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## A Theory of the Good and the Right

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A THEORY OF THE GOOD AND THE RIGHT. By *Richard B. Brandt*. Oxford: Clarendon Press. 1979. Pp. ix, 362. £9.50.

Moral philosophers have traditionally pondered two fundamental questions: (1) How can one obtain moral knowledge? and (2) What substantive implications does such knowledge have? In *A Theory of the Good and the Right*, Richard Brandt attempts to answer these perennial questions. Brandt's book will seem hopelessly impractical and abstract to those in the legal profession seeking ready guidance from specifically stated, easily justified moral rules. Readers interested in ethical theory, however, should find Brandt's unique blending of psychology and ethics rather ingenious and thought-provoking.

Eschewing the approaches of intuitionists and ordinary language philosophers, Brandt draws substantive moral conclusions from actual behavior, fully criticized in light of relevant factual and logical information. A "fully rational person," an individual whose desires have survived rational criticism, Brandt contends, will support some version of rule utilitarianism over alternative moral systems.

Brandt divides his book into two parts. Drawing extensively from psychological literature, he first assembles his theory of the good — the best thing for a "fully rational person" to do. The foundation of this effort is the author's contention, based on psychological evidence (pp. 49-57), that individuals tend to act in ways that they perceive will best satisfy their desires. Brandt identifies two ba-

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9. See, e.g., Macneil, *The Many Futures of Contracts*, 47 S. CAL. L. REV. 691, 808-16 (1974).

10. Macneil draws extensively from Weber and Durkheim in his treatment of labor and exchange specialization. See, e.g., E. DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (1964); M. WEBER, *THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* (1947). He modestly notes, however, that his work has "yet to pay proper attention to legal history." P. 139 n.25. For a classic treatment of the early history of contract, see H. MAINE, *ANCIENT LAW* 295-354 (1963); T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 591-631 (1948). The most recent treatment of contract-law development in the last century is G. GILMORE, *THE DEATH OF CONTRACT* (1977).

sic types of "cognitive errors" that impede the maximization of an individual's desires. First, by overlooking an act's consequences or alternative acts, a person may incorrectly identify the best means to satisfy given desires. Second, false beliefs or artificial cultural conditioning may produce "irrational" desires. To expunge cognitive errors, Brandt proposes that individuals repeatedly consider all relevant information. Desires which survive such "cognitive psychotherapy" Brandt defines as rational; desires in fact abandoned he terms irrational (p. 113). Purged of cognitive errors, the fully informed and therefore "rational" individual, Brandt predicts, will in fact tend to act so as to maximize satisfaction of his desires (p. 154).

Here one wonders whether Brandt has over-estimated the individual's ability or willingness to change in response to rational criticism. The psychotherapists from whom Brandt freely draws certainly *hope* that rational criticism will reform skewed beliefs, desires, and actions. But not may therapists uniformly predict such results — witness their doctrine of resistance. Contrary to Brandt's expectations, fully informed individuals might not tend to act so as to maximally realize their desires, despite the irrationality<sup>1</sup> of such behavior. Nevertheless, this assumption of rational human motivation plays a central role in Brandt's overall theory; building upon it, he proceeds to demonstrate what kind of moral system will command allegiance. If his assumption is wrong, however, Brandt has two alternatives. First, he might argue that fully informed, "rational" individuals "should" abandon irrational<sup>2</sup> behavioral tendencies that reduce the level of satisfaction otherwise attainable.<sup>3</sup> Alternatively, Brandt might qualify his view regarding the nature of the moral system that fully informed persons will support.<sup>4</sup>

In the second section of his book, Brandt uses his possibly un-

1. The term is not here used as Brandt defines it. According to Brandt, the person who has undergone "cognitive psychotherapy" possesses rational desires and behavioral tendencies by definition. Brandt's equation of rational behavior with the maximal satisfaction of desires is thus not definitional, but factual. Here, in contrast, "irrational" is used as psychotherapists often use it — to describe behavior which unnecessarily restricts an individual's happiness.

2. See note 1 *supra*.

3. This line of argument would radically alter, if not destroy, the epistemological basis of Brandt's theory. Since rationally criticized behavior would not itself lead to Brandt's conclusions, support for them must be found elsewhere. Since Brandt has ruled out intuitions and ordinary language, it is not clear what reasons could be adduced to persuade persons that they "ought" to maximize their happiness. Brandt would not be content merely to assert that individuals "should" so act; he wants to avoid the circularity of reasoning from a normative premise to normative conclusions. P. 154.

4. Under this alternative, Brandt would be forced to take account of the influence that deep-rooted biases which survive "cognitive psychotherapy" have on the moral code adopted by a fully informed individual. The possibility that Brandt's "moral" theory might be shaped in part by irrational views about women or race relations, for example, is troubling.

realistic assessment of human motivation to develop a theory of the right — the moral system a fully informed person will favor. Since the “rational” person who has undergone “cognitive psychotherapy” may or may not be benevolent, Brandt examines what kind of moral system both the perfectly benevolent<sup>5</sup> individual and the perfectly selfish<sup>6</sup> individual will favor.

Brandt concludes that a perfectly benevolent individual will favor a code aimed at maximizing the happiness of all sentient creatures (p. 217). More surprisingly, Brandt claims that a perfectly selfish person will also tend to endorse such a code: since a moral system will neither be implemented nor survive unless it wins the cooperation of others, the perfectly selfish individual will support a “Hobbesian” code built on some degree of self-restraint and reciprocal benefit. The major difference between the benevolent person’s code and the selfish person’s, Brandt surmises, will be that the benevolent individual’s code will concern itself with the happiness of animals, fetuses, handicapped persons, and future generations, while the rational selfish individual will deny the benefit of his moral system to those who can neither help nor harm him (p. 221). The selfish individual’s code, that is, might maximize happiness for one group rather than all society, since extending the system’s benefits to all might not be necessary to safeguard the selfish person’s benefit or the system’s survival. Some will find Brandt’s theory unacceptable because it implies that the rational and “moral” selfish person may justifiably endorse a moral code that blithely ignores the welfare and perhaps countenances the repression of other societal groups. Brandt attempts to circumvent this irksome conclusion by contending that rational selfish individuals will tend to favor egalitarian arrangements which, in the long run, engender less antagonism and possess greater stability.

Next, Brandt argues that rule utilitarianism is the best route to maximize aggregate happiness. He finds act utilitarianism unsatisfactory because it is a single-principle code which merely instructs individuals to act in each situation so as to maximize the aggregate happiness. Such a system, Brandt remarks, constantly burdens individuals with complex judgments, renders efficient planning difficult, and turns life into an ongoing moral dilemma (pp. 273-77). Brandt contends that rule utilitarianism, a set of specifiable rules designed to

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5. Brandt defines the perfectly benevolent person as one who values the happiness of others on par with his own. P. 215.

6. A completely selfish person, Brandt states, is indifferent to others’ happiness except to the extent that it affects his own welfare. P. 217.

maximize aggregate happiness indirectly, avoids such pitfalls. He urges that social scientists and philosophers collaborate in the development of welfare-maximizing rules.

Brandt answers the most famous recent anti-utilitarian, John Rawls. Brandt first objects to the use of intuitionist epistemology in Rawls's *A Theory of Justice*.<sup>7</sup> Unless our supposed intuitions possess an initial credibility, Brandt argues, we have no reason to believe the corresponding ethical theory, no matter how internally consistent the theory might be. "Is one coherent set of fictions," Brandt asks rhetorically, "supposed to be better than another?" (p. 20). Brandt finds Rawls's system unconvincing because of the person-to-person variability and cultural provinciality of Rawls's intuitions. Hence Brandt rejects Rawls's contention that hypothetical persons situated in the "original position" (a condition of ideal ignorance) would plan a "just" society. Rawls would give individuals in the original position knowledge that they will live as human beings but keep them ignorant of their particular abilities, desires, and economic position. Giving the hypothetical planners knowledge that they will be living human beings, Brandt contends, stacks the deck against fetuses and animals. Moreover, Rawls's implicit notion that the planners' particular abilities and situation are morally irrelevant, according to Brandt, presupposes a benevolence that many "rational" individuals do not possess (p. 238). Brandt's criticisms do not irrevocably destroy Rawls's theory but they should force some clarification and revision.<sup>8</sup> Although he perceives weaknesses in Rawls's theory, Brandt, as evidenced by his discussion of income redistribution (pp. 309-26), is anxious to show that his theory shares Rawls's egalitarian attraction.

Although of little immediate practical utility to the lawyer, Brandt's book should reward those interested in the ethical basis of a system of legal rules. Brandt's work can be taken as a justification for the pluralistic, rule-based structure of the existing legal system.<sup>9</sup> Although Brandt's theory does not justify the content of existing legal rules, it does indicate the type of argument that one must make to

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7. J. RAWLS, *A THEORY OF JUSTICE* (1971).

8. For Rawls's response to essentially similar criticisms, see Rawls, *Fairness to Goodness*, 84 *PHILOSOPHY REV.* 536 (1975).

9. Members of the legal profession might be interested in Brandt's comments about the comparative advantages of abstract versus specific rules. Brandt observes that abstract rules can be fewer in number and possess greater generality while, in concrete situations, the average person will more easily infer the proper application of a specific rule. Accordingly, Brandt recommends that a moral code use specific rules for frequently arising situations or where predictability is important. P. 290.

criticize or justify such rules. In Brandt's view, such claims must be grounded in scientific data and phrased in terms of the maximization of welfare, not intuited principles. One may legitimately question Brandt's view of the close relationship between psychology and morality; his theory seems to presuppose a rationality beyond the capacity or willingness of some individuals. As a basis for moral conclusions, actual behavior, maximally criticized by facts and logic, is therefore not as useful as Brandt believes. But at the very least, Brandt furnishes a challenging alternative to intuitionist and ordinary language theories.<sup>10</sup>

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10. Brandt's book is also reviewed by Cohen, *Book Review*, 30 *PHILOSOPHY Q.* 271 (1980); Emmet, *Book Review*, 55 *PHILOSOPHY* 412 (1980); Mitchell, *Book Review*, 21 *PHILOSOPHY BOOKS* 223 (1980); Quinton, *Morals and Marxism*, *TIMES LIT. SUPP.*, Jan. 4, 1980, at 18.