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Edited by Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul

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WHY ALL WELFARE STATES  
(INCLUDING LAISSEZ-FAIRE ONES)  
ARE UNREASONABLE\*

By GERALD F. GAUS

I. THE WELFARE STATE VERSUS THE LIBERAL RECHTSTAAT

Liberal political theory is all too familiar with the divide between classical and welfare-state liberals.<sup>1</sup> Classical liberals, as we all know, insist on the importance of small government, negative liberty, and private property. Welfare-state liberals, on the other hand, although they too stress civil rights, tend to be sympathetic to “positive liberty,” are for a much more expansive government, and are often ambivalent about private property. Although I do not go so far as to entirely deny the usefulness of this familiar distinction, I think in many ways it is misleading. In an important sense, most free-market liberals are also “welfare-state” liberals. I say this because the overwhelming number of liberals, of both the pro-market and the pro-government variety, entertain a welfarist conception of political economy. On this dominant welfarist view, the ultimate justification of the politico-economic order is that it promotes human welfare. Traditional “welfare-state liberals” such as Robert E. Goodin manifestly adopt this welfarist conception.<sup>2</sup> But it is certainly not only interventionists such as Goodin who insist that advancing welfare is the overriding goal of normative political economy. J. R. McCulloch, one of the great nineteenth-century laissez-faire political economists, was adamant that “freedom is not, as some appear to think, the end of government: the advancement of public prosperity and happiness is its end.”<sup>3</sup> To be sure, McCulloch would have disagreed with Goodin about the optimal welfare-maximizing economic policy: the welfarist ideal, he and his fellow classical political economists believed, would best be advanced by provision of a legal and institutional framework—most importantly, the laws of property, con-

\* I have greatly benefited from discussions with Julian Lamont. My thanks also to Fred D’Agostino and Bob Goodin for very helpful comments.

<sup>1</sup> For analyses focusing on this divide, see Edward Shils, “The Antinomies of Liberalism,” in *The Relevance of Liberalism*, ed. Staff of the Research Institute on International Change (Boulder, CO: Westview, 1978), pp. 135–200; and Loren E. Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), ch. 5. See also my “Liberalism,” in *The Stanford Encyclopedia of Philosophy* (online at <http://plato.stanford.edu>).

<sup>2</sup> Robert E. Goodin, *Utilitarianism as a Public Philosophy* (Cambridge: Cambridge University Press, 1995), ch. 1.

<sup>3</sup> J. R. McCulloch, *Principles of Political Economy*, 5th ed. (Edinburgh: Charles Black, 1864), pp. 187–88.

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tract, and the criminal code—that allows individuals to pursue their own interests in the market and, by so doing, promote public welfare.<sup>4</sup> In general, what might be called the “classical-liberal welfare state” claims to advance welfare by providing the framework for individuals to seek wealth for themselves, while welfarists such as Goodin insist that a market order is seriously flawed as a mechanism for advancing human welfare and, in addition, that government has the competency to “correct market failures” in the provision of welfare.<sup>5</sup>

It may be objected that describing both these laissez-faire and state interventionist views as “welfare-state liberalism” is simply perverse: they are manifestly different doctrines. To be sure, on the familiar dimension of whether they favor more or less government intervention in economic life and provision of welfare, they do, of course, differ. But their agreement is also profound: both understand the government and the economy as instruments for the advancement of human welfare, and both make confident claims about what does and does not advance human welfare. For both, the primary justification of political institutions and government policies is that they effectively promote human welfare. The interventionists believe that they know what human welfare is, and (armed with welfare economics) why the market fails to advance it and why government can often do a better job; the free-market welfarists insist that the market does a superior job of promoting human welfare and (armed with public choice theory) tell us why government does badly at promoting welfare. While these are certainly significant disputes, especially for economists and political scientists, they are essentially social-scientific disputes within an approach to political economy that takes human welfare as the *summum bonum*. Understood thus, utilitarianism is the moral foundation of the welfare state, providing the basis for the classical political economists, neo-classical libertarian economists, and “government house” interventionists such as Goodin.<sup>6</sup>

The case for utilitarianism as a public philosophy, justifying the state and its policies, certainly seems overwhelming: at what else would a

<sup>4</sup> For an elaboration, see my “Public and Private Interests in Liberal Political Economy, Old and New,” in *Public and Private in Social Life*, ed. S. I. Benn and G. F. Gaus (New York: St. Martin’s, 1983), pp. 199–203.

<sup>5</sup> Robert E. Goodin, *Reasons for Welfare* (Princeton: Princeton University Press, 1988), pp. 11–12. President Franklin Delano Roosevelt recognized more clearly than most the broader ideal of the welfare state: “If, as our constitution tells us, our Federal Government was established among other things, ‘to provide for the general welfare,’ then it is our plain duty to provide for that security upon which welfare depends.” Quoted in Amy Gutmann, “Introduction,” in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1988), p. 3.

<sup>6</sup> Regarding the term “government house,” Goodin writes: “This is after all a term usually applied, usually derisively, to the closing chapters in [Henry] Sidgwick’s *Methods of Ethics*, where he recommends that enlightened (implicitly, colonial) rulers govern according to utilitarian principles that are not necessarily . . . accessible to those subject to their rule” (Goodin, *Utilitarianism as a Public Philosophy*, pp. 61–62).

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humane and rational state aim besides the welfare of its citizens? Perhaps in their private lives people may reasonably embark on courses of action that do not advance anyone's welfare, but to most observers this seems "simply perverse" and "irresponsible" when done by government.<sup>7</sup> Michael Oakeshott provides the clearest articulation of this apparently "perverse" alternative. Oakeshott repeatedly stresses that "[t]he civil condition is not an association in transactions for procuring the satisfaction of wants."<sup>8</sup> And because a civil association is not designed to satisfy wants or advance human welfare, "[t]he acknowledgment of the authority of a rule does not entail the recognition of the desirability of the conditions it prescribes."<sup>9</sup> The life of such an association is ordered by what Friedrich von Hayek calls "end-independent abstract rules of conduct."<sup>10</sup> As understood by Oakeshott and Hayek, then, the legal rules structuring a free society cannot be understood as means or instruments for achieving the good of human welfare, or indeed, as means for achieving a "desirable condition." They are noninstrumental rules of conduct. I shall call a political association ordered by such rules a Liberal *Rechtstaat*.<sup>11</sup> Here I follow Hayek, who depicted his own view as upholding the traditional *Rechtsstaat*'s idea of a general rule-based order.<sup>12</sup> However, as I understand the Liberal *Rechtstaat*, it is characterized not only by the rule of *law*, but by the rule of *right*, where it is not supposed that the right is justified simply as a means to produce the good.<sup>13</sup> It is this aspect of the Liberal *Rechtstaat* that seems irrational to many: what possible reason could we have to follow a rule of right that does not achieve a good result? Perhaps one might acknowledge that there is reasonable debate about whether the good result must be conceived solely in terms of human welfare—perhaps there are other goods too—but surely some good must be achieved by rules of right. As Ralph Barton Perry quipped, "It is certainly a doubtful compliment to the right to deny that it does not of itself do good."<sup>14</sup>

The widely shared perception, then, is that some form of welfarism is obviously rational, while the Liberal *Rechtstaat*, following rules that are

<sup>7</sup> *Ibid.*, pp. 10–11.

<sup>8</sup> Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), p. 156.

<sup>9</sup> *Ibid.*, p. 159.

<sup>10</sup> Friedrich A. von Hayek, *The Fatal Conceit: The Errors of Socialism* (Chicago: University of Chicago Press, 1988), p. 31.

<sup>11</sup> I vary the spelling from the traditional "*Rechtsstaat*" to indicate my slightly deviant use of the term. As I understand it, the traditional notion of the *Rechtsstaat* is consistent with rules of law that are justified as ways to achieve welfare. On the traditional view of the *Rechtsstaat*, see Hans Kelsen, *The Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967), pp. 312–13. The variation in spelling was suggested to me by Friedrich A. von Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), p. 88, n. 2.

<sup>12</sup> Hayek, *The Road to Serfdom*, ch. 6.

<sup>13</sup> In the terminology of ethics, the Liberal *Rechtstaat* is a deontological view of the state.

<sup>14</sup> Ralph Barton Perry, *Realms of Value* (Cambridge, MA: Harvard University Press, 1954), p. 107.

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not justified simply in terms of the desirability of their outcomes, is irrational. As is commonly the case in philosophy, first appearances are deceptive: much closer to the opposite, I shall try to show, is true. I argue in this essay that, by and large, it is typically unreasonable or irrational to pursue policies seeking to achieve desirable social goals; when the goal is social welfare, this unreasonableness is striking. For most of the essay, then, I shall focus on the typical unreasonableness of the pursuit of any social goals, only at times pointing to the especially glaring unreasonableness of pursuing the particular goal of social welfare. In contrast to the unreasonableness of goal pursuit, I shall argue that reasonable legislators, taking up the public perspective,<sup>15</sup> will enact rules that cannot be reduced to mere instruments to achieve goals. The upshot of this argument is that a state whose laws are enacted by reasonable legislators will look much more like a Liberal *Rechtstaat* than a welfare state, of either the interventionist or laissez-faire variety.

## II. TWO WAYS OF BEING RATIONAL<sup>16</sup>

### A. Goal rationality

Before we can evaluate the comparative rationality of the welfare state and the Liberal *Rechtstaat*, we need to reflect on the idea of a rational agent and her actions. The widely shared perception that some version of the welfare state must be rational, while the Liberal *Rechtstaat* is clearly irrational, stems, I think, from the dominant conception of reason in action, which I shall call *goal rationality*.<sup>17</sup> This theory, developed by Thomas Hobbes and later British empiricists, was basic to the emerging science of political economy, which split into political science and economics toward the end of the last century. The motivating idea has been articulated in a variety of ways. Some, following David Hume, argue that all rational action is intended to satisfy desires. Others put the point in terms of satisfying preferences, while yet others, more prevalent in political science, tend to talk of advancing one's interests. To call an economic agent a utility-maximizer is often taken to be much the same as saying

<sup>15</sup> Throughout I will be supposing that legislators, when deliberating about legislation, are taking up a genuinely public perspective, rather than using their public position to advance their private ends.

<sup>16</sup> For a fuller treatment, see my essay "The Conflict of Values and Principles," in *Conflicting Values*, ed. Thomas Magnell (Amsterdam: Rodopi, forthcoming).

<sup>17</sup> In addition to *ibid.*, see my essay "The Rational, the Reasonable, and Justification," *Journal of Political Philosophy*, vol. 3, no. 3 (September 1995), pp. 235–38; and Jean Hampton, "The Failure of Expected-Utility Theory as a Theory of Reason," *Economics and Philosophy*, vol. 10, no. 2 (October 1994), p. 198ff.

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that she has “purposes that her action is designed to promote.”<sup>18</sup> The basic idea is clear and simple: “If doing  $x$  would best serve a person’s ends, then that person has reason to do  $x$ .”<sup>19</sup> Goal rationality is at the heart of economics: the motor of market behavior is the pursuit of one’s “own purposes which inspire one’s actions and excite one’s alertness.”<sup>20</sup> We can get a little more precise about the nature of goal rationality by specifying four of its closely related features.

(F1) *More is better than less.* Faced with a choice between quantity  $p$  of goal  $G$  and quantity  $q$ , where  $p > q$ , a rational agent typically has reason to act to obtain  $pG$  rather than  $qG$ . Feature 1 is fairly straightforward: for almost any goal of mine, if I am given the option between satisfying it to a lesser or a greater extent, a goal-rational agent has reason to choose to satisfy it to a greater extent. If we interpret the goal  $G$  as “utility” or even “happiness,” then F1 is true without exception. When we consider more specific goods, however, we can discover anomalies. Some goals, for example, manifest satiation; the goal of eating a big steak, for example, reaches satiation at some level of fulfillment; most of us prefer a two-pound to a ten-pound steak for dinner. Of course, in this case, if we redefine our goal in terms of, say, pleasure or satisfaction, then the anomaly is removed, for the bigger steak does not, presumably, bring about more pleasure. Although we need not adopt hedonism, it probably is the case that goal rationality conforms to F1 far better when goals are not understood as specific goods,<sup>21</sup> but as more abstract aims, ends, and states of being. Even if goals are interpreted as specific goods, however, it will generally be the case that a rational goal-pursuing agent does not have a hard time deciding whether to opt for more or less of a good.

(F2) *Decreasing marginal reasons.* One’s reasons to obtain more of a goal increase (as stated by F1) as the amount of the goal to be achieved increases, but the rate of increase diminishes from the  $n$  to the  $n + 1$  unit of a goal. The justification for this feature will differ depending on one’s theory of value; on a subjective theory of value, for instance, it might be claimed that as one’s  $G$  increases from the  $n$  to the  $n + 1$  unit, one’s rate of increased satisfaction slows. I shall avoid here any commitment to a sub-

<sup>18</sup> Geoffrey Brennan and Loren Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Cambridge: Cambridge University Press, 1993), p. 9 (note omitted).

<sup>19</sup> David Schmidtz, *Rational Choice and Moral Agency* (Princeton: Princeton University Press, 1995), p. 7. As with Schmidtz, “I use ‘end’ and ‘goal’ . . . interchangeably” (*ibid.*, p. 7n.). I have slightly altered Schmidtz’s notation.

<sup>20</sup> Israel M. Kirzner, *The Meaning of Market Process: Essays in the Development of Modern Austrian Economics* (London: Routledge, 1992), p. 208. See also Philip H. Wicksteed, *The Common Sense of Political Economy*, ed. Lionel Robbins (London: George Routledge and Sons, 1946), vol. 1, pp. 170–83.

<sup>21</sup> If the goal is understood in terms of specific goods, “lumpiness” can also be a problem; it may well be that we only have use for goal  $G$  in certain “lumpy” increments, and an extra amount that does not get us to the next increment is of no use.

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jectivist account of value;<sup>22</sup> for a theory of rationality, the important point is that other things equal, one's reason to  $x$  increases as one's amount of  $G$  achieved by  $x$  increases (F1), but this rate of increase slows down as one achieves more of the goal (F2). I shall treat decreasing marginal reasons as an empirical generalization rather than as a law.<sup>23</sup> Nevertheless, it seems to characterize almost all our goals. Suppose, for example, that one's goal is to become rich and famous. Although one always has some reason to choose being yet richer and more famous (F1), when one has become extremely rich and famous, one's reasons to seek yet more fortune and fame are going to be pretty weak. Again, we can imagine anomalous cases where someone not only "cannot get enough" in the sense that he or she is not satiated (which is consistent with F2), but where one's reasons to pursue a goal are just as strong no matter how much of it one obtains. However, cases like this often suggest an alternative explanation, in terms of neurotic rather than effective instrumental behavior; someone who "cannot get enough" in this sense may be looking for satisfaction where "it is not to be found," and thus his seeming obsession may well be an indication that he is not really achieving his goal at all.<sup>24</sup>

(F3) *Completeness of goal comparisons.* Fully goal-rational individuals possess a system of trade-off rates between all their goals. They are always able to determine whether  $q$  amount of  $G_1$  is better than, worse than, or just as good as,  $p$  amount of  $G_2$ . This is equivalent to the standard requirement in decision theory that one completely rank one's preferences.

(F4) *Downward-sloping demand curves.* Given (F3), as the cost of  $G_1$  (in terms of  $G_2$ ) increases, goal-rational agents have less reason to undertake  $x$  acts seeking to bring about  $G_1$ . This is a gloss on the notion that the demand curve for  $G$  is downward-sloping.<sup>25</sup> A goal-rational agent, then, not only is able to resolve conflicts between his ends, but must do so through a system of trade-off rates (a utility function)<sup>26</sup> according to which the "demand" for a goal (or value, or end) decreases as its cost

<sup>22</sup> Although I have defended one elsewhere; see my *Value and Justification: The Foundations of Liberal Theory* (Cambridge: Cambridge University Press, 1990), Part 1.

<sup>23</sup> See Daniel M. Hausman, *The Inexact and Separate Science of Economics* (Cambridge: Cambridge University Press, 1992), p. 32. Cf. Ludwig von Mises's claim that "there is no question of any such thing as a law of increasing marginal utility" (i.e., marginal utility never increases over the range of possible quantities). Ludwig von Mises, *Human Action: A Treatise on Economics*, 3d ed. (Chicago: Contemporary Books, 1966), p. 125.

<sup>24</sup> See Sigmund Freud, "The Disposition to Obsessional Neurosis," in *On Psychopathology*, ed. Angela Richards (Harmondsworth: Penguin, 1979), pp. 134–44. Cf. Thomas Hill Green, "On the Different Senses of 'Freedom' as Applied to the Will and to the Moral Progress of Man," in his *Lectures on the Principles of Political Obligation and Other Writings*, ed. Paul Harris and John Morrow (Cambridge: Cambridge University Press, 1986), p. 228.

<sup>25</sup> Brennan and Lomasky, *Democracy and Decision* (*supra* note 18), p. 9. This is distinct from F2. According to decreasing marginal reasons, if we hold constant the cost of obtaining  $G$ , our reason to secure it decreases as we obtain higher levels; according F4, holding constant the level of  $G$ , our reasons for pursuing it decrease as the cost of obtaining it rises.

<sup>26</sup> For the present, these can be treated as synonymous, though in fact the idea of a utility function is usually interpreted in a way that is more demanding than a system of trade-off

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relative to other goals (or values, or ends) increases. Again, anomalous cases occur, as with Giffen goods, for which demand increases as their costs rise.<sup>27</sup>

### B. Rule rationality

A familiar picture emerges: A rational person has a system of goals and can make consistent choices among them. A person always has reason to act to pursue more of a goal rather than less, but her reason to keep on pursuing any particular goal lessens as the cost of achieving it increases; she generally also has less reason to seek an incremental increase when she has successfully achieved the goal than when she has yet to obtain it. To many, especially to economists and social scientists employing economic models, this (or something very similar) is the crux of all rational action. "Optimizing" and "rational" are pretty much synonymous terms to economists; one certainly cannot be the latter without being the former.<sup>28</sup> Even opponents of the optimizing model such as Herbert Simon tell us that "reason is wholly instrumental. . . . It is a gun for hire that can be employed in the service of whatever goals we have, good or bad."<sup>29</sup> Sociologists, lawyers, and moral philosophers, however, have generally taken far more seriously the idea that rationality can be expressed by action following from the acceptance of norms or rules.<sup>30</sup> As H. L. A. Hart stresses, in "any large group general rules, standards and principles" are the primary mode of regulating social life; the rules identify general classes of action and require or prohibit particular acts falling under these general descriptions.<sup>31</sup> This suggests an alternative notion of reason; let us say:

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rates. See Stanley Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988), ch. 3. See also my *Value and Justification* (*supra* note 22), p. 182.

<sup>27</sup> Sir Robert Giffen pointed out that when the price of bread rises, the very poor may purchase more of it; the increase in the price of bread has a significant effect on the real incomes of poor people, causing them to substitute bread for more expensive foods they can no longer afford, thus increasing the total amount of bread they consume. Status goods also can be considered as exceptions to downward-sloping demand—if they do not cost a great deal, they do not serve their purpose of showing that you can afford them. I am grateful to Julian Lamont for pointing these exceptions out to me.

<sup>28</sup> See, e.g., Gary Becker, *The Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1976), p. 3.

<sup>29</sup> Herbert A. Simon, *Reason in Human Affairs* (Stanford, CA: Stanford University Press, 1983), pp. 7–8.

<sup>30</sup> For the contrast between economic and sociological approaches, see Viktor J. Vanberg, *Rules and Choice in Economics* (London: Routledge, 1994), ch. 1. See Talcott Parsons's "classification of the sciences of action" in Parsons, *The Social System* (London: Routledge and Kegan Paul, 1951), p. 545ff. For analyses of rule rationality with a focus on law, see Gidon Gottlieb, *The Logic of Choice* (London: George Allen and Unwin, 1968); and Frederick Schauer, *Playing by the Rules* (Oxford: Clarendon Press, 1991).

<sup>31</sup> H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 121. I shall not consider permissive rules here.

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Alf has a *reason of fidelity* to (or not to)  $x$  if (1) Alf accepts some norm, principle, or rule  $R$ ; (2)  $R$  requires (or prohibits) a type of action  $X$ ; and (3)  $x$  is an instance of  $X$ .

This characterization of reasons of fidelity highlights three features of rule-following. *First*, an account of rational rule-following must clarify what is meant by embracing or internalizing a norm or a rule, a phenomenon that sociologists and psychologists have studied.<sup>32</sup> It is important to stress that rule rationality is not simply behavior in conformity to rules; it is action performed because rules are accepted. *Second*, rules are generalizations that identify types of actions;<sup>33</sup> because of this, *third*, a specific act required (or prohibited) by a rule stands to the rule in something like a token-to-type relation—to  $x$  because of a rule is to do it because it instantiates  $X$ , i.e., is an instance of it.<sup>34</sup> Together, the second and third points raise the standard problems about rule-following: How do we know that the correct way to “go on” with the rule—to instantiate  $X$ —is to perform this act rather than that? How do we know, for instance, whether a rule prohibiting vehicles in a public park provides a reason for leaving one’s bicycle at the entrance?<sup>35</sup> I shall not plow these familiar philosophical and jurisprudential fields here; for present purposes what is worth stressing is that these are distinct philosophical problems raised by the idea of rule-following, problems that do not characterize goal pursuit. The very existence of these long-standing problems thus indicates that rule-following is an activity quite distinct from goal pursuit.

### C. Why rule rationality is distinct from goal rationality

A common move in both philosophical ethics and decision theory is to reduce rule-following to goal pursuit. We follow rules, it is said, simply as a means to achieve goals. It is often the case that (1) because of lack of information, incentive structures, or strategic interactions, if each person sets out to achieve  $G$ , it will not be obtained. (2) In these sorts of cases (runs the reductionist argument), the best way to achieve  $G$  is through common acceptance of a rule  $R$ , which calls for actions of type  $X$ , where it is the case that  $X$  actions generally will lead to achieving  $G$ .<sup>36</sup> Therefore,

<sup>32</sup> See Parsons, *The Social System* (*supra* note 30), p. 207ff.; Vanberg, *Rules and Choice in Economics* (*supra* note 30), p. 14. See also Jerome Kagan, *The Nature of the Child* (New York: Basic Books, 1984), ch. 4.

<sup>33</sup> Schauer, *Playing by the Rules* (*supra* note 30), ch. 2; Vanberg, *Rules and Choice in Economics*, p. 16ff.

<sup>34</sup> Schauer, *Playing by the Rules*, pp. 54ff., 72, 77, 113; Benn, *A Theory of Freedom* (*supra* note 26), p. 24.

<sup>35</sup> This, of course, is Hart’s famous example in *The Concept of Law* (*supra* note 31), p. 123ff.

<sup>36</sup> This is a familiar claim in a huge body of utilitarian literature. As Goodin puts it: “The best way to coordinate our actions with those of others, and thereby maximize the utility from each of our actions as well as from all of our actions collectively, is to promulgate rules (themselves chosen with an eye to maximizing utility, of course) and to adhere to them.” Goodin, *Utilitarianism as a Public Philosophy* (*supra* note 2), p. 18.

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(3) it is claimed, *R* is simply an indirect means of goal pursuit, and so the reason for *x*-ing based on *R* is, after all, an (indirect, to be sure) case of goal-pursuit rationality.

In their war against reductionist claims, advocates of rule rationality almost always choose the same battleground: a case where *R* instructs us to *x* but where *x*-ing does not produce *G*. To an advocate of pure goal rationality, it seems crazy to follow the rule here. As John Stuart Mill said, when such extraordinary cases occur, rules will be faulty guides to our goal; if we insist on *x*-ing, “we shall employ the means and the end will not follow.”<sup>37</sup> Thus, says Mill, “the legislator, or other practitioner, who goes by rules rather than by their reasons . . . is rightly judged to be a mere pedant, and the slave of his formulas.”<sup>38</sup> As I said, advocates of rule rationality such as Frederick Schauer have focused on these “recalcitrant experiences”—where *x*-ing does not produce *G*,<sup>39</sup> trying to show that (*pace* Mill) it is rational to *x* anyway, and if so, it must be the case that one’s reason to *x* cannot be reduced to a means for attaining *G*.

Although I think Schauer’s analysis of recalcitrant experiences is right, these sorts of arguments tend to be highly inconclusive. An advocate of goal rationality can plausibly maintain that a more subtle analysis shows that the goal really is advanced by sticking to the rule, or that an additional goal such as fairness is attained by obeying the rule in apparently “recalcitrant” cases.<sup>40</sup> And if *no good at all* comes from following the rule, a proponent of pure goal rationality may stick to a (seemingly) hard-headed anti-rule-worship line, and insist that one is a fool to follow rules in these cases. It is more useful, I want to suggest, to reflect on the cases where the rule *does* promote the goal. Schauer is convinced that these cases are not truly rule-governed: if rule *R* is justified because it mandates *X* actions, which bring about *G*, and if in this case *x*-ing does bring about *G*, it seems that the action dictated by the rule (instantiate *X*) is extensionally equivalent to the goal-directed action of bringing about *G*. In these cases, Schauer believes, the rule is “superfluous.”<sup>41</sup> However, even when the rule agrees with the goal-based justification for it, rule rationality differs from goal rationality since it is not characterized by decreasing marginal reasons. Suppose I accept the rule that I ought to tell the truth. Even if I accept this because it will bring about good results, if I tell the truth because I accept the rule, my reasons to tell the truth do not decrease as I tell more and more truths. Suppose I tell the truth a lot—I am

<sup>37</sup> John Stuart Mill, *A System of Logic* (London: Longman’s, 1947), Book VI, ch. xii, section 3.

<sup>38</sup> *Ibid.*, Book VI, ch. xii, section 2. I consider Mill’s view in depth in my essay “Mill’s Theory of Moral Rules,” *Australasian Journal of Philosophy*, vol. 58 (September 1980), pp. 265–78.

<sup>39</sup> Schauer, *Playing by the Rules* (*supra* note 30), ch. 3.

<sup>40</sup> See, e.g., Russell Hardin, “My University’s Yacht: Morality and the Rule of Law,” in *NOMOS XXXVI: The Rule of Law*, ed. Ian Shapiro (New York: New York University Press, 1994), pp. 219–22.

<sup>41</sup> Schauer, *Playing by the Rules*, p. 72.

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thoroughly honest. If my actions were simply a manifestation of goal rationality, my reasons for telling the truth rather than seeking other goals should be declining.

In contrast to reasons that follow from goals, ends, and so on, reasons based on rules typically do not display any tendency to “decreasing marginal reasons.” One’s reason to tell the truth is simply that it instantiates truth-telling, not that one is accumulating instances of truth-telling in the world, or achieving more trust, or more cooperation, or whatever. This is the chief way that rule-following calls on drastically less information than goal pursuit. To recognize and evaluate one’s reason to achieve a goal, one must know how much of the goal one has achieved, how much others are achieving, prospects for future attainments, and so on; to deliberate on one’s reasons to follow a rule, one need only know that the act under consideration instantiates the type of act the rule addresses.

Now it might be replied that rule-following does, after all, usually exhibit decreasing marginal reasons. Suppose that I am a habitual truth-teller, and I am getting sick of missing out on the fun of lying. I try to keep on telling the truth, but the attractions of fibbing finally overcome me, and I tell a whopper. “One can’t,” I reason, “be an angel forever.” This, however, is a case of *increasing costs* of following the rule: one’s frustration builds up, and so do one’s reasons to put aside the rule. I have not denied that the “demand curve” for rule-following is “downward-sloping,” in the sense that as its cost increases, one has, overall, less reason to follow the rule. The important point is that one’s reasons to fulfill the duty do not decrease as one is successful at living up to it—(F2) does not hold. However, it may seem that this does not accurately describe what are often called “imperfect duties.” Charity or beneficence is characterized as an imperfect duty because we do not owe it to any particular person; as John Stuart Mill stressed, although we have a duty to be charitable, no specific person has a right to our charity.<sup>42</sup> Thus, it may seem that we have a less urgent reason to act charitably the more we have done so in the past; we do not wrong any particular person when we refrain from acting charitably, and as we have generally “done our duty” in the past, we can begin to relax and turn to other matters. One has, as it were, done one’s bit, or near enough to it that one’s duty does not press on one so urgently. This begins to look very much like decreasing marginal reasons to act charitably.

It may well be. I do not wish to insist that nothing we call a “duty” conforms to the goal-rationality model. It is not implausible to characterize an imperfect duty of charity as committing us to go a certain way toward achieving a goal of relieving suffering. We can have duties to work toward goals; if so, the closer we get to our goal, the closer we come to fulfilling our duty, and therefore the less urgent the duty is in our

<sup>42</sup> John Stuart Mill, *Utilitarianism* (Indianapolis: Bobbs-Merrill, 1957), pp. 61–62.