolutionary consciousness, but are now only to be valid for the subject of history as a whole. Only in this way can history be comprehended as a step by step realization of the demands raised by the revolution for the legitimization of right, without at the same time having to legitimize the revolutionary activity of subjective consciousness.

J. HABERMAS, *THEORY AND PRACTICE* 138 (trans. J. Viertel 1973).

²¹ "Contradiction is non-identity under the aspect of identity; the dialectical primary of the principle of contradiction makes the thought of unity the measure of heterogeneity." T. ADORNO, *NEGATIVE DIALECTICS* 5 (E.B. Ashton trans. 1973).

ence is neither denied nor hypostatized through its relegation to the purely external; difference from the other is also understood as an internal relation to the other. As Hegel teaches us, the hypostatization of difference as absolute other is absolute identity.²²

The view of the subject that will be presented here undermines the logic of identity associated with the philosophy of consciousness.²³ We are left with a decentered subject, relational at its core. This view of the decentered subject, however, does not dissolve the self totally in an all-encompassing community. The insistence on the intersubjective dynamic inherent in the construction of humanity—our shared spirit—permits us to expand the concept of rationality to encompass ethical questions and also to provide a vision of our prospects rooted in our actual life situation.

²² "Difference in itself is self-related difference; as such, it is the negativity of itself, the difference not of an other, but *of itself from itself*; it is not itself but its other. But that which is different from difference is identity. Difference is therefore itself and identity." G.W.F. HEGEL, *THE SCIENCE OF LOGIC* 417 (trans. A.V. Miller 1969).

²³ By the *philosophy of consciousness*, or the *paradigm of subjectivism*, I mean to indicate the philosophical positions that not only have favored the subject over the object but have also understood the object only derivatively as for the subject. Built into this paradigm is the subject/object split, which has wrought a great deal of philosophical havoc. This paradigm has recently been deconstructed and politically criticized, most notably by Martin Heidegger and Jacques Derrida. Habermas joins with those who reject it, criticizing it for making reconciliation free of domination an impossibility.

The idea of reconciliation cannot plausibly be accommodated in the basic concepts of the philosophy of consciousness from Descartes to Kant; and in the concepts of objective idealism from Spinoza and Leibniz to Schelling and Hegel, it can only be given in an extravagant formulation. Horkheimer and Adorno know this, but they remain fixated on this conceptual strategy in the very attempt to break its spell. They do not to be sure analyze in detail how subjective reason functions: but they do rely upon model representations that connect basic notions of an idealistic theory of knowledge with those of a naturalist theory of truth. On these models, subjective reason regulates exactly two fundamental relations that a subject can take up to possible objects. Under object the philosophy of the subject understands everything that can be represented as existing. Under subject, it understands first of all the capacities to relate oneself to such entities in the world in an objectivating attitude and to gain control of objects, be it theoretically or practically. The two attitudes of mind are representation and action; the subject relates to objects either to represent them as they are or to produce them as they should be. These two functions are intertwined: knowledge of states of affairs is structurally related to the possibility of intervention in the world as the totality of states of affairs; and successful action requires in turn knowledge of the causal nexus in which it intervenes. The epistemological connection between knowing and acting became all the clearer along the way from Kant through Marx to Peirce, the more a naturalistic concept of the subject gained ground.

I. THE PROBLEM RESTATED: MORAL CHAOS DEFINED

According to both Unger²⁴ and MacIntyre,²⁵ one of the common-sense assumptions of our culture is that *decisionism*, or at the very least moral *relativism*, is the inevitable result of the social world in which we live. Since these terms might be said to describe our culture, it is necessary to define them and distinguish between them.

Decisionism is the belief that moral propositions are founded only on the choices or commitments of the individual.²⁶ From the decisionist perspective no rational ground for any decision exists, nor is there a rational standard by which to judge divergent choices.²⁷ Evaluative judgments are, accordingly, nothing more than subjective preferences. Decisionism thus implies a distinction between reason and individual choice—a “system of complementarity,” in the words of Karl Otto-Ap-pel²⁸—in which reason cannot help the individual select specific values or goals; it can serve only as a means to their attainment. Reason becomes simply a technique and, as Habermas remarks, is “disinfected” of feelings and desires—in short, of life.²⁹

Moral relativism is often identified with decisionism. Richard Rorty, for example, defines relativism as “the view that every belief on a certain topic, or perhaps about any topic, is as good as every other.”³⁰ Such a definition of relativism suggests that decisionism is its basis: every belief is as good as any other because all such beliefs are rooted in an individual’s decision.

Moral relativism, however, can be more broadly defined and can in fact be antithetical to decisionism. The more expansive definition contrasts relativism with *objectivism*, the belief in “some permanent, ahistorical matrix or framework to which we can ultimately appeal in determining the nature of rationality, knowledge, truth, reality, goodness or rightness.”³¹ Relativists who define their position against objectivism deny the possibility of uncovering an ahistorical matrix, yet not the possibility of having shared moral standards and an historically rel-

²⁴ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 78. Although Unger uses terms such as the “individuality of values,” he is referring to the perspective that I label “decisionism.”

²⁵ See A. MACINTYRE, *supra* note 8, at 22. MacIntyre’s term for the decisionist perspective is “emotivism.” *Id.* at 11-12.

²⁶ See *id.* at 12.

²⁷ *Id.*

²⁸ K. OTTO-APPEL, *The Communication Community and the Foundation of Ethics*, in *TOWARDS A TRANSFORMATION OF PHILOSOPHY* 225 (G. Adey trans. 1980).

²⁹ J. HABERMAS, *supra* note 20, at 263.

³⁰ R. RORTY, *supra* note 16, at 166.

³¹ R. BERNSTEIN, *BEYOND OBJECTIVISM AND RELATIVISM* 8 (1983).

evant framework of judgment. This definition of relativism includes the concept of shared standards, which at a particular historical moment would seem objective and universal.³² Yet it also embraces the notion that such standards will change in history.

Relativism so understood emphasizes social context and the social nature of value. In its extreme form, this view leads to the "myth of the framework"³³—the idea that individuals are completely bound to their cultural milieu by the chains of linguistic convention. In this extreme variant of relativism, the possibility of critical reflection—the ability to examine critically one's context and to imagine alternatives—is denied, because the notion of critical reflection is understood to rest on the belief in what one might call the residually transcendent subject, a subject existing apart from a context.

The second, more expansive definition of relativism leads us to a way of thinking about its relationship to decisionism. Decisionism may be regarded as the moral stance embedded in our culture—the moral viewpoint relative to our cultural context. As a result, we are in the ironic position that we can do nothing but individually choose our moral commitments or choose between conflicting moral views, without any guidance from a cohesive framework, historical or otherwise. Our framework has disintegrated into a series of competing value judgments, none of them compelling. This state of disintegration undermines the very idea of morality and ethics, both of which imply shared, rational standards of judgment.³⁴

If one considers decisionism to be the expression of our historical situation, and this is both MacIntyre's³⁵ and Unger's³⁶ approach, then the solution of the problem of a lack of shared moral standards becomes particularly difficult, for decisionism cannot simply be condemned as an intellectual mistake. We cannot simply escape it by finding the "true" basis for moral judgments. Indeed, any attempt to will or to think ourselves beyond the moral crisis only reinforces the fragmentation it was meant to overcome. We would only have fallen back once again into decisionism by "deciding" to put ourselves on the other side of the crisis. The individual seems imprisoned in her subjectivity, and there appears to be no exit. The problem, since it is a problem embedded in a way of life, cannot be adequately resolved without a shift to some new

³² *Id.*

³³ *Id.* at 84 (quoting Popper, *Normal Science and Its Dangers*, in *CRITICISM AND THE GROWTH OF KNOWLEDGE* 56 (I. Lakatos & A. Musgrave eds. 1970)).

³⁴ See A. MACINTYRE, *supra* note 8, at 2.

³⁵ See *id.* at 22.

³⁶ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 76.

framework.

Both Unger³⁷ and MacIntyre³⁸ are aware of this dilemma of modern moral life. They do present us, however, with an alternative: "the Aristotelian tradition in some form or another."³⁹ In order to understand better MacIntyre's and Unger's⁴⁰ belief that a return to Aristotelianism is the only way out of our current moral crisis, it is necessary to trace their respective narrations of the development of this crisis.

II. THE NATURE OF THE CRITIQUE AND THE PROBLEM OF METHOD

Before I turn to the content of the critique of liberalism, I want to offer some thoughts on the nature of the philosophical discourse that Unger and MacIntyre adopt. Both present their conclusions less in the form of argument than as a narrative drama. They do not criticize liberalism as a set of ideas abstracted from day-to-day life and historical development but rather present it as a form of life shared by all of us. We are supposed to recognize the cast of characters in MacIntyre's *After Virtue* and the story of the self in Unger's *Passion and Knowledge and Politics* because it is our story too.

Unger has not always written a narrative drama. Within *Knowledge and Politics*, two opposed discourses run throughout the book. In the first, Unger, employing his quasi-logical method, attempts to study liberalism as a coherent set of premises, creating an artificial sense of stasis as a result.⁴¹ In the second, narrative discourse, he studies liberalism as a form of consciousness that breaks down under its own weight and creates in its wake a new consciousness and the cultural formations associated with the welfare state.⁴² With this second discourse, he offers us a powerful interpretive dialectic,⁴³ which illuminates the shifts in

³⁷ See *id.* at 137.

³⁸ See A. MACINTYRE, *supra* note 8, at 118.

³⁹ *Id.* at 259.

⁴⁰ Although Unger does not speak in terms of returning to Aristotelianism, on my reading of his work he does embrace an Aristotelian framework. In particular, he wants to recognize the "existence of a unitary human nature." R. UNGER, *KNOWLEDGE*, *supra* note 9, at 195.

⁴¹ See *id.* at 16. Unger recognizes the shortcomings of this approach. He contends, however, that it is necessary to start with this method, as it "prepare[s] the way for a more complete account of [liberalism] as a mode of consciousness and a type of social organization." *Id.*

⁴² See *id.* at 174.

⁴³ See C. TAYLOR, *HEGEL* 218 (1975). Taylor explains the interpretive dialectic method as one in which an explanation is put forth that is accepted only "when it has been followed out, and connected with all the other imputations which go with it, and when these have been seen to fit the facts with plausibility, and to make over-all sense." *Id.* at 217.

modern consciousness and convinces us by its overall plausibility.⁴⁴

Yet in *Knowledge and Politics* Unger is wary of openly endorsing this latter approach, at least in part because he is suspicious of dialectics.⁴⁵ He seems to want to persuade us with the rigor of deductive logic. This indicates that he has in mind something like a strict dialectic: a dialectic whose "starting point is or can reasonably claim to be undeniable."⁴⁶

In *Knowledge and Politics* Unger endorses the quasi-logical method because he believes himself to be trapped in the grip of liberal subjectivity.⁴⁷ By burrowing into the depths of liberalism, by studying it exhaustively from the inside, Unger hopes to free himself from its grasp.⁴⁸ Yet he admits at the outset that the quasi-logical method cannot provide us with anything like a strict dialectic. He describes it as a crutch to be discarded.⁴⁹ Unger can invoke his quasi-logical method as a critical crutch, however, only insofar as he has already escaped the hold of liberal consciousness. He recognizes that he faces this contradiction: he says he needs the method to liberate himself, yet he sees it as a crutch that he can toss away.⁵⁰ And he sees no way to escape this contradiction. Nevertheless, he considers his quasi-logical method to be more objective than dialectic.⁵¹ In *Passion*, on the other hand, particularly in the essay on the human personality, Unger seems more comfortable with, and more committed to, the narrative drama. Indeed, Unger speaks of his essay as a form of storytelling, a "storytelling with the austerity of discursive thought rather than the lush particularism of literary art."⁵²

MacIntyre has none of Unger's ambivalence about narrative drama and apparently would accept the characterization of his narrative as an interpretive dialectic. He admits, in fact, that his account is a philosophical history in the Hegelian sense.⁵³ Indeed, he suggests that such an approach is the only one that will allow us to make sense of our current moral crisis.⁵⁴ His recognition of the validity of this kind of account allows him to give greater attention than does the Unger of

⁴⁴ See *id.* at 218.

⁴⁵ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 15.

⁴⁶ C. TAYLOR, *supra* note 43, at 218.

⁴⁷ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 118.

⁴⁸ See *id.* at 118-19.

⁴⁹ See *id.* at 15.

⁵⁰ See *id.* at 118.

⁵¹ See *id.* at 15.

⁵² R. UNGER, *PASSION*, *supra* note 9, at 84.

⁵³ See A. MACINTYRE, *supra* note 8, at 265. MacIntyre also acknowledges Collingwood and Vico as predecessors of his form of argument.

⁵⁴ See *id.* at 39.

Knowledge and Politics to the historical development of liberal consciousness as it has taken form in the lives and works of philosophers.⁵⁵ His work gives the reader the sense that a recognizable form of consciousness is being presented.

Unger⁵⁶ and MacIntyre⁵⁷ reject the notion that they are unfolding a narrow, academic history of ideas. Indeed, they suggest that the limited role we expect academic philosophy to play in social life is itself a reflection of the present moral crisis.⁵⁸ Both authors stress that this crisis is a crisis of everyday life. There are not two separate arenas, one philosophical and the other day-to-day; there is not an absolute separation of the world of events from the world of ideas.⁵⁹ Their works move constantly back and forth between analysis of social events and philosophical arguments. Their account, I believe, provides a way to understand the suspicion often directed at the kind of enterprise in which they are engaged. It allows us to expose the historical underpinnings of what often parades as the definition of sound philosophy. Instead of a method of argument, Unger and MacIntyre offer a way to understand our journey, a journey they hope will end in a reconstructed moral life.

III. THE CRITIQUE OF LIBERALISM

Let me turn now to the claim made by both MacIntyre and Unger that liberalism is a culture in which the disintegration of moral life is inevitable. What follows is my reconstruction of the development of the moral crisis of liberalism, organized around three motifs: the problem of the subject, the crisis of rationality, and the hope for reconciliation. Although I borrow from Unger and MacIntyre, I emphasize aspects of the crisis that MacIntyre and Unger do not. The differences in our accounts are crucial, because whether there is a way out of the crisis depends on how one reconstructs the history of our moral development.

A. *The Significance of the Decline of Aristotelianism*

For both Unger⁶⁰ and MacIntyre,⁶¹ the heart of classical philosophy lies in the theory of "intelligible essences."⁶² According to this

⁵⁵ See, e.g., *id.* at 36-50.

⁵⁶ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 118.

⁵⁷ See A. MACINTYRE, *supra* note 8, at 36.

⁵⁸ See *id.* at 50.

⁵⁹ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 107.

⁶⁰ See *id.* at 31.

⁶¹ See A. MACINTYRE, *supra* note 8, at 58.

⁶² R. UNGER, *KNOWLEDGE*, *supra* note 9, at 31. Although MacIntyre speaks in terms of *telos* and essential nature, he is referring to the same metaphysical concept

view, every object, every stone, every plant had an essence that could be grasped by the human mind.⁶³ As it was thought possible to know "stoneness" or the essence of a stone, it was thought equally possible to know "humanness" or the core of human nature.⁶⁴

On the classical view, our human essence is not immediately given, nor is the course of our development foreordained. If it were, then practical wisdom would have no role to play in making it a reality. Our only task would be to grasp the essence of human nature and then to construct a reality in congruence with that nature. For Aristotle, however, full human development is the result of deliberate cultivation.⁶⁵ The realization of a fully human life is a creative achievement.

In the classical perspective, moreover, the concept of human essence unites fact and value. For the Aristotelian tradition, "human" is a functional concept: to be human is to fulfill the essential function or purpose of human beings.⁶⁶ One can evaluate a particular person or action in terms of this purpose much in the way that one can evaluate animals or objects. An example borrowed from MacIntyre may prove helpful here. As MacIntyre observes, "to call x good (where x may be among other things a person or an animal or a policy or a state of affairs) is to say that it is the kind of x which someone would choose who wanted an x for the purpose for which x 's are characteristically wanted."⁶⁷ A good watch is one that tells time accurately, and a good person is one who acts in accordance with the essential human purpose.⁶⁸ In making any evaluative statement one is making, in effect, a statement of fact: one is describing the object, person, or action in terms of its function.

The kind of reasoning involved in the elaboration of the virtues as they are expressed and developed in social roles is called *phronesis*, or practical reason, in the Aristotelian tradition.⁶⁹ Aristotle distinguishes the "intellectual virtue"⁷⁰ of *phronesis* from two other types of reason,

that Unger identifies as "intelligible essence."

⁶³ See *id.* at 31.

⁶⁴ See *id.* at 41.

⁶⁵ See ARISTOTLE, *NICHOMACHEAN ETHICS* bk. II, 1103a15-1103b25 (M. Os-
wald trans. 1962).

⁶⁶ See A. MACINTYRE, *supra* note 8, at 58.

⁶⁷ *Id.* at 59.

⁶⁸ Aristotle presents this idea at the beginning of the *Nichomachean Ethics* in terms of the roles of different professions. Just as we can identify the proper function of a carpenter and measure a specific carpenter's performance against this ideal, we can identify the proper function of human beings and evaluate an individual's actions against this ideal. ARISTOTLE, *supra* note 65, bk. I, at 1097b25.

⁶⁹ See A. MACINTYRE, *supra* note 8, at 154.

⁷⁰ *Id.*

episteme and *techne*.⁷¹ *Episteme*, or scientific knowledge, involves the contemplation of eternal truths, the laws of the universe—a type of reason inapplicable to human affairs.⁷² Technical knowledge, or *techne*, is directed to the goal-oriented organization of means.⁷³ *Phronesis*, by contrast, is a practical reason that instructs human beings in how they might reach their true end.⁷⁴ It guides an individual's judgment in particular circumstances,⁷⁵ and serves as a mediation between the universal and the particular.⁷⁶

According to Unger, the classical understanding of practical wisdom rests on an understanding of the relationship between the universal and the particular that is foreign to the liberal mentality. Unger argues that liberal consciousness cannot conceive of the intermingling of the universal with the particular.⁷⁷ Unger attempts to demonstrate that the antinomies of liberal thought (fact/value, reason/desire, culture/nature) are generated by the separation of the universal from the particular.⁷⁸

Unger tries to illuminate the codetermination of the universal and the particular in a discussion of how we might conceive of the baroque style.⁷⁹ Liberal thought might see the baroque nominalistically—as a collection of disparate techniques of literary, artistic, and musical composition, with no essential coherence except for the spurious unity bestowed by linguistic convention.⁸⁰ Unger, however, suggests a conception of the baroque as the concretization of a universal, in which particular works manifest the spirit of the baroque although no single work ever fully captures it.⁸¹

Another example of the codetermination of the universal and the particular is legal reasoning, in which “the normative content [of the law] is to be determined in regard to the given case in which it is to be applied.”⁸² Under this formulation, to think like a lawyer is to engage

⁷¹ See ARISTOTLE, *supra* note 65, bk. VI, at 1139b15.

⁷² See A. MACINTYRE, *supra* note 8, at 159.

⁷³ See ARISTOTLE, *supra* note 65, bk. VI, at 1140a5. As Aristotle explains, *techne* is the “trained ability of rationally producing.” *Id.*

⁷⁴ See A. MACINTYRE, *supra* note 8, at 162.

⁷⁵ Thus *phronesis* is inseparable from ethical human actions; according to Aristotle, it tells us “what we ought to do and we ought not to do.” ARISTOTLE, *supra* note 65, bk. VI, at 1143a5.

⁷⁶ See R. UNGER, KNOWLEDGE, *supra* note 9, at 143-44.

⁷⁷ See *id.* at 137.

⁷⁸ See *id.* at 135-37.

⁷⁹ See *id.* at 122.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² H. GADAMER, TRUTH AND METHOD 291 (G. Barden & J. Cumming trans. 1975).

in the kind of rational discourse to which Aristotle referred as *phronesis*.

Yet as Unger⁸³ and MacIntyre⁸⁴ point out, the Aristotelian tradition of an essential human nature and a practical wisdom, with its uniting of fact and value and of the universal and the particular, which guides us to it, is foreign to the liberal mentality. They seek to convince us that the decline of ethics is neither a coincidence nor an inevitable result of anything we have come to know about the nature of normative statements. For them this decline should be understood as an expression of the disintegration of the classical viewpoint and the growth of a modern or liberal consciousness that rejects the validity of a functional view of human nature.

B. *The Identification of Reason with Instrumental Rationality*

With the decline of Aristotelianism, we are left with Appel's system of complementarity. The severance of fact from value leads to the dissociation of truth from normative statements. Our chosen ends cannot be justified; reason can only help us develop the means to those ends. We can assess ends at all only on the basis of their strategic value within an already established value context.⁸⁵ Reason comes to be identified with what Habermas calls "formal rationality," which requires "that the actor be aware of his preferences, that he make precise the underlying values and check them for consistency, that he place them, if possible, in a transitive ordering, and so on."⁸⁶

The limitation of reason to instrumental rationality undermines the very idea of practical rationality, and with it the classical conception of ethics. We are left with a pluralism of value systems, and those who "go to the devil" cannot be rationally condemned.⁸⁷ The inevitable result of the acceptance of this view of reason is a decisionist, or in MacIntyre's terms an *emotivist*, treatment of ethical questions, where emotivism is defined as the belief that "all moral judgments are *nothing but* expressions of preference, expressions of attitude or feeling."⁸⁸ Practical questions are subsumed under *techne*; the life world is colonized. The ends chosen in an individual life are no longer seen as suitable

⁸³ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 32.

⁸⁴ See A. MACINTYRE, *supra* note 8, at 58-61.

⁸⁵ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 43.

⁸⁶ 1 J. HABERMAS, *supra* note 23, at 171.

⁸⁷ See M. WEBER, *Science as a Vocation*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 131, 145-52 (H. Gerth & C.W. Mills trans. 1946).

⁸⁸ A. MACINTYRE, *supra* note 8, at 12.

ble subjects for rational discussion.⁸⁹ Without agreed-upon criteria for judgment, questions of what is good cannot be meaningfully answered. The slogan of our culture, "Do your own thing," now takes on a more sinister meaning: do your own thing because there is nothing else for you to do.

The limitation of reason to instrumental rationality also means that our actions as subjects cannot be rationally comprehended. To the degree that the human sciences adopt the methods of the physical sciences,⁹⁰ human behavior is of interest only insofar as it can be objectified—explained without reference to the preferences or the intent of the subject. Such a view stands in marked contrast to the Aristotelian understanding of human action that emphasizes the ends of man. We arrive at a concept of the human being that portrays it as an entity without the Aristotelian complexity and richness.

There is irony here. The hallmark of modernity is its belief in the autonomous subject. Yet the objectifying tendency inherent in instrumental rationality threatens subjectivity. The irony is intensified when it is recalled that the proclaimed goal of the instrumental rationality hailed by the Enlightenment as reason itself was the taming of the objective world on behalf of the subject. We, the thinking beings, were to conquer all that stood between us and a fully rational world. The subject was to be sovereign. Yet this striving for sovereignty apparently turned against itself. How could this be the case?

C. *The Problem of the Subject*

Theodor Adorno and Max Horkheimer have described the poison at the center of the Enlightenment view of the constitutive subject.⁹¹

⁸⁹ For an elaboration of this idea, see R. UNGER, *KNOWLEDGE*, *supra* note 9, at 42-44. Unger suggests that in modern liberal society, our choices cannot be justified by resort to reason. *See id.* at 42. He does qualify this position, however. First, he notes that we often do, in fact, attempt to analyze our choices. We treat our desires as facts and explain them causally in psychology, and we treat them as an expression of our individuality, as contingent choices, which may be criticized and justified in ethics. *See id.* at 42-43. Unger points out, however, that we never examine our desires as both facts and ends at the same time, and that the relation between these two understandings "remains forever a mystery." *Id.* at 43. Secondly, reason does play a role in ordering our desires and providing the most effective means to achieve them. The basic point, however, remains that the role of reason is limited.

⁹⁰ *See* A. MACINTYRE, *supra* note 8, at 83 (examining the mechanization of the study of human behavior).

⁹¹ M. HORKHEIMER & T. ADORNO, *THE DIALECTIC OF ENLIGHTENMENT* (J. Cummings trans. 1972). Although there is much in Horkheimer and Adorno's and Foucault's critique of the Enlightenment that is reminiscent of the postmodern critique of humanism, the intent and the approach are different. Foucault shares with Adorno and Horkheimer the desire to undermine constitutive subjectivity. He argues that it is

The subject's striving for control, combined with the limitation of reason to instrumental rationality, unleashed the dialectic of the Enlightenment:

The awakening of the self is paid for by the acknowledgement of power as the principle of all relations. In view of the unity of this *ratio*, the divorcement between God and man dwindles to the degree of irrelevancy to which unswervable reason has drawn attention since even the earliest critique of Homer. . . . Man's likeness to God consists in sovereignty over existence, in the countenance of the lord and master, and in command.

Myth turns into enlightenment, and nature into mere objectivity. Men pay for the increase of their power with alienation from that over which they exercise their power. Enlightenment behaves toward things as a dictator toward men.⁹²

In the story Adorno and Horkheimer tell, the subject as a natural being falls prey to the endless process of the subjugation of the object, of nature. The master-slave dialectic takes its toll: the thinking subject's striving for mastery corrupts it. Reason is geared solely to the preservation of the subject, which through the separation of consciousness has been pitted against the object. At the same time, the phenomenon of consciousness itself implies a pitting of the subject against itself. The part of our humanness that is natural—sexual desire, our longing for warmth and comfort—succumbs to a rationality whose mission is to drive into submission an essential part of what we are. The goal of

necessary "to dispense with the constituent subject, to get rid of the subject itself, that is to say, to arrive at an analysis which can account for the constitution of the subject within a historical framework." M. Foucault, Lecture at the University of California at Berkeley (1980). What he rejects, however, is the validity of a negative dialectics that would use the strength of the subject to break through the fallacy of the constitutive subject. For Foucault, there is no subject other than the constitutive subject, and Adorno's attempt indirectly to indicate a subject free from the mark of domination is mistaken. According to Foucault, subjectivity and domination are locked in a deadly embrace, from which it is impossible to rescue an untainted ideal of the subject. To hope that the spell cast on our culture by the allure of sovereignty can be broken through an immanent critique is pure whimsy. For Foucault, the attempt to save the subject through negative dialectics is self-defeating and ends by enforcing the constitutive subjectivity it seeks to undermine.

Thus the crucial difference between Adorno and Horkheimer and Foucault is in their philosophical approaches to the telling of the tale of subjectivity. For Foucault, the history of the subject can be told only from the outside; the very dispersion of the individual in exteriority belies Adorno and Horkheimer's notion that the history of the subject can be told in terms of an internal dialectic.

⁹² *Id.* at 9.

freedom defined as sovereignty turns against those whom it was to make free.

Women become the most obvious victims of this ruthless drive against all that is labeled irrational, because they symbolize the natural, which must be repressed and controlled. The enchained and brutalized women of the Marquis de Sade's fantasies become the symbol of our desire, beaten, as it must be, into submission. Love, because it denies the independence of the ego, has to be negated. Lust, tamed by the mind and manipulated by reason, takes its place. The Enlightenment ideal of sovereignty demands nothing less than the death of the heart.

Adorno and Horkheimer expose the defects of an instrumental rationality that can think of nature and our embodied selves only as objects. Their critique of the Enlightenment expresses a longing for a more integrated way of being human. Yet at no time do they reject the liberating impulse of the Enlightenment.⁹³ For them, its history is also a history of the subject's acquisition of freedom through the power of self-reflection. Their critique of the Enlightenment is in this sense an immanent critique. On their view, there can be a coherent account of the internal dynamic of subjectivity precisely because the ideas of freedom and self-reflection are bound together in the dialectic of the Enlightenment. Their goal is to unfold the objectivity of social domination in relation to a subjectivity reified by its own search for liberation and self-preservation. Through his negative dialectics, Adorno seeks to remind us that the liberal view of subjectivity is not the subject's natural habitat.⁹⁴ His method is to use the strength of the subject to break through the fallacy of the constitutive subject. Adorno, however, does not attempt positively to prove that there is or can be a subject divested of sovereignty. Instead he proceeds by carefully chipping away at both sides of the subject/object dichotomy, knowing all the while that he cannot systematize his enterprise. Until the end, Adorno and Horkheimer remained the conscience of the Enlightenment's liberating impulse, even if they believed that the impulse could not be directly expressed in theoretical writings but only indirectly in works of art or through a negative dialectics.

The critical theory of Habermas develops this commitment to the recognition of the liberatory impulse of the Enlightenment. According to Habermas, the project of the Enlightenment must be criticized, not simply discarded. Indeed, for him, the commitment to this liberatory impulse is essential to a truly modern solution to the problem of

⁹³ See generally T. ADORNO, *supra* note 21.

⁹⁴ T. ADORNO, *supra* note 21, at XXX.

decisionism.⁹⁵

Unger and MacIntyre, on the other hand, remain convinced that the modern project of the Enlightenment, even when critically reconstructed, cannot fill the vacuum left by the demise of a functional view of human nature. They want us to understand the reasons for the failure of the Enlightenment and, more importantly, to recognize that it has indeed failed.

D. *The Critique of Kantianism*

Both Unger⁹⁶ and MacIntyre⁹⁷ make Kant central to their critique of the Enlightenment. Both see Kant as the Enlightenment figure *par excellence* and criticize his attempt to formulate a decisive test for moral maxims. As Unger⁹⁸ and MacIntyre⁹⁹ observe, Kant's test for moral propositions is whether they can be universalized: the *categorical imperative* is to "act only on that maxim through which you can at that same time will that it should become a universal."¹⁰⁰

Unger and MacIntyre uncover several problems in this formulation. The first problem is that the categorical imperative is too easily satisfied; it can be used to justify some extremely trivial moral maxims and even some that seem obviously immoral.¹⁰¹ The second problem is that because the categorical imperative is so abstract, it cannot give us the kind of concrete guidance we want from a moral theory.

According to MacIntyre, there is a formulation of the Kantian ethic that gives enough specific content to the categorical imperative to exclude trivial maxims: "Always act so as to treat humanity, whether in your own person or in that of others, as an end, and not as a means."¹⁰² For MacIntyre, however, this reformulation of Kant cannot be rationally justified. One can refuse to live by it and can even offer a contrasting maxim—such as, "Let everyone except me be treated as a

⁹⁵ See generally Habermas, *The Entwinement of Myth and Enlightenment: Re-Reading Dialectic of Enlightenment*, NEW GERMAN CRITIQUE, Spring/Summer 1982, at 13.

⁹⁶ See R. UNGER, KNOWLEDGE, *supra* note 9, at 51.

⁹⁷ See A. MACINTYRE, *supra* note 8, at 62.

⁹⁸ See R. UNGER, *supra* note 9, at 51.

⁹⁹ See A. MACINTYRE, *supra* note 8, at 45.

¹⁰⁰ I. KANT, GROUNDWORK OF THE METAPHYSIC OF MORALS 421 (H. Paton trans. 3d ed. 1956).

¹⁰¹ See A. MACINTYRE, *supra* note 8, at 45-46. As MacIntyre explains, inconsequential maxims, such as "Always eat mussels on Mondays in March," and disturbing maxims, such as "Persecute all those who hold false religious beliefs," are consistent with Kant's test. *Id.* at 46.

¹⁰² *Id.* at 46.

means"¹⁰³—and still meet the demands of the categorical imperative.

On MacIntyre's view, the Kantian ethic itself is simply a matter of decisionism.¹⁰⁴ Kant smuggles in the teleological framework of "God, freedom, and happiness" as the presupposition of practical reason, and it is this framework that allows him to fill in the emptiness of the categorical imperative. Take away the framework and his morality collapses. Yet it is precisely the acceptability of a framework given to us by tradition that the Enlightenment set out to challenge; God, freedom, and happiness are all called into question.¹⁰⁵ The framework folds under the pressure brought to bear on it by the Enlightenment skepticism of all presuppositions—its "prejudice against prejudice."¹⁰⁶ The crumbling of tradition is seen as a necessary moment in the ascension of the individual subject. The notion of the autonomous self displaces any teleological framework. Individualism is also a framework, but if MacIntyre¹⁰⁷ and Unger¹⁰⁸ are right, it is not one that allows us to develop an authoritative normative system.

The price we pay for the loss of practical reason is high. We seem to be left with Adorno's and Horkheimer's warning about the dialectic inherent in the Enlightenment. The unfolding of the dialectic puts us in an ironic position. Our ability to achieve technical miracles subsumes our capacity for moral reasoning. We are confronted with the benefits and horrors that technology can bring in its wake, but we seem to have been robbed of the shared public standards that would allow us to preserve the benefits while guarding against the dangers. "More" becomes its own justification.

The self of our culture internalizes the sense of powerlessness created in the wake of moral skepticism, the sense of loss of freedom and disintegration of meaning associated with life in a social milieu emptied of objective standards with personal or social force.¹⁰⁹ The sovereign self loses its glory. The irony of decisionism is that it easily gives way to paralysis.

The loss of shared standards robs the individual of a sense of purpose. We become what we are as if by accident. Choice loses its mean-

¹⁰³ *Id.*

¹⁰⁴ *See id.* at 54-55.

¹⁰⁵ *See id.* at 56.

¹⁰⁶ *See* H. GADAMER, *supra* note 83.

¹⁰⁷ *See* A. MACINTYRE, *supra* note 8, at 68.

¹⁰⁸ *See* R. UNGER, KNOWLEDGE, *supra* note 9, at 155. In his more recent work, *Passion*, Unger does try to develop the moral implications of the modernist view of the self.

¹⁰⁹ *See* A. MACINTYRE, *supra* note 8, at 68; R. UNGER, KNOWLEDGE, *supra* note 9, at 26.

ing when it cannot be justified, when any other decision would have been equally good. The self finds itself in a life that seems to have happened to it:

After all, by the time they have reached the middle of their life's journey few people remember how they have managed to arrive at themselves, at their amusements, their point of view, their wife, character, occupation and successes, but they cannot help feeling that not much is likely to change any more. It might even be asserted that they have been cheated, for one can nowhere discover any sufficient reason for everything's having come about as it has. . . . Something has had its way with them like a fly-paper with a fly; it has caught them fast, here catching a little hair, there hampering their movements, and has gradually enveloped them, until they lie buried under a thick coating that has only the remotest resemblance to their original shape.¹¹⁰

Musil's Ulrich rebels against the seemingly arbitrary exposition of social role through his desire to be the man without qualities. Only thus can he avoid the fly paper. But, as Unger tells us, the attempt is self-defeating.¹¹¹ One replaces the experience of being trapped in a set of artificial meanings with a sense of the unbearable lightness of being.¹¹² Unger's point in *Knowledge and Politics* is that we gain substance and experience our own weightiness only in relation to one another.¹¹³ To deny connection is ultimately to deny the self. The seemingly opposed alternatives actually collapse into each other, for "the man without qualities consists of qualities without a man."¹¹⁴

We have come full circle. We are returned to the dilemma of a subject undermined by the very rationality and individualism that were to give it its dignity.¹¹⁵ Adorno suggests that the freedom of bourgeois

¹¹⁰ R. MUSIL, 1 THE MAN WITHOUT QUALITIES 151 (E. Wilkins & E. Kaiser trans. 1979).

¹¹¹ See R. UNGER, KNOWLEDGE, *supra* note 9, at 60-62.

¹¹² See M. KUNDERA, THE UNBEARABLE LIGHTNESS OF BEING (M.H. Heim trans. 1984).

¹¹³ See R. UNGER, KNOWLEDGE, *supra* note 9, at 60-61.

¹¹⁴ 1 R. MUSIL, *supra* note 111, at 172.

¹¹⁵ We are thus left with the paradox of liberal individualism:

The individual's independence, inappropriately stressed by liberal ideology, does not prevail At times the individual would oppose himself to society as an independent being, though a particular one—a being capable of rationally pursuing its own interest. In that phase, and beyond it, the question of freedom was the genuine question whether society permits the individual to be as free as it promises; and thus it was also the question whether society itself is as free as it promises. Temporarily, the indi-

society is the unfreedom of the individual, that the ultimate toll of liberalism is its restriction of personality.¹¹⁶ As MacIntyre and Unger argue, we can put an end to the disintegration of the self only by founding a community based on shared ethical standards. And we can create such a community only if we can move beyond the limits of liberal individualism.

IV. THE ALTERNATIVE: MACINTYRE'S AND UNGER'S REVIVAL OF NEOARISTOTELIANISM

A. *MacIntyre's Account*

MacIntyre's call for a return to Aristotelianism is both more specific and more qualified than the sweeping claim that we must incorporate the classical tradition in any comprehensive vision of humanity. He insists that he wants us to return to an Aristotelian elaboration of the virtues. At the same time, however, he wants to reject what is philosophically invalid and politically objectionable in the Aristotelian framework.¹¹⁷

This section focuses on three problems with MacIntyre's work. First, without Aristotle's metaphysical biology, which MacIntyre rejects, MacIntyre cannot elaborate a *telos* of human life, a concept on which the Aristotelian framework depends. Second, his ambivalence toward the Enlightenment leads MacIntyre to neglect its valuable emphasis on autonomy and equality. Third, although he encourages us to abandon our current framework and return to an Aristotelian one, MacIntyre offers no convincing account of how it is possible for us to make this choice without having to jump over our own shadow.

1. MacIntyre's Attempt to Rescue Aristotelianism from Aristotle's Metaphysical Biology

MacIntyre considers Aristotle's metaphysical biology to be philosophically invalid.¹¹⁸ This metaphysical biology, it will be remembered, rests upon the premise that human beings, like all species, have a particular nature that moves them towards a specific *telos*. MacIntyre

vidual looms above the blind social context, but in his windowless isolation he only helps so much more to reproduce the context.

T. ADORNO, *supra* note 21, at 219.

¹¹⁶ See *id.* at 262.

¹¹⁷ For an excellent discussion and critique of MacIntyre, see Bernstein, *Nietzsche or Aristotle?: Reflections on Alasdair MacIntyre's After Virtue* (Book Review), 67 *SOUNDINGS* 6 (Spring 1984).

¹¹⁸ See A. MACINTYRE, *supra* note 8, at 162.

finds it philosophically untenable in the present day to believe that such a thing as an essential human nature exists.¹¹⁹ Yet he realizes that it is precisely Aristotle's metaphysical biology that allowed him to elaborate the virtues within a comprehensive understanding of human development.¹²⁰ MacIntyre understands that a substitute account of human development would be necessary to provide a satisfactory account of the virtues.

MacIntyre rejects the aspect of the Aristotelian tradition he finds most politically offensive: its acceptance of the exclusion of some human beings from the full life of the community.¹²¹ As MacIntyre notes, the Aristotelian metaphysical biology included the concept of a hierarchy among human beings.¹²² Only some individuals were considered capable of full human development; others, such as barbarians or slaves, were thought to possess lesser degrees of humanity and were allotted social roles accordingly.¹²³ For example, women played a less significant role in community life than men, because in classical Greece women were thought to possess an inferior degree of humanity. Women had a set of standards appropriate to their role and earned a measure of respect if they fulfilled that role well. But the role itself was not challenged, for to challenge it was to question the essential nature of women. MacIntyre points out that Aristotle's ethical account is inseparable from his view of life in the Greek city-state.¹²⁴ And, as MacIntyre explains, Aristotle's hierarchy owes much to the perspective of his particular political culture.¹²⁵ Yet MacIntyre would admit that the affirmation of this natural hierarchy, reinforcing as it does sexual, racial, and other social inequities, seems patently objectionable today.

If MacIntyre rejects Aristotle's metaphysical biology, one might wonder in what sense his vision is still Aristotelian. He answers this question, I think, by attempting to define what he calls the "core concept of virtue."¹²⁶ This definition entails three interrelated stages: 1) a definition of a "practice"; 2) an account of the "narrative order of a

¹¹⁹ See *id.* at 163.

¹²⁰ See *id.* at 162 ("Aristotle's teleology presupposes his metaphysical biology.").

¹²¹ See *id.* at 159 ("What is likely to affront us—and rightly—is Aristotle's writing off of non-Greeks, barbarians and slaves, as not merely not possessing political relationships, but as incapable of them.").

¹²² See *id.*

¹²³ *Id.*; see also *id.* at 184 ("[V]irtues attach not to men as inhabiting social roles, but to man as such.").

¹²⁴ See A. MACINTYRE, *supra* note 9, at 163.

¹²⁵ See *id.* at 159 ("This blindness of Aristotle's was not of course private to Aristotle; it was part of the general, although not universal, blindness of his culture.").

¹²⁶ *Id.* at 186.

single human life"; and 3) a description of a "moral tradition."¹²⁷

MacIntyre's definition of a practice is so intricate that it deserves to be quoted in its entirety:

By a 'practice' I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.¹²⁸

MacIntyre sets out to explicate several of the terms on which his definition relies. He explains the concept of "goods internal to" a practice by the example of teaching a child to play chess. Initially, he suggests, the child might learn to play only if given, say, money or a piece of candy, which would represent for MacIntyre goods *external* to the practice of playing this game.¹²⁹ In time, however, the child may learn to play for the goods *internal* to the game—for example, the achievement of a particular "analytical skill, strategic imagination and competitive intensity."¹³⁰ It is only when the child plays the game with these internal goods in mind that she can be truly said to be engaging in a practice. Unlike the money or candy, these internal goods are not particular to the individual; they are for the good of the entire community of practitioners.¹³¹ By having them as a goal the individual practitioner can indeed benefit the others: the child in MacIntyre's example may discover a new chess move that will enhance the game's practice.

As MacIntyre's definition of a practice indicates, there are rules and standards of excellence for a practice that constitute the practice itself.¹³² When an initiate enters a particular practice, she must learn the rules and accept the authority of the definitive standards lest she be said not to be engaged in the practice at all.¹³³ Here MacIntyre stresses the social aspect of the practice: the child cannot obey certain rules and pay attention to a few standards and still be said to play the "complex form of socially established cooperative activity" called chess.¹³⁴ Like

¹²⁷ *Id.* at 186-87.

¹²⁸ *Id.* at 187.

¹²⁹ *See id.* at 188.

¹³⁰ *Id.*

¹³¹ *See id.* at 190-91.

¹³² *See id.* at 187.

¹³³ *See id.* at 190.

¹³⁴ *Id.* at 189.

the practice's goods, however, its standards and rules are not immutable; they have changed in the history of the practice and are subject to the practitioners' criticism.¹³⁵ MacIntyre suggests—and this seems to be the final point in his definition—that by pursuing the practice's present goods according to its authoritative standards of excellence and rules, the practitioner might arrive at new conceptions of these goods, standards, and rules.¹³⁶

With this definition of a practice MacIntyre arrives at a preliminary definition of the "core concept of the virtue": "A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods."¹³⁷ Whereas numerous virtues exist specific to particular practices, three stand out in MacIntyre's eyes "as necessary components of any practice": "justice, courage and honesty."¹³⁸ The necessity for these virtues becomes clear, notes MacIntyre, when we consider that every practice, defined as a "cooperative human activity," involves relationships among practitioners.¹³⁹ Without these virtues, he says, we cannot pursue with others the goals of any practice in accordance with its standards.¹⁴⁰ Without honesty, for example, it would be difficult for two individuals to cooperate in achieving a goal of a particular practice.¹⁴¹

After this account of practices MacIntyre makes a preliminary assessment of why his argument is Aristotelian. Although he gives three reasons for his characterization,¹⁴² one in particular deserves mention. MacIntyre believes that his concept of practices unites fact and value, a union that, as we have seen, was an essential part of Aristotle's philosophy.¹⁴³ From MacIntyre's perspective, an action is evaluated in terms of whether the actor manifested or failed to manifest a particular virtue. Yet to evaluate an action in this way, observes MacIntyre, is also to describe or explain the action.¹⁴⁴ To return to our chess example, one could evaluate a particular chess move for its exhibition of a virtue inherent in the practice of playing chess, and this evaluation would entail an explanation of why the move occurred.

¹³⁵ *Id.* at 190.

¹³⁶ *See id.* at 191-92.

¹³⁷ *Id.* at 191.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *See id.* at 192.

¹⁴¹ *See id.*

¹⁴² *See id.* at 197-99.

¹⁴³ *See id.* at 199.

¹⁴⁴ *See id.*

There are two problems with this account of practices. One is that some very objectionable activities could meet MacIntyre's definition of a practice.¹⁴⁵ In *After Virtue* MacIntyre anticipates this objection. Even though he believes that such activities as torture and sadomasochism would not qualify under his definition of practices, he realizes that practices themselves may lead to evil, as for example in the case of a prominent painter neglecting his family.¹⁴⁶ As a preliminary answer MacIntyre suggests that he has defined the virtues only in terms of practices, not good or right practices, and that thus the practices themselves should be subject to moral criticism.¹⁴⁷ This criticism, he observes, can originate from the virtues themselves: justice, for instance, may sustain a practice, yet it can also be used to criticize a practice. MacIntyre, however, acknowledges that this preliminary answer may not resolve the problem of objectionable activities.¹⁴⁸

A second, related difficulty is that the traditionally accepted standards for excellence—the internal goods—in a supposedly perfectly legitimate practice, such as lawyering, may be objectionable.¹⁴⁹ One of the prime “virtues” associated with lawyering in an adversarial system

¹⁴⁵ As Bernstein points out:

[I]t is important to realize just how wide the range of practices is. For while not everything is a practice, there do not seem to be any a priori limitations on what may become a practice. Given his own “definition” of a practice, spying, smuggling, safecracking, the art of the executioner, and (despite MacIntyre’s suggestion to the contrary) even torturing may become practices. (Indeed, the types of practices that Foucault analyzes in his own genealogical unmasking of modernity—and which he claims constitute the “disciplinary society” or the “carceral archipelago”—appear to satisfy MacIntyre’s definition of a practice.) The fact that there may be external goods associated with these practices does not disqualify them as practices. In each case we can discriminate “internal goods” characteristic of these practices.

Bernstein, *supra* note 117, at 13.

¹⁴⁶ See A. MACINTYRE, *supra* note 8, at 199-200.

¹⁴⁷ See *id.* at 200.

¹⁴⁸ See *id.*

¹⁴⁹ MacIntyre’s initial response might be that lawyering is not a practice but a profession. But then he would have to offer us standards by which to determine when a practice has become so professionalized that it is no longer a practice. It cannot simply be that one receives money for a particular practice. People receive money for playing chess and football, and MacIntyre considers chess and football practices. If what is required is a highly developed set of techniques and skills associated with a particular activity, lawyering certainly meets this requirement. Law has internal as well as external goods. The goal is to beat the opponent within the rules of the game, as well as to get rich. If MacIntyre’s point is that real practices incorporate the standards of honesty, justice, and courage, then he would have to shorten considerably his list of practices. The notion of practice would be defined to exclude evil. But MacIntyre explicitly notes that some practices are simply evil. So the standard for what he considers a practice cannot be that a practice embodies evil and excludes the “pure virtues.” See generally Bernstein, *supra* note 117.

is the determination to beat the opponent. One of the popular criticisms of lawyers is that this "virtue" is in conflict with the virtues we value more generally. Such a conflict raises a difficult question for MacIntyre. How are we to challenge the tradition of internal goods associated with a particular practice? How are we to reconcile generally valued modes of human conduct, such as honesty and justice, with a practice that seems to undermine their legitimacy?

MacIntyre's answer is that we must "accept as necessary components of any practice with internal goods and standards of excellence the virtues of justice, courage, and honesty."¹⁵⁰ But this answer only raises further questions. Is this a set of universally valued virtues that we can use to judge the tradition of virtues associated with specific practices? If so, it appears to represent a move in the direction of the Enlightenment. Certainly, MacIntyre has not convincingly shown us that excellence in a particular practice requires the virtues of honesty, justice, and courage. The standards of "professional responsibility" for modern lawyers do not necessarily incorporate these virtues. Indeed, history offers many examples of these fundamental virtues actually preventing people from achieving excellence in a particular practice precisely because the tradition associated with that practice failed to incorporate these virtues or even demanded that they be suppressed.

MacIntyre answers some of the difficulties arising from his account of the virtues in terms of practices with the second stage of his definition of the "core concept of a virtue": the "narrative order of a single human life."¹⁵¹ That MacIntyre's second stage deals with the unity of a life evidences his Aristotelianism for, as he points out, Aristotle centered his virtues upon the concept of a whole human life progressing toward its *telos*. Yet MacIntyre gives this unity a twist by defining it as a narrative order or story. His interest in the narrative seems to arise from the conclusion of many contemporary historians and literary theorists that individuals make sense of their lives through narratives.¹⁵² In MacIntyre's view, the unity of the individual life will be the narrative that results from the individual's search for an answer to the questions "What is the good for me?" and "What is the good for man?"¹⁵³ The virtues acquire an added definition in this context of the quest for the good life: not only do they enable individuals to achieve goods internal to the practices, but they sustain men and women in the

¹⁵⁰ A. MACINTYRE, *supra* note 8, at 191.

¹⁵¹ *Id.*

¹⁵² *See, e.g., id.* at 212.

¹⁵³ *Id.* at 218.

quest.¹⁵⁴ According to MacIntyre, the good that will orient the narratives of individual lives is not a *telos* separate from the search for it: "[T]he good life for man is the life spent in seeking for the good life for man, and the virtues necessary for the seeking are those which will enable us to understand what more and what else the good life for man is."¹⁵⁵

MacIntyre's concept of the unity of a human life does establish something of a *telos* that will help individuals to place their practices in an order and settle conflict between them.¹⁵⁶ Moreover, it may help to eliminate from the realm of practices those activities whose virtues do not contribute to the quest for the good life. But there are still problems with MacIntyre's construction of a *telos* of human existence. The question "What is the good for me?" can be answered in a number of different ways. How is one to choose between competing versions of what is good for oneself? Should one follow the virtues of a given practice, or instead the virtues that should be implicit in every practice—justice, courage, honesty? Is there some overarching human good? MacIntyre suggests that such a general good does exist:

It is in looking for a conception of *the* good which will enable us to extend our understanding of the purpose and content of the virtues, for a conception of *the* good which will enable us to understand the place of integrity and constancy in life, that we initially define the kind of life which is a quest for the good It is in the course of the quest and only through encountering and coping with the various particular harms, dangers, temptations, and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood. A quest is always an education both as to the character of that which is sought and in self-knowledge.¹⁵⁷

MacIntyre's sentiment here is very close to the humanist notion of *Bildung*. Such a vision offers an account of why we would pursue the good and not just the immediate gratification of our own immediate desires—an account that is essential if MacIntyre is to show us the relationship between pursuing the *good for me* and the seeking out of the *good for humankind*. As Gadamer describes it,

¹⁵⁴ See *id.* at 219.

¹⁵⁵ *Id.*

¹⁵⁶ See *id.* at 202 ("[W]ithout an overriding conception of the *telos* of a whole human life, conceived as a unity, our conception of certain individual virtues has to remain partial and incomplete.").

¹⁵⁷ *Id.* at 219.

[*Bildung*] embraces a general sense of proportion and distance in relation to itself, hence is capable of being raised above itself to universality. To distance oneself from oneself, and from one's private purposes, means to look at these in the way that others see them. This universality is by no means a universality of concept or of the understanding. A particular is not determined by a universal, nothing is proved conclusively. The universal viewpoints to which the cultivated man keeps himself open are not a fixed applicable yardstick, but are present to him only as the viewpoints of possible others.¹⁵⁸

There is nothing essentially Aristotelian, however, about this vision. Indeed, the expansiveness of mind associated with *Bildung* constantly seeks out what is of value in the new and does not, like MacIntyre, simply reject the present out of hand. MacIntyre, to be sure, maintains a critical distance from the Aristotelian schema he defends, but this critical distance does not open him up to ethical possibilities other than the stark either/or he offers us. That either/or leads MacIntyre to seek out the firm yardstick that the open-ended redefining of the good would seem to preclude.

If MacIntyre is to provide us with a firm yardstick he must tell us why it is necessary for human beings to engage in this quest as he has defined it. Do they simply decide that this quest is in their interest? What does MacIntyre have to say to those who decide otherwise?

One could argue that in the third stage of his definition of the "core concept of virtue," a definition of a "moral tradition," MacIntyre provides us with a way to avoid decisionism. In this step MacIntyre points out that we do not create our moral world.¹⁵⁹ Rather, we are all born into specific social circumstances; we have, for example, a nation, an ethnic background, and a family.¹⁶⁰ These social circumstances supply traditions, which in turn provide us with particular traditional goals.¹⁶¹ For MacIntyre, the traditions constitute our "moral starting point,"¹⁶² the "moral particularities" we need in order to begin our search for the good life.¹⁶³ MacIntyre thus arrives at the third aspect of his definition: virtues are what sustain "those traditions which provide

¹⁵⁸ See H. GADAMER, *supra* note 82.

¹⁵⁹ See A. MACINTYRE, *supra* note 8, at 220.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 222 ("Within a tradition the pursuit of goods extends through generations, sometimes through many generations.").

¹⁶² *Id.* at 220.

¹⁶³ *Id.* at 221.

both practices and individual lives with their necessary historical context."¹⁶⁴

One wonders, however, whether MacIntyre's concept of a tradition furnishes answers to the problems that his notion of a virtue was intended to solve, particularly the problem of decisionism. There might be different definitions of the good arising from different traditions. To this objection MacIntyre is particularly sensitive, for he criticizes Aristotle for not understanding the tragic situation that he defines as "the conflict of good with good."¹⁶⁵ Different traditions—the family, the country, the profession—may present the individual with different goods that cannot be reconciled, and the tragedy lies in the irreconcilability.¹⁶⁶ MacIntyre reintroduces an element of decisionism here with the portrayal of the individual trying to decide which good to follow. MacIntyre would probably argue that the tragic choice is unlike that of the modern man or woman trying to decide which of competing moral viewpoints to adopt: whereas in the latter situation the individual would be deciding between moral stances that are equal because none is essentially correct, in the former the tragic actor would be selecting one of two "authentic and substantial" goods.¹⁶⁷ But if this distinction is unconvincing, then his concept of a tradition, the final step in his definition of a virtue, cannot free us from decisionism.

MacIntyre's appeal to tradition also poses another, more fundamental dilemma. Our tradition is one in which the basis for moral decision has been undermined. We therefore must find a way to criticize this tradition if we are to follow MacIntyre's road. But once critique is not only allowed for but understood as necessary, the force of the appeal to tradition as the counterweight to the decisionism implicit in the second part of MacIntyre's definition of a practice is undermined.

In sum, although MacIntyre seriously attempts to retain the Aristotelian framework without Aristotle's metaphysical biology, his definition of the "core concept of virtue" makes us wonder whether his project has succeeded. Without recourse to the Aristotelian concept of human nature, MacIntyre finds it difficult, if not impossible, to elaborate a determinate *telos* of human life. At the end of his definition, therefore, we seem left with no exit from the decisionism or emotivism in which we find ourselves.

¹⁶⁴ *Id.* at 223.

¹⁶⁵ *Id.* at 163.

¹⁶⁶ See *id.* at 224 ("[T]he tragic protagonist cannot do everything that he or she ought to do.").

¹⁶⁷ *Id.* at 224.

2. MacIntyre's Ambivalent Attitude Toward the Enlightenment

MacIntyre's second problem is his ambivalent relationship with the Enlightenment. Throughout *After Virtue* MacIntyre insists that the project of the Enlightenment, the project of providing a "rational vindication of morality,"¹⁶⁸ has failed.¹⁶⁹ His book embodies a lengthy critique of the Enlightenment and of its representative thinkers, such as Kant. In his account of traditions,¹⁷⁰ for example, MacIntyre seems to introduce a notion of a tradition that runs counter to the Enlightenment's "prejudice against prejudice."

Although MacIntyre criticizes the Enlightenment, he implicitly adopts certain Enlightenment principles, particularly in his rejection of the hierarchical nature of Aristotle's view of humanity. As we saw earlier, MacIntyre finds fault with Aristotle's definition of human nature, which characterized some individuals as slaves by nature and thus relegated them to inferior social roles. MacIntyre attributes this definition partly to Aristotle's inability to free himself from his own cultural prejudices.¹⁷¹ By criticizing Aristotle's view, however, MacIntyre seems to be adopting a principle that owes something to the Enlightenment's spirit of democracy. One might label this the "no exclusion" principle: every individual should be free to participate fully in community life and to select her role.¹⁷²

The spirit of democracy, however, is not the only Enlightenment principle. Not only did the Enlightenment criticize traditional social roles, but it also questioned the notion that our lives should be determined solely by these roles. The Enlightenment includes the principle that we might call the "expressive ideal," suggesting that the self can be defined as an entity free from its containment within social roles. This principle appears in MacIntyre with his concept of a narrative unity of a human life. For only when a self is free from its social roles can it begin to ask, as does MacIntyre's individual, "What is the good for me?" and can it embark on its narrative quest.¹⁷³

¹⁶⁸ See *id.* at 50.

¹⁶⁹ See, e.g., *id.* at 36-61, 118. What is more, MacIntyre leaves little doubt that in his opinion the project of the Enlightenment was bound to fail from the very outset. See, e.g., *id.* at 51-52.

¹⁷⁰ See *id.* at 220-22.

¹⁷¹ See *id.* at 159.

¹⁷² Bernstein is right that MacIntyre implicitly acknowledges that any adequate conception of the good life and the virtues cannot and should not exclude in principle any member of the human species. See Bernstein, *supra* note 117, at 25.

¹⁷³ See, e.g., A. MACINTYRE, *supra* note 8, at 218. According to MacIntyre, of course, the unity of moral life presupposes the individual's asking the corollary question, "What is the good for man?" See *id.* at 219.

MacIntyre's explicit rejection of the Enlightenment project¹⁷⁴ together with the implicit adoption of its principles creates a tension that appropriately characterizes our present situation, a tension between a desire to return to a true community life and a wish to retain individual freedom and autonomy. Unfortunately, MacIntyre's condemnation of the Enlightenment seems to triumph in *After Virtue*. This simple negation of the Enlightenment in the name of neoAristotelianism poses a conservative danger. Particularly as a woman, I value the freedom from traditional views of human nature and roles made possible by the Enlightenment principles.¹⁷⁵

In *After Virtue* MacIntyre often comes dangerously close to denying the value of autonomy altogether. Although he speaks forcefully against the distortions in the Marxist tradition, MacIntyre fails to see that one of those distortions has been the denial of the value of autonomy. His call for a more meaningful community life is well taken, but his antiliberalism should not be allowed to obscure the difficulties of achieving a modern reconciliation between the individual and the community without diminishing the values of autonomy and equality. This question preoccupied Hegel throughout his life. As Hegel never lets us forget, the most for which the modern world can hope is a *self-conscious* reconciliation between individual and community. We cannot return to a oneness with the community that completely denied the independence of the subject; our only hope is to move forward, incorporating the best of what we have been and become.

Yet MacIntyre barely speaks to Hegel's attempt to move beyond liberal individualism, focusing instead on Marxism as the primary alternative to liberalism. It is easy to understand why MacIntyre gives the version of Marxism that he presents such short shrift. Marxists, he

¹⁷⁴ As Bernstein remarks, MacIntyre's out-of-hand rejection belies his own historical examination of contemporary moral outlooks. Ironically, MacIntyre, who is so sensitive to how every moral philosophy has a particular sociology as its counterpart and must itself be understood in its historical and social context, distorts the social context in which the Enlightenment project emerged. For we do a grave injustice to the Enlightenment if we fail to appreciate how far it was a legitimate protest against hypocrisy and injustice, how acutely sensitive it was to the failures of moral and political ideologies that systematically excluded whole groups of human beings from participation in the good life and legitimated political beliefs that masked determinization. See Bernstein, *supra* note 117, at 29.

¹⁷⁵ MacIntyre salutes the republicanism of the eighteenth century for its glorious if desperate attempt to achieve such a reconciliation. See A. MACINTYRE, *supra* note 8, at 236-38. For example, he notes that the "republican conception of justice was defined basically in terms of equality, but secondarily in terms of public desert, public merit, a notion for which once again a place has to be found." *Id.* at 237. "Liberty, fraternity and equality," he adds, "were not the only Jacobin virtues. Patriotism and love of family were both important." *Id.* at 238.

writes,

claim that by means of Marxism the notion of human autonomy can be rescued from its original individualist formulations and restored within the context of an appeal to a possible form of community in which alienation has been overcome, false consciousness abolished and the values of equality and fraternity realized.¹⁷⁶

To this claim MacIntyre offers two objections. The first is that Marxists, once in power, have failed to develop their own moral perspective; indeed, their political practice has come to mirror that of their capitalist counterparts.¹⁷⁷ MacIntyre's second, deeper complaint is that Marxism is too individualistic—that Marxism is in fact the true child of the Enlightenment.¹⁷⁸

MacIntyre is correct in noting the Enlightenment strain in Marx's work. As Charles Taylor has written,

[T]he young Marx is heir of the radical Enlightenment first in his notion that man comes to shape nature and eventually society to his purposes. He is heir second in his critique of the inhumanity of the present order. The Enlightenment gave rise to a new kind of indignant protest against the injustices of the world. Having demolished the older versions of cosmic order and exposed them as at best an illusion, and perhaps even sham, it left all the differentiations of the old society, all its special burdens, and disciplines without justification The Enlightenment thus provoked a new consciousness of inhumanity, of gratuitous and unnecessary suffering¹⁷⁹

Taylor also recognizes how the dark side of the Enlightenment has played itself out in the attempt to institutionalize Marxism in the Soviet Union.¹⁸⁰ The fear that what happened in the Soviet Union will happen again is implicit in MacIntyre's assertion that when Marxists come to power they become Weberians. MacIntyre believes that Marxism perpetuates the rule of instrumental rationality.¹⁸¹

Although MacIntyre has undoubtedly uncovered an important tension in a Marxism that reduces normative questions to questions of

¹⁷⁶ *Id.* at 261.

¹⁷⁷ *See id.*

¹⁷⁸ *See id.*

¹⁷⁹ C. TAYLOR, *supra* note 43, at 547-48.

¹⁸⁰ *See id.*

¹⁸¹ *See A. MACINTYRE, supra* note 8, at 261.

strategic action, he is not entirely fair to the Marxist tradition. Humanist Marxism at its best does offer an ethical viewpoint that diverges from Kantianism and utilitarianism.¹⁸² Indeed, the humanist Marxists can be interpreted as returning to the Aristotelian tradition themselves, insofar as they attempt to provide a foundation for normative argument in a vision of human nature. MacIntyre is right that all brands of Marxism have incorporated something of the Enlightenment tradition. As I hope to show, however, a continuing, if critical, commitment to the Enlightenment *should* be maintained.

3. MacIntyre's Prison House of Decisionism

In addition to (and perhaps because of) his inability to find a convincing replacement for Aristotle's metaphysical biology and his ambivalence toward the Enlightenment, MacIntyre's work exhibits a third problem. Although he is persuasive in describing the breakdown of the liberal point of view, his account falters at the crucial point of reconstruction. MacIntyre simply promises to give us, in a later book, a modern "account of rationality" consonant with the Aristotelian tradition,¹⁸³ and in the meantime urges us to construct "local forms of community within which civility and the intellectual and moral life can be sustained through the dark ages which are already upon us."¹⁸⁴ Yet how can subjects who are thoroughly self-conscious because they are the children of our modern culture meaningfully exercise their "choice" to return to Aristotelianism even if they want to? Can we simply forget what we have become? MacIntyre's deep understanding of the cultural and historical roots of our present situation makes his solution, if it counts as such, seem like wishful thinking. MacIntyre surely realizes that modern human beings cannot easily retrieve a meaningful sociability, and yet without such a retrieval the self seems trapped in its independence. His solution therefore can easily be one more example of the assertion of the self against society, one more example of "the self playing with itself."¹⁸⁵

4. Conclusion

In a project designed to lead us out of our current moral crisis MacIntyre leaves us unsure whether he has not merely added one more

¹⁸² The writings of Mihailo Marković provide an excellent example of humanist Marxist literature. See, e.g., M. MARKOVIĆ, *FROM AFFLUENCE TO PRAXIS* (1974).

¹⁸³ A. MACINTYRE, *supra* note 8, at 260.

¹⁸⁴ *Id.* at 263.

¹⁸⁵ The phrase is Shklar's. See J. SHKLAR, *FREEDOM AND INDEPENDENCE* (1974).

deluded actor to Hegel's cast of moral failures in the *Phenomenology*.¹⁸⁶ Although he argues that we should abandon our liberal individualism because it can do us no good, we can only feel unsatisfied with the neoAristotelianism he offers in its place. For without Aristotle's metaphysical biology, MacIntyre cannot elaborate a determinate *telos* of human life, a concept essential to the Aristotelian framework. Moreover, his critique of Enlightenment individualism harbors a conservative threat, for it neglects the Enlightenment's positive contributions toward autonomy and equality. Finally, the possibility of an abandonment of our individualism demands an act of decision that once again imprisons us in the trappings of individuality at the very moment we are seeking to find something else. Perhaps the only way to salvage his project is by considering it a creative recapturing of the past that will allow us to begin the process of spiritual reconstruction, a reconstruction necessary if we are to create the kind of social experience through which to make sense of the Aristotelian virtues. Yet as we leave his work our confidence that we can restructure what we have become and return to something we have lost is extremely shaky.

B. Unger's Account

In both his early work, *Knowledge and Politics*, and his more recent essay, *Passion*, Unger seeks a solution to moral relativism by appealing to an immanent tendency within our own culture. For Unger this tendency is a normative concept of human nature. Yet he assigns a different content to this normative concept in *Knowledge and Politics* and *Passion*.

In *Knowledge and Politics* he presents our collective history in the form of a *bildungsroman*.¹⁸⁷ This history explains both where we have been and how we might now be able to reach a higher stage of development. Since the universal unfolds in history, according to Unger, and since Unger denies a final closure to history, he does not argue that we are at the end of our development. We have come, however, far enough down the path toward the realization of our full humanity to be able to take the next step, one that would project us beyond the limits of liberal consciousness.

In *Passion*, on the other hand, Unger is no longer telling a story

¹⁸⁶ G.W.F. HEGEL, *supra* note 12.

¹⁸⁷ In literary criticism, the term *bildungsroman* is used to describe "a novel in which the chief character, after a number of false starts or wrong choices, is led to follow the right path and develop into a mature and well balanced [person]." H. GARLAND & M. GARLAND, *THE OXFORD COMPANION TO GERMAN LITERATURE* (1976).

of what we have become and might yet become. According to Unger, we are no longer to move beyond liberal consciousness. Indeed, he no longer describes liberal consciousness as merely one stage of human development, but gives it a universal status. He hopes that by plumbing the depths of our subjectivity, we can unearth an ethic based on a thoroughly modern conception of the self. Rather than finding an explanation in our past and a hope in our future, *Passion* begins and ends with the situation of the liberal individual of modern times.

Unger's shift in focus can be understood as an attempt to overcome the abstractness of the vision he presented in *Knowledge and Politics*. I will suggest, however, that the content given to a normative concept of human nature in his later work does not allow him to achieve his desired reconciliation between the individual and the world. I hope to show, moreover, that the central error of Unger's concept of human nature in *Passion* is its failure to come to terms with the intersubjective constitution of the subject itself.

1. Unger's Critique of Neutrality

Let me begin with our collective story as Unger tells it in *Knowledge and Politics*. I believe Unger's critique of liberalism should be read as an interpretive dialectic that traces the breakdown of liberal consciousness and its development into the consciousness and culture of the welfare state on the one hand and state socialism on the other. These social constructs are imperfect attempts at reconciliation, according to Unger,¹⁸⁸ but they represent a step forward, a move in the direction of freedom. From the vantage point of these current attempts to resolve the contradictions of the liberal worldview, we can reconstruct the dilemmas inherent in liberalism, and perhaps, more importantly, we can begin to understand the meaning of our history.¹⁸⁹

Before Unger begins to reconstruct a shared vision of the good of human life, he wishes to exhibit the breakdown of liberalism in its attempt to provide a social unity. For Unger the breakdown revolves around what he calls the problem of freedom.¹⁹⁰ According to liberal psychology, notes Unger, our desires, which establish our ends, are arbitrary¹⁹¹ and irrational: reason can help us reach or organize our desires, but it has no other connection to desire than this instrumental

¹⁸⁸ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 174-90.

¹⁸⁹ See *id.* at 146-47, 229-30.

¹⁹⁰ See *id.* at 66-67.

¹⁹¹ See *id.* at 42.

function.¹⁹² Desires, moreover, are private,¹⁹³ and from the perspective of the desires, the good for each individual is defined as their satisfaction.¹⁹⁴ Because individuals pursue an infinite number of desires and because to satisfy these desires and to survive in a world of scarce resources they need one another, individuals stand in an uneasy relationship. The problem in liberal society then becomes to insure that each individual will achieve the greatest amount of liberty, the freedom to pursue her own desires, and to establish an order that can restrain conflicts among individuals and that does not favor some at the expense of others.¹⁹⁵ "This," says Unger, "is the problem of freedom."¹⁹⁶

In an attempt to solve this problem, notes Unger, liberalism offers the concept of an autonomous legal system.¹⁹⁷ Liberalism establishes what Unger calls "prescriptive rules,"¹⁹⁸ known essentially as laws, that prescribe certain behavior for individuals. As Unger observes, these laws "place limits on the pursuit of private ends, thereby ensuring that natural egoism will not turn into a free-for-all in which everyone and everything is endangered. They also facilitate mutual collaboration."¹⁹⁹ These laws must possess several qualities to accomplish this task. They must, first of all, be impersonal so that they do not embody the desires of a single individual or group.²⁰⁰ Generality in formulation and uniformity in application must characterize them to insure that they can apply to numerous situations without favoring particular parties.²⁰¹ They must be public and thus stand above the private desires of individuals; accordingly, a government, itself existing above individual conflict, usually establishes them.²⁰² Finally, the laws could not achieve this task of maintaining order and promoting freedom without being "capable of coercive enforcement."²⁰³

Unger, however, rejects the attempted reconciliation of individual freedom with social order through an autonomous legal system, because

¹⁹² See *id.* at 42-43.

¹⁹³ See *id.* at 45 ("Means and form, as objects of reason, are public; ends and substance, as concerns of desire, are private.").

¹⁹⁴ See *id.* at 49.

¹⁹⁵ See *id.* at 65. For an earlier formulation of this liberal tenet, see T. HOBBS, *LEVIATHAN* ch. 13, at 104-08 (1958) (1st ed. London 1651).

¹⁹⁶ R. UNGER, *KNOWLEDGE*, *supra* note 9, at 67.

¹⁹⁷ See *id.* at 67.

¹⁹⁸ *Id.* at 69.

¹⁹⁹ *Id.*

²⁰⁰ See *id.* at 70.

²⁰¹ See *id.* at 73.

²⁰² See *id.*

²⁰³ *Id.* ("If, however, the laws, by virtue of their very impersonality, fail to live up completely to the interests of any person . . . stiff punishment . . . will make it in the interest of all to obey them.").

he believes that it does not avoid value choices.²⁰⁴ According to Unger, this system substitutes the value of neutrality for other values, and it cannot justify privileging this value over others.

Unger's description of the values inherent in neutral laws appears in his analysis of liberal theories concerning the foundation and application of the laws. With respect to the formulation of these laws, liberalism, observes Unger, has offered two types of theories, the theory of formal freedom and that of substantive freedom.²⁰⁵ According to the former, legislators can derive laws from the concept of freedom itself and thus avoid contaminating the laws with particular values.²⁰⁶ However, as Unger notes, the concept of freedom offered is so abstract that when the legislators try to move from it to the "level of concrete regulation of conduct" they must prefer some values over others.²⁰⁷ If the laws are to be neutral and above the conflict of subjective desires or values, such a theory cannot provide them.

Liberalism's second response to achieving freedom and order through neutral laws is the substantive theory of freedom: "the claim that there exists some procedure for lawmaking on the basis of the combination of private ends, to which procedure all individuals might subscribe in self-interest."²⁰⁸ Although this theory takes at least three forms,²⁰⁹ Unger argues that it, like the formal theory, fails to arrive at neutral laws. For instance, in what Unger calls the "social contract" version of the theory, men and women in self-interest would accept certain procedures for making laws and settling disputes. Yet the discovery of procedures to which everyone would subscribe is exceedingly unlikely, and, if such were found, they would be so general as to make impossible the production of truly neutral laws.²¹⁰

Even if we had neutral laws, notes Unger, we would still have to face the problem of adjudication, which Unger defines as the application of the laws without violating the freedom of individuals, without imposing others' values upon them.²¹¹ In Unger's view, liberalism can-

²⁰⁴ See *id.* at 91. In liberal thought, "[v]alues are subjective in the sense they are determined by choice. . . . The opposing conception is the idea of objective value[s], . . . which are standards and goals of conduct that exist independently of human choice.").

²⁰⁵ See *id.* at 84-86.

²⁰⁶ See *id.* at 85. Formal freedom is "illustrated by the political and legal doctrines of Kant and by the kinds of legal positivism that grew directly out of the Kantian tradition." *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ These forms include classical utilitarianism, the social contract doctrine, and the Rawlsian theory of justice. *Id.* at 86.

²¹⁰ See *id.* at 86-87.

²¹¹ See *id.* at 89.

not solve this problem because it cannot reconcile or keep distinct what he calls "legal justice" and "substantive justice."²¹² Whereas legal justice establishes rules to govern individuals' acts and then resolves disputes on the basis of these rules, substantive justice sets up particular goals and then decides disputes by a judgment of what will best contribute to the pre-established goals, a judgment of instrumental rationality in Unger's view.²¹³

According to Unger, one of the most popular theories of adjudication has been formalism, which held that one could deduce from the laws a solution to any particular dispute.²¹⁴ This theory, however, has fallen out of favor because it assumes that the adjudicator could perceive the "essential qualities" of each problem situation that place it under a particular rule, an assumption antithetical to the central liberal tenet that denies the possibility of an "essential" understanding of a situation.²¹⁵ With the demise of formalism, observes Unger, the purposive theory of adjudication has taken its place.²¹⁶ From the perspective of this theory, to apply laws to a particular situation a judge must determine which purposes or ends the laws serve.²¹⁷ Unger sees several problems with this theory; one in particular deals with the issue of substantive justice and instrumental rationality. To apply a law in a situation in accordance with the law's ends or purpose, the adjudicator must make a judgment of instrumental rationality. Such a judgment, however, is not capable of being generalized, because it is always possible, notes Unger, to discover a more efficient means to achieve the same ends in the next application of the law.²¹⁸ Thus, instead of applying the laws in a neutral and predictable manner, the purposive theory of adjudication reintroduces the notion of substantive justice and makes an elaboration of established interpretations nearly impossible.²¹⁹

Unger thus argues that liberalism cannot establish neutral laws or apply them neutrally²²⁰ and consequently cannot solve the problem of

²¹² *Id.* at 89-91 ("This is the antinomy of rules [legal justice] and values [substantive justice].").

²¹³ *See id.* at 89.

²¹⁴ *See id.* at 92.

²¹⁵ *Id.* at 93.

²¹⁶ *See id.* at 94.

²¹⁷ *See id.*

²¹⁸ *See id.* at 96.

²¹⁹ *See id.*

²²⁰ The critique of neutrality has two prongs, which often fail to be distinguished. The first undermines the positivist notion that rationality and neutrality are symmetrical propositions. Neutrality, in other words, is not a "fact of reason." Indeed, the simple identification of reason with neutrality is an essential aspect of the ideological limitation of reason to instrumental rationality. The second prong denies the validity of the liberal system's privileging of the *right* over the *good*. The first prong is directed to-

freedom—the attempt to reconcile the pursuit of her desires by each individual with the foundation of an order preventing conflicts among individuals. For unless values are covertly smuggled in, neutral laws are without content. Yet to give content to these laws negates their purported function. This seemingly inescapable paradox of neutrality represents one aspect the “prison-house” of liberalism that Unger describes in his introduction to *Knowledge and Politics*.²²¹ This paradox can only be resolved if the good in human life can be reconstructed. And it is to Unger’s project of reconstruction that we now turn.

2. Unger’s Reconstruction of the Good; The Ideal of Human Nature

The resolution of the problem of freedom and the reconstruction of human nature are intertwined in Unger. Because individuals reveal themselves²²² through their words and deeds, notes Unger, our human

ward the methodological premise of neutrality, while the second looks to neutrality as a normative proposition.

The ideological obfuscation inherent in the limitation of reason to questions of *techné* can be so nearly complete because the choice of the most efficient means appears neutral. The reason involved in such a choice does not appear committed to any particular end but rather seems merely to function operationally in the effort to gain control over the objectified processes of nature and society. Reason so conceived does not present itself as the handmaiden of any particular interest other than that of efficiency, which is understood not as a value but as a necessary concomitant of instrumental rationality.

As Habermas notes, however, the appearance of neutrality belies the committed nature of instrumental reason:

The methodology of the empirical sciences is tacitly but effectively modeled in a technical cognitive interest that excludes all other interests; consequently all other relations to life-praxis can be blocked out under the slogan of ethical neutrality or value freedom. This economy in the selection of . . . means which is guaranteed by conditional predictions in the form of technical recommendations is the sole admissible value and it too is not seen explicitly as a value, because it seems to coincide with rationality as such.

J. HABERMAS, *supra* note 20, at 264. Once the committed nature of technical rationality is exposed, the decision in its favor cannot be justified as the ineluctable product of objective reason. The premise of rationality falls prey to the dynamic inherent in positivism’s own limitation of reason. Positivism cannot justify itself except by an appeal to an irrational decision, to an act of will by the individual. With this recognition, the commitment to technical rationality is revealed as itself a value. And, like all values, it cannot be rationally legitimated within the positivist framework. Positivism is thus caught in a contradiction that it cannot overcome.

²²¹ R. UNGER, *KNOWLEDGE*, *supra* note 9, at 3 (“Having turned my mind to some familiar matters of jurisprudence[,] . . . I discovered that the solutions offered to each of the problems [were inadequate and irreconcilable]. Thus, the house of reason proved to be a prison-house of paradox whose rooms did not connect and whose passageways led nowhere.”).

²²² Revelation, however, can never be complete, because each individual “is an

nature—what he calls “species nature”²²³—might well emerge from “moral agreement”:²²⁴ the convergence of moral beliefs in different periods and societies that might disclose what we have in common.²²⁵ Unger, however, notes an objection to the belief that moral agreement would readily disclose human nature. For the shared values of moral agreement may be none other than the ideals of particular groups dominating others at a particular historical moment.²²⁶ Unger argues that to arrive at a true moral agreement that would lead to a concept of human nature one would have to discover “under what conditions [these individuals’] choices might inform us more fully about what is distinctive to each of them and to mankind as a whole.”²²⁷

A key condition to the production of true moral agreement would be the absence of domination.²²⁸ Yet, as Unger observes, the definition of domination could lead to a “vicious circle.”²²⁹ Moral agreement can have a meaning only in the absence of domination, understood as subjection to another’s unjustified power.²³⁰ However, to call power over others justified or unjustified depends upon the perspective of established moral values, themselves perhaps contaminated by domination.²³¹ For Unger politics can transform this circle into a “spiral” because it provides a solution that

lies in a progressive approach to the ideal in which each step toward equalizing the way men participate in the formulation of common values adds to the authority of the latter, and each increase in the moral weight of shared purposes increases the precision with which domination can be defined.²³²

We arrive at the “spiral of dominance and community.”²³³ As domination progressively diminishes, a true community will emerge: we will arrive at common values that will reflect the universal nature we share and that will be both authoritative and the expression of each of

abstract as well as a concrete self.” *Id.* at 241.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *See id.*

²²⁶ *See id.* at 242.

²²⁷ *Id.*

²²⁸ *See id.* at 243.

²²⁹ *Id.*

²³⁰ *See id.*

²³¹ *See id.*

²³² *Id.* at 244.

²³³ *Id.* at 253.

us.²³⁴ At the same time, this formation of a community will help us better to understand our shared humanity and thus will eradicate domination.²³⁵ According to Unger, community appears as a distant ideal guiding politics, whereas domination in all its forms deserves immediate attention.²³⁶ He hopes, however, that in time the relationship between these terms will be transformed, for in his view the self can be realized only in a true community.²³⁷ Unger's commitment to the immediate removal of domination reveals his attachment to the modern recognition of subjectivity and to the Enlightenment's emphasis on freedom.

Unger's vision of human nature has to do with his understanding of history as this spiral of dominance and community. To make sense of a spiral that progressively achieves the realization of human nature, one must postulate not only an ideal but one unfolding in time. Each historical stage takes us nearer to this goal.²³⁸ Unger's teleology is in this way similar to those of Hegel and the young Marx.

In Hegel the origin of world history is the initial embodiment of *Geist* in the world.²³⁹ At first, *Geist* is lost in nature, unable to recognize the universe of its own expression. Hegel's *Geist* is not the infinite substance of the pantheist, but an embodied subject with a history. A *Geist* that cannot exist separate from its embodiment can only come to self-awareness through the consciousness of finite beings capable of embodying spirit. Once this is understood, Hegel's vision of human history can be seen as the development of an adequate embodiment of *Geist* that will allow *Geist* to achieve self-knowledge.

Our knowledge of the world, our understanding of our place in the universe, becomes *Geist*'s self-knowledge.²⁴⁰ According to Hegel, however, we can come to a conscious understanding of our role in the meanderings of *Geist* only with the coming of the modern age. To this

²³⁴ See *id.*

²³⁵ See *id.*

²³⁶ See *id.*

²³⁷ *Id.*

²³⁸ See *id.* at 230. Unger is no utopian optimist. "The failure to reach the ideal in history, or even to progress toward it," he says, "may be complete and irremediable." *Id.* at 231. But Unger nevertheless believes that "[o]ur present historical condition makes possible a more complete resolution of the problem of the self for the species as a whole and for each of its members." *Id.* at 230.

²³⁹ See G.W.F. HEGEL, LECTURES ON THE PHILOSOPHY OF WORLD HISTORY 42 (H.B. Nisbet trans. 1975) ("History is the unfolding of God's nature in a particular determinate element, so that only a determine form of knowledge is possible and appropriate to it.").

²⁴⁰ See *id.* at 44-124; see also G.W.F. HEGEL, REASON IN HISTORY 78 (R.S. Hartman trans. 1953) ("The goal of world history is that spirit comes to knowledge of what truly is, that it gives this knowledge objective expression, realizes it in a world which lies before it, in short produces itself as an object to itself.").

extent, we find ourselves at the end of history. All of the previous frameworks of consciousness are understood as incomplete and yet necessary stages in the development of humanity. This view of the modern age has important epistemological implications in Hegel's work. Only with the achievement of an adequate expression of *Geist* can we achieve self-knowledge, only then can we become transparent to ourselves: to know what we truly are is an historical achievement. Before the modern period human beings were fated to be unconscious actors in a drama they did not write and could not fully comprehend until they had played out their given role. With the achievement of an adequate expression of *Geist* in the modern age, however, we can overcome the limits of our historical context. We can move beyond the realm of understanding (*Verstand*)²⁴¹ into the realm of reason (*Vernunft*).²⁴² We can think the absolute.²⁴³

The young Marx implicitly retains the *telos* inherent in Hegel's vision yet breaks with what he perceives as untenable metaphysical premises in Hegel's system.²⁴⁴ The early Marx replaces *Geist* with human nature, for he criticizes Hegel's *Geist* as the alienated expression of human creativity. Human beings are not the necessary creation of *Geist*, Marx argues, but *Geist* is the creation of a human society that does not allow for the adequate expression of the species being of humanity.²⁴⁵ Whether a society allows human beings to realize their species being is the standard by which the early Marx judges that society.

For the young Marx, what gives hidden significance to human actions in history is the as yet unrevealed potential of humanity.²⁴⁶ But as long as the essence of humanity is in contradiction to its actual historical embodiment, as Marx believed it to be in class societies,²⁴⁷ human beings cannot act self-consciously. In the young Marx, it is implied that with the creation of the proletariat, a class capable of ruling on the level of humanity as a whole, the limits of class-bound ideology could be overcome, so that we could grasp what is truly universal.

Both Marx and Hegel, then, give the modern age a unique episte-

²⁴¹ See G.W.F. HEGEL, *supra* note 12, at 179-213.

²⁴² See *id.* at 789-808.

²⁴³ See *id.*

²⁴⁴ See generally K. MARX, *EARLY WRITINGS* (T.B. Bottomore trans. 1964).

²⁴⁵ See *id.* at 210-11.

²⁴⁶ See Marx, *Economic and Philosophical Manuscripts of 1844*, in *THE MARX-ENGELS READER* 116 (R. Tucker ed. 2d ed. 1978) ("And as everything natural has to have its *beginning*, man too has his act of coming-to-be—*history*—which, however, is for him a known history, and hence as an act of coming-to-be it is a conscious self-transcending act of coming to be.").

²⁴⁷ See Marx, *Alienation and Social Class*, in *id.* at 133, 133-34.

mological status,²⁴⁸ thereby avoiding the problem of relativism as traditionally conceived. Unger is more tentative. He suggests that we might only now be in a position to reconstruct the universal and to move beyond liberal consciousness because our social life has been changing, a change that calls forth and guides a philosophical reconstruction.²⁴⁹ He does not, however, adequately explain why we can now begin to grasp what we truly are without confusing our own historical context with the universal. Herein lies one of the central weaknesses in *Knowledge and Politics*. Certainly, there are good reasons for Unger's reluctance to endorse the Hegelian and Marxist attempts to give a special epistemological status to the modern age. In particular, Unger wants to avoid insisting on historical closure.²⁵⁰ Doubtless, in both the young Marx and the later Hegel, the idea that in the modern age we can finally know what we truly are is associated with the idea of closure.

Without such an explanation, however, it is difficult for Unger to offer a concrete vision of the universal. Unger begins his attempt at an explanation with a recognition that a concrete vision of human nature must avoid three related dilemmas, problems that seem to arise ineluctably from his desire to protect subjectivity and his plan to conceive of a universal developing in history.²⁵¹ The first dilemma contrasts the "suprahistorical" with the "historicist" view of human nature.²⁵² The suprahistorical concept, defined as a belief in a single human nature existing unchanging throughout history, restricts individuals' ability to transform their experience and has the political implication of becoming a tool to sanction a given actuality.²⁵³ The historicist view, on the other hand, accepts the existence of many human natures and no one unitary human nature. Accordingly, it reintroduces something like a principle of subjective value.²⁵⁴ A second, related dilemma opposes "essentialism" to "relationalism."²⁵⁵ Whereas essentialism defines human nature as a core existing in each individual at any given time whatever her external abilities, relationalism conceives of it as arising from a set of relations to others and to situations.²⁵⁶

²⁴⁸ As Heinz Lubasz has pointed out, however, even the young Marx leaves the epistemological status of his claims vague. H. Lubasz, Lectures at Haverford College (Nov. 1984).

²⁴⁹ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 231.

²⁵⁰ See *id.* at 245 ("It misconceives the character of the spiral to suppose that one can determine beforehand its final outcome, if indeed it has one.").

²⁵¹ See *id.* at 146.

²⁵² *Id.* at 194.

²⁵³ See *id.*

²⁵⁴ See *id.*

²⁵⁵ *Id.*

²⁵⁶ See *id.*

For Unger, these concepts have their problems as well: essentialism reintroduces the notion of intelligible essences;²⁵⁷ relationalism dissolves human nature into roles and thus leaves it as "the dimensionless and shifting intersection of [one's] role relationships."²⁵⁸ The third dilemma would contrast the view that an individual simply exemplifies the species with the notion that a species is nothing more than a classification of individuals.²⁵⁹ Once again, neither side of this dilemma is satisfactory. While the first view would submerge the individual in the species and ultimately dissolve subjectivity, the latter would hardly account for any similarity among individuals.²⁶⁰

In Unger's view, his concept of human nature will avoid these dilemmas primarily because it reflects a "doctrine of universals and particulars."²⁶¹ According to this doctrine, one would consider human nature as a universal and its manifestations in forms of social life and individuals as particulars.²⁶² The universal exists only in these particulars, yet it moves beyond them and is transformed through their activity. "Each person," notes Unger, "and each form of social life represents a novel interpretation of humanity, and each new interpretation transforms what humanity is."²⁶³

According to Unger, this concept of human nature understood through the doctrine of universals and particulars resolves the three problems in the following manner. With respect to the dilemma of the suprahistorical and the historicist view, Unger observes that his universal does not stand above history or historical changes, yet it retains a unitary nature.²⁶⁴ Unger's concept (so he believes) also avoids essentialism and relationalism, for it both acknowledges an individual's identity and recognizes her relations. And what is the view of a universal human nature that can accomplish these tasks? For Unger, universal human nature is defined as a set of dilemmas inherent in our condition as finite beings rather than as a substance or core of our being.

Universal human nature consists in a certain set of puzzles men confront in their relations to nature, to others, and to themselves. It is the universality of a predicament . . . rather than that of a substance. But each particular representation of this predicament has an organic wholeness and

²⁵⁷ See *id.*

²⁵⁸ *Id.* at 195.

²⁵⁹ See *id.*

²⁶⁰ See *id.*

²⁶¹ *Id.*

²⁶² See *id.*

²⁶³ *Id.*

²⁶⁴ See *id.*

weight of its own, the weight and wholeness of the particular in the face of the universal it embodies

. . . .
The three theaters of life are a man's relationship to nature, to other persons, and to his work and station. In each of these theaters, an individual faces certain recurring problems which arise from the conflicts among his most basic demands upon nature, others, or himself. What makes the demands basic is that they are presupposed by all other tendencies of human conduct; they define the meaning of humanity.²⁶⁵

What Unger calls human nature could just as easily, and to my mind more accurately, be labeled "the conditions of finitude." That we are human beings and that what we can know is inevitably limited by our finite condition does not mean, for him, that any attempt to understand the world is futile. Our tragedy is not in being human but in denying our humanity. The search for absolute knowledge is self-defeating, for it leads us to reject what we can actually achieve. Unger could easily say, with Wallace Stevens:

To say more than human things with human voice,
That cannot be; to say human things with more than human
voice, that also cannot be;
To speak humanly from the height or from the depth of
human things, that is acutest speech.²⁶⁶

By coming to terms with our finitude we can gain the humility necessary to overcome the hubris of individualism. According to Unger, what we can achieve is a vision of human nature in which the contradictions inherent in the human condition do not rip apart the soul. For him it seems that we are not fated to be at war with ourselves, with each other, and with nature.

The acceptance of finitude has a number of implications for the way one views the ideal. The most important is the recognition that the contradictory nature of our existence can never be completely overcome. Unger does not deny the inevitable separation of the individual from the natural world. For him, individuals are separated from the world in both an objective and subjective sense.²⁶⁷ As Unger notes, instincts do

²⁶⁵ *Id.* at 195-96.

²⁶⁶ W. STEVENS, *From Chocura To its Neighbors*, in *THE PALM AT THE END OF THE MIND* 245 (1974).

²⁶⁷ See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 199. The separation is objective because conduct is indeterminate and subjective because it is conscious. See *id.*

not dictate human behavior and thus do not predetermine the relationship of men and women to the natural world.²⁶⁸ According to Unger, this means that human beings, considered objectively, are "not wholly natural being[s]."²⁶⁹ More importantly, the gift of consciousness, which Unger defines as "the ability to reflect on existence"²⁷⁰ means that we are separated from our surrounding environment.²⁷¹ Here we return to one feature of Unger's definition of human nature as a set of puzzles individuals confront in their relations to, among other things, nature. Because the individual is separated from nature and never has a fixed relationship to it, she confronts nature as a "problem to be solved."²⁷²

Although the individual is separated from nature, she also wants to become "one who belongs to the natural order from which [she] has been thrown out by the gift of consciousness."²⁷³ For Unger, then, every human activity possesses a twofold characteristic: it reaffirms the individual's separation from the world but also attempts to "bridge the gap" between the world and the individual.²⁷⁴ To achieve this second task, to establish a relationship with nature, human beings attempt to transform the world. Thus in their battle to understand and to control an object, it becomes an "object for them." That is, it becomes something in their world, and to the degree that it does, it loses the quality of foreignness. Whereas this relationship between the self and object changes the latter, it also transforms the former, because, as Unger notes, "the self is defined by its relations with the world."²⁷⁵ By her activity in the world, therefore, an individual can achieve natural harmony, which Unger defines as "[t]he situation in which man is at one with nature though separate from it, in which he has overcome his moral and cognitive estrangement without losing his independence."²⁷⁶ For Unger, natural harmony captures both the experience of separation from the world and the experience of relationship with it.

Because it is "an experience of separation and limitation,"²⁷⁷ consciousness separates us not only from nature but also from each other. For Unger, individuality, which he defines as the "attribute of the self

²⁶⁸ See *id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 200.

²⁷¹ See *id.* ("To be conscious is to have the experience of being cut off from that about which one reflects: it is to be a subject that stands over against its objects.") (footnote omitted).

²⁷² *Id.* at 199.

²⁷³ *Id.* at 202.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 204.

²⁷⁶ *Id.* at 205.

²⁷⁷ *Id.* at 213.

by virtue of which it must always be a particular self, distinct from other selves,"²⁷⁸ is a description of the human condition.²⁷⁹

Yet our individuality does not mean that we are helplessly imprisoned in a self that no one else can reach. Consciousness, which separates us from others, expresses itself through the medium of shared cultural symbols, such as language and gestures.²⁸⁰ Our very individuality, our consciousness of separation, is only given reality to us through the social medium of language. Consciousness, according to Unger, is thus self-contradictory; it both separates us from and unites us with other people. This twofold aspect of consciousness leads to what Unger calls the "paradox of sociability".²⁸¹

The more precarious the bonds of common existence and belief among men as minds, the less are they able to express their consciousness through the social medium of symbols, and therefore the less are they secure in the experience of individuality that arises from consciousness. Nevertheless, the more intimate the similarity of experience and reflection among individuals, the less of a basis does individual identity seem to have.²⁸²

Unger seems to be suggesting that we need one another in order to be confirmed in our individuality.²⁸³ We are by nature social, and to grasp what we are it is necessary to come to terms with our sociability. Yet we are never completely at one with the community. Indeed, the more we conform to the community, the more we threaten our individual identities.²⁸⁴

Although for Unger one cannot escape the paradox of sociability, there is a possible reconciliation of the need for others with the desire for distinctiveness. What Unger calls the "ideal of sympathy,"²⁸⁵ which

²⁷⁸ *Id.*

²⁷⁹ According to Unger, three "bases" make sense of this individuality. First, without a separation from others, the conscious self would have no boundaries and would lose its "experience of separate identity." *Id.* at 214. Second, the body itself sets a natural limit to individual consciousness, although it also reveals the self's connection with nature. *See id.* Third, individuality is based on the relationship between human beings and their species nature; because this nature is exceedingly complex, an individual cannot embody it completely. *See id.*

²⁸⁰ *See id.* at 215.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ In Unger's terms, "[W]e are our relations If one could imagine a situation in which no one treated a person . . . as a human being with a self . . . [that person] would have no self." *Id.* at 216.

²⁸⁴ *See id.* at 217.

²⁸⁵ *Id.*

in the relationship with self and others he compares to the ideal of natural harmony in the sphere of the self and nature, combines the greatest individuality with the greatest sociability.²⁸⁶ Personal love best illustrates this ideal, for the lover, while clearly a separate person, does not threaten but reaffirms the loved person's individuality.²⁸⁷ Yet for Unger this personal love cannot truly represent the ideal of sympathy because it often falls into a romantic love, where one lover dominates the other, or a perverse love, which contains as much antagonism as sympathy.²⁸⁸ More importantly, although it unites individuals, personal love is not easily generalizable to social relations between people. Love is particularized. Since we cannot be all things to all people, our ability to love, let alone to love well, is limited.

But the inability to love everyone does not mean that we can only feel tied to those with whom we have developed bonds in love. According to Unger, the idea of community can achieve the ideal of sympathy in the social world and remedy the limitations of personal love.²⁸⁹ Because sympathy in society must be weaker than the love between two individuals, to attain the unity of individuals with a recognition of their distinct identities a community must have shared purposes that express the species nature.²⁹⁰ Thus the more an individual contributes to these ends, the more she will affirm her own self. Community, then, will confirm individuality rather than undermine it and will mitigate the tension between self-assertion and attachment to others. From the perspective of the individual, others will not be seen as antagonistic, for as they further their own ends they advance her own. This tension between the individual and society, however, can never be eliminated without the loss of individuality.²⁹¹

For Unger the final contradiction in human nature is that of the concrete and abstract self.²⁹² As individuals, we are limited by our confinement in time and space; we can only accomplish so much in any given lifetime. Unger would thus define our finiteness, our inability to be all that we could be, as our concrete self.²⁹³ Our abstract self, on the other hand, is the possibility that the individual has to participate in

²⁸⁶ See *id.*

²⁸⁷ See *id.* at 218.

²⁸⁸ See *id.* at 219.

²⁸⁹ See *id.* at 220.

²⁹⁰ See *id.*

²⁹¹ See *id.* at 221-22. This is because "to become fully transparent to others and to lose all sense of them as antagonistic wills, [one's] understandings and ends would have to coincide with theirs. Thus, [one] would cease to be an individual." *Id.* at 222.

²⁹² See *id.* at 222.

²⁹³ See *id.*

the many-sided species nature.²⁹⁴ This is the self that has access to universality: "It has access, though not unlimited access, to the fund of talents of mankind, and it has the quality of humanity, the characteristics of selfhood all members of the race share."²⁹⁵ The individual, then, tries to reconcile the concrete and abstract selves so that her life will express the universal.

Although Unger recognizes that individuals often attempt to evade this contradiction,²⁹⁶ he observes that reconciliation between the concrete and abstract selves occurs through the "ideal of concrete universality,"²⁹⁷ where universal is achieved in the particular. The work of an individual who contributes thus to an ideal of universal significance exemplifies this concrete universality.²⁹⁸ We often think that only in the lives of a few great artists or religious figures is this ideal achieved.²⁹⁹ Yet Unger envisions a society where each individual's work expresses the universal nature. In this society, where true common ends would not be products of domination and thus would be expressions of the species nature, the work of each would be particular yet would contribute to these universal ends.³⁰⁰ Thus the more we can participate in a community that expresses in itself many of the possibilities denied to the individual, the more we are enriched by our existence in the species. Yet no matter how all-encompassing the community life, it can never realize all of the collective and individual potentialities. Moreover, even in a society possessing true common ends, the individual should be able to stand apart in her own particularity and criticize them.³⁰¹

3. Unger and Pragmatism

There is a certain beauty in Unger's vision of reconciliation. But what grounds do we have for choosing Unger's vision over others?

The answer suggested in *Knowledge and Politics* is that we

²⁹⁴ See *id.*

²⁹⁵ *Id.* at 223.

²⁹⁶ One such attempt is described as "acquiescence in pure partiality," in which one's identification is one's "concrete social position." *Id.* at 223. In moral terms this answer is the "sentiment of resignation." *Id.* at 224. Unger labels the other attempt "abstract universality"—that is, "the vain attempt to approach in individual life the many-sidedness of the species." *Id.* Abstract universality is unable "to escape from the realm of dreams," because "it represents a rebellion against the irrevocable decree of partiality." *Id.*

²⁹⁷ *Id.* at 224.

²⁹⁸ See *id.*

²⁹⁹ See *id.* at 225.

³⁰⁰ See *id.* at 225-26.

³⁰¹ *Id.* at 226.

should choose Unger's vision because it accurately describes what we are. But what exactly has been described? Unger has told us that as finite human beings we must engage in the three theatres of self, society, and nature. And he has suggested that our engagement in these theatres need not involve the painful divisions we experience in liberal society. But the vision of reconciliation that Unger hopes to present to us cannot be derived directly from the conditions of finitude, despite his efforts.

Unger needs to provide a convincing account of why we learn his specific lessons from finitude; other philosophers, after all, have drawn very different conclusions. To supply such an account, Unger would have to show us that the *nature* of the experience of finitude yields his vision. Without a more in-depth account of the experience of finitude, he can show us only that his vision is one possibility among others.

The need for an account of our experience of finitude stems from the impossibility of treating finitude as a thing-in-itself from which a normative view of human nature might be directly derived. Such interpreters of Heidegger as Werner Marx and Hans-Georg Gadamer have developed the insight that the experience of finitude can open us to a way of being in the world that has ethical implications. This account stresses what the experience of finitude is for us. It is not finitude-in-itself—for there is no finitude-in-itself—but coming to terms with finitude that has moral implications. What is crucial is the account of the experience and how we learn from it.

Gadamer has offered this description of the experience of finitude:

[E]xperience is experience of human finitude. The truly experienced man is one who is aware of this, who knows that he is master neither of time nor of the future. The experienced man knows the limitedness of all prediction and the uncertainty of all plans. In him is realized the truth value of experience. If it is characteristic of every phase of the process of experience that the experienced person acquires a new openness to new experience, this is certainly true of the idea of complete experience. It does not mean that experience comes to an end in it and a higher form of knowledge is reached (Hegel), but experience is fully and truly present for the first time. In it all dogmatism which proceeds from the soaring desires of the human heart reaches an absolute barrier.³⁰²

³⁰² H. GADAMER, *supra* note 82, at 320.

The moral of the experience of human finitude, as Gadamer explains, is humility, and with humility the openness to others and to shared experience that comes with the recognition of the limits of the self. The recognition of limitation comes within a gentle directive message to see one's situation authentically and in this sense to *be* differently. The militant assertion of individuality is exposed as hubris. To the degree that we accept the experience of finitude as inevitable to our human being, we accept that our situation is not ours alone, but shared with others.

In this experience lies the basis for the empathy that Unger believes can be generalized into a form of fellow-feeling. We can deny this shared experience, and with it the compassion that comes with the recognition of the other's experience as our own, but we can never entirely escape it. One of Unger's central insights in *Knowledge and Politics* is that we are never so alone in our humanity as liberalism pretends. Nevertheless, one cannot immediately derive moral guidance from the schema of the three theatres of existence, as Unger seems to suggest. There is no strong *telos* in the experience of finitude, no necessity that we will learn the lesson of compassion.

Unger faces a second problem, related to the one just discussed. To the degree that Unger successfully describes what is truly universal in the human condition his vision remains abstract. Without filling in its concrete content, we have little to guide us in our quest for the good life. This process of filling in is possible in Hegel and the young Marx because they offer an explanation of why we can now grasp the universal. But Unger does not offer such an explanation. As a result, he finds it difficult to present us with a truly concrete universal.

There is, however, a pragmatic reading of Unger's theory of human nature that helps him escape from its excessive abstraction and particularly from its objectivism. Unger, however, has remained leery of pragmatism for several reasons. First, he seems to accept at times the popular conception of pragmatism, which would reduce all practical questions to the level of *techne* and to the single concern of efficiency.³⁰³ This version of pragmatism functions to legitimate the status quo, sifting out disturbing potentialities as too expensive from the standpoint of what has already been established.

We must turn for a moment to Unger's later book, *Passion*, to

³⁰³ As has been warned, "We cannot simply equate the 'pragmatic' with the 'practical' as is so commonly done by popular writers . . . '[P]ractical' in ordinary discourse is often synonymous with the 'convenient,' the 'useful,' and the 'profitable' and thus contributes to enormous misunderstandings of the serious aims of pragmatism." Weiner, *Pragmatism*, in 3 *DICTIONARY OF THE HISTORY OF IDEAS* 553, 553 (1973).

discover his most important objection to pragmatism. According to Unger, the pragmatists see no need to base their normative ideas upon a substantive theory of human nature; this theory is not a philosophical problem for them.³⁰⁴ Rather, they simply give reasons for preferring one position over another.³⁰⁵ For Unger, such reasons prove too empty to provide us with any moral guidance and, to the extent that they do have normative force, they inevitably smuggle in a conception of human nature.³⁰⁶

If we leave aside Unger's first criticism of pragmatism as more an attack on instrumental rationality, we might conclude that Unger is right when he suggests that pragmatists like Richard Rorty³⁰⁷ reject all substantive views of human nature. But it is important to draw out more explicitly exactly what Rorty rejects when he criticizes these views. For Rorty, such substantive views are inevitably bad universals.³⁰⁸ Rorty shares with the French postmodernists a political suspicion of any attempt to say what we are. What is suspected is not only the hypostatization of human life, but also the privileging of one way of being human. For Rorty, to posit a substantive view of human nature is to draw pernicious lines between the normal and the abnormal, lines that inevitably restrict human potentiality.³⁰⁹

Rorty does not limit his critique to the undesirable political consequences of the postulation of a substantive view of human nature; his main target is the philosophical inadequacy of such an approach. For Rorty, Aristotle's metaphysical biology must go, and along with it, the claim that we can establish a foundation for our moral judgments in a view of human nature. Yet none of this necessarily entails the rejection of the validity of a moral-political vision of human possibility. To the degree that Unger claims to be representing what we really are, Rorty would argue that his undertaking is misguided. But I would argue that Rorty presents us with a vision of potentiality despite himself. It is the vision expressed in Hegel's *Phenomenology*.³¹⁰ In Hegel, the "we" is

³⁰⁴ See R. UNGER, *PASSION*, *supra* note 9, at 43.

³⁰⁵ See *id.*

³⁰⁶ *Id.* at 43-44.

³⁰⁷ See generally R. RORTY, *CONSEQUENCES OF PRAGMATISM* (1982).

³⁰⁸ See R. RORTY, *Nineteenth Century Idealism and Twentieth Century Textualism*, in *id.* at 160.

³⁰⁹ See R. RORTY, *Method, Social Science, and Social Hope*, in *id.* at 191. The vision of ourselves that Unger offers in *Passion* seems least susceptible to this criticism. In *Passion*, we are defined by our capacity for self-transcendence and context-smashing. Unger reminds us that "there is no unconditional context—no set of frameworks that can do justice to all our opportunities of insight and association—not even in the areas of experience where we might most expect to find such frameworks." R. UNGER, *PASSION*, *supra* note 9, at 7.

³¹⁰ G.W.F. HEGEL, *supra* note 12.

created through the communal recollection of the past, presented to the individual as the truth of her own spiritual development. To know oneself in Hegel is to know oneself as a human being who shares a spiritual history with other human beings. It is also to grasp the intersubjective constitution of the subject, the we that is I and the I that is we. By remembering what we have become and understanding our fundamental interrelatedness, we reach the stage of possible recreation. To recreate ourselves, in accordance with the most expansive vision of human possibility open to us on the basis of what we have learned, is the humanist project as I define it.

Rorty calls on us to develop the expansiveness of mind associated with what he calls edification.

The attempt to edify (ourselves or others) may consist in the hermeneutic activity of making connections between our own culture and some exotic culture or historical period, or between our own discipline and another discipline which seems to pursue incommensurable aims in an incommensurable vocabulary. But it may instead consist in the "poetic" activity of thinking up such new aims, new words, or new disciplines, followed by, so to speak, the inverse of hermeneutics: The attempt to reinterpret our familiar surroundings in the unfamiliar terms of our new inventions.³¹¹

One hears echoed in Rorty the call to promote in oneself the compassion for others that develops out of the recognition of our shared experience of finitude. He offers us a gentle directive message in his insistence that we listen to the other and see a part of ourselves in what we have denied as abnormal. Such a vision of human potentiality remains pitted against substantive views of humanity, with their inevitable division between the normal and the abnormal.

A pragmatic reading of Unger helps him escape from objectivism. Unger admits that his theory of human nature is a response to our modern situation. It provides the first step toward an alternative to liberal doctrine, whose contradictions he has explored in *Knowledge and Politics*.³¹² Yet it also provides a key to understanding the current transformations in liberal society,³¹³ transformations that have guided the shape of this theory of human nature.³¹⁴ Because the theory both emerges from and makes sense of these social changes, it leads Unger

³¹¹ R. RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* 360 (1979).

³¹² See R. UNGER, *KNOWLEDGE*, *supra* note 9, at 229.

³¹³ See *id.*

³¹⁴ See *id.* at 146.

back to activity in society through politics as a significant method of making his ideals concrete.³¹⁵ He cautions, however, that the failure to reach the ideal or even progress toward it always remains a distinct possibility.³¹⁶

From what seems to be a pragmatic perspective, moreover, Unger even insists that circularity in his theory of human nature may be necessary. He admits that our "moral interest,"³¹⁷ which may help us select one theory of human nature rather than another, must ultimately be justified by the theory.³¹⁸ Unger realizes that we choose our future, and that the calculation involved in our choice must refer to what we think the choice will make possible.³¹⁹ When considering questions as fundamental as what we are and what we can be, we may always have to anticipate what we seek to become. Yet such circularity need not undermine Unger's undertaking as long as he relies on an pragmatic justification for his approach. Indeed, Unger concludes that the escape from the circularity will come from a "notion that the theory of human nature must build on a moral vision that partly precedes it but that is constantly refined, transformed, and vindicated through the development of the theory."³²⁰

Unger's theory of organic groups in *Knowledge and Politics* is best read in light of this expansive vision, with its emphasis on intersubjectivity and our shared experience of finitude. On this reading, Unger's society of organic groups is not the inevitable outcome of our historical development, nor necessarily the most adequate expression of what we are. Rather, it constitutes an attempt to spell out the conditions under which our moral judgments can be given weight.

Such a highlighting of the pragmatic aspect of Unger recasts his analysis of our ethical situation to focus more specifically on the posture in which the Enlightenment has left us. Unger is grappling with the difficulty of finding a basis for moral judgments once the Enlightenment has undermined the hold of any system of authority. The central question for Unger becomes that of the possibility for ethical reconstruction in a disenchanted world. If moral claims are to be redeemed, they can be redeemed only intersubjectively. The question becomes under what conditions the intersubjective process of the redemption of normative claims can be given moral weight. In other words, what are

³¹⁵ See *id.* at 230 ("[T]heory . . . anticipates, criticizes, and contributes to politics, but cannot replace it.").

³¹⁶ See *id.* at 231.

³¹⁷ *Id.* at 198.

³¹⁸ See *id.*

³¹⁹ See *id.*

³²⁰ *Id.*

the circumstances in which we can achieve Unger's goal of shared values, and have the values achieve legitimacy? Unger's answer is that intersubjective agreement can be given weight only in a society freed from the mark of domination. From this perspective, the theory of organic groups is not a substantive blueprint or a description of future society, but it serves as a *regulative ideal*: "a limit never attained yet capable of providing guidance to those who try to approach it."³²¹

This emphasis upon the pragmatic side of Unger is consistent with his attempt to grapple with the unique ethical difficulties associated with modernity without rejecting it per se. Moreover, this approach to the theory of organic groups frees Unger's account from objectivism. It also avoids the error of postulating a strong species nature, which would inevitably undermine the freedom Unger wants to attribute to individuals.

This reading of Unger also brings to the fore the two central problems we must face in a modernist/postmodernist reconstruction of ethics: the redemption of rationality and the situation of the subject. Unger faces these problems only indirectly in *Knowledge and Politics* due to his continuing adherence to objectivism, which allows him to argue for the *truth* of normative propositions; as a result, he need not grapple fully with the limits of an instrumental definition of rationality. Likewise, his commitment to a vision of our species nature allows him to avoid the need to redefine the subject from within a perspective of intersubjectivity.

It is not surprising, then, to find that in his later work he explicitly accepts the strong subject, the *pour-soi*, as the starting point for his tale of moral education. Yet he retains his commitment to the development of a meaningful solidarity and his determination to beat back the nihilist ghost that haunts the efforts of radical skeptics.

4. Unger's Recent Work and the Lessons of Indeterminacy

Whereas Unger's pragmatism emerges almost despite Unger in *Knowledge and Politics*, he brings it to the forefront of *Passion*. For example, Unger offers a pragmatic justification for his style of argumentation, which attributes normative force to substantive conceptions of human nature.³²² Unger would abandon this style, he says, only after inquiring whether his goal might require this change or whether he could find a satisfactory alternative practice.³²³ His pragmatism also

³²¹ *Id.* at 260.

³²² See R. UNGER, *PASSION*, *supra* note 9, at 40.

³²³ See *id.* at 42.

emerges when he defines an existential project as an individual view that can give meaning to the individual's life.³²⁴ For Unger the justification for selecting a particular project is pragmatic: "The *should* of the existential project or the social vision means: execute this project and enact this vision, or find a better vision and a better project, or else fail at self-affirmation."³²⁵

Although Unger becomes explicitly pragmatic in *Passion*, the perspective of intersubjectivity ceases to occupy center stage in his work as Unger develops a Christian-romantic vision of human nature. I believe this vision can best be understood as an attempt on Unger's part to give content to a view of the subject derived from indeterminacy. Although Unger seeks in *Passion* to root his vision in other sources—the Christian tradition of romance and the story of the self told in what Unger describes as the great works of modernist literature—the substance of his vision continues to express this attempt to recast the lesson of indeterminacy. In both his essay on the Conference of Critical Legal Studies³²⁶ and in *Passion*, Unger seeks to defeat nihilism by giving anthropological content to the moral-political vision that he understands to underlie the critique of foundationalism. I turn first to his essay on the Conference of Critical Legal Studies.

Unger excavates the underlying moral concerns of the attack on objectivism launched by the Conference. One helpful way to understand Unger's interpretation of the Conference's anti-objectivist critique of liberal rights theory is to compare it with the early Hegel's attack on positivity in religion. Hegel defines a positive faith as

system of religious propositions which are true for us, because they have been presented to us by an authority which we cannot flout. In the first instance, the concept implies a system of religious propositions or truths which must be held to be truths independently of our own opinions and which, even if no man has ever considered them to be truths, nevertheless remain truths. These truths are often said to be objective truths, and what is required of them is that they should now become subjective truths for us.³²⁷

Hegel's attack on positivity focuses on the individual's loss of freedom. Belief in moral propositions simply because they are thought to be objectively valid involves a suspension of the subject's moral autonomy.

³²⁴ See *id.* at 47.

³²⁵ *Id.* at 48.

³²⁶ Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983).

³²⁷ See G.W.F. HEGEL, *supra* note 12.

Hegel argues that human beings are degraded to the degree that they assent to religious beliefs simply because they possess positive authority. Hegel wanted to dissolve the pretension of objectivity associated with religious institutions and thereby to display Christianity's claim to universality as an objective illusion. He hoped that people would take up the debate over the authority of the Christian church under conditions of restored freedom in which they could choose because they would understand that choice was possible.

The Conference's attack on liberal rights theory is similar to Hegel's critique of positive religion insofar as it rejects the claim that the liberal formulation of rights and law is objectively given in a foundational sense. The core of the message is that our system has no positive authority. The Conference aims at exposing the falsity of attempts to present our legal system as an objective necessity. It seeks to demonstrate that the definition of rights institutionalized in our current legal structure makes sense only in relationship to a particular worldview that has no more claim to a universal, atemporal validity than any of its competitors. Like Hegel, the Conference aims at restoring us to a condition of freedom so that we will be able either self-consciously to appropriate the tradition in which we are embedded or to negate it. The Conference wants to remind us that liberalism is no more our second nature³²⁸ than is Christianity.

In Unger's essay on the Conference, a view of the subject, implicit in the Hegelian notion of being returned to moral autonomy, is suggested but not fully developed. What we have instead is the indication that human beings are characterized by their "negative capability"³²⁹ to break out of context—a view presented as a lesson of the Conference's critique of objectivism.

At the heart of that critique is the much misunderstood notion of indeterminacy. The writers in the Conference show us the disseminating power of language. "Indeterminacy" here signals that meaning can

³²⁸ The term "second nature" first appears in Hegel's work. Lukacs later took it up to indicate the relations between human beings that had become so solidified that people forgot that they *were* relationships. See G. LUKACS, *THE THEORY OF THE NOVEL* 60-64 (trans. A. Bostock 1971).

In some of the writings of the Conference, this reminder seems to take on an almost magical quality: we remember and are promptly liberated. As Fish among others has pointed out, however, there is no direct causal link between antifoundationalism and what Fish would call antifoundationalist hope. What is suggested is only that this new way of seeing our situation can remind us that there is another way to be, and that this interpretation can open us up to the possibility of different commitments.

³²⁹ Unger, *supra* note 326, at 650 ("Negative capability is the practical and spiritual, individual and collective empowerment made possible by the disentanglement of formative structures.").

never coincide with its expression in a moment of unimpeded union. Nor can meaning ultimately be grounded in the speaker's interest, nor again by an appeal to convention.³³⁰ As Derrida has shown repeatedly,

³³⁰ Sanford Levinson has argued that once we have debunked the notion of one objectively given interpretation we are left with a "fractured and fragmented discourse." Levinson, *Law as Literature*, 60 TEX. L. REV. 373, 403 (1982). But as Stanley Fish points out in response to Levinson, this assumes the very possibility of an objective viewpoint that Levinson is purportedly denying. See Fish, *Interpretation and the Pluralist Vision*, 60 TEX. L. REV. 495, 496-97 (1982). Since he cannot have truth in the sense of accurate representation, Levinson despairs of achieving any kind of meaningful knowledge. But to argue that there is no truth independent of theory is not to argue that there is no truth at all. Thus those who argue that we can settle the mess that the law professors have inherited from the philosophers simply by an appeal to convention, see, e.g., Yeazell, *Convention, Fiction, and Law*, 13 NEW LITERARY HIST. 89 (1981), are asking too much of convention. What we think of as convention is itself always open to interpretation; otherwise women and minorities would never have been recognized as full citizens before the law. Accordingly, I do not share Rorty's fear about what might happen if lawyers and law professors were to be introduced to Barthian insights:

I confess that I tremble at the thought of Barthian readings in law schools . . . I suspect that civilization reposes on a lot of people who take the normal practices of the discipline with full "realistic" seriousness. However, I should like to think that a pragmatist's understanding of knowledge and community would be, in the end, compatible with normal inquiry—the practitioners of such inquiry reserving their irony for after-hours.

Letter from Richard Rorty to Sanford Levinson (Apr. 28, 1981), *quoted in* Levinson, *supra*, at 401 n.117. Not only do I not share Rorty's fear, I believe there is much to be gained by introducing Barthian readings into the law schools. Lawyers and law professors would no longer be able to justify running away from their moral responsibilities in the name of some unjustifiable technical mumbo-jumbo. Moral debate would find its way back into the law schools. Idealistic young lawyers committed to social change would benefit, because they would see that they were not trapped under the leaden weight of a tradition they believed to perpetuate injustice. It would become possible to see lawyering as a romantic profession in which the lawyer can play a significant role in shaping our moral discourse.

Mark Tushnet has taken the position that indeterminacy does lead into a nihilist morass. See Tushnet, *Legal Scholarship: Its Causes and Cures*, 90 YALE L.J. 1205 (1981). Tushnet's argument is similar to Levinson's. Frank Michelman has rightly suggested in response that Tushnet finds more nihilism in Wittgenstein, *see generally* L. WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* (G. Anscombe trans. 3d ed. 1973), than is actually there. See Michelman, *Politics as Medicine: On Misdiagnosing Legal Scholarship*, 90 YALE L.J. 1224, 1227 (1981). Michelman correctly interprets Wittgenstein as leaving us with something like contextual truth:

Professor Tushnet mentions Wittgenstein's *Philosophical Investigations* as the "fancy citation" for the idea that rules and rule systems are ineradicably indeterminate. It is worth remembering just what lessons Wittgenstein taught. From Wittgenstein we learned that a set of instructions can never finish explaining how itself is to be read; the signpost on the road fails to tell us whether to go in the direction of the point or the butt. The Wittgensteinian lesson, however, does not end there. It goes on to insist that judgments of error, mistake and incompetency in the use of rules are nonetheless possible within a practice, a language-game or a form of life. One can say, for example, that a traveler striking off in the direction of

context and convention are themselves ultimately indeterminate, in the sense that we are beyond the closure of the absolute idea. Objectivity in interpretation, understood narrowly as accurate representation of the determinate meaning of language, must be rejected as a myth.

In order to understand how Unger moves from the insight of the disseminating power of language to a vision of human possibility—what he calls our negative capability—it is necessary to recall the Hegelian lesson that every attempt to specify the limits of the object goes beyond it. In *Passion* Unger develops the implications of our negative capability in a full-blown view of the subject, which he derives from two sources: the Christian-romantic tradition of a study of human nature, and modernism.³³¹ For Unger, modernism represents both a moment in the transformation of the Christian-romantic tradition and a heresy for that tradition in its radical view of contextuality-threatening personal encounter.³³² Unger, however, maintains that his view of human nature will emerge not from the elimination of modernism but from the modernist vision itself, which will purge any view of arbitrary assumptions about personality and society.³³³ The modernist view of contextuality plays a purifying role in Unger's definition of the Christian-romantic vision of human nature.

In Unger's recent work, he presents a view of human activity with three elements: the capacity to break through any particular condition of action; the inability to reach the unconditional situation in which the terms of the activity exclude further insight; and the opportunity to loosen the constraints of conditionality. Each of the three elements can be understood as part of Unger's attempt to draw out a romantic vision of the human subject from the implications of indeterminacy. According to Unger, indeterminacy of context means that we can never be completely engulfed by a particular vision of ourselves or of our society. What cannot be fully determined cannot be entirely contained. In its negative capability the self is infinite. We are always in language as creators, never entirely as mere prisoners. We always "cheat the language."

the butt-end of a road sign has failed to read the sign correctly.

The latter part of the lesson has implications for liberal legal theory no less significant than those of the first part. At the very least, it seems to mean that in no case is the set of admissible judicial responses—decisions and reasons—unbounded. It may mean, further, that there are at least some "easy cases" in which the set of admissible responses contains only one member.

Michelman, *supra*, at 1226-27.

³³¹ See R. UNGER, *PASSION*, *supra* note 9, at 23.

³³² See *id.* at 38-39.

³³³ See *id.* at 39.

For Unger, the good society would express this vision of romantic possibility. The structure-revising structure that Unger presents in his essay on the Conference of Critical Legal Studies attempts to incorporate his romantic ideal—"the belief that every entrenched system of social division and humanity represents an unnecessary and unjustifiable constraint upon the possibilities of social life and individual existence."³³⁴ In such a society we would be guaranteed the conditions for our self-assertion, a moment of which is our desire for attachment. The rights we would be guaranteed would not be derived from first principles but would be understood instead as freedom concretized. Unger wants to institutionalize something like the "law of the heart."³³⁵

The most notable problem with this program is that the very idea of a law of the heart is self-contradictory.

There is an insurmountable contradiction between the heart and law of any conceivable sort. The heart stands for the supremacy of uniquely personal feeling, while law expresses general rules. The first is justified by its peculiarity, the latter by its common applicability. The two simply cannot be reconciled . . . That becomes clear as soon as several hearts stake out their claims for general validity. Each insists on its own validity, but because of their personal character each one of these laws of the heart is different: since it has no content other than the rejection of convention, it cannot endure its own success.³³⁶

5. Unger's Recent Work and the Intersubjectivity of Practical Reason

Like Hegel in the *Phenomenology*, Unger in *Passion* narrates our psychic history from the standpoint of the divided self. The opening pages in both works describe the ego's recognition of itself as desirous of both self-sufficiency and community.³³⁷ But unlike the *Phenomenology*, Unger's *Passion* does not go on to describe the inevitable unhappiness of an *I* that cannot find its way home to a reconciliation with the community, the other. The *Phenomenology* makes clear that any form of individualism is too self-centered to serve as an ethic.³³⁸ The best individualism can offer is an eternal return to the dialectic of depen-

³³⁴ Unger, *supra* note 326.

³³⁵ G.W.F. HEGEL, *supra* note 12, at 667.

³³⁶ J. SHKLAR, *supra* note 185, at 108.

³³⁷ See G.W.F. HEGEL, *supra* note 12, at 149-60, 218-27.

³³⁸ See *generally id.* at 229-40.

dence and independence, domination and slavery.

Hegel's elaboration of the cycle of the self-divided consciousness begins with the awakening of the erotic ego in a world that is not its own. The *I* that has not yet learned of its social nature seeks to cancel out the world opposed to it. Desire wants to bring the outside in. The ego pursues itself in all that surrounds it; the goal is perfect self-coincidence, ego = ego.

But the *I* inevitably runs into a barrier that will not give way, another *I*. The only escape from this experience is to challenge the other to a duel. There is only one true victory possible as the outcome of the duel: mutual recognition. Yet the *I* that battles the other is not aware of the only sane alternative. The choice appears to be between defeat or mastery, dependence or independence. The autonomy of one appears to threaten the existence of the other. Both contenders seek to find a home in the world around them but fail to grasp the communal nature of the undertaking. The world seems too small for both of them. One must go under. Their failure to see the self in the other ushers in the striving for sovereignty.

This striving unleashes the tragicomic saga of independent self-consciousness. The psychic experience of the master/slave dialectic is played out again and again. It is the experience of the divided consciousness par excellence. In Hegel, the story of independent self-consciousness is a tale of moral failure, but this state of disintegration is not the end of Hegel's story. The final experience of spirit is the recognition of the reciprocity of subjectivity, of the "we that is I and the I that is we."³³⁹

But Unger denies what Hegel affirms: the intersubjective constitution of the subject itself. Indeed, Unger seeks to rehabilitate the individualistic experience of the self. Accepting Hegel's beginning, Unger hopes to show that the striving of independent self-consciousness need not result in disintegration. It can provide, instead, the key to a vision

³³⁹ See M. TAYLOR, *JOURNEYS TO SELFHOOD: HEGEL AND KIERKEGAARD* 197-99 (1980). As Taylor writes,

The dramatis personae of the initial stages of practical reason's sojourn represent various forms of individualism: the hedonist searching for pleasure, the frenzied reformer protesting the established order, the utopian dreamer judging the way of the world. Gradually the active individual realizes that selfhood can reach completion only within a social community formed by mutually recognizing and freely acting subjects. The goal of practical reason, Hegel contends, is "the self-consciousness that is recognized and acknowledged and which has its own self-certainty in the other free self-consciousness, and possesses its truth precisely in that other."

Id. at 198 (quoting G.W.F. HEGEL, *PHENOMENOLOGY OF SPIRIT* 256 (A.V. Miller trans. 1977)).

of the good life. By mitigating the dangers accompanying self-assertion, Unger hopes to defuse the threat others pose to us. And by limiting the harm that can be done to us by the mere existence of static social relations, he hopes to open us up to love.

Unger's vision comes close to an existentialism overlaid with a redemptive view of love. Indeed, one can even conceive of Unger as attempting to incorporate what is valid in Sartre's vision while rejecting the bleak implications of the Sartrean conclusion that the divided self can never find its way home.³⁴⁰ In a sense, Unger wants to turn the early Sartre upside-down and show that there is normative content to Sartre's vision. He wants to argue that our freedom is a good, not just the inevitable state of being of the unhappy consciousness.

Certainly the understanding of freedom as transcendence, as the negative capacity to break out of any context, has not always been understood with Sartrean bleakness. Such left-wing Hegelians as Kojève, for example, define freedom as negativity, but Kojève's analysis, tracking Hegel, posits negativity dialectically as including both an objective and a subjective moment.³⁴¹ Negativity, in other words, is not one-sidedly reduced to a mere capacity of the self. We are not imprisoned in any particular set of social relations because these relations are themselves constituted in and through negativity. Such a dialectical view also informs the humanistic Marxism advocated by the Yugoslavian Praxis Group. For these thinkers, our capacity for self-creative activity, our ability to negate our environment, not only describes what we truly are but also makes possible our development in history.

In presenting us with a narrative of human development, the humanist Marxists emphasize what we have become and can become. The past and the current social world set the conditions in which one must work, and in the course of reshaping social conditions we recreate our very nature. To know oneself is to know oneself as a member of the species that has come this far and can go further yet. By contrast, Unger's emphasis on the strong self, the *pour-soi*, denies the full implications of his earlier insight into the paradox of sociability and into the intersubjective nature of ethical practice.

³⁴⁰ See generally J.P. SARTRE, *BEING AND NOTHINGNESS* (H. Barnes trans. 1956).

³⁴¹ See A. KOJÈVE, *INTRODUCTION TO THE READING OF HEGEL* 222 (J. Nichols Jr. trans. 1980) ("Man exists humanly only to the extent that he really transforms the natural and social World by his negating action and he himself changes because of this transformation . . .").

7. Why Indeterminacy Cannot Ground an Authoritative Anthropology

Even if we could put aside the contradiction inherent in the institutionalization of the law of the heart and the disintegrative dialectic unleashed by the striving of independent self-consciousness, there is a more fundamental difficulty in Unger's recent work. We cannot derive the truth of a new anthropology from indeterminacy. Neither the deconstruction of linguistic convention nor Hegel's dialectic of the limit directly yields the anthropology Unger presents. As Adorno reminds us,

That man is 'open' is an empty thesis, advanced—rarely without an invidious side glance at the animal—by an anthropology that has 'arrived.' It is a thesis that would pass off its own indefiniteness, its *fallissement*, as its definite and positive side. Existence is a moment. That we cannot tell what man is does not establish a particularly majestic anthropology.³⁴²

The most that one can hope to demonstrate in the subtle to-and-fro between subject and object is the error of an absolute privileging of one side of the subject/object dichotomy over the other. The nonidentity of subject and object exposes the cracks in any system, linguistic or otherwise, that claims to be self-identical and thus completely self-enclosed. But negative dialectics cannot positively demonstrate the existence of a self-transcending subject even if it can give us hope that critical reflection is not foreclosed. For Adorno, independence from context—autonomy—is a delicate achievement understandable only as interaction with that which would deny its possibility.

But if we deny the authoritative status of Unger's anthropology, is there still something to it, or are we left, as Unger fears, with an inexhaustible skepticism? When no longer understood as an anthropology, Unger's vision shares in the spirit (or perhaps one should say the *anti*-spirit) of the postmodern aesthetic. Unger wants to give us an ethic that accepts plurality rather than insisting on consensus, an ethic that disrupts and fragments the unitary structure of any given social code. His ethic hails context-smashing and never-ending tension. Unger could easily say with Lyotard, "Let us wage war on totality Let us activate the differences and save the honor of the name."³⁴³

What is notable in Unger's attempt is that he sees the normalizing aspect of even a directive against ethical meaning. He does not fear all

³⁴² T. ADORNO, *supra* note 21, at 124.

³⁴³ See J. LYOTARD, *THE POST-MODERN CONDITION* (1974).

forms of institutionalization—indeed he insists on the establishment of a positive program. In his acceptance of the inevitability of a normalizing moment in any attempt to realize an ethical program, he rejects the mood of postmodernism. But his recognition of the need for a positive program does not allow him to escape from the dilemma inherent in an ethic of negativity.

In another place, Adam Thurschwell and I have criticized a pure ethic of negativity that does not grasp negativity dialectically in the Hegelian manner as both one-sided and self-contradictory; at the same time, we have argued that a negative³⁴⁴ redemptive movement is necessary in any attempt at ethical reconstruction.³⁴⁵ What I want to note here is an irony associated with the abstract negation of the subject. To the degree that Unger still strongly affirms the subject, he is in the modernist camp. His continuing affirmation of the subject separates him from his colleagues in the Conference of Critical Legal Studies who endorse a version of the postmodernist critique of the subject, which attempts to undermine the subject/object dichotomy from both sides at once. One of Derrida's essential insights is to grasp the way in which structuralism explicitly postulates an autonomous subject distinct from the reified world of social and linguistic structure.

Nevertheless, as Perry Anderson has said, "[A]ny theory that seeks to completely deny the illusory power of the subject tends to reinstate that illusion even more than the one which overestimates the power of the subject."³⁴⁶ We are left with the strange phenomenon of an "unbridled subjectivity without a subject."³⁴⁷ There is a sense, then, in which Unger's explicit attempt to salvage a vision of the subject anterior to

³⁴⁴ Derrida would argue that the very conception of the counterpole to meaning as the negative remains caught in Hegel's restricted economy and thus remains servile to meaning. The excess of nonmeaning if it is to escape capture—which Derrida believes it can never fully do—must allude to its containment in negativity. Without commenting at length on Derrida's essay on Bataille, I want to suggest that Bataille's longing for sovereignty is precisely what has been exposed by Adorno as fear of the other. Bataille and Derrida's "writing of sovereignty" is the loss that cannot be stated—the indication of the inadequation of all speech. All forms of recognition and meaning are condemned as reinscribing servility. Yet Bataille (and Derrida?) fail to see that those who wish to escape their need for recognition do so only at the expense of the other. In Bataille's novels, the other—Woman—is often literally done in. What is also missed is that the foresaking of the other is still a form of relation, and a servile form of relation at that. Bataille attempts to distinguish sovereignty as transgression—the excess of nonmeaning—from lordship as rule; but he fails to do so. See J. DERRIDA, *From Restricted to General Economy*, in *WRITING AND DIFFERENCE*, *supra* note 17.

³⁴⁵ See D. Cornell & A. Thurschwell, *Feminism, Negativity, and Intersubjectivity* (1984) [unpublished manuscript on file with the *University of Pennsylvania Law Review*].

³⁴⁶ P. ANDERSON, *IN THE TRACKS OF HISTORICAL MATERIALISM* 54 (1984).

³⁴⁷ *Id.*

intersubjectivity merges with the "unbridled subjectivity without a subject" unleashed by the abstract negation of the subject.

Ethical reconstruction of meaningful public norms demands an intersubjective perspective that exclusive emphasis on negativity cannot provide. Unless we can achieve such a perspective we cannot overcome the decisionist worldview. The early Unger was right to seek to uncover the conditions in which value judgments could be given weight. In his new work he has abandoned this effort, looking instead to a redemptive vision of love. But if his new vision is incomplete as a result, it does serve as an eloquent reminder of romantic possibility. Unger never lets us lose sight of the hope that in our very search for redemption we will find ourselves redeemed. He prods us to recommit ourselves to the effort to change the world.

V. WHERE WE HAVE BEEN; WHERE WE ARE GOING

After our long journey through MacIntyre and Unger we are left in something of a dilemma. While MacIntyre's call for a return to a meaningful community life has attracted us, he has not convinced us that an Aristotelian framework will succeed without the Aristotelian metaphysical biology, and he has not suggested how we might return to Aristotelianism without jumping over our own shadows. Moreover, his critique of the Enlightenment threatens its positive contributions, such as its view of a self separate from social role. At least in *Knowledge and Politics*, on the other hand, Unger seems to avoid MacIntyre's problems. Unger's theory of the self is an attempt to reconcile the self's desire for autonomy and its need for community—a conflict that Unger labels the paradox of sociability. Indeed, if read pragmatically, Unger's theory specifies the conditions under which our judgments would have ethical authority because we would arrive at them through an undistorted intersubjectivity. In his later work, *Passion*, however, Unger's concern for intersubjectivity begins to recede into the background as he attempts to develop an anthropology out of the modernist self. Unger's later work in fact illuminates an aspect of Unger present even in *Knowledge and Politics*: a concept of a self anterior to society.

The contrast between Unger's more recent work and MacIntyre's *After Virtue* leaves us with this dilemma: how can we value an expanded conception of the subject's autonomy and yet reconcile it with the kind of community life necessary if value judgments are to carry normative weight? This is the very dilemma that led Hegel to undertake his quest for a mediated reconciliation between the modern liberal subject and the community. One of Hegel's contributions to the modern ethical debate is his recognition of the intersubjectivity of the ethical

world. I will now turn to an attempt to reconstruct the perspective of intersubjectivity, or dialogism, that Hegel presents in his Jena manuscripts.

VI. DIALOGISM AS A REGULATIVE IDEAL

In this section I first review the dialogic universalism of Hegel's Jena manuscripts, focusing on how Hegel's vision takes us beyond the liberal view of the subject without falling back into a romantic view of the community that is oblivious to the value of autonomy. Next I discuss the development of Hegel's insights in the works of Richard Bernstein, Hans-Georg Gadamer, and Jürgen Habermas. Finally, I argue that dialogism can serve as a powerful regulative ideal in the development of an ethic of citizenship. Before we turn to these themes, however, I want to emphasize the differences between the approach adopted here and the neoAristotelian mode of normative argumentation.

The problem with the attempt to establish a definitive view of human nature, aside from what I consider insuperable problems of proof, and aside from the difficulty of supplying enough concrete detail to guide us in practice, is that any such vision appears to undermine plurality and the possibility of an ever-expanding vision of what we might become. This is so, at least, if one purports to argue from an accurate representation of what we truly and necessarily are—an approach that denies the historical element. With the introduction of history, however, come both the recognition that humanity encompasses many possibilities and the expansiveness of mind that is the hallmark of humanism. A pragmatic focus on the conceivable³⁴⁸ helps to determine what is right within a specific historical situation even as it avoids the hypostatization of the status quo—a danger that lurks in positing a substantive human nature. As Habermas often reminds us, the best cure for dogmatism is reflection. A vision of human possibility capable

³⁴⁸ As already noted, I am defining pragmatism very broadly. A narrow understanding of pragmatism explains the tendency of many critical theorists to pit pragmatism against dialectics. Adorno affords an example:

The contrast between dialectics and pragmatism . . . is reduced to a nuance, namely to the conception of the next step The pragmatist, however, defines it as adjustment and thus perpetuates the domination of what is always the same. Were dialectics to sanction this it would renounce itself in renouncing the idea of potentiality Pragmatism is narrow and limited because it hypostatizes the situation as eternal.

T. ADORNO, *PRISMS* 92-93 (1979). One finds in some passages in Rorty the rhetoric of continuation that troubles Adorno so greatly. But as Bernstein points out, the rhetoric of continuation is only one aspect of Rorty's work. See R. BERNSTEIN, *supra* note 31, at 197-207. Certainly pragmatism as Rorty defines it does not inevitably carry within it the hypostatization of current social relations.

of skirting the danger of hypostatization inherent in the positivist approach needs to encompass reflection on the conditions of its own existence. Such a vision must understand itself as a part of the process of *Bildung*. The metacritique of epistemology in Hegel's *Phenomenology* exemplifies such a vision. Hegel demonstrates that human knowledge is never free of presuppositions. If it is to avoid mystification, any critique must be critical of its own beginnings. Only a presentation of human possibility that achieves this stance can reveal both the retrospective and prospective disposition of humanity.

A. *Dialogism in Hegel's Jena Manuscripts*

In his recent book, *Liberalism and the Limits of Justice*,³⁴⁹ Michael Sandel suggests that we can overcome the ethical crisis of liberalism only if we adopt an intersubjective understanding of the subject, for only then could we accept as legitimate the kind of community life we would require in order to succeed in ethical reconstruction. Because Sandel's goal is to demonstrate the inadequacies of the liberal account of the constitutive subject prior to its ends, he does not offer an view of how a subject divested of sovereignty might be derived. He does indicate, however, what a reformulated conception of the subject would entail. The boundary between the individual and her community would be relaxed, "but not so completely relaxed [as] to give way to a radically situated subject."³⁵⁰ The self would distinguish itself from others through its reflective capacity "to participate in the constitution of its identity."³⁵¹

Sandel describes a view of the subject that comes very close to the one presented in the Jena manuscripts, where Hegel criticizes the Kantian concept of the *I*. For Kant,

[T]he I is represented as the pure unity relating to itself, as the I think which must be capable of accompanying all my representations. This concept articulates the fundamental experience of the philosophy of reflection, namely the experience of ego-identity in self reflection, thus the experience of the self of the knowing subject which abstracts from all possible objects in the world and reflects back to itself as the sole object. The subjectivity of the I is determined in self-reflection—it is the relation of the knowing subject to itself.³⁵²

³⁴⁹ M. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982).

³⁵⁰ *Id.* at 153.

³⁵¹ *Id.*

³⁵² J. HABERMAS, *supra* note 20.

For Hegel, on the other hand, subjectivity is not determined in self-reflection but is developed within a framework of interaction. One becomes a self-identified ego only through interaction in which one experiences oneself *as* a self by being mirrored in the eyes of others. This interaction takes place within a framework of preexisting intersubjectivity, or *spirit*, in which consciousness exists as the middle ground for the encounter.

Hegel's rejection of Kant's transcendental ego does not involve an absolute rejection of the universal subject in favor of a fully situated one.³⁵³ Hegel's *I* is the unity of universality and singularity: the *I* as self-consciousness is universal to all subjects, but the *I* also names³⁵⁴ a particular individual who *is an I*, and thus it represents a category of singularity. Spirit does not subsume particularity. Spirit is rather reinforced and developed in what Hegel considers the fundamental and intersubjectively constituted realms of human life: labor, love, and communicative interaction.³⁵⁵

Spirit develops in struggle. The dialectic of recognition is not one of unconstrained intersubjectivity. On the contrary, it entails a suppression and a distortion of intersubjectivity that belie the interactive constitution of the self. This very denial of intersubjectivity unleashes the force of the dialectic—what Hegel calls the causality of destiny. Suppression, therefore, is never complete. Yet neither is reconciliation inevitable; indeed, it is always precarious.

For the Hegel of the Jena manuscripts, the consciousness that emerges from this dialectic cannot be separated from the medium in which consciousness is set forth: language. The formation of the *I* depends on its immersion in an already constituted linguistic life-world that embodies a set of traditions and a community.

In order that nature can constitute itself into the world of an "I", language must . . . achieve a two-fold mediation: on the

³⁵³ It is easy to confuse the preservation of the universal subject with the salvaging of the transcendental subject, but this identification need not be made. "While the death of God becomes actual in the universe dispersed and hence nontotalizable totality, the death of the self [the sovereign subject] is a noncentered subjectivity which though not transcendent is nevertheless universal." M. TAYLOR, *ERRING* 142 (1984).

³⁵⁴ I do not want to put undue stress on the significance of naming. The point is only that the name names if it is associated with conventional meaning and an ostensive referent, even if its process is in no way absolute. I would suggest that Derrida ends up in a similar position in his deconstruction of the proper name. Derrida's deconstruction of the proper name shows us that meaning, the meaning which can be attached to the referent, is not bounded by the real properties of the referent. See J. DERRIDA, *OF GRAMMATOLOGY* (trans. G. Spivak 1976).

³⁵⁵ See G.W.F. HEGEL, *SYSTEM OF ETHICAL LIFE AND FIRST PHILOSOPHY OF SPIRIT* 218-35 (H.S. Harris & T.M. Knox trans. 1979).

one hand of resolving and preserving the perceived thing in a symbol which represents it, and on the other, a distancing of consciousness from its objects, in which the I by means of symbols it has produced itself is simultaneously with the thing and with itself. Thus language is the first category in which spirit is not conceived as something internal, but as medium which is neither internal or external. In this spirit is the *logos* of a world and not a solitary self-consciousness.³⁵⁶

To understand ourselves as subjects who share in the *logos*, to understand ourselves as subjects constituted to be speaking subjects,³⁵⁷ is to understand ourselves as members of a dialogic community that is not a mere dead weight confronting the individual but rather is both the product and the medium of communicative relations. We transform speech even as we come to ourselves within it. Agency is not denied, it is redefined.

[T]he truth is that speech . . . [is] not merely the one side of the antithesis that is opposed to [the subject] who posits himself as consciousness, [it] is just as much connected with him; and the middle [is] that in which he separates himself from his true antithesis: in speech, from others to whom he speaks He is the agent; [the middle is] not what he acts against . . . but . . . the means, whereby, through which he is active against something else.³⁵⁸

Once the formative process of the *I* is rightly understood, the Kantian view of the autonomous will is exposed as an abstraction from

³⁵⁶ *Id.* at 153.

³⁵⁷ Some might object here that human beings have other capacities that are as important as speech. This criticism misses the point. As Heinrich Ott explains,

Sometimes it seems as if man has at his disposal still other abilities and possibilities—for example, the possibility of creating in music and the pictorial arts—which fall completely outside the horizon of language and which therefore show that the ontological interpretation of man's being as dialogue is too narrow a frame of reference. This is a common objection to the linguistic conception of man. Indeed, what is characteristic of a symphony or a painting can no longer be said in words and yet these spheres of man's being too remain embedded in the encompassing horizon of language. It is only in language that one can lay hold of the fact that what is characteristic of the work of art affects us in a way that no longer can be said in words. How art affects us and how it brings us together in its works can even be discussed again, or rather the way in which it affects us comes to pass in the realm of language.

Ott, *Hermeneutic and Personal Structure of Languages*, in *ON HEIDEGGER AND LANGUAGE* (1972).

³⁵⁸ G.W.F. HEGEL, *supra* note 356, at 219.

ethical relationships. The free will is no longer regarded as a law unto itself, as a sovereign subject. Self-awareness is instead understood as a delicate interactive achievement. The experience of self-awareness, of *being an I*, is in no way denied. Neither, however, is the tension between the *I* and the community denied. The dialectical conception of the relation between the self and its community permits us to escape the contradictions in the liberal notion of constitutive subjectivity without throwing the subject overboard, and enables us to envision a new relationship between the individual and the collective—a vision that informs Unger's theory of organic groups in *Knowledge and Politics*.

This understanding of community as constitutive and yet nonidentical with the self is the vision for which I believe Sandel too is reaching in his discussion of community. The view of community presented in Hegel is neither sentimental or merely instrumental. Intersubjectivity is not just a sentiment of fellow feeling; it is constitutive of what we are. Yet the emphasis on reconciliation, and not simple identity between the individual and the community, protects the individuality that liberalism hails.³⁵⁹ The Adornian reminder of the failure of identification between subject and object also protects the Jena Hegel's emphasis on what we are as members of an ethical community from falling prey to one version of the postmodern language-philosophical critique of the subject. In order to hold that the self is totally enclosed in a linguistic framework or a set of social conventions, one would have to postulate a set of philosophical assumptions that are self-contradictory. Just to *know* that self-reflection is foreclosed by an all-encompassing context that makes real critical distance an impossibility, one would have to achieve a stance beyond context that the denial of self-reflection itself precludes. In his *Negative Dialectics*, Adorno indicates the contradiction inherent in the assertion that there is no residually transcendent subject.³⁶⁰

Moreover, the version of the linguistic-philosophical critique of the subject that abstractly negates the subject denies what it purportedly affirms: the function language plays in the constitution of social reality. To be an *I*, to be a self, has a meaning. The linguistic-philosophical decentering of the subject does not mean its demise.³⁶¹ As Albrecht

³⁵⁹ On my reading of Sandel's constitutive view of community, a reading informed by Adorno's insights, this view of community need not deny difference or demand full transparency of the subject to itself. For a contrary viewpoint, see I. Young, *The Ideal of Political Community and Difference* (1985) [unpublished manuscript on file with the *University of Pennsylvania Law Review*].

³⁶⁰ See generally T. ADORNO, *supra* note 21.

³⁶¹ It is important to note here that what is being deconstructed in the language philosophical and psychoanalytic critiques of the subject is the notion of the constitutive

Wellmer reminds us,

In a sense we have to give words back to their normal use, as Wittgenstein demanded; then it becomes clear that the philosophy of total unmasking still lives from the very rationalistic metaphysics which it set out to destroy. If instead we bring back to earth the distinctions between reality and appearance, truthfulness and lie, violence and dialogue, autonomy and heteronomy, then it is no longer possible to assert (except in the sense of bad metaphysics) that the will to

intentional subject that can master both itself and external reality. As Mark Taylor tells the tale of the unwinding of the subject,

The decentering of the subject . . . does not issue in the simple disintegration of the self. Neither completely undifferentiated nor entirely separate, the deconstructive subject is situated in the midst of multiple and constantly changing relations.

M. TAYLOR, *ERRING* 135 (1984). Taylor's decentered subject is a figure in the Hegelian tale of the reciprocity of subjectivity.

Subjects, in other words, are never isolated monads, but are always reciprocally related. The bond is affirmed even in the efforts to negate it. It is necessary to stress that this relationship not only inverts but more importantly subverts the exclusive logic of identity. The outcome of the struggle of recognition is far more radical than the simple reversal of roles played by oppressor and oppressed with the realization of total reciprocity of subjects. The entire foundation of the economy of domination crumbles. No longer conceived as selves equal by virtue of exclusion of difference, each self is for the other the means through which each mediates itself with itself. In this play which is interplay subjects recognize themselves as mutually recognizing one another.

Id. at 134. This notion of the subject is presented in the name of undermining the logic of identity. The reciprocity of subjectivity, the process of taking the inside out, leaves us with a decentered subject that is intersubjective or relational at its core. It is a serious mistake to think that the intermingling of the selves can be encompassed by the traditional categories of the logic of exclusion. Moreover, as Taylor remarks,

the ceaseless interaction of self and other renders subjectivity thoroughly communicative, since the trace is never enclosed within itself, it is in effect an intersection within a tangled network of communication. Each node in this web is a mobile site through which constantly shifting forces recurrently pass. By breaking down the barriers between self-enclosed "I's" communicating forces transform subjects into communicants.

Id. at 142. This insight can be translated into the Habermasian framework that criticizes the Kantian view of the other for its denial of the need for communication in the establishment of an ethical schema. Put more strongly, the Habermasian critique is that the Kantian view of the constitutive subject blocks the view of oneself as a communicant at the same time that it blocks an understanding of the relationship to the other as constitutive of the self. One can then not only accept dialogism without postulating a centered subject; one can insist that the breakdown of the sovereign subject is essential to this project. The logic of identity is in that sense antithetical to this view of the subject, which stresses the subject's communal aspect. The intimacy sought for in community is Heideggerian intimacy, understood as that which holds things together while holding them apart. Difference from the other is at the same time a relationship to the other.

truth is a will to power; that dialogue is symbolic violence; that truth-oriented speech is terror; that moral consciousness is a reflex of internalized violence; or that the autonomous human being is either a fiction or a mechanism of self-oppression or a patriarchal bastard, etc. In other words: the language philosophical critique of rationalism and subjectivism offers us the occasion to reflect on "truth," justice, or self-determination in a new way.³⁶²

B. *A Pragmatic Rendering of the Ideal Speech Situation*

Hegel is not the only one to present us with a dialogic view of what we are as ethical beings. As Bernstein notes, "Gadamer's entire corpus can be read as showing us that . . . what is most characteristic of our humanity is that we are dialogical or conversational beings in whom language is a reality."³⁶³ And as Bernstein also observes, we find traces of this view in a number of divergent intellectual arenas: in discourses on the philosophy of science, in Habermas's effort to develop a theory of communicative action, and in Arendt's writings on politics and the nature of judgment. Bernstein contends, as I shall contend below, not only that a real conversation is going on between thinkers in various fields about the nature of human rationality, but that dialogism can provide us with a regulative ideal for our ethical practice.

It would be a gross distortion to imagine that we might conceive of the entire political realm organized on the principle of dialogue or conversation, considering the fragile conditions that are required for genuine dialogue and conversation. Nevertheless, if we think out what is required for such a dialogue based on mutual understanding, respect, a willingness to listen and risk one's opinions and prejudices, a mutual seeking out of the correctness of what is said, we will have defined a powerful regulative ideal that can orient our practical and political lives. If the quintessence of what we are is to be dialogical—and if this is not just the privilege of the few—then whatever the limitations of this ideal, it nevertheless can and should give practical orientation to our lives.³⁶⁴

³⁶² A. Wellmer, *On the Dialectic of Modernism and Postmodernism*.

³⁶³ R. BERNSTEIN, *supra* note 31, at 162.

³⁶⁴ *Id.*

1. The Conditions of Dialogue

In order to make sense of dialogism as a regulative ideal we must spell out in detail the conditions for dialogue. Gadamer notes that the first condition of authentic dialogue is that the participants "not talk at cross purposes."³⁸⁵ In a true conversation, the partners must take constant care to move together toward a common object, with each discussant striving not to defeat the other in argument but rather to give full consideration to the other's opinion. This process naturally proceeds in the format of question and answer.

For we have seen that to question means to lay open, to place open. As against the solidity of opinions questioning makes the object and all its possibilities fluid. A person who possesses the art of questioning is a person who is able to prevent the suppression of questions by dominant opinion.³⁸⁶

The conditions of dialogue that Gadamer describes are exceedingly fragile. In our day-to-day lives, all of us participate in communicative interactions and exchanges of information that have nothing to do with dialogue. Indeed, we may experience informational exchange as the norm and dialogue as the rarity. Various cultural critics, playwrights, and poets have suggested that this experience is rooted in the malaise of our contemporary culture. It has been argued that for better or for worse, our age—and even the word "age" connotes a continuity that proponents of this viewpoint deny—is characterized by the near loss of the possibility of dialogue. For dialogue demands shared experience, a place to begin, a way of knowing that our conversational partner is with us, and yet the sense of common history and shared experience is continually corroded by liberal individualism. The speaking subject is therefore left (this argument runs) to babble on and to suffer its own lack of coherence. Onstage with us are fellow babblers, but never can we engage them in conversation. Our sentences dissolve. No meeting of the minds is possible because the mind itself has sunk into the schizophrenic state of total dissociation.

To my mind, Gadamer does not adequately grapple with the effects of social and ideological fragmentation. But his central point, that the conversation that we are can never be completely broken off, remains. To suggest that language's only role is to disseminate intention into the chain of signifiers universalizes one aspect of language at the expense of all others, a move incompatible with deconstruction itself.

³⁸⁵ H. GADAMER, *supra* note 83.

³⁸⁶ *Id.*

Habermas offers a corrective to Gadamer's hermeneutics, not only in recognizing the systematic character of the distortion of our conversation but also in insisting that we develop an historical, institutional analysis of its roots. Without such an analysis, we will be unable to reconstruct an ethic of the public realm.

An essential aspect of Habermas's and Gadamer's critique is that the public realm of shared ethical practice has been undermined by the submersion of *phronesis* by *techne*. The shrinkage of the public realm, in turn, has considerably diluted the ideal of the citizen, and with it the ideal of the participatory democracy. But the dialogic emphasis on what we are as speaking subjects, immersed in a communicative community from the beginning and yet parties to its continual reshaping, can revive a view of the citizen—a view that the modern science of politics has obscured. Although I agree with Bernstein that dialogism does not allow us "to conceive of the entire political realm organized on the principle of conversation,"³⁸⁷ it can orient our attempt to think through what Gadamer has identified as a central concern of practical reason: the question "what the individual is due as a citizen."³⁸⁸ Bernstein acknowledges this in his discussion of Arendt, where he notes that although Arendt's own view of the citizen and her ideal of political participation are never freed from their elitist overtones, she does provide a potentially radical concept of what each is due as a citizen.³⁸⁹ For Arendt, the attractiveness of council democracy derives from its institutionalization of a public space, or *polis*, in which individuals can encounter one another and can direct their fate together. As Bernstein explains, Arendtian politics involves "the mutual and joint action grounded in human plurality and the isonomy of citizenship where in-

³⁸⁷ R. BERNSTEIN, *supra* note 31, at 162-63. I should stress that I do not believe that all social relations can be grasped either vertically as the dialectic of the master and the slave or horizontally as the ideal of symmetric reciprocity. (I owe this formulation to H. Lubasz, Lectures at Haverford College (Nov. 1984).) But I do want to suggest that the insistence of the possibility of a reconstruction of the public realm as a place, or *polis*, in which face-to-face encounter and code determination is possible is consistent with modern life in the city—the word "city" being used here not only as a symbol of the disintegration of small cohesive communities but more broadly as a symbol for life without transcendent meaning. See J.H. MILLER, *THE DISAPPEARANCE OF GOD* 5 (1963) ("Life in the city is the way in which men have experienced most directly what it means to live without God in the world."). One need not deconstruct the city in order to open create such a *polis*. In my own experience as a union organizer, for example, the Local Hall became precisely such a meeting place.

³⁸⁸ See H. GADAMER, *supra* note 83. As Michael Walzer has recently shown, the contextual nature of reflection on what each is due as a citizen need not deny the usefulness of such reflection in developing a regulative ideal. See generally M. WALZER, *SPHERES OF JUSTICE* (1983).

³⁸⁹ See R. BERNSTEIN, *supra* note 31, at 214.

dividuals . . . seek to persuade each other.”³⁷⁰ One hears echoed in Arendt’s understanding of politics the conception of the truly ethical relationship as one of symmetric reciprocity. The power of Bernstein’s reconstruction of the regulative ideal of dialogism lies in his recognition that the Hegelian themes of symmetric reciprocity and freedom for all are implicit in the ideal itself.³⁷¹ The opportunity to participate in the sort of political life that Arendt describes requires more, as Bernstein observes, than liberalism’s formal recognition of each of us as abstract subjects equal before the law. It depends on the achievement of the material and cultural conditions for participation.

2. Universality Recast

Understood in the context of dialogism as a regulative ideal, universality appears in a new light. It comes to mean that each of us is to be recognized as a participant in the conversation; each voice is to count and no one is to be silenced in the name of a substantive universal that denounces what is different as not being really human. This way of thinking about universality denies the strict dichotomization of universality and particularity. Indeed, once the role of language in determining universality is understood, it becomes clear that one cannot even conceive of the particular other than in relation to the universal. Adorno reminds us, “[N]ot only particularity, but the particular itself is unthinkable without the movement of the universal which differentiates the particular, puts its imprint on it, and in a sense is needed to make a particular of it.”³⁷² The lesson here is that one cannot successfully *side* with either universality or particularity as if the two were truly opposed to each other.

³⁷⁰ *Id.* at 209.

³⁷¹ Bernstein’s reconstruction also allows us to argue that although Habermas’s fundamental principle of universalization may not in itself give us guidance as to how we should act in the prevailing conditions of distorted intersubjectivity, the Hegelian vision of ethical relationship can provide us with a directive for our praxis. I do not pretend to answer Wellmer’s objections to discursive ethics in full. There are interesting and difficult problems that remain in terms of both the elaboration of the role private conscience and the development of a fuller explanation of the force of the ought. But it is too sweeping to argue that dialogism cannot give *any* guidance or direction in the moral decisions we have to make now. Although this Article emphasizes the ethics of the public realm, I do not believe that the role of discursive ethics is merely to be a partial foundation for an ethics of citizenship or to be a principle of legitimation for social legislation. Undoubtedly Habermas’s own presentation, which frequently seems radically to separate the right and the good, has reinforced the critique of the usefulness of discursive ethics in moral theory. Bernstein’s reconstruction of a Hegelian theme of symmetric reciprocity implicit in dialogic relation allows for a more comprehensive vision of dialogism as a regulative ethical ideal.

³⁷² See T. ADORNO, *supra* note 21.

In a similar manner, sameness and difference can be understood as two components of a dialogical relationship. For the conversation to go on, the other must be understood simultaneously as equal and as different. To assimilate the other is to end the conversation. But if one rejects sameness, one denies the other the status of participant. Then too will the conversation cease. Nor is sameness defined here as a composite of identifiable properties shared by individuals. We are the same qua subjects in that we are different *I*'s. We are the same in that we are *I*'s but we are *I*'s because we are different. This dynamic of sameness and difference preserves singularity. The denial of either sameness or difference ends in the same result: the reinstatement of a monological relationship to the other.

3. The Limits of a Pure Ethic of Negativity

A monological relationship to the other is also implied in a one-sided ethic of negativity. Such an ethic misunderstands the dialogic and intersubjective nature of ethics and inadvertently reinstates unbridled subjectivism and methodological solipsism. Meaning is inevitably reinscribed at the moment of its total negation. A negative moment, however, must always accompany any attempted reconstruction of ethics, even a dialogic ethic.³⁷³ As Kristeva insists, dialogism imagines "a relationship which strives not towards transcendence but rather towards harmony, all the while applying an idea of rapture (opposition and analogy) as a modality transformation."³⁷⁴ Negativity, in this context, is a guard against the hypostatization of consensus and a protector of otherness. Negativity, that is, remains a necessary moment in the undermining of any perspective's claim to have the last word on reality.

Negativity, however, understood without the second negative—"the concept of *human activity* as revolutionary activity and that of the *social and natural laws* this activity shows to be objective"³⁷⁵—the fear of the positive, the uncompromising rejection of any consolidated program, must also be seen for what it is: insofar as it reflects the subject seeking to deny objectivity to anything other than itself, it is merely another form of the fear of the other. A dialogic view of the other, by contrast, implies both the negative and the positive, as it implies both universality and particularity, both sameness and difference. To privilege either disagreement or agreement is to fail to grasp the dynamic of conversational exchange among equals.

³⁷³ See generally D. Cornell & A. Thurschwell, *supra* note 345.

³⁷⁴ J. KRISTEVA, *DESIRE IN LANGUAGE* 89 (1980).

³⁷⁵ *Id.*

I think that many of Habermas's critics would accuse him of making the mistake just described. Habermas is criticized for privileging consensus over disagreement, the positive over the negative, and the unified over the plural. But I think this assessment is unfair to Habermas, even if it derives apparent support from some statements in his writings. Habermas's emphasis on the possibility of meaningful intersubjective agreement must be read in light of what he is seeking to defeat: the decisionist premise that all we can have is a plurality of gods and demons. Habermas wants to show us that we can achieve the reconciliation that liberalism deems impossible. In Habermas, as in Hegel, intersubjectivity is not a *good* to be *achieved*, for we are always already intersubjectively constituted, just as we are always shaping and being shaped by the character of this intersubjectivity. Habermas has also been one of the most persistent critics of any theory that denies the intersubjective aspect of ethics and reduces ethical alternatives to the strategic actions of the individual. At the same time, however, Habermas's dialogic vision of ethical possibility demands a plurality of speaking subjects. His debate with Gadamer reflects his uneasiness with too facile an acceptance of consensus. Yet, while recognizing the potential dangers of a consensus achieved in conditions of distorted communication, Habermas wants to show us that generalizable interests are rooted in communicative interaction. We can overcome the suppression of generalized interests characteristic of liberal society and create an ethical practice that seeks forms of solidarity foreign to liberal society. Those who assert prior to entering the conversation that there are no generalizable interests are relying on an ahistorical, monological view of human nature and of the individual subject. They are, in short, just objectivists in disguise.

None of this is to deny that there is a reading of Habermas that interprets his universal pragmatics as another failed attempt to reinstate objectivism. Habermas has argued that the communicative apparatus on which we all rely in order to make ourselves understood implies a foundation of rational decisionmaking that theory can make explicit. Whenever someone makes an utterance, according to Habermas, she implicitly advances four validity claims: that her utterance is *comprehensible*; that it is *true*; that she is being *truthful*; and that the utterance is *right* with respect to a recognized normative background.³⁷⁶ The validity claims form a background consensus that is taken for granted in day-to-day discourse. Habermas is concerned with

³⁷⁶ See J. HABERMAS, *What Is Universal Pragmatics?*, in COMMUNICATION AND THE EVOLUTION OF SOCIETY 1 (T. McCarthy trans. 1979).

the problem of what to do when a break in that consensus takes place. With such a break, *discourse* becomes relevant. For Habermas, discourse is a type of argumentation in which we suspend action and proceed to assess a challenged validity claim by attending solely to the force of the better argument. Habermas is well aware that this is not the only or indeed even the usual response to breaks in the background consensus. But Habermas's point is not simply that discourse is a *possible* response; he is not merely interested in showing us that there is a type of rationality appropriate for the redemption of normative validity claims. He argues further that

in taking up discourse we unavoidably suppose an ideal speech situation that on the strength of its formal properties allows consensus only through generalizeable interests. A cognitivist linguistic ethics has no need for principles. It is based only on fundamental norms of rational speech that we must always presuppose if we discourse at all. This, if you will, transcendental character of ordinary language can be reconstructed in the framework of a universal pragmatics.³⁷⁷

The ideal speech situation is that in which all speakers have equally at their disposal the required collection of fully realized universal linguistic competences.

To the extent that Habermas's sketch of a universal pragmatics embodies a positive scientific research program, it involves a dangerous category mistake that Bernstein³⁷⁸ and others have rightly criticized. Science cannot tell us what *ought* to be; questions of ethics simply are not amenable to empirical verification or falsification. And to the extent that we read Habermas's reconstructive effort as a transcendental argument in the Kantian tradition, we might conclude that Habermas "only feeds into relativism and decisionism."³⁷⁹ As Bernstein points out, however, Habermas's desire to uncover a foundation for ethical discourse sometimes receives a less objectivist, more pragmatic expression. In his pragmatic mood, Habermas shares with Hegel, Gadamer, and Bernstein

the desire to show that there is a telos immanent in our communicative action that is oriented to mutual understanding. This is not to be understood as a telos that represents the inevitable march of world history or the necessary unfolding

³⁷⁷ See J. HABERMAS, *supra* note 20.

³⁷⁸ See R. BERNSTEIN, *supra* note 31, at 194.

³⁷⁹ *Id.*

of a progressive form of social evolution, but rather as . . . a telos that directs us to overcoming systematically distorted communication. It can orient our collective praxis in which we seek to approximate the ideal of reciprocal dialogue³⁸⁰

This reading of Habermas comports with Habermas's own critique of the ideological obfuscation inherent in the identification of reason with instrumental rationality. It also reflects Habermas's own careful separation of *techne* and *phronesis*. And it avoids the error of thinking that a claim to knowledge that is not scientific in the narrow sense can have no rational basis.

C. *Toward an Ethic of Citizenship*

The regulative ideal of dialogism can guide us in our reflective judgment as we sketch an ethic of citizenship.

As Habermas demonstrates, the simple identification between rational wills made possible in the Kantian framework by the presupposition of a sovereign subject denies the significance of the other for moral purposes. The other becomes merely the mirror image of oneself as a rational agent:

The moral laws are abstractly universal in the sense that if they are valid as universal for one then eo ipso, they must also be considered valid for all rational beings. Therefore under such laws interaction is dissolved into the actions of solitary and self-sufficient subjects, each of which must act as though it were the sole existing consciousness; at the same time each subject can still have the certainty that all its actions under moral laws will necessarily and from the outset be in harmony with the moral actions of all possible other subjects.³⁸¹

On a dialogic understanding of the universal in terms of a concrete dialogic relationship, however, we need not accept the Kantian view of the universal subject that liberal jurisprudence presents as a necessary component of the ideal of equality to be given expression in formal legality. The universal self can be differently conceived. The concretization of the universal as dialogic relation in Hegel denies the validity of the absolute separation of the concrete and abstract self. We relate to

³⁸⁰ *Id.* at 195.

³⁸¹ See J. HABERMAS, *supra* note 20, at 151.

one another as equals, as subjects, and as nonidentical beings who can reach ethical understanding only through recognizing one another as different and yet the same. "Each is like the other in that wherein it has opposed itself to the other. By distinguishing itself from the other, it thereby becomes identical with it."³⁸²

This has important implications for a long-running debate in the Conference of Critical Legal Studies over whether the idea of right can be stripped of its bourgeois origins in "possessive individualism."³⁸³ Those who argue that the negation of a sphere of right is necessary for the defeat of the possessive individual believe that the entwinement between right and possessive individualism cannot be undone. Those who defend a sphere of right argue that the division between the abstract and concrete self protects the dignity of all individuals from total immersion in social role.³⁸⁴ On the latter view, to deny the sphere of abstract right is to deny individual freedom. Those who argue for the first position do not have answers for those who confront them with the nightmare reality of societies that actually have done away with the sphere of right. Those who espouse the second viewpoint rarely come to terms with the dilemmas inherent in a system of right based on an understanding of the abstract subject as proprietor.

Nor to my mind is the solution to be found in the later Hegel's *Philosophy of Right*, which situates the sphere of right within a broader ethical life. For the later Hegel, abstract right is the expression of what *Geist* has achieved in civil society.

Civil Society [is] an association of members as self-subsistent individuals in a universality which, because of their self-subsistence, is only abstract. Their association is brought about by their needs, by the legal system—the means to security of person and property—and by an external organization for attaining their particular and common interests.³⁸⁵

The reification of *Geist* in the later Hegel diminishes the significance of the theme of intersubjectivity, even if it undoubtedly is still assumed as the background of the *Philosophy of Right*. *Geist*, however, as Habermas points out,³⁸⁶ is no longer the creation of human beings interacting in the spheres of labor, ethical life, and love, but rather a

³⁸² G.W.F. HEGEL, JUGENDSCHRIFTEN 379 (my translation).

³⁸³ See C.B. MACPHERSON, THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM (1962).

³⁸⁴ See, e.g., Baker, *Sandel on Rawls* (Book Review), 133 U. PA. L. REV. (forthcoming April 1985).

³⁸⁵ G.W.F. HEGEL, PHILOSOPHY OF RIGHT 110 (T.M. Knox trans. 1952).

³⁸⁶ See J. HABERMAS, *supra* note 20.

force that operates behind our backs. On the level of political theory, the reification of *Geist* leaves us with the Prussian state, and with little guidance in our attempt to rethink an ethic of citizenship that insists on participation.³⁸⁷

Hegel's early writing, however, reflects a more cynical view of abstract right and a more hopeful view of revolutionary possibility. The emphasis in the early Hegel is on what we are as members of an ethical community, who shape that community through communicative interaction with one another. Hegel himself does not explicitly develop his insight into an activist view of the abstract self as citizen. But this is precisely the move that Bernstein has made. For the purposes of the debate within the Conference of Critical Legal Studies, this difference can be understood as the difference between universal self understood as proprietor and the universal self understood as citizen. With the view of the self as citizen, the ideal of a separation from social role is not lost. On this conception, a sphere of right would still have a place, but it would no longer serve primarily to maintain a radical separation between the individual and the community. The very idea of right would be redefined to emphasize what I would call participatory rights.³⁸⁸

³⁸⁷ For an excellent discussion of the power and yet limitation of Hegel's *Philosophy of Right* in providing us with a participatory vision of citizenship, see Ben-Habib, *Obligation, Contract, and Exchange: On the Significance of Hegel's Abstract Right*, in *STATE AND CIVIL SOCIETY: STUDIES IN HEGEL'S POLITICAL PHILOSOPHY* (1984). For a perspective that suggests that Hegel can help us sketch out a vision of political participation, see Pelczynski, *An Introduction: The Significance of Hegel's Separation of the State and Civil Society*, in *id.*

³⁸⁸ I have suggested in another article that this view of right is consistent with the Marxist critique of bourgeois right. See Cornell, *Should a Marxist Believe in Rights?*, 4 *PRAXIS INT'L*, April 1984. Does this mean that the traditional rights of civil society are to be significantly downplayed? The full answer to that question can ultimately be found only in the continual process of rethinking the values that rights protect and the relationship between those values and the rights themselves. Indeed, these rights have already undergone a process of reconceptualization in order to meet the demands of the welfare state. Although this reconceptualization has been rather limited in the United States, the social democracies of western Europe have engaged in a much more serious restructuring of the notion of private right.

The point to be emphasized here is that Hegel's trichotomy—his division of the modern *Sittlichkeit* into the three spheres of state, civil society, and family—may be perfectly good as a limiting principle. It does not, however, tell us—indeed cannot tell us—which aspects of life are to be included in each sphere. See generally G.W.F. HEGEL, *supra* note 385. The relationship between the three spheres, as well the content of each sphere, are questions open to political debate. See generally R. Bernstein, *Rethinking the Social and the Political* (1985) [unpublished manuscript on file with the *University of Pennsylvania Law Review*]. Only if right is understood in the strong Kantian sense can it achieve full independence from the mire of politics and the effort at ethical reconstruction. The reconceptualization of the ethic of right allows us to think differently about some of dilemmas that have plagued the efforts to reconcile a sphere of right with communal aspirations.

1. The Virtue of Civic Friendship

Part of the task of a reconstruction of the ethics of the public realm is to elaborate on the virtues of civic friendship that are implied if the establishment of a dialogic relationship to the other is taken seriously.

Within the Kantian scheme, an ethic of virtue is supplementary at best, an acknowledgment of human weakness. What matters to Kant is that we do our duty, and to the degree that we need to develop a certain character in order to do what we ought to do, Kant has some suggestions as to how that character should be developed. The downplaying of the virtues stems from the Kantian privileging of the right over the good. The right in Kant can be given prior to all empirical ends because it is rooted in what we are not as individuals of the day-to-day world but as transcendental egos capable of an autonomous will. The privileging of the right is derived entirely from the concept of freedom in the mutual relationship of human beings, and has nothing to do with the end that all human beings have by nature (the aim of achieving happiness) or with the means for the attainment of that end. Without the postulation of a subject prior to its ends, the Kantian moral law is robbed of its foundation.

As MacIntyre observes, however, the Kantian ethic not only rests on a fictitious subject but also smuggles in the teleology of Kant's time.³⁸⁹ Without some notion of the good, MacIntyre suggests, the Kantian ethic is vacuous. And yet open adherence to a vision of the good undermines the status Kant claims for his ethic.

An ethic, however, that does not pretend to rest on the kind of foundation that Kant attempted to build need not, as a matter of principle, privilege the right over the good. Within the dialogic framework, the force of what we ought to do cannot be separated from a vision of the quality of our intersubjective relations. And these relations, in turn, cannot be separated from character-building. Dialogism offers us an ideal that is directive as well as normative. To the degree that we take this ideal seriously we must also take seriously the cultivation of the virtues that allow us to participate in a conversation free from domination. It is not just a question here of what one should *do*, it is a question of what one must *become* in order to relate to the other on a basis of symmetric reciprocity.

MacIntyre, as we have seen, suggests that we must bring certain universal virtues—justice, integrity, courage—to any practice in which

³⁸⁹ See A. MACINTYRE, *supra* note 8, at 55-56.

we engage. To my mind, each of these virtues is indispensable to the practice of civic friendship. MacIntyre, of course, would probably maintain that without a functional conception of human nature—a conception whose truth value can be tested—no account of the virtues can escape the problem of incommensurability; if normative claims are not seen as *true*, then the universal virtues lose their prominence and we are thrown back into the mire of the Enlightenment. MacIntyre's claim, however, is too strong, and reflects his own ambivalence toward an ethic without a strong foundational justification. What is clear is that an account of the virtues must emphasize a *telos* and that this emphasis implies an account of what we are as ethical beings. Such an account is offered by dialogism. Even the Kantian scheme, however, incorporates the directive aspect of the virtues. Once the myth of the transcendental ego has been debunked, there is no fundamental contradiction between normative and directive ethics, no absolute disjuncture between the truth of the virtues and the truth of the Enlightenment. Although this is not to say that there are not significant and important differences between them, the liberal antipathy to directive ethics does not necessarily inhere in modernity itself. MacIntyre's stark either/or signals objectivism's continued hold over our ethical debate. One can respect the directive aspect of ethics without advocating a system of integration.³⁹⁰

2. Beyond the Substance/Procedure Dichotomy in Liberal Jurisprudence

A potential misunderstanding of dialogism as a regulative ideal takes the form of a dichotomy between substance and procedure. This is not the occasion for a discussion of the historical development of this dichotomy within the American legal system. I do, however, have two points to make about the dichotomy's relation to dialogism. The first is that the dialogic vision presented here is beyond the substance/procedure distinction as the latter has traditionally been understood within American legal circles. The second is that the distinction dissolves in any case once the decisionist perspective is dismantled. Within dialogism the *procedures* for intersubjective debate and political participation are *substantively* important in that they reinforce a particular kind of relationship that is considered to be an end in itself. On the other hand, the attempt to uncover a substantive universal negates the inter-

³⁹⁰ The directive or character-building aspect of dialogism is evidenced in Bernstein's restatement of the regulative ideal implicit in dialogic interaction, *quoted supra* text accompanying note 364.

subjectivity of ethical interaction. Dialogism negates the possibility of a return to the totalizing domination of what Karl Otto-Appel calls "the system of integration."³⁹¹ It is precisely the fear of a return to a system of integration that has informed the liberal insistence on the substance/procedure distinction.

The traditional substance/procedure dichotomy has force only within the framework of decisionism. Implicit in the oft-repeated justifications for our legal system is the notion that value judgments cannot be rationally justified, that we cannot rationally adjudicate between the plurality of possible alternatives to uncover or to create a shared vision of the good life. The most we can hope to do, it is argued, is to implement neutral procedural standards that purportedly do not favor one person's view of the good over another's.

Given the liberal premise that reason cannot help us to discover our shared values, proceduralism seems necessary in order to guarantee fair and equal treatment. The liberal tenet that we cannot rationally decide on substantive ends means that we must rely on procedure. To do otherwise would seem to negate the important Enlightenment values of autonomy and equality. We have seen, however, that the identification of reason with instrumental rationality is an error. Proceduralism arises from a cultural framework that misunderstands the situation of the subject and replaces universality with neutrality. Such a framework can provide only inadequate definitions of autonomy and equality. Equality need not reduce to neutral treatment by the state, nor must autonomy be identified with sovereignty. These notions are specific to a particular worldview and are not a necessary part of the human condition.

Dialogism marks a significant break with the liberal perspective. First, it allow us to redefine the subject as intersubjectively constituted and thereby to understand autonomy differently. Second, it provides us with a way of understanding universality that does not share the hypostatizing vices of substantive views of human nature. As a result, we can free ourselves from the limited formal view of equality associated with neutrality without fear of return to a system of integration. Third, it allows for a more expansive dialogic understanding of rationality. Fourth, it permits us to mitigate the tension between the right and the good. A dialogic regulative ideal does not and cannot give us anything like a full vision of the good. But the communicative relations protected by the dialogic ideal and the elaboration of the virtues of civic friendship are at least a component part of an adequate vision of the good.

³⁹¹ K. OTTO-APPEL, *supra* note 28.

The dialogic vision offers the determinate negation of the premises that constrained the liberal conversation.

3. Summary

Dialogism involves a commitment to universality: we are all to be recognized as participants in our collective conversation, and we are to hold it out as a real possibility that generalizeable interests will emerge in the course of that conversation. Understood in this way, universality is a commitment to a yet-to-be-realized actuality rather than to an established reality. Too many have been and continue to be silenced. In our emotivist culture, the possibility of discovering what we share is increasingly at risk. The validity of dialogic universality itself must be redeemed in dialogue.

Dialogic universality forsakes any pretense to permanence. Although generalizeable interests must meet the criterion of universality, dialogism denies the validity of an atemporal rational will. The question which interests are to be considered general always remains open for reconsideration.³⁹² Ethical ideals do not exist outside of history or apart from their intersubjective determination.

Does this mean that the dialogic view of ethical understanding is valid only within our cultural and historical situation? Is dialogism just another variety of relativism? As Bernstein points out, this question is meaningful only to someone caught up in Cartesian anxiety. Of course our ethical ideals are historically engendered; to call an idea relative is in this sense simply to call it human. As historical beings, we cannot know what it could mean to have an ahistorical ideal. The search for one is more than self-defeating, it is a denial of our human condition. This being said, however, we are left not with nothingness but with our affirmative ability to speak about human things in a human voice. The debunking of objectivism does not mean the end of ethical standards, nor does it mean that we cannot rationally distinguish between competing ethical positions based on what they bring to our shared praxis. We can still make rational judgments. Objectivism and relativism are not simple opposites, but rather mirror images. The move beyond the dichotomy between objectivism and relativism calls on us to focus on the truly important ethical task we face today: the development of a praxis oriented to the creation of dialogic communities and new forms of democratic solidarity.

³⁹² Universalizability is a necessary but not sufficient condition to establish a generalizeable interest. This is because the intersubjective perspective disavows the pre-given coordination of rational wills.

CONCLUSION

NeoAristotelianism is not a tenable solution to the moral crisis of liberalism. But an interpretation of the early Hegel's dialectic of ethical life presents an alternative. In the early Hegel one finds a view of the subject and a vision of reconciliation that affirms neither liberal individualism nor its mirror image, a sentimental conception of community life. The Hegelian conception of the ethical relationship as one of symmetric reciprocity is expressed in the regulative ideal of dialogism. Dialogism incorporates an account of what we are as speaking subjects that comes to terms with the role of language as constitutive of our experience and yet does not deny the ideal of a self separate from social role. Such a view of what we are as ethical beings allows us to revive a conception of citizenship that has been nearly eclipsed with the subsumption of *phronesis* by *techné*.

The question remains what role a regulative ideal—dialogism or any other—can play in the reconstruction of ethics. Is it just an appeal to an abstract should? Can it help us make sense of commitment to the reconstruction of a postconventional ethics?

Following the Hegelian-Marxist tradition, I have attempted to root the regulative ideal of dialogism immanently in an account of the objective. With the emphasis on what is conceivable, we gain an opening up to history and the possibility of change. We are not left with a one-sided, positive account of reality that hypostatizes our current social relations and ignores the tensions and with them the possibilities that inhere in our social world. To deny possibility in the name of the continuation of the same is exposed as ideology and as the reinscription of objectivism. If there is a final lesson in this way of thinking about the world, it is never to say never.

The value of a regulative ideal in ethics is similar to value of metaphor in poetry. Taken together, an account of the objective and the regulative ideal of dialogism and citizenship drawn out of that account propose a world we might inhabit and into which we might project our powers. They allow us to see differently the history and social relations in which we are immersed and to orient our practice to the possibility of change. Commitment easily dissolves under the weight of the world. A regulative ideal helps us to see what we might yet become, and this different way of seeing can itself take on a force that encourages critique and commitment. In this sense, it concretizes the invitation to remake the world, as well as providing a guide for our own reflection and judgment.

Yet to suggest that one can find a regulative ideal in a reinterpret-

tation of our experience of ethical life is not to deny that ultimately the ideal can serve us only if we commit ourselves to it. The most we can expect from an ethical ideal is an orientation for our practice. It cannot protect us from the uncertainty of history or shield us from the risk of commitment. In the end, the act of commitment is one that each of us must make without the promise or security of a rational guarantee, for "the practical realization of reason through [good] will always require a commitment that cannot be proven."³⁹³ This view should not be confused with decisionism, which would deny the validity of any rational reasons for choosing the dialogic vision, with its specific commitment to universality. Decisionism has as its first premise the denial of the cognitive status of value judgments. As we have seen, this view involves the mistaken identification of reason with instrumental rationality, and falsely ascribes predicaments arising from our historical situation to value judgments more generally. There are reasons for making the commitment I advocate, although they are not instrumentally rational reasons. As Gadamer reminds us, Hegel's speculative statement that what is rational is real and what is real is rational articulates a task for each individual. But once the task is articulated, we must go further and take it up. Only if we are committed to the reconstruction of our social world can we shape a better future.

The moment of commitment is aesthetic in its orientation. It demands not only the capacity for judgment but also the ability to dream of what-is-not-yet. The ethical cannot be reduced to an aesthetic, but neither can it do without an aesthetic. There is a truth, then, in Unger's romantic vision of transcendence and context-smashing. The loss to our shared ethical life would be great indeed if the dreamer in each of us were to be silenced.

³⁹³ K. OTTO-APPEL, *supra* note 28.