The Role of Non-Governmental Organizations in the Repatriation of Refugees

This paper examines the ethical responsibilities of those NGOs that assist in repatriating migrants from countries that do not want them -- in particular, the case of the South Sudanese in Israel. Did NGOs exploit these migrants by using repatriation to appeal to donors? Were NGOs complicit in a government policy that may have been unjust?

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Proving Impoverishment: Child Mortality Rates and the Problem of Moral Recognition

International law has long given us a clear ethical framework for understanding indiscriminate harm to noncombatants, and also for grounding the imperative of protecting vulnerable populations. But economic sanctions that deliberately cause enormous harm to an entire civilian population are likely to elude moral recognition.

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Objectivity and Subjectivity in Theories of Well-being

Last year, a special issue of this journal addressed the concepts of well-being and happiness as they appear in discussions of public policy. This paper defends an objective conception of well-being as happiness in a worthwhile life. Nevertheless, the paper points out problems that face any proposal for a well-being policy. To promote the well-being of its people, the state would impose its own conception of well-being on them and thus violate the principle of impartiality.

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Civic Studies

The emerging field of "Civic Studies" asks “What should we do?” It is thus inevitably about ethics (what is right and good?), about facts (what is actually going on?), about strategies (what would work?), and about the institutions that we co-create. Good strategies may take many forms and use many instruments, but if a strategy addresses the question “What should we do?” then it must guide our own actions – it cannot simply be about what other people ought to do.

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The Role of Non-Governmental Organizations in the Repatriation of Refugees

Mollie Gerver

Beginning in 2005, hundreds of Africans, mostly from Sudan and Eritrea, entered Israel across the Egyptian border. They typically paid smugglers in Egypt to take them to the border, where they were able to climb over the border fence. By 2009 about 22,000 non-Jewish individuals without authorization had crossed over into Israel, where the government labeled them "infiltrators" and "illegal work migrants." Of these, 1,250 were from South Sudan.1 Most of these migrants had left Sudan during or before the Second Sudanese Civil War, fought between the Sudanese government and the South Sudanese People's Liberation Army (SPLA) from 1983 to 2005. By 2012 the number stood at between 700 and 1000. Private organizations provided services to facilitate what they called "voluntary repatriation" back to South Sudan. I evaluate here the moral obligations of these organizations. I will ask whether they were exploitative, negligent, or perhaps complicit in broader Israeli government policies that may have been unjust.

Introduction

In 2008 I founded a student group, Advocates for Asylum, and a website, www.asylumseekers.org, which sought to secure rights for refugees in Israel. In this capacity, I interviewed and engaged in informal conversations with South Sudanese refugees who resided in Tel Aviv, Jerusalem, Eilat, and Arad.

I learned from several of them that non-governmental organizations (NGOs) offered them assistance to return to South Sudan. It occurred to me that NGOs that helped South Sudanese to go back to a war-torn area did not necessarily serve the interest of these migrants, or, if they did, it was only to offer them a less horrible alternative to forced deportation from or imprisonment in Israel. I wondered whether a more humanitarian course might have included an attempt to legalize the presence of these refugees in Israel.

The Israeli government began a Refugee Status Determination (RSD) procedure for some asylum seekers in 2010, but not for the South Sudanese. According to the 1951 Convention for the Protection of Refugees, all signatory states, including Israel, must interview individuals and provide refugee status to those who can demonstrate that they have been persecuted because of their race, ethnicity, religion, or membership in a social group. South Sudanese, Sudanese, and Eritreans, however, were not allowed to access this procedure; they were given informal "group protection," which essentially consisted of a government decision prior to 2011 not to arrest or deport them but also not to give them legal status as...

In January 2012... Israel's Population and Immigration Authority (PIBA) sent an open letter to South Sudanese in Israel telling them “Now that South Sudan has become an independent state, it is time for you to return to your homeland.”
refugees or residents. Special visas were issued, to be renewed every three months.\textsuperscript{2}

Under such "group protection," South Sudanese had few rights. They could not work legally in Israel, although the relevant ruling, Government Decision 2104,\textsuperscript{3} was not enforced before 2012. In the southern town of Eilat, the municipal public schools refused admission to non-Jewish African asylum seekers, including all South Sudanese children, a policy that was reversed after the Sudanese left.\textsuperscript{4} In addition, all South Sudanese residents throughout Israel were denied medical insurance,\textsuperscript{5} and employers often paid them less than minimum wage.\textsuperscript{6}

In 2005 the Sudanese government in the north and SPLA in southern Sudan signed a comprehensive peace agreement. In July 2011 South Sudan officially became an independent country, with Juba its provisional capital. In January 2012, half a year after independence, Israel's Population and Immigration Authority (PIBA) sent an open letter to South Sudanese in Israel telling them "Now that South Sudan has become an independent state, it is time for you to return to your homeland."\textsuperscript{7}

The government had persuaded some members of the South Sudanese community to gather the names and addresses of the South Sudanese in Israel. Officials then came to their houses with "voluntary repatriation" forms to sign. All had either to repatriate "voluntarily" by April 1, 2013, with a 1,000 Euro stipend, or to face detention and deportation in April without any stipend.\textsuperscript{8} South Sudanese were told they had three options:

1. They could be detained and possibly deported by force or
2. They could repatriate voluntarily with the assistance of an NGO called Operation Blessing International (OBI) if they had earlier expressed interest in repatriation or
3. They could repatriate voluntarily via a government-run project dubbed Operation Returning Home,\textsuperscript{9} organized by civil servants who eventually headed a permanent Assisted Voluntary Return (AVR) unit.

A court rejected a petition to reverse this policy,\textsuperscript{10} and nearly all South Sudanese, except for roughly fifty,\textsuperscript{11} repatriated. Citizens of Cote d'Ivoire were also told they must repatriate in the summer of 2012 or face detention and forced deportation.\textsuperscript{12}

In this article I will first describe some of the research I undertook in Israel, South Sudan, and Uganda over seven years, including what I learned about the repatriation. I shall then consider the possibility that by facilitating repatriation, OBI and a similar NGO exploited South Sudanese refugees in Israel or, alternatively, were negligent in failing to disclose accurate information about South Sudan to those considering repatriation. This will require some philosophical analysis of the concept of exploitation. I will then try to understand when and whether NGOs that facilitate repatriation are complicit in policies that may be unjust. In this way, I hope to contribute to the discussion of the moral obligations of NGOs in facilitating the repatriation of refugees.

The Role of NGOs in Repatriation

In 2009 the International Christian Embassy (ICE) and OBI established a repatriation service for South Sudanese. This began three years before the government initiated its AVR program. South Sudan was and remains a territory of extreme poverty. Civil war erupted there late in 2013.

In 2010 while I was in Israel, NGO managers told me, in interviews I conducted with them, that repatriation had been a relative success. Returnees, I was told, were opening businesses, attending school, and rebuilding their country after return. In March and April 2012, while I was a graduate student at Oxford University's African Studies Centre, I went to South Sudan to conduct interviews with those who had repatriated. In Juba I interviewed ten returnees from Israel between the ages of thirty and forty-five. I then took a bus to Aweil in Northern Bahr Ghazal State, where I interviewed sixteen returnees between the ages of fifteen and fifty. I also spoke with a mother and her three children who had returned from Israel to the secondary town of Wau in South Sudan's Western Bahr Ghazal state.

Shortly after I left South Sudan in April 2012, almost all of the remaining 700 to 1,000 South Sudanese in Israel had repatriated to avoid the 2012 detention threat from PIBA. Many who returned in 2012 moved to nearby countries shortly after repatriation. Therefore, in April to May 2013 I travelled to Uganda, where I interviewed 31 returnee parents and children. On December 12th 2013 I travelled to South Sudan again, to interview those who repatriated in the summer of 2012 to avoid
government deportation, but who had stayed in South Sudan, rather than move to Uganda.

I arrived in Juba on December 13th, 2013, with a list of ten cell phone numbers of returnees. I checked into a modest hotel and managed to conduct two interviews on December 14th. The next day, on December 15th, fighting broke out in Juba among members of the presidential guard, whose base was close to my hotel. I called the cell phones of some of the returnees whom I planned to interview, and two told me they were not safe in their homes in Juba, because they were members of the Nuer tribe. They had fled to the Internally Displaced Persons (IDP) camp of the United Nations Mission in South Sudan. I stayed to bring food and medicine to these two returnees in IDP camps, and there I soon met dozens of other returnees from Israel. I decided to stay in South Sudan to help those who were in the camps and to pursue research on the moral ambiguities of NGO-assisted repatriation, which for me was no less urgent.

Because I was there independently, rather than funded by an external body, I could use my own discretion in deciding where to travel within South Sudan and when to leave. I learned two weeks into the war, through extensive interviews inside and outside the two IDP camps, that five returnees from Israel had been killed in the fighting. I told this to reporters I knew in Israel and in the U.S., who reported it, although they could not enter South Sudan because incoming flights has ceased. On January 17th 2014 I returned to the UK, as I had teaching responsibilities during that semester. I hope to go back to South Sudan again within a year.

The Repatriation of South Sudanese in Israel Between 2009-2012

South Sudan is the world’s newest country. In addition to suffering from the civil war which continues as of this writing, it is one of the poorest countries in the world, with one of the worst public health records. Both Juba and secondary towns, such as Aweil and Wau, face severe food insecurity. South Sudanese with whom I spoke in Israel in 2010 were understandably concerned about returning too soon to South Sudan, due the widespread poverty, crime, internal violence, and the risk of war with Sudan. Nonetheless, some South Sudanese in Israel wanted to return even before independence. Eager to help, the ICE began a pilot program of Assisted Voluntary Return to South Sudan, including to Juba, Aweil, Wau, and other villages and secondary towns. OBI took over in 2010, providing a flight, a 1,000 Euro stipend, and training courses to those who wished to repatriate. The Hebrew Immigrant Aid Society (HIAS) was hired by ICE and OBI to conduct interviews with those who were considering repatriation, to ensure they were well-informed and were not coerced by the Israeli government into leaving. The NGOs helped 900 South Sudanese and Sudanese repatriate between 2009 and 2012. Most South Sudanese had stayed in Israel up until 2012, when the government threatened to detain and deport them.

When I went to South Sudan in 2012 to speak to those whom the NGOs had helped to repatriate, I learned that many faced very different conditions than they had been led to expect. On the one hand, eight
out of the ten I interviewed in Juba in 2012 had employment or had started a business. On the other hand, only two returnees I interviewed in Aweil had a business—the remainder were unemployed, and suffered from fear of hunger and lack of shelter. Nearly all lived in houses that would collapse in the rain, as they were made out of woven straw mats.

The majority of returnees I met who had resettled in rural areas had no memory of rural South Sudan life. For example, a woman named Catherine left Abyei for Khartoum at age seven and then Khartoum for Cairo several years later. While in Israel, she learned about South Sudan through television programs on South Sudanese Television, produced by the Government of South Sudan. A member of OBI had told her that her children could learn English in South Sudan. An OBI worker in Israel told me that all who returned would have access to schooling. Another woman, Tareza, was born in 1990 in Mariel Bai near Aweil, but had lived in the capital of Sudan, Khartoum, since infancy until age fourteen, and then in Egypt for two years before crossing over into Israel. She assumed, before returning to South Sudan in April 2011, that it would be "fine because it's my country." A meeting had been organized by OBI in Israel before repatriation. Tareza told me that at the meeting, an Israeli who had visited Juba promised that there was infrastructure, employment, healthcare, and schools in South Sudan. None of these were actually provided after repatriation.

Some returnees recalled how, before they returned to South Sudan, they had been in contact with family and friends in their home villages who had promised to help. However, friends and family did not always provide returnees basic necessities or livelihoods as promised. Catherine, who returned to Wau, could not rely on her father-in-law's family network: "They only say hello on the road, and then move on." Nor could returnees outside of Juba afford to travel to Juba to seek employment, with an overland round trip costing approximately $260. Eliza, a mother of four in Aweil, could not afford to pay the school fees of 600 SSP ($133) per year. Furthermore, by the time they saw they could not find employment, deadlines for World Food Program assistance had passed.

In April and May 2013 and in December 2013 to January 2014, I went to Uganda and South Sudan to speak with those who repatriated to avoid the 2012 deportation threat from PIBA. They told me they had received a lot of misinformation about what they would find on their return. As far as I could judge, however, they were not misinformed to the same extent as those I spoke with who returned before the 2012 PIBA deportation threat. Those who returned in 2012, either via OBI or the government AVR unit, felt they had been physically forced to repatriate because of the threat of deportation. They did not feel that misinformation was what led them to choose to repatriate, because they did not think they had a choice.

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In December 2012 and in June 2013 I also interviewed two families who have stayed in Israel, in hiding. They were not deported, although they remain without legal status. They have decided that life in Israel without legal status is unquestionably better than repatriation to South Sudan. Indeed, the majority whom I interviewed in South Sudan agreed that they might have been better off if they had refused to repatriate.

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Exploitation

A moral concern arises because it is hardly clear that the NGOs facilitated repatriation as a purely humanitarian intervention. ICE, which facilitated the first repatriation flight, defines itself as a "worldwide, non-profit ministry of Christian supporters of Israel...whose purpose is to remind her of God's promises to re-gather His scattered Jewish people to the Land." Pat Robertson, vocally supportive of Israeli policy goals, founded OBI and now in his 80s remains on its board.

Mikhail Valdman has argued that "one wrongly exploits another when and only when...one extracts excessive benefits from someone who cannot, or cannot reasonably, refuse one's offer." Valdman provides the following example: Person A agrees to provide an antidote to B, a lone hiker, who has been bitten by a poisonous snake, in return for $20,000, though it retail for $10. In this example, Person A extracts an excessive benefit from B when viewed against the baseline of an ordinary market exchange, i.e., in view of what it costs A to give B the medicine. Note, as well, that both parties in an exploitative
exchange may view the exchange as beneficial compared to not entering the exchange at all, even if the exchange is worse for B compared to the type of exchange that would occur were B not in distress.

What is morally problematic is that OBI in response to its donor base may have focused more on repatriating as many South Sudanese as possible than on their serving their best interest.

I want to ask whether OBI exploited South Sudanese in facilitating their repatriation. Economists use the term "rent" to describe the amount of a person pays to acquire a good beyond its competitive market price or opportunity cost. If OBI had used the plight of the South Sudanese to extract "rent" or a high price from them, it could have exploited these refugees, in the way Person A exploited the hiker.

I agree with the literature that defines "excessive benefit" as any benefit that is above what the exploiter ought to have benefited, were she to fulfill her basic moral obligations or duties. These moral obligations or duties are relevant baselines, and a benefit extracted because one has failed to fulfill these duties is exploitative. Some scholars, such as Hillel Steiner, view exploitation as involving a benefit above what the exploiter would obtain, had the exploited not faced some rights violation, including a violation by some third party unrelated to the exploiter. In this case, there is also an implied moral baseline of what the exploiter ought to give the exploited. The baseline is the price the exploited ought to be charged or ought to accept, were the exploited not to have suffered a rights violation. South Sudanese suffered a rights violation when they were denied the right to apply for refugee status in Israel. Perhaps OBI exploited them, if OBI benefited from South Sudanese repatriating under such circumstances.

The "rent" – if I may use that economic term – OBI extracted in this situation did not involve any monetary payment from the refugees. One could argue, however, that the price OBI extracted from the refugees included the sacrifice of whatever legal rights they might have obtained had they remained in Israel. We can call this a price, and not merely an unrelated unfortunate consequence for South Sudanese, insofar as this sacrifice was essential for ICE and OBI to promote their own (and Israel's) ideological and political goals. It is difficult or impossible, however, to quantify the sacrifice the South Sudanese made in leaving Israel because one can only speculate about how well they would have fared if (possibly with the help of NGOs) they had contested or resisted the deportation order.

The extraction is indirect, but it may be exploitation nonetheless. OBI gained donations in return for repatriating South Sudanese. OBI was not paid by the South Sudanese, but by external donors, whose support included funding for salaries and the travel of personnel. This funding may have been available only for a repatriation program and not for humanitarian purposes in general.

One may argue that OBI had a duty to provide humanitarian assistance to the South Sudanese migrants, perhaps because OBI implicitly promised to do so or because they had that role to fulfill. If so, OBI had a moral duty to treat South Sudanese as ends-in-themselves. Their welfare, however, may not have been the primary purpose of the repatriation. Rather the effort may have been motivated by the attempt to "re-gather His scattered Jewish people to the Land." The South Sudanese were not considered to be "His people." What is morally problematic is that OBI in response to its donor base may have focused more on repatriating as many South Sudanese as possible than on their serving their best interest.

On the other hand, perhaps the only way OBI could acquire any funds was by promising repatriation; if so the OBI director possibly could either offer repatriation or nothing at all. If repatriation is better than no charity at all, and if there was nothing else OBI could offer, perhaps OBI was not exploitative but simply did what it could in a dire situation.

I believe there is something else OBI could have offered. OBI could have appealed to donors to provide more funds for a safer return, even if donors wanted to earmark their donations for repatriation. How much more in security and assistance should OBI have offered to South Sudanese when facilitating their repatriation, to avoid charges of exploitation? One could opine that the NGOs, to avoid the charge of exploitation, ought to have given South Sudanese at a minimum the kind of assistance they would have accepted to repatriate, were they not facing forcible deportation or detention without an RSD process. Yet, how does one really know what South Sudanese would
have accepted, had the Israeli government set up a working RSD procedure? One may be tempted to argue, for example, that OBI's offer of 1,000 Euro in "reintegration assistance" and some job training was not enough because, if South Sudanese were able to access residency and refugee status in Israel, they would have agreed to repatriate only with far more assistance. Yet, even if Israel had a working RSD process, perhaps South Sudanese would have been unable to prove they were refugees, and so would have accepted whatever OBI had to offer in excess of the government-sponsored program. The question whether the South Sudanese in Israel had a legal claim to refugee status under international law becomes a factor in determining the moral baseline of efforts to repatriate them.

Some rights should have been granted to them regardless of whether they gained refugee status, such as access to education for children and basic healthcare; other rights, however, are contingent on the consequences of having access to the right to an RSD process. To determine fully what OBI owed the South Sudanese to avoid being exploitative, one depends on a counterfactual chain of events that are impossible to calculate. Since the baseline legal right of the South Sudanese to refugee status in Israel is so uncertain, it may not be possible—it is certainly not easy—to determine the extent that OBI was exploitative in repatriating South Sudanese from Israel.

Misleading Information

There is another way South Sudanese may have been exploited. According to a number of philosophical arguments, exploitation can involve taking advantage of someone who is ignorant of key relevant facts. One party may be vulnerable because they lack information, or their rights could be violated by the exploiter, if the exploiter has a duty to disclose certain information. One might ask, then, if OBI knew how tough things were in South Sudan and thus misled the South Sudanese migrants. If OBI did not know, which is possible given the volatility there, was this intentional, or just negligent? How much diligence was due on the part of OBI given the limited choice available to the South Sudanese?

HIAS knew relatively little about South Sudan, even though it was hired by OBI to determine if those returning were fully informed about the conditions there. The little information on Sudan that was available in the HIAS training manual for employees was not particularly accurate or well-cited. For example, the manual states: "...although Sudan might not have the same services as we have in Israel, their family is a significant factor for positive mental health - indeed a strong pull factor for their return." The manual also states: "Many applicants might not be aware of the entire situation in Sudan. Instead, they might only know about the circumstances in their village. This is OK."

OBI employees with whom I spoke stated that they called returnees on a monthly basis, but none of the returnees whom I interviewed in Aweil and Wau had been contacted. Rachel, the OBI employee I interviewed, explained to me that they had fallen behind in contacting returnees as promised. She said that one challenge was that returnees often did not speak English or Hebrew, but only Arabic and one or two additional tribal languages. There was no native Arabic speaker on the OBI staff until 2012, making communication difficult.

In 2012, when migration authorities in Israel told South Sudanese that they would be imprisoned if they did not repatriate, OBI stopped accepting new applicants. However, those who had expressed any interest in repatriation before the prison and deportation threat could repatriate via OBI. During the deportation, OBI also organized meetings within the South Sudanese community in Israel. At these meetings, the OBI director, the Israeli Ambassador to South Sudan, and a South Sudanese government employee claimed that it was safe to repatriate. In this context, one may ask whether the problems of misinformation, the lack of follow-up, and so forth, which I have described, represented 1) an intentional failure to disclose information, to encourage South Sudanese to repatriate or 2) an instance of negligence.

It seems that intent is important for exploitation, but not for negligence. It is not that negligence is any less serious. Negligence, like exploitation, can also benefit
a stronger party. Furthermore, the recipients of a negligent offer, just like the recipients of an exploitative offer, may face a demeaning choice. Yet negligence does not involve intent, and so it is a distinct wrong, with a distinct policy solution. If OBI did not know what information on South Sudan it lacked, that is different than if it did.

It seems clear to me after talking with affected individuals that OBI, if it had hired a native Arab speaker to conduct phone calls to returnees, could have learned more about the conditions they found when they returned. About 20% of Israel's population are native Arabic speaking Palestinians with Israeli citizenship. Furthermore, OBI could have easily contacted those living in Aweil and Wau, were they to have contacted other NGOs in Israel, as I did, such as the Hotline for Migrant Workers and the Aid Organization for Refugees and Asylum Seekers. Rachel, the OBI employee I interviewed, expressed regret at OBI's failure to build a relationship with these organizations. When the OBI director told me "there is health insurance and free education in South Sudan," OBI may have genuinely thought it to be true. However, OBI could have obtained more accurate information if it had tried to do so.

Because it would have been relatively costless to provide more information, it may be that OBI did, in fact, foresee the consequences of its actions. Furthermore, OBI's failure to adequately inform the refugees of their prospects looks like exploitation rather than negligence insofar as it served an ulterior interest which was to repatriate the South Sudanese.

Complicity and the Policy Effect of the Repatriation Option

According to Chiara Lepora and Robert Goodin, for an NGO to be complicit in a wrong, such as an unjust government policy, its actions must be necessary and sufficient for that wrong to have occurred in the circumstances or even if the world were somewhat different. In other words, "the agent's actions could have been necessary and sufficient for the injustice if the world was slightly different." In this case, one can argue that there was a significant injustice when Israel refused to initiate an RSD process for the South Sudanese. The claim that this was an injustice would be consistent with a range of views on immigration. Regardless of whether South Sudanese were actually refugees, it seems that they had a right to have their claims heard.

To what extent were the NGOs complicit in the refusal of the government to hear the status claims of the South Sudanese? One may argue that the NGOs would have been complicit in this policy if 1) the policy would not have been implemented or would have been softened but for the work of the NGOs; and 2) the policy was influenced by the work of the NGOs.

Neither of these conditions seems to hold. As I noted earlier, it was not only through OBI that individuals repatriated. The government had its own repatriation program, set up in 2012, the AVR Unit. Perhaps the government's AVR unit, which was less generous, played the bad cop to the OBI good cop. On one hand, one could argue that OBI humanely preempted the government repatriation, which would have occurred regardless of how OBI acted. On the other hand, pre-emption is hardly grounds for avoiding complicity, because if the world were slightly different — if the government did not have its own repatriation program — then OBI would have had a bigger impact. However, one may argue that the world would have to be very different indeed for the Israeli government to have had no AVR unit; it was and is an integral part of their immigration policy. If the success of voluntary repatriation did encourage the government not to initiate an RSD procedure, but if repatriation was possible without OBI, then OBI's actions were not necessary or sufficient for the decisions of the Israeli government, nor would they have been necessary or sufficient if the world were only slightly different.
Yet, perhaps the world without the government repatriation would only be slightly different. Indeed, the government runs its repatriation program with only two staff members, from a small office. As such, we can consider whether OBI was complicit by determining what would have happened without OBI, in a world slightly different from our own, where the government had no repatriation program. Furthermore, OBI really was the only NGO to provide repatriation up until 2012. It is possible to speculate that if a sizeable number of South Sudanese chose to stay and go to prison in Israel, or if they had to be physically deported, as it were, in chains, Israel might have initiated an RSD process or done something else to limit the damage to its image at home and abroad. The availability of repatriation—facilitated by NGOs—might have lessened pressure on Israel to initiate an RSD process for the South Sudanese. Israel avoided embarrassment because the South Sudanese repatriated voluntarily. Did this make it easier for Israel to threaten them with physical deportation or life imprisonment without an RSD process—threats it might have found difficult to carry out?

Yet again, by acting as an independent NGO with humanitarian credentials, OBI might have abetted Israeli policy by providing a moral cover as well as an easier path for repatriation.

Unfortunately, I am not able to travel to a counterfactual world and conduct empirical research there. This may be a problem for all philosophers. I am unable to compare the real world, where both OBI and the AVR unit existed, to hypothetical worlds without the AVR unit and/or without OBI. Would the South Sudanese have been treated differently by the Israeli government if NGOs did not assist in repatriation? It is nearly impossible to get a purchase on this question. To try to do so, one can compare the experience of the South Sudanese refugees to the experience of other groups of refugees in Israel who did not have access to a repatriation process. In other words, one can look to see if there is a correlation between 1) the work of NGOs to facilitate repatriation and 2) the willingness of Israel to threaten to force repatriation and to refuse to initiate an RSD process. Plainly correlation is not
causation, but one can try to tease out the counterfactual and hypothetical this way.

Congolese asylum seekers in Israel, for example, were not threatened with imprisonment to anything like the same extent as the South Sudanese. No NGO-assisted repatriation process was offered to them. This example may be considered evidence in support of the claim that OBI's repatriation scheme causally contributed to the Israeli government's policy of detention and forced deportation without access to an RSD procedure. There is counter-evidence. Ivorians were threatened with imprisonment in 2012 alongside South Sudanese and never had access to a repatriation scheme by a private charity, OBI or otherwise. More empirical research is needed, and it would help to make comparisons across countries and times.

Yet again, by acting as an independent NGO with humanitarian credentials, OBI might have abetted Israeli policy by providing a moral cover as well as an easier path for repatriation. Furthermore, the Israeli government was perhaps emboldened to administer its own repatriation, the AVR unit, precisely because it saw that many were repatriating through OBI; it saw that, since so many refugees did repatriate via OBI, it could get the others to leave. As such, perhaps OBI causally contributed because, in the absence of OBI repatriation, the government would have to take the moral onus of repatriation on itself. It was not just that OBI preempted the AVR unit, it is that OBI causally contributed to the government's overall policy. Therefore, it is possible that OBI did not merely preempt the AVR unit. OBI possibly caused the AVR unit to exist to begin with.

We are left with a unique chicken and egg dilemma, which Lepora and Goodin's definition of complicity cannot quite resolve. To wit: 1) The threat by the government to repatriate by force encouraged OBI to create its own more humane repatriation scheme, and 2) that more humane repatriation scheme encouraged the government to threaten to repatriate the South Sudanese by force.

"We Had No Choice"

None of the South Sudanese I interviewed were actually deported. "Why did you go back to South Sudan?" I asked. "Because we needed to. The government told us to go back." I persisted, "So they forced you, physically, to go back?" In an IDP camp, one returnee answered "No," as he crouched under bed sheets draped over twigs, his shelter since the war began. "If we hadn't gone back, the Israeli immigration would have detained us. So we signed a form, and agreed to go back."48

Why did nearly every South Sudanese national in Israel agree to repatriate by 2012 rather than face the threatened consequences? The cooperation of the South Sudanese in their repatriation is puzzling in part because many of them were not naive about what they would find when they returned. "Did you know or suspect what would happen to you when you decided to go back?" I asked those I met in South Sudan, both times I went, and I put this question to those living inside and outside the IDP camps after the civil war began. Many replied that they did, indeed, suspect what would happen to them.

What did happen to those who went back? By far the most widespread risk was malaria, and I heard rumours that over thirty individuals died from the disease among those who returned. This, based on the newest data on malaria in South Sudan,49 seems likely. A lack of resources for housing and food was also widespread. When the civil war began, those who repatriated also faced ethnically-targeted killings, by Dinka militias against Nuer citizens, and Nuer militias against Dinka citizens, depending on the region.

One South Sudanese returnee I met, Gatluak, had been an active member of the Nuer community in Israel. Before return, a friend already in South Sudan warned him that, if he repatriated to South Sudan, his life might be at risk. While still in Israel, he hired a lawyer and applied for refugee status, and his application was rejected. He returned and, when the war started, Dinka militias came to his home in Juba, beat him up, and tried to arrest him, but he managed to flee to the IDP camp. "Why did you decide to go back, rather than go to detention in Israel?" I asked him. He was not the victim of misinformation. He responded that he was told by immigration authorities that he would be forcibly deported from detention if he did not consent to repatriation.50 Others I spoke with simply feared imprisonment for life. I was always told, "We had no choice."

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Conclusion

Why did Israel fail to initiate an RSD process for the South Sudanese? It seemed obligated under international law to do so, but that may not be the whole story. Given that things are very bad in South Sudan, could any South Sudanese claim refugee status if he or she managed to cross into Israel from Egypt? One may speculate that if the number of asylum seekers in Israel were few and not apt to increase, there may have been an RSD process to weigh the circumstances of each individual. My experience suggests that the growing number of asylum seekers who might be eligible for an RSD process was a concern for the Israeli government.

In 2007, before OBI set up its program, the majority of members of Israel's parliament signed a petition to end to the detention of Sudanese asylum seekers, to cease deportations at the border, and to support the implementation of an RSD procedure.31 Another student and I spent a month in 2007 trying to reach and to persuade Benjamin Netanyahu, who was head of the opposition at the time, to sign the petition. In the final week of July, we found Mr. Netanyahu outside of the plenum in Israel's parliament, where he had just left for his lunch break. In lieu of a formal meeting, we walked with him to the cafeteria. After we spoke with him, he eventually agreed to sign the petition, but only after telling us that he did not support a single additional Sudanese entering the country.

Netanyahu later (as Prime Minister) supported detention, but this may have been because there were so many more asylum seekers in the country, and this was not related to OBI's repatriation program. It is conceivable that Israel took a tough position because it wanted to discourage more asylum seekers from crossing the border from Egypt. If the South Sudanese had been able to access an RSD process, more and more South Sudanese may have found their way into Israel and claimed refugee status there. I believe many in Israel including Netanyahu were worried about this prospect. Even if Netanyahu's policy as Prime Minister was not just, it suggests that OBI's offer of repatriation was not the only contributing factor to the government policy of refusing to implement an RSD process and threatening South Sudanese with deportation and detention.

I cannot compare the real world in which Israel emptied itself of the South Sudanese nationals through various incentives to a hypothetical world in which these same South Sudanese refused those incentives or in which Israel initiated an RSD process. I know that the few South Sudanese who remained were not forcibly deported, but they may be left in peace because there are so few of them.

If better services to the refugees under the circumstances could not have been provided by NGOs, and if there was nothing they could do to change government policy, then perhaps they were not complicit, exploitative, or negligent. There is a great deal to be discussed and to know about the appropriate roles of NGOs in assisting voluntary repatriation as an alternative to forced repatriation or worse. One ought to try to understand what role they play, in terms of causality and responsibility. At the same time, one cannot mount a moral high horse in the matter; indeed, the moral high ground is often difficult to find except in a counterfactual world.

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Notes:

2Yaron et al. (2013).
3Nathan, op. Cit.
4Beer Sheva Administrative Court petition no. 29883-07-11 (Hebrew), HCJ 6312/10 (Hebrew).
5Protocol No. 64: "Special Committee for the Evaluation for the Problem of Foreign Workers" (Hebrew).
7For the text of the letter sent to South Sudanese, see PIBA "A Call for the people of South Sudan" (31/01/11) http://www.piba.gov.il/SpokesmanshipMessages/Documents/2012-2192.pdf.
8Ibid.
9Lijnders (2013).
10Administrative Petition (Jerusalem) 53765-03-12: ASSAF
Interview with David, Juba, January 10th 2014; Interview with Director of HIAS

Interview with Rachel, Tel Aviv, 3 January 2013.

The director of HIAS

See for the relation between “misrepresentation” and "exploitation" see, for example, McClurg (2014).

The director of HIAS - Israel provided me with their training manual, which is not available for public view.

Interview with Rachel, Tel Aviv, 3 January 2013.

Interview with Director of HIAS-Israel, Jerusalem, 11 December 2012.

Interview with David, Juba, January 10th 2014; Interview with Peter in UN IDP camp, Juba, 1 January 2014; Interview with Samuel, Juba, December 22 2013; Interview with Phillip, 26 December 2013, Juba; Interview with Tahani, Juba, 25 December 2013.

Tahani described a meeting that took place with the OBI Director and the Israeli Ambassador to South Sudan at the time, Dan Shaham.


Interview with OBI Director, ibid.


For a range of views that are consistent with my argument on complicity, see Gibney (2004); Betts (2013) Lister (2013); Carens (2013); Sandelind (2014); and Kukathas (2012).

For discussion see Lewis (2000). But see Bigaj (2012).

Interview with Dan, Juba, 9 January 2014.

Margaret B Eyobo et al. (2014).

Interview with Gatluak, Juba, 21 December, 2013.

Willen (2010).

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Proving Impoverishment: Child Mortality Rates and the Problem of Moral Recognition

Joy Gordon

Economic sanctions, imposed for political purposes or viewed as a middle route: they seem more substantial than “mere diplomacy,” but they do not entail the risks of military intervention. Under this view, sanctions offer an attractive policy option. They do not seem inhumane or costly, and consequently there may be little opposition, at least from the political constituency of the state imposing them. These assumptions changed in the early 1990s, when the UN Security Council imposed sanctions on Iraq that were so severe that they triggered a massive humanitarian crisis, including the collapse of Iraq’s ability to provide adequate potable water, electricity, health care, or education to its population.

What had been regarded as a valuable tool for foreign policy and global security abruptly came to be seen in a different light -- as itself a human rights violation, ineffective in its goal of achieving compliance by the Iraqi state (or alternatively, regime change), while raising a host of moral and legal objections.

The Security Council, as well as scholars and practitioners, responded in part by formulating targeted sanctions, intended to impact the political and military leaders of the offending state directly, without causing harm to the civilian population. These targeted sanctions included arms embargoes, asset freezes, and visa denials. However, a second policy response emerged as well: a set of recommendations to 1) assess prior to the imposition of sanctions the humanitarian damage they may cause, and 2) monitor the humanitarian effects of sanctions throughout the period in which they are in place.

A United Nations handbook published in 2004 provides the clearest methodology for determining whether sanctions have resulted in increased threats to core components of human security: health; food and nutrition; water and sanitation; and education.

The Monitoring Role of the United Nations

Beginning in the mid-1990s, the UN put in place an elaborate system for observing the humanitarian consequences of the Security Council sanctions on Iraq. Representatives of UNICEF, UNESCO, WHO, and other UN agencies were present in Iraq to monitor the goods arriving under the Oil for Food Program and to assess their adequacy and to monitor whether they were distributed efficiently and equitably. By the late 1990s, consultants and commentators began to offer recommendations about how to assess and monitor the humanitarian impact of sanctions in general. One group of consultants to the United Nations suggested a process that would monitor 1) public health indicators, such as malnutrition and child mortality; 2) economic indicators, such as the availability of essential goods and the prevalence of refugees; 3) political and other indicators, such as the impact on governance and civil society as expressed, for example, in increased crime or political repression.

Similarly, a set of conferences based in Stockholm in 2003 recommended periodic humanitarian assessments of economic sanctions, to determine the impact of the sanctions and distinguish the harm caused by the sanctions from that caused by other
factors. A United Nations handbook published in 2004 provides the clearest methodology for determining whether sanctions have resulted in increased threats to core components of human security: health; food and nutrition; water and sanitation; and education.

The sanctions handbook offers trade sanctions as an example to illustrate the process that leads from sanctions to the deterioration of humanitarian conditions. Restrictions on trade lead to 1) increased unemployment in the affected sector, which leads to 2) reduced household income for displaced workers, which leads to 3) reduced nutritional intake for workers’ dependents, which leads to 4) increased malnutrition.

This succession of events leading to malnutrition (or even famine) makes intuitive sense but leaves us with two questions. First, if there is intervention to protect the most vulnerable—by the state, the family, aid agencies, or others—then the suffering of the most vulnerable, children, for example, will not indicate the humanitarian consequences of sanctions. How then do we measure the humanitarian damage done by the sanctions, if not by looking to the most vulnerable? And similarly, if the damage from the sanctions has not yet caused extreme harm, then how do we measure the humanitarian damage that has occurred in earlier stages?

In 2005, the Security Council set up a working group, which made recommendations on the effectiveness of sanctions, including suggestions about the design of sanctions regimes, and the use of expert panels and monitoring mechanisms. In its report the following year, the working group offered recommendations to address some of the issues that had been the most problematic in the case of Iraq, such as the arbitrariness and lack of transparency in decisions regarding humanitarian exemptions. The working group mentions humanitarian considerations (although briefly) in the discussion of the initial design of the sanctions regime: “If it is feasible and appropriate to prepare pre-assessment or early assessment reports, they should be clear regarding…the possible humanitarian, political, and economic impacts.”

Partly in response to these initiatives, the UN Security Council began to establish panels of experts to monitor its sanctions regimes, to conduct field visits, and to draw on the expertise of their members, for example, with respect to the flow of weapons, illicit trade in various goods, and the political and economic characteristics of the particular region involved.

However, Security Council resolutions that established committees or regimes for imposing and monitoring sanctions have been primarily concerned with dealing with violations of sanctions, and these resolutions do not mandate the monitoring of humanitarian consequences. Insofar as the Security Council does mandate humanitarian monitoring, it generally addresses different issues, such as whether militia groups are interfering with humanitarian assistance.

In many cases, the panels of experts for the sanctions regimes have included no members with expertise in humanitarian issues. For example, although Security Council Resolution 1521, imposing sanctions against Liberia, provided that the Panel of Experts should include persons with expertise in humanitarian matters, this almost never happened. Among some two dozen individuals who served on the panel over the course of its history, only one person had training in humanitarian matters, while the rest were experts in arms, finance, or natural resources.

When a clear humanitarian crisis does take place, neither the Security Council resolutions nor the practices of the committees require an analysis of whether the sanctions themselves are a contributing factor.

Similarly, the committee that is charged with overseeing the sanctions imposed on Iran under Resolution 1737 and successor resolutions has no mandate to monitor the humanitarian impact of the sanctions which it oversees. Neither the reports of this committee nor the expert panels comment upon any aspect of the humanitarian situation, even where the socioeconomic problems may be due to sanctions. When a clear humanitarian crisis does take place, neither the Security Council resolutions nor the practices of the committees require an analysis of whether the sanctions themselves are a contributing factor. Where there are other factors that contribute to the target state’s economic problems, such as its own economic policies, or additional sanctions imposed unilaterally by various nations, the monitoring groups and sanctions committees have no mandated role (or
interest in) disentangling the humanitarian damage done by the various actors.

There are sometimes other entities within the UN system that do provide some assessment of the humanitarian impact of sanctions. For example, the UN Special Rapporteur on human rights in Iran noted that the sanctions imposed by the Security Council, as well by various nations, created serious shortages of medicines and other basic goods, as well as initiated a broader economic crisis across Iran. But these concerns did not enter into the design of this or other sanction regimes. The sanction regimes themselves do not, for example, incorporate any prior assessment of the humanitarian damage the sanctions are likely to create.

In cases involving the imposition of sanctions by individual states, rather than by the UN Security Council, there are even fewer efforts at effectively minimizing humanitarian impacts. For example, the US sanctions on Cuba have been enormously damaging from a humanitarian perspective. As this article explains below, these sanctions have blocked Cuba’s access to medicine and medical technology, allowed food sales only on adverse terms, and restricted Cuban-Americans from visiting family members in Cuba.

Yet deaths from poverty are not widely described with the kind of moral condemnation that accompanies atrocities; nor is poverty seen as requiring the kind of urgency that follows events such as acts of terrorism, or aggression.

### Child Mortality as a Measure of the Humanitarian Impact of Sanctions

Certainly there is a need to engage in pre-assessment and ongoing monitoring of the humanitarian impact of economic sanctions; this much has been widely recommended by practitioners, consultants, and international agencies. Even with the advent of “smart sanctions,” many sanctions regimes still continue to do indiscriminate harm to the target nation’s economy and infrastructure, or simply target the wrong people for measures such as asset freezes.

While there may be clear recommendations about whether to monitor the humanitarian consequences of sanctions, how to measure them is a complicated question. The impact of sanctions on infant and child mortality rates has been the most prominent indicator. The use of infant and child mortality as a measure brings with it intuitive political and moral justifications and ordinarily is relatively easy to assess.

It is hard to think of any moral claims that intuitively carry more weight than those that invoke infant and child mortality. The suffering and death of infants and young children convey a powerful sense of a profound moral wrong in contexts ranging from economic development, to nonprofit fundraising, to the laws of armed conflict. Whatever utilitarian or other justifications may be present, any politician or policymaker who openly justifies the killing of infants and young children, or even expresses indifference, risks moral condemnation. By contrast, reduced life expectancy for adults is seen rather differently. The notion that adults are dying ten years sooner than they might does not carry nearly the same intuitive moral opprobrium, or the degree of sympathy, that accompanies an image of an emaciated child, or the tiny coffins of infants.

Child and infant mortality rates also function as indicators of economic development and deterioration. The logic of this is clear: If there are not the means of treating and distributing potable water, there will be high rates of dysentery and water-borne diseases; infants and children will have less resilience than adults, and they will be more likely to die from the dehydration that results. Availability of potable water, in turn, will be affected by whether there is sufficient electricity to power water and sewage treatment plants; sufficient engineering expertise to design and operate a system to pipe clean water to consumers; and sufficient wealth and equipment to implement these.

Likewise, food security depends on the availability of resources and on the development of infrastructure. Irrigation will likely depend on access to a water distribution system; distribution of food beyond the immediate area where it is produced will require vehicles and roads, bridges, or railroads; refrigeration is needed to avoid spoilage of many foods, and refrigeration in turn depends upon equipment and electricity; and so forth. As with dysentery and water-borne diseases, infants and young children will be the most vulnerable and less likely to survive deprivation than adults, and this will be reflected in rates of child and infant mortality.

Under the laws of armed conflict, the targeting of infants and children is clearly prohibited. But even
though poverty directly causes infant and child mortality, impoverishing a society through corruption, exploitation, or economic sanctions, does not generate the same moral condemnation as bombing an elementary school. However, extreme poverty is far more deadly than armed conflicts for children. Globally, some 11 million children under the age of five die each year, overwhelmingly in poor countries. According to UNICEF, an Ethiopian child is 30 times more likely to die before the age of five than a child in Western Europe. Yet deaths from poverty are not widely described with the kind of moral condemnation that accompanies atrocities; nor is poverty seen as requiring the kind of urgency that follows events such as acts of terrorism, or aggression. It may be that this is partly because impoverishment is seen as misfortune, rather than as caused by the deliberate choices of agents, even where the impoverishment in fact results from deliberate policies. It may also be because economic harm is not seen as violence in the way that warfare is, even though poverty causes more deaths than warfare.

A[1]t the level of both the state and the family, it is likely that resources will be redistributed to protect infants and children, for political reasons if not moral ones. But this also means that the most morally compelling evidence of economic harm will be absent.

**The Case of Iraq**

In August 1990, in response to Iraq’s invasion of Kuwait, the United Nations Security Council imposed the most stringent economic sanctions in the history of international governance. Initially Iraq was allowed to import only medicines. For the first eight months, no country or organization was permitted to deliver food to Iraq, although Iraq had been dependent on imports for two-thirds of its food supply. In the winter of 1991, the bombing campaign of the Persian Gulf War destroyed much of Iraq’s infrastructure, including roads, bridges, electrical generators, water and sewage treatment plants, and most of Iraq’s manufacturing base. This was followed by epidemics of cholera, typhoid, and dysentery. Health care deteriorated, as hospitals did not have sufficient electricity to run medical equipment. The lack of refrigeration meant that the "cold chain" could not be maintained for blood supplies and pharmaceuticals.

In 1992, a study conducted by researchers at Harvard’s School of Public Health found that the mortality rate for children under five tripled as a result of the war and the economic sanctions. They estimated that more than 46,000 children died under these conditions, who would not have died otherwise ("excess mortality"). International agencies and public health researchers generated estimates showing that IMR and U5MR continued to be high.

By the mid-1990s, infant and child mortality rates emerged as the most prominent factor in the moral criticisms of the sanctions regime. The Iraqi government held funeral processions of child-sized coffins. In 1996, Secretary of State Madeleine Albright was excoriated for her response to a question about child mortality in Iraq. Leslie Stahl of 60 Minutes said “We have heard that a half million children have died. I mean, that’s more children than died in Hiroshima. And, you know, is the price worth it?” Albright replied, “We think the price is worth it.” Albright later commented, “As soon as I had spoken, I wished for the power to freeze time and take back those words. My reply had been a terrible mistake, hasty, clumsy, and wrong. Nothing matters more than the lives of innocent people. I had ... said something that I simply did not mean. That is no one's fault but my own.”
Albright’s response nonetheless was widely cited to show the moral indifference of the US government, and to mobilize opposition to the sanctions.

However, several observers questioned the reliability of the estimates of child and infant mortality in Iraq on the grounds that some studies used a small sample size, and others relied on data from the Iraqi government. One critic asserted that “No one seems to be able to agree on exactly how big the ‘starvation’ problem really is. UNICEF says that 4,500 Iraqi children die of malnutrition, starvation and disease every month; Iraq says 1.2 million people have died as a result of the embargo.”

Thus, the infant and child mortality rates were a matter of considerable contention. It seemed that the matter was resolved in 1999, when UNICEF conducted an extensive study which found that infant mortality had more than doubled, from 47 deaths (per thousand live births), to 107, and mortality of children under five years old had increased similarly, from 56 per thousand to 131 per thousand. The UNICEF report brought much of the controversy to a halt, and its estimate was widely cited for the next several years. On the basis of UNICEF’s methodology, one demographer estimated that the excess child mortality for the entire period of the sanctions (from 1991 to 2003) was between 670,000 and 880,000. However, later analyses showed that this figure could not have been accurate, apparently because the Iraqi government manipulated the data.

It is clear that the Iraqi government would have the political motivation to overstate this number. But at the same time, this presents a puzzle. For over a decade, there was extensive documentation, across the country, by numerous international agencies, which showed a consistent pattern of severe, widespread malnutrition; the near-collapse of health care; indicators of extreme poverty, such as families selling off their possessions; and macro-indicators, including hyperinflation and high levels of unemployment. So why is it that infant and child mortality did not, in the end, seem to reflect this?

Anecdotal evidence from aid workers suggests that this was because the resources available were directed toward intervening in extreme situations to prevent children and infants from dying. This happened at both the family level and the institutional level. Within families, while books, tools, and even things like windows and door frames were sold off, it seems that the dwindling family resources were directed toward obtaining food and medicine for the infants and young children. Within hospitals and clinics, while the numbers of surgeries and lab tests declined precipitously, it appears that the minimal remaining resources were often directed to address the dysentery and dehydration of infants and young children. Thus, while there was in fact widespread malnutrition, as evidenced in wasting and stunting, there were enough resources brought to bear in targeted interventions to reduce the number of infants and children who died. On a moral and emotional level, it is unsurprising that families, and even officials in Saddam Hussein’s government, would choose to prioritize resources in this way. However, while this certainly seems to be the most morally defensible choice, it also means that infant and child mortality rates no longer functioned as indicators of the broader economic situation.

From this situation, one can see a dilemma: at the level of both the state and the family, there may well be a practice of using whatever resources are available to protect infants and young children. At the same time, this will make it more difficult to demonstrate the harm being done. This is evident in the cases of both Cuba and Iran.

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The Cases of Cuba and Iran

Prior to 1990, Cuba’s economy was highly dependent on the Soviet Union, with 80% of its trade with the Eastern bloc. When the Soviet Union collapsed, Cuba’s economy was heavily impacted, losing a third of its GDP between 1990 and 1994. At the same time, the US embargo was tightened dramatically, blocking not only Cuba’s trade with U.S. companies, but with companies in other countries as well, interfering with shipping, and compromising Cuba’s access to international banking. Cuba restructured its economy, establishing new trading partners in Europe and Latin America, as well as with companies in...
Canada and Australia. Cuba also began rapidly expanding its economic activity in other areas, particularly tourism, biotechnology, and nickel exports. Even so, Cuba’s economic recovery was only incremental, and the economic crisis continued for over two decades.

Oil shortages led to reduced electrical generation, and there were rolling blackouts for a number of years. The treatment and distribution of potable water was compromised by the electricity shortages, as well as by the difficulty in obtaining spare parts and chemicals for water purification. The secondary markets for food disappeared for nearly a decade, and for much of the population, the only food that was legally available were the minimum rations provided by the state. There were severe food shortages in 1993 and 1994, and average caloric intake dropped from 3000 calories per day to 1800. There was a significant reduction in proteins, vitamins, and micronutrients, which resulted in, among other things, an epidemic of optical and peripheral neuropathy. At the same time, Cuba lost access to nearly all foreign commodities, including pharmaceuticals.

However, throughout this period, infant and child mortality decreased slightly, nearly every year. This resulted from a set of policies that targeted their welfare, even though the deprivations in the population as a whole were quite severe. For example, prior to the economic crisis, every child up to the age of twelve was guaranteed a liter of milk per day for ten cents; and additionally, milk was available at affordable prices in the markets. During the economic crisis, milk disappeared from the public markets, but the rations remained intact. As the crisis continued, the age was lowered, until milk was guaranteed only to children up to the age of seven. But the milk rations for young children remained in place even when the economy was at its worst.

There were also health care policies that targeted the welfare of infants and children. The number of infants with low birth weight increased slightly, as did infant mortality, in 1993 and 1994, the worst years of the economic crisis. But Cuba had an extensive system of primary health care, with a doctor and nurse living on every block. Food supplements, as well as increased pre-natal visits, were provided to pregnant women. Although Cuba’s economic production and access to imports were profoundly compromised, Cuba had considerable human capital, and quickly reduced infant mortality. Although there was a broad economic collapse for almost five years, followed by only incremental growth for the next decade, IMR and U5MR continued to decrease. Thus, they no longer served as reliable economic indicators, precisely because resources were directed to children as a way to protect them from the hardship being borne by the rest of the population.

A similar pattern has emerged in the case of Iran. The United States first imposed sanctions on Iran in 1982. Citing Iran’s renewed efforts to develop uranium for nuclear power, the UN Security Council also imposed sanctions, primarily concerning Iran’s nuclear capacity and production of ballistic missiles. In addition, the US imposed increasingly stringent measures, broadly targeting Iran’s access to shipping, its energy sector, and its international financial transactions.

The US, the European Union, and a few other nations participated in these more extreme measures. The consequences were significant. Many foreign companies withdrew from Iran, shipping companies refused to carry Iranian goods, and Iranian manufacturers could not buy raw materials or equipment. As factories shut down, unemployment spiked, and bankruptcies increased. As food became more expensive, families bought less meat, dairy, vegetables, and fruit. Many university students could no longer afford to leave Iran to study abroad. As the national currency, the rial, lost value, Iranians with sufficient wealth began buying real estate; at the same time, Iranian professionals, and those with family abroad, sought to emigrate, and many sold their property.

None of these responses to sanctions—having to attend a local university, eating less meat, and buying real estate—carry a great deal of moral force. Certainly they do not seem to be the least bit similar to the starvation and death of young children. There are reports of shortages of medicines, and those certainly carried greater moral force. But in general, many choices were made, at both the micro and macro level, to mitigate the most extreme harms, and to protect the most vulnerable populations.

When families sell off their assets to buy food and medicine, their level of health, and that of their children, will be impacted less than other aspects of their lives, such as education, travel, or consumer goods. Thus, it seems that however severe and extensive the sanctions may be, the effect on the health
and nutrition of infants and young children may well be manifested least and last.

**Conclusion**

International law has long given us a clear ethical framework for understanding indiscriminate harm to noncombatants, and also for grounding the imperative of protecting vulnerable populations. But policies that deliberately cause economic harm to an entire population are likely to elude moral recognition, precisely because if there are any collective resources at all, individual choices and state policies may effectively shift the harm to those who are more resilient. This in turn diverts attention away from the extent of the harm, and dilutes the sense of wrong, because the victims, and the injuries, appear less compelling.

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In a society that has few resources of any sort, including infrastructure or human capital, infant and child mortality rates will be accurate indicators of the severity of the destitution. But there are also situations where these measures are quite misleading. This occurs where there is a deliberate policy to impoverish a society -- essentially a modern, legalized form of siege warfare, where the target state, at least initially, is relatively well off. In these cases, the state and family may well go to considerable lengths to redirect shrinking resources to protect infants and children. This may occur even where the state is corrupt and self-serving in other ways. Ironically, the most visible and morally compelling harm will be mitigated by those who are its targets; while the harm that is apparent will not seem like it matters much at all.

What is needed is, first, to implement the recommendations by practitioners and scholars to assess the likely humanitarian impact of sanctions prior to their imposition, and, second, to monitor their impact throughout the duration of the sanctions. In the last decade, this has rarely been done, even in the context of the increasing use of sanctions by institutions of global governance. To the extent that monitoring groups and panels of experts have been involved, they have given little or no attention to the humanitarian effects of the sanctions themselves.

But additionally, considerably more thought should be given to the methodology of assessment. The studies and recommendations that have been generated thus far have largely focused on the deterioration of public health, food insecurity, and the loss of ability to meet other basic needs. However, these will most likely appear only in the most extreme situations. They will not serve as useful measures of the less severe disruptions of the economy, which are likely to take place first. Nor will they reflect the harm done by sanctions when intermediate actors, such as the state and family, intervene to redirect the harm to those who are less vulnerable.

What is needed, second, is the development of a new set of guidelines to anticipate and assess the humanitarian impact of sanctions. These guidelines should be based upon what is known about how resources tend to be redistributed under sanctions to protect vulnerable populations. These guidelines should, moreover, incorporate indicators of humanitarian impact not only when it is severe, but also in the earlier stages, when the impact will take place in ways that are very different from situations that are more extreme.

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**Notes:**

4. Ibid., p. 12.
5. Ibid., p. 10.
7. Ibid., pp. 4, 9.
8. Ibid., II.A.3.(a), p. 4.
9. Resolution 1737 instructs the states to provide information regarding their enforcement efforts, and to do the same with the IAEA; to respond to violations of the sanctions; to consider requests for exemptions; to determine whether other goods should be prohibited, and whether other individuals or companies should be sanctioned; to issue guidelines for implementation of the sanctions; and to provide quarterly reports to the Council. (United Nations Security Council, "Resolution
Although there were negotiations in late 2013 to partially lift international sanctions on Iran, many of the national sanctions on Iran, including the US sanctions legislated by Congress, remain in place.

27See, e.g., Resolutions 1737 (2006), Resolution 1903 (2008), and Resolution 1929 (2010).


31Ibid., p. 112.

32Ibid., p. 121-22.

33Ibid., p. 140.

34Ibid., p. 127.

35United Nations Secretary-General (2012), para. 3.

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Objectivity and Subjectivity in Theories of Well-being

Neera K. Badhwar

In the philosophical literature as well as in discussions of public policy, happiness is sometimes identified with well-being. More often, however, happiness is seen as a long-term psychological state of fulfillment, and well-being (also sometimes called “flourishing” or “eudaimonia”) as the *summum bonum* that includes both happiness and the sense that one’s happiness is worth having, or that one’s life is worth living. As our highest personal or prudential good, our well-being gives each of us reason to cultivate certain traits and act in certain ways and not others.

Subjective vs. Objective Standards

According to some—maybe many—people, the standards by which we evaluate our lives as worthwhile or satisfactory need not themselves pass muster by some objective standard of worth, because there are no objective standards of worth for well-being. According to others, because well-being is the highest prudential good (HPG) for the individual as a human being, well-being must meet not only the individual’s own standards, but also certain objective standards of worth. Alternatively, on this view, the individual’s own standards must pass muster by an objective standard of worth.

I dub the proponents of the first view subjectivists, and those of the latter view objectivists. Subjectivists make a sharp distinction between a life’s *prudential value* on the one hand, and its *objective value* on the other, between the idea of the highest prudential good for an individual and the idea of her objective worth as a person. Objectivists, by contrast, hold that the objective value of a life is partly constitutive of a life’s prudential value, and that the idea of the highest prudential good for an individual entails the idea of an objectively worthwhile life.

In *Well-Being: Happiness in a Worthwhile Life* (2014), I defend the latter view. Building on an idea of Aristotle’s, I argue that a satisfactory conception of well-being must meet the formal requirements of the highest prudential good (HPG) as the most complete, self-sufficient, and choice-worthy good for an individual. The central idea here is that the HPG for an individual is a life that is both supremely desirable and worthwhile, a life that is therefore eminently worth living. I argue that the HPG conceived thus is an ideal that many of us yearn for from an early age, however dimly and inarticulately, and that to meet its requirements, well-being must be defined as happiness in a worthwhile life. Our lives can be worthwhile without being happy, thanks to great misfortunes, and they can be (more or less) happy without being (very) worthwhile, thanks to bad values. On my view, what is required for a worthwhile life is an understanding of the important aspects of one’s own life and human life in general, and the traits that are necessary for achieving such understanding and acting accordingly.

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Subjective vs. Objective Standards

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These traits, I argue, are autonomy (the disposition to think for ourselves about important matters), and
reality-orientation (the disposition to seek truth or understanding about important matters and live accordingly).

My defense of an objective conception of well-being is contrary to the general trend these days. In the philosophical literature, subjectivism about the prudential good has been on the ascendency, gaining strength and respectability from its alliance with empirical studies of subjective well-being, while objectivism has been on the retreat. Subjectivism also seems to align well with the preference-based view of welfare economics. Subjectivists claim that objectivist theories of well-being are elitist, that they give short shrift to the individual’s own point of view on her life, or that they ignore individual differences. Some also complain that objectivist theories confuse the prudential value of a life with other dimensions of value. Finally, subjectivists worry that an objective conception of well-being justifies paternalism, that is, the imposition of the objectivist’s preferences or values on others against their will. Those who believe that the state should promote our well-being add that objective theories will lead governments to impose alien values on citizens. In this summary, I limit myself to showing that my conception of well-being as happiness in a worthwhile life can meet these objections; the positive defense of this conception is in my book.

Elitism

The charge that objective theories are elitist is somewhat obscure. Is the thought here that objective well-being requires extraordinary ability, but subjective well-being is open to all comers? If so, the worry seems unfounded, because this requirement is not essential to an objective conception. Only “Objective List Theories” are guilty of elitism, insofar as they hold that a high degree of intellectual or cultural achievement is essential for well-being. My conception of objective well-being requires only that we be reality-oriented and autonomous. And the ability for reality-orientation and autonomy is an ability that everyone who is capable of well-being possesses. True, not everyone has this ability to the same extent, whether because of innate features or because of upbringing. But this is also true of happiness: some people are born with a happy personality—a high genetic happiness set-point—some with a melancholic or grouchy one. Some people are brought up by happy people in circumstances that promote happiness, others by unhappy people in circumstances that promote unhappiness. Yet these would be poor reasons for excluding happiness from a conception of well-being.

Ignoring Subject-relativity

Objective theories have also been criticized for ignoring the individual’s own point of view on her life, the fact that her good must be her good from her own perspective. But what sort of objective theory do critics have in mind? Valerie Tiberius and Alicia Hall define objective theories as those that claim that “there are at least some components of well-being whose status as components of well-being does not depend on people’s attitudes toward them.” Presumably, this means that you would be better off with these components even if you were perfectly happy without them and would find them hateful if you had them. A striking example is the Objective List Theory, which Derek Parfit defines as a theory that claims that “certain things are good or bad for people, whether or not these people would want to have the good things, or to avoid the bad things.” These good things, he continues, “might include moral goodness, rational activity, the development of one’s abilities, having children and being a good parent, knowledge, and the awareness of true beauty” (p. 499). So even if none of these things appeals to us – even if we wouldn’t enjoy having children and being good parents, would rather not exert ourselves to develop our abilities, and have no capacity to appreciate beauty - they are necessary to our well-being.

However, the Objective List view is not committed to this counterintuitive view. It can say that enjoyment or deep appreciation of these and the other goods on the list is essential to well-being, so someone who has no pro-attitudes towards them no more has well-being than someone who lacks them altogether. Richard Arneson recognizes the importance of the individual’s own feelings towards, and evaluations of, his life when he argues that a life of objective well-being is a life “that has lots of pleasure, especially when this comes by way of enjoyment of what is truly excellent, a life that includes sustained and deep relationships of friendship and love, a life that includes significant achievement in art or culture or systematic scientific understanding, a life that includes significant and sustained meaningful and interesting work--these features of a life inherently make it a better one for the one who lives it” (italics mine).
It is not the case, then, that the Objective List Theory has to give short shrift to the subject-relativity of well-being, the fact that an individual’s perspective on her life, her positive evaluation of it, is essential to her well-being. Nor does my theory. My theory recognizes that meaningful relationships, significant achievements in art or culture, appreciation of beauty and so on are valuable in a human life independently of any particular individual’s enjoyment or positive evaluation of them, but that they become components of an individual’s well-being only if he does enjoy them, or finds them fulfilling, or has some other pro-attitude towards them. There is an asymmetry in the role played by objectively bad and objectively good values in an individual’s life: Someone with bad values lacks well-being, whether or not he approves of them or takes joy in them, whereas someone with good values has well-being only if he takes joy in them and approves of them. Unlike some objectivist conceptions, my conception of well-being as the HPG also avoids the next problem.

**A defensible conception of well-being must be responsive, as Mill’s was, not only to the fact that we human beings are mostly alike, but also to the fact that we are very different in our tastes, talents, and abilities.**

**Ignoring Individual Nature**

Insofar as a theory holds that everyone’s well-being requires, or is enhanced by, cultural or intellectual achievements, appreciation of beauty, etc., it has too narrow a view of the sorts of lives that can be worthwhile or happy. An early example is provided by Aristotle’s conception, on which a life of manual labor is a life that no one would freely choose, and the life of the philosopher is the most *eudaimon* (flourishing). But not all objective theories are fated to make this mistake. On the view I defend, someone who has well-being as the highest prudential good possesses the traits necessary for a worthwhile life (autonomy and reality-orientation), understands important aspects of his own life and human life in general, and pursues those
worthwhile goals, of the many available to him, that suit his particular nature - those pursuits in which he finds happiness. Our activities must engage our interests and passions to be fulfilling and, indeed, to be our “own,” expressive of, or suited to, our individual natures. In this emphasis on individuality, my conception of well-being is more Millian than Aristotelian. A defensible conception of well-being must be responsive, as Mill’s was, not only to the fact that we human beings are mostly alike, but also to the fact that we are very different in our tastes, talents, and abilities. These differences, combined with differences in our social situations, make all the difference to the sorts of lives different individuals need for their own fulfillment.

According to some philosophers, however, objective theories rest on a fundamental confusion: the confusion of the prudential value of a life with other values. This argument has been made most forcefully by L.W. Sumner.5

Confusing Prudential Value with other Dimensions of Value

Sumner holds that a thoroughgoing subjectivism about well-being is the only game in town, because there can be no objective standard for well-being. Such a standard cannot be prudential, he argues, because it is circular to say that the objective requirement for well-being (the prudential value of a life) is that the life be truly prudentially valuable.6 But neither can the standard be moral or “perfectionist”, for we can imagine someone who is a paragon of virtue, or who has perfected his central human capacities to an exemplary extent, failing to find much satisfaction in his ethical or perfectionist excellences.7 Think of the honest, just, and generous man who fails to realize his dreams, loses his wife to his dazzling neighbor, and his wealth to his counterfeit friends. Or of the lonely genius, who dies never having known the simple pleasures of hanging out with drinking buddies or the intimacy of romantic love. Or, for that matter, of the autonomous and reality-oriented but unhappy individual.

From the fact that virtue and perfection do not guarantee well-being, Sumner concludes that there is a conceptual gulf between prudential values, on the one hand, and moral or perfectionist values, on the other, and hence that well-being is entirely subjective. Those who value morality or human perfection enough to see it as part of their well-being will measure their well-being partly by moral or perfectionist standards; those who do not, will not. The individual’s own priorities determine what makes her life better for her; there are no objective constraints on prudential values.8

These arguments, however, are too quick. No doubt it is circular to say, “Alpha’s life is prudentially valuable because it is prudentially valuable.” But there is no reason to think that we cannot say something more informative about the prudential standard Alpha’s life must meet to be prudentially valuable. Using a prudential standard for measuring well-being is no more circular than using a moral standard for measuring the moral value of a life, or using weights for measuring the weight of a bag of potatoes. Indeed, what else could we use to measure the prudential value of a life if not a prudential standard? If, as I argue in my book, autonomy and reality-orientation are necessary for objective worth, and objective worth is necessary for well-being as the HPG, then they are also prudential standards of the prudential value of a person’s life.

Sumner’s second argument against moral or perfectionist standards to measure well-being, namely, that even a paragon of morality or human perfection may fail to have well-being, merely shows that virtue or perfection are not sufficient for happiness, not that they are not necessary. Hence, Sumner’s arguments do not support his conclusion that there are conceptual barriers to thinking that prudential standards can be (partly) objective. The idea that all prudential values must be subjective creates an artificial and indefensible conceptual gulf between prudential values on the one hand, and moral and perfectionist values on the other.

But Sumner also has an epistemological objection to the claim that there are objective standards for well-being: if the individual’s own (authentic) point of view on her life does not determine her well-being, he asks rhetorically, who is to decide which goals or ways of life really are prudentially valuable? “The enlightened elite? Mill’s ‘competent judges’? Philosopher kings?”9 But this is a problem only if we assume that well-being does not require any objective values. So far, however, this assumption remains unjustified. Hence, if there are objective standards of well-being, anyone who knows what they are can judge which ways of life are prudentially valuable. Accordingly, it doesn’t seem “presumptuous,” as Sumner complains, to say of someone whose central goals are worthless that his life is not going well for him, even if he judges otherwise.10
It would, of course, normally be presumptuous to tell him so. But it would also normally be presumptuous to tell an irrational person that she lacks an important human quality or a cowardly person that she lacks moral fiber, even though it would not be presumptuous to make these judgments tout court. We can apply objective standards to others without announcing them.

It is safe to conclude, then, that none of the objections we have considered so far are fatal to the thesis that well-being as the HPG is happiness in an objectively worthwhile life. But there is one more objection that I need to consider.

**The most one can do to help others become autonomous and reality-oriented is to exemplify these traits oneself, persuade others of their value, and ... promote the conditions that encourage the development of these traits.**

**Paternalism**

This objection claims that objective theories are paternalistic, requiring that we impose our own supposedly objective values on others if we want to promote their well-being. But theories of well-being in themselves do not tell us to promote other people’s well-being, let alone to promote our conception of their well-being. The prescription to promote others’ well-being can only come from a substantive theory of ethics, and a sensible ethics must be alive to the dangers of busybody-ism. Additionally, even in situations in which one should promote another’s well-being, an obvious non-paternalistic way of doing so is to support her (as Kant would put it) in her permissible ends, instead of (self-defeatingly) imposing one’s own values on her — self-defeatingly, because for these values to benefit her, she must find them attractive and admirable enough to integrate into her valuational and motivational system. Pursuing good values kicking and screaming, so to speak, does nothing for her well-being. Moreover, on my conception of well-being as happiness in a worthwhile life, the values that are central to well-being are autonomy and reality-orientation, and autonomy and reality-orientation cannot be imposed on anyone. The most one can do to help others become autonomous and reality-oriented is to exemplify these traits oneself, persuade others of their value, and (depending on one’s relationship to the people to be helped), promote the conditions that encourage the development of these traits.

Some subjectivists about well-being argue that the state ought to pursue well-being policies, but that it can do so justifiably only if it promotes everyone’s well-being as they themselves see it. In other words, the state can pursue such policies justifiably only if it takes no stand on the correct conception of well-being. I agree with the last point because the correct conception is a matter of controversy, and the state is supposed to be impartial. But how can the state promote everyone’s well-being as they themselves see it, given that people differ in their conceptions of well-being? The state cannot have different well-being policies for different people. Hence, if it adopts such policies, it will necessarily favor some over others.

There is another equally grave problem with the idea of the government promoting people’s well-being as they themselves see their well-being: some people’s values and preferences are simply not worth supporting. Tiberius and Hall, and Tiberius and Plakias seem to think that their subjective conception of well-being as value-based life-satisfaction (VBLS) escapes this criticism. They argue that well-being is life-satisfaction according to “appropriate values,” that is, values that are in accord with the individual’s affective nature and that would not be undermined in the light of new information about these values or about the individual. As they put it, “when life-satisfaction judgments are informed and grounded in appropriate values, then these judgments are made from a perspective that is authoritative for a person’s well-being.” These values can range, on one extreme, from regarding pleasure as the most important thing in life, to not caring about pleasure or even happiness, on the other.

Tiberius and Hall argue that their theory offers an advantage that some have thought to be the province of objective theories of well-being alone: it can show why well-being is normative for us, that is, why it is worth pursuing, why we should pursue some values and not others, and why we should care about other people’s well-being—indeed, not only care about it, but use it as a basis for public policy and decisions about how resources “should be distributed.” Their general argument for thinking that their theory meets these normative demands is that “[t]he fact that appropriate values are an ideal to aspire to means that
when we wish someone a life that lives up to their values, we are wishing for something necessarily worthwhile.\(^7\)

However, what is appropriate for an individual and worthwhile to him on the VBLS theory can be quite inappropriate and worthless objectively speaking, since his well-being can lie in the pursuit of pleasure to the exclusion of everything else, or in getting special favors from the state, or in discriminating against members of certain groups, and so on. (In my book I argue that this is a problem with every subjectivist theory of well-being.) Hence, the rest of us have reason to hope that he will not have a life that lives up to his values, and that he will not get any of our resources to help him live thus.

I have argued that my conception of well-being as happiness in a worthwhile life is not elitist, does not give short shrift to the subject-relativity of well-being or ride rough shod over individual differences, does not confuse the prudential value of a life with other dimensions of value, and is not paternalist. In positive terms, unlike subjectivist conceptions of well-being, my conception of well-being can justify the time and energy we spend on trying to understand well-being, on striving for it in our own lives, and on wishing for it in the lives of others.

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Notes:

Lykken (1999), Chapter 2. Lykken emphasizes, however, that there is much we can ourselves do to live below or above our set point.

\(^2\) Tiberius and Hall (2010), p. 213.


\(^4\) Arneson (1999), pp. 113–142.


\(^6\) Ibid., pp. 164-65.

\(^7\) Ibid., pp. 20–25, 164–165.

\(^8\) Ibid., p. 93.

\(^9\) Ibid., p. 164.

\(^10\) Ibid., p. 166.

You are a citizen of a group (regardless of your legal status) if you seriously ask: “What should we do?”

The question is what we should do because the point is not merely to talk but to change the world. Thinking is intrinsically connected to action. We don’t think in focused and disciplined ways about the social world unless we are planning to act; and we don’t think well unless we learn from our experience.

The question is what we should do, not what should be done. It’s easy enough to say what should be done (enact a global tax on carbon, for instance). The tough question is what we can actually achieve. That requires not only taking action but obtaining leverage over larger systems. Since our tools for leverage are mostly institutions, this question requires careful thought about real and possible institutional forms. It is also, by the way, not the question “What should I do?” Of course, that is also important, but I cannot achieve much alone and—worse—I cannot know on my own what I ought to aim for. I must collaborate in order to learn enough about what to do.

The goal of civic studies is to develop ideas and ways of thinking helpful to citizens, understood as co-creators of their worlds.

The question is what should we do, so it is intrinsically about values and principles. We are not asking “What do we want to do?” or “What biases and preferences do we bring to the topic?” Should implies a struggle to figure out what is right, quite apart from what we may prefer. It is about the best ends or goals and also the best means and strategies. (Or if not the best, at least acceptable ones.)

Finally, the question is what we should do, which implies an understanding of the options, their probabilities of happening, and their likely costs and consequences. These are complex empirical matters, matters of fact and evidence.

Academia generally does not pose the question “What should we do?” The what part is assigned to science and social science, but those disciplines don’t have much to say about the should or the we. Indeed, the scientific method intentionally suppresses the should. In general, philosophy and political theory ask “What should be done?” not “What should we do?” Many professional disciplines ask what specific kinds of professionals should do. But the we must be broader than any professional group.

In response to the question "What Should We Do?" a group of scholars and activists have joined to form the emerging academic field of "Civic Studies." It is the intellectual component of civic renewal, which is the movement intended to improve societies by engaging their citizens. The concept of "Civic Studies" as an academic field was coined in 2007 in a statement by a group of scholars when they designed a summer institute on the subject. The framing statement is available at the website footnoted below. A more complete portrayal of the nascent field of "Civic Studies" can be found at its website (http://activecitizen.tufts.edu/civic-studies/) along with links to its organizing members. The website presents "Civic Studies" in part as follows.

The goal of civic studies is to develop ideas and ways of thinking helpful to citizens, understood as co-creators of their worlds. We do not
define “citizens” as official members of nation-states or other political jurisdictions. Nor does this formula invoke the word “democracy.” One can be a co-creator in many settings, ranging from loose social networks and religious congregations to the globe. Not all of these venues are, or could be, democracies.

Civic studies asks “What should we do?” It is thus inevitably about ethics (what is right and good?), about facts (what is actually going on?), about strategies (what would work?), and about the institutions that we co-create. Good strategies may take many forms and use many instruments, but if a strategy addresses the question “What should we do?” then it must guide our own actions – it cannot simply be about how other people ought to act.

I have no complete theory of “Civic Studies” to offer, but here are five principles, drawn from various authors and from experience.

The heart of conservative thought is resistance to intellectual arrogance. A conservative is highly conscious of the limitations of human cognition and virtue. From a conservative perspective, human arrogance may take several forms:

- the ambition to plan a society from the center;
- the willingness to scrap inherited norms and values in favor of ideas that have been conceived by theorists;
- the preference for any given social outcome over the aggregate choices of free individuals;
- the assertion that one may take property or rights away from another to serve any ideal; and/or
- the elevation of human reasoning over God’s.

These are separable claims. You can be an atheist conservative who has no objection to elevating human reason but deep concerns about state-planning. That is why conservatism is a field of debate, not a uniform movement. But it’s also possible to build coalitions, since, for example, Christian conservatives and market fundamentalists can unite against secular bureaucracies. Their reasons differ, but it is not only their practical objective that unites them. They also share a critique of the bureaucracy as arrogant.

Edmund Burke, an 18th century Irish political philosopher who served as a prominent member of the British Parliament, is considered by many to epitomize the ethic of conservatism. He stood for the
proposition that the status quo is likely to be better than any ambitious reform. Even if current institutions are based on unjust or foolish general principles, they have gradually evolved as a result of many people’s deliberate work, so that they now embody some wisdom. People have accommodated themselves to the existing rules and structures, learned to live with them and plan around them, and have woven more complex wholes around the parts given by laws and theories. Meanwhile, proposed reforms are almost always flawed by limited information, ignorance of context, and downright arrogance. In politics, as in medicine, the chief principle should be: “First, do no harm.”

In any debate, the Burkean conservative position is worth serious consideration. I come down on that side pretty often. And given the alternatives, I almost always vote for the Burkean political party in the United States, which is the Democratic Party.

It is the Democrats, after all, whose main goal is to defend the public institutions built between 1900 and 1960: neighborhood public schools, state universities, regulated capital markets, federal health programs, science funding, affirmative action, and the like, against untested alternatives based in the abstract theories of neoliberalism. Importantly, Democrats defend existing institutions without heartily endorsing them. A typical Democratic position goes something like this: Neighborhood public schools are inequitable and sometimes oppressive, but they need our support because lots of teachers and families have invested in them, they are woven into communities, and the radical critiques of them are overblown.

In fact, no one maintains authentic conservative ideals in the United States as well as the grassroots activists who organize everyday civic initiatives: service projects, community-based research studies, public deliberations, and the like. Typically, they place themselves far to the left of the political spectrum. But that just demonstrates that our political spectrum has been oddly scrambled. Civic activists are precisely the people who advocate respect for local norms and take an “asset-based” stance toward the institutions, resources, and norms of the communities where they work. They also work independently of the state and try to build the capacity of free citizens to solve their own problems. These are authentically conservative ideals.

Criticize from Within

Pure conservatism would preclude any criticism of existing institutions and norms. That will not do. But our critique of the shortcomings of our society should be “immanent,” in the jargon of the Frankfurt School, a group of social theorists associated with the Institute for Social Research at the Goethe University in Frankfurt, Germany, and particularly with its contemporary leader, Jürgen Habermas.

Habermas has long argued that we should make more explicit and try to improve the implicit (“immanent”) norms of a community rather than imagine that we can import a view from nowhere.

I would alter the idea of immanent critique in two ways. First, we should not look only for contradictions and hypocrisy in the norms underlying social and political discourse. Holding contradictory ideas is a sign of maturity and complexity, not an embarrassment. And if you look for contradictions in order to advance your own view, then you are not actually practicing immanent critique. You’re hoping to score debating points in favor of a position external to the community. The immanent critique I recommend is subtler and more respectful than that. Second, it is not always directed at communities, whether geospatial, ethnic, or political. Sometimes it is directed at practices and fields. In fact, I see special value in intellectual engagement with fields of practice whose expressed aims are appealing but which need help with the details.

Avoid the Search for Root Causes

Here is a little fable that illustrates this point:

A group of middle class students has volunteered to serve meals at a homeless shelter. They love the experience. During the reflection session later, one remarks, “Serving the homeless was so great! I hope
that shelter will still be open in 50 years, so my grandchildren can serve.”

A progressive educator cries, “No! Our goal must be to end homelessness. You need to think about root causes, not just serve free food once a week. What are the fundamental causes of homelessness?” Chastened, the students do serious research and determine that homelessness results from poverty, which, in turn, is a byproduct of global capitalism.

They are trying to figure out what to do about capitalism when the Brazilian legal theorist and former cabinet member Roberto Mangabeira Unger happens to walk by. “No!” Unger might declare. “You are assuming that the link between poverty and homelessness is natural or inevitable. You have derived patterns from data drawn from limited and partial experience and restricted your imaginations to what you believe are ‘lawlike tendencies or deep-seated economic, organizational, and psychological constraints.’”

“We human beings have made the social world and we can change any part of it—not only the parts that you have identified as deep structures, but also any of the other elements or links.

“Your ‘confining assumptions…impoverish [your] sense of the alternative concrete institutional forms democracies and markets can take.” By focusing on the biggest and most intractable factors, you guarantee defeat, whereas any part of the picture could be changed. It would be possible to have a capitalist society with poverty but no shortage of homes. What if we got rid of all zoning rules and rent control but gave everyone a voucher for rent? What if public buildings were retrofitted to allow people to sleep comfortably in them at night? What if some houses were shared, like ZipCars, and homeless people occupied the temporarily empty ones? What if …?”

The idea of "root causes" is a misleading metaphor. Social issues are intertwined and replete with feedback loops and reciprocal causality. There is no root. Sometimes it is better to address an aspect of a problem that seems relatively superficial, rather than attack a more fundamental aspect without success.

**Keep the Ship Together**

In deciding what we should do next, we should not turn our attention to ultimate ends, for example, to a theory of the good (let alone the ideal) society. First, the path toward the ideal is probably not direct, so knowing where you ultimately want to go may send you in the opposite direction if you look for a shorter path. Second, we should be just as concerned about avoiding evil as achieving good. Third, our concept of the ideal will evolve, and we should have the humility to recognize that we do not believe what our successors will believe. And fourth, we are a group that has value—the group may even give our lives the value they have. It is just as important to hold the group together as to move it forward rapidly toward the ideal state.

There’s a great scene in the movie Lincoln when the president tells Thaddeus Stevens:

> A compass, I learnt when I was surveying, it'll— it'll point you True North from where you're standing, but it's got no advice about the swamps and deserts and chasms that you'll encounter along the way. If in pursuit of your destination you plunge ahead, heedless of obstacles, and achieve nothing more than to sink in a swamp, what's the use of knowing True North?

These are the words of Tony Kushner, who wrote the screenplay, not (as far as I know) of President Lincoln himself. But they make an important point. Knowing where we ought to end as a society tells us very little about our best next move. Sometimes a tactical retreat or a sidestep is well advised. Thus political philosophy does not address the question, “What should be done?” unless it is married to political strategy—and the division of disciplines and departments makes that combination rare.

I would actually push the point further. There is no end, no literal True North. As we move through time as a people, we keep deciding where we ought to go. Moving in the right direction is important, but so is holding ourselves together as a community so that we can keep deciding where to go. Sometimes, the imperative of maintaining our ability to govern ourselves is more important than forward motion.

In his fine book, Reconstructing the Commercial Republic, Stephen Elkin introduces this metaphor:

> Those who wish to constitute a republican regime are like
shipbuilding sailors on a partly uncharted sea who know the direction in which they sail, since the kinds of ports they prefer lie that way. This much they can agree on. To attempt to agree on anything more specific will defeat them, their opinions on the matter differing significantly. They also know too little for substantive agreement to be possible. … It is clear that the relations among the shipbuilders are fundamental. Because they must build, rebuild, repair, and modify the vessel as they sail and learn—and because they must alter their course— it matters whether the shipbuilders’ modes of association are such as to facilitate this learning and the decisions they must make. … These modes of association are then at least as important as the ports toward which the shipbuilders sail.4

So it is with a republican regime. Elkin adds that the “essential problem is one of creating a design that provides the capabilities that are needed to keep the regime oriented in the right direction.”

Lincoln provides a rich example for thinking about this problem. He knew the North Star (in that case, abolition) but he also strove to keep the ship of state together because abolition was not the only or final destination our ship could reach. Lincoln’s was the great case, but the same situation confronts every leader—and every citizen. For instance, our current president named the North Star in his Second Inaugural:

We are true to our creed when a little girl born into the bleakest poverty knows that she has the same chance to succeed as anybody else, because she is an American, she is free, and she is equal, not just in the eyes of God but also in our own.

But how can we move a divided America closer to that objective? That is an example of a question that is worthy of us, as citizens.
Philosophy & Public Policy Quarterly

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