

HAPPINESS AND REVEALED PREFERENCES IN EVOLUTIONARY PERSPECTIVE

Richard A. Epstein^{*†}

INTRODUCTION

How do we understand human nature? The purpose of this Essay is to examine the relationship between human nature and social institutions. More concretely, the question is: What does an accurate account of human nature tell us about the choice of a desirable set of social institutions? Accounts of this sort typically focus on two key sticking points, one of ends and the other of means. On the former, Is individual self-interest the driving force behind all forms of human behavior? Do people care about themselves first? In the extreme, improbable, answer to this query, ordinary people do not care about any other individuals at all. In more modest versions, they display a degree of empathy and concern for their fellow individuals, best captured by Hume's memorable phrase of "confin'd generosity."¹ On the latter, Do these (self-interested) persons select the proper, i.e., lowest cost, means to reach their chosen ends under conditions of uncertainty?

Within the standard versions of neoclassical economics, both of these premises—self-interest and rationality—are generally posited as true.²

* James Parker Hall Distinguished Service Professor of Law, University of Chicago Law School; Peter and Kirsten Bedford Senior Fellow, Hoover Institution, and visiting professor, New York University Law School.

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1. DAVID HUME, A TREATISE OF HUMAN NATURE 519 (P.H. Nidditch ed., Oxford Univ. Press 1978) (1740). "Men being naturally selfish, or endow'd only with a confin'd generosity, they are not easily induced to perform any action for the interest of strangers, except with a view to some reciprocal advantage, which they had no hope of obtaining but by such a performance." *Id.* Note that Hume uses the phrase "not easily induced," which shows that he does not believe that such actions will never happen. But the clear implication is that the gains to the recipient have to be far larger than the costs of the other side for this action to take place. The patterns of altruism are indeed quite complex. David Hyman has assembled an impressive array of evidence to indicate that in many cases there are too many good Samaritans who perish in unsuccessful rescues. See David A. Hyman, *Rescue without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEXAS L. REV. 653, 681 (2006) ("[I]ndividuals who choose to get involved in a rescue face a significant risk of injury or death.").

2. See, e.g., ADAM SMITH, THE THEORY OF MORAL SENTIMENTS 10 (Philadelphia, Anthony Finley 1817) (1759) (explaining the "[p]leasure of mutual [s]ympathy"). Smith states:

[N]othing pleases us more than to observe in other men a fellow-feeling with all the emotions of our own breast; nor are we ever so much shocked as by the appearance of the contrary. Those who are fond of deducing all our sentiments from certain refinements of self-love, think themselves at no loss to account, according to their

Starting from these assumptions, the key challenge is to devise a set of social constraints that align individual welfare with social welfare, which in classical liberal theory leads to a prohibition against the use of force and fraud and a strong suspicion of private monopoly. It then becomes possible to develop a model of political institutions that promotes both private property and voluntary agreements. These institutions are not self-sustaining, so the complete theory requires the creation of public institutions with limited power to use tax revenues to develop additional rules to promote the desirable and limit the undesirable behavior, as identified under this basic theory.

I shall not seek here to offer a fresh defense of this view, which I have long held.³ But I do want to deal with some of the critical attacks that have sought to undermine its twin bedrock assumptions of self-interest and individual rationality. A decade ago, perhaps, the dominant focus was on the postulate of rational behavior, chiefly by exposing an array of cognitive biases, starting with the early work of Amos Tversky and Daniel Kahneman.⁴ More recently, academic attention has turned to the second key assumption that asks whether the promotion of individual happiness counts as a proper or useful social end. My purpose is not to defend the undying correctness of that model of human behavior, in which individuals seek in systematic, relentless, and precise fashion to maximize their individual welfare. It is rather to offer a sympathetic but critical evaluation of this worldview in terms of evolutionary theory, which, when properly understood, bolsters the case for the classical liberal synthesis of legal norms and institutions. The connection between evolution and political thought dates back to early times. Long before Darwin, some implicit version of evolutionary theory was tied to now-of-discredited notions of “natural law,” one of which refers to the rules of conduct needed to protect basic human needs on such vital matters as procreation, cooperation, and aggression.⁵

own principles, both for this pleasure and this pain. . . . But . . . it seems evident that neither of them can be derived from any such self-interested consideration.

Id.

3. See RICHARD A. EPSTEIN, *SKEPTICISM AND FREEDOM: A MODERN CASE FOR CLASSICAL LIBERALISM* 34 (2003) (explaining why a sound theory of limited government, unlike the hard-line libertarian position, allows for both flat taxes and the use of the eminent-domain power).

4. See, e.g., Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, in *JUDGMENT UNDER UNCERTAINTY* 3, 3 (Daniel Kahneman et al. eds., 1982) (showing that “people rely on a limited number of heuristic principles which reduce the complex tasks of assessing probabilities and predicting values to simpler judgmental operations”); Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *ECONOMETRICA* 263, 263 (1979) (describing “several classes of choice problems in which preferences systematically violate the axioms of expected utility theory”).

5. See, e.g., *JUSTINIAN’S INSTITUTES* § 1.1 (Peter Birks & Grant McLeod trans., 1987): “The

In order to achieve this result, Part I of this Essay briefly outlines the general findings of the modern literature on two key elements of happiness. The first is the weak correlation between happiness and other factors such as wealth, health, exposure to potential criminal behavior, and other aspects of human endeavor that we intuitively think affect people's sense of their own well-being. The second is the persistent finding that individual happiness is often relative, not absolute, such that people feel better off when they perceive that people in their reference group are made worse off.

Part II then offers some common-sense reasons to question these conclusions based on the observation of individual and group conduct. The critique rests less on sophisticated reexamination of the extensive survey data and more on the traditional emphasis on *revealed preferences*, which insists that the most accurate guide to what people want lies not in what they say, but what they do.

Part III then seeks to find the middle path whereby evolutionary theory offers good reason to believe that both the survey data and the common-sense observation of human behavior are both needed to complete the overall picture. In dealing with this information, it is necessary to interweave three key facets of evolutionary theory: variability, inclusive fitness, endogeneity.

First, on *variability*: a simple reminder that any theory of human nature must take into account not only the behavior of the median individual, but also *variations* within populations. Just as all individuals do not have the same height or intelligence, they also do not have the same attitudes towards their own happiness or that of others—let alone the same degree of sociability. Taking these variations into account is critical for any assessment of human behavior and the institutions that help shape it.

Second, on *inclusive fitness*: a shortfall of the happiness literature is that it fails to take into account one of the central features of evolutionary theory, namely, that individuals do not have individual welfare functions at all. The more accurate account of human nature always stresses the key notion of “inclusive fitness,” which explains how each individual necessarily takes into account the welfare of other individuals in making his

commandments of the law are these: live honourably; harm nobody; give everyone his due.” Of these, the second invokes the law of tort; the third, the law of contract. The first is the most ambiguous, because there is little that law, as opposed to social norms, can do to enforce honorable behavior. If, for example, not lying counts as honorable behavior, then the first prohibition adds nothing to the second. If more is required, it is hard to see what law can do to compel it.

The next passage addresses the relationship between nature and natural law: “The law of nature is the law instilled by nature in all creatures. It is not merely for mankind but for all creatures of the sky, earth and sea. From it comes intercourse between male and female . . .” *Id.* § 1.2.

or her decisions.⁶ The relevant variables are easy to state. It is critical to ask at what cost one person can give assistance to another with whom he or she shares common genes. For parents, particularly mothers and infants, extensive care makes good sense at the early stages in the relationship. So long as the gains to the child are two times or more than costs to the parent, the actions will be both offered by the parent and accepted by the child. But let the cost to the parent be twice the benefit to the child, and neither party will want that relationship to go forward. The conflicted situations arise when the level of gain to the child is between one and two times the cost to the parents, at which point the child will want the parent to continue the action that the parent would prefer to cease.⁷ Weaning is one obvious illustration of this pattern of gradual separation. The actual distribution of benefits and costs could well be culturally determined, but the relevance of these ratios should be invariant across cultures. To be sure, we can identify many situations, such as arm's-length transactions with strangers, where none of these complications alter the basic results. The family situation only determines that the distribution of the gains (or losses) of these transactions with strangers will be distributed within the family. Lawyers often refer to this as "natural love and affection."⁸ Any analysis of family and other intimate associations—be it marriage or family businesses—will surely go astray if it does not take "inclusive fitness" into account.

Third, on *endogeneity*: the survey data work best in those settings in which individuals are not faced with any decisions. Nonetheless, surveys are a very poor predictor of how they will behave when something, anything, is on the line—that is, whenever individual efforts can make a difference in the well-being of any individual. The current approaches to happiness wrongly treat various human responses as though they were exogenous reports of mental states. In most instances, these survey responses, like individual behaviors, are better understood as endogenous: they are intended to maximize some individual welfare in the face of a set of negative external constraints that human ingenuity and effort cannot change. Survey data are never exogenous. When people cannot change their condition, they will report themselves happy in order to make themselves happier. Why should they make themselves miserable when a bit of

6. See TIMOTHY H. GOLDSMITH & WILLIAM F. ZIMMERMAN, BIOLOGY, EVOLUTION, AND HUMAN NATURE 127–30 (2001) (discussing how common genes lead to interdependent individual utility functions whereby persons take into account the welfare of their genetic kin); Owen D. Jones et al., *Economics, Behavioral Biology, and Law*, 19 SUP. CT. ECON. REV. (forthcoming 2011) (providing a recent exploration of the connections between evolution and economics).

7 Robert L. Trivers, *Parent-Offspring Conflict*, 14 AMER. ZOO. 249 (1974).

8 W.D. Hamilton, *The Genetical Evolution of Social Behaviour. I.*, 7 J. THEORETICAL BIOL. 1 (1964).

optimism will help their situation? When people can make themselves better, they will push hard to get whatever it is that will improve them, whether it be admission to a select college or access to needed medical care. Now that there is a target, passivity is destructive, and with it goes the contentment with the status quo.

Once these three elements are given their proper weight, the various strands of the happiness literature fall into place. There is no need to abandon the neoclassical model altogether when there are principled ways to account for the observed deviations from its predictions. Quite the opposite: once the richer account of human nature is taken into account, the older, simpler regime proves more durable than before. The key feature to take into account is not malevolence, but limited levels of altruism borne in part from empathy.

Part IV briefly defends of the proposition that the new learning on happiness does little to alter our understanding of the proper social institutions.

I. TWO MODELS OF HUMAN BEHAVIOR

The literature on happiness and the human emotions is subject to many deep ambiguities, and perhaps none more salient than this: the happiness literature largely relies upon use of surveys seeking to match overall happiness against some social variable, such as income, health, crime rates, and the like.⁹ The survey data are collected scrupulously and all sorts of sophisticated methodological checks are introduced to weed out false or feigned answers to the particular questions asked. Yet, lo and behold, when the dust settles, two counterintuitive conclusions dominate the happiness literature. The first of these conclusions has to do with overall changes in the larger culture. The second has to do with the importance of relative happiness.

The initial finding is that only a few external factors can alter the overall level of happiness for any person. The death of a spouse or other loved one and serious and chronic pain are the most common examples, and even the former is something that erodes with time. Most notably, even permanent physical disability is said to correlate weakly with any decline in happiness, on the ground that adaptive individuals learn to live within the limitations of injury and disease.¹⁰ By and large, therefore, global measures

9. For a collection and review of much of this vast literature, see HELEN JOHNS & PAUL ORMEROD, *HAPPINESS, ECONOMICS AND PUBLIC POLICY* 28–38 (2007).

10. For a collection and review of this literature, see Cass Sunstein, *Illusory Losses*, 37 J. LEGAL STUD. S157, S158 (2008); DANIEL GILBERT, *STUMBLING ON HAPPINESS* 153 (2006).

of happiness seem remarkably impervious to any change in the external environment. People both report and experience approximately the same level of happiness regardless of their social or personal well-being. The hedonic losses that loom large to the outsider are always smaller than they appear.¹¹

The second conclusion deals with the relationship between absolute and relative preferences. The standard neoclassical accounts of economics suppose that envy has little to do with the level of satisfaction in life, so that a person looks at his or her material and psychic well-being and cares little, positively or negatively, about where they stand in relationships to other persons. This account allows relatively strong forms of social comparisons via the familiar tests for Pareto superiority and Pareto optimality. Thus, to focus on the former, if *A* starts out with 10 and *B* with 20, *A* will be happy with any new distribution that leaves his wealth greater than 10, while *B* will be happy with any that leaves her wealth greater than 20. Neither side compares with each other, so neither the ratio of their respective endowments nor the absolute difference between them matters. If the initial distribution is 10, 20, then any distribution $X_a > 10$, $Y_b > 20$ counts as an improvement for both *X* and *Y*. Neither envy nor empathy alters the well-being of either person. The argument, based on this neoclassical model, easily generalizes to large numbers of people.

The second major conclusion of the happiness literature, however, strongly disputes this assumption and holds that, except in extreme cases, what matters to individuals is not their absolute position but their position relative to some key reference group.¹² All changes in the wealth of persons have psychic externalities on the position of others. In principle, the sign of that externality could go in either direction, such that the increased wealth of others could affect either positively or negatively the happiness level of any subject. However, the basic claim of the happiness literature is that the externalities tend to run in one direction, so that people regard themselves as worse off to the extent that their neighbors have become better off, no matter whether they start out or end up richer or poorer than their neighbor. The most striking version of this negative interdependence is found in this old adage: “At the extreme we have the

11. See, e.g., Sunstein, *supra* note 10, at S157–58 (“[M]any losses are illusory or at least exaggerated, in the sense that they inflict far less hedonic damage than people anticipate.”); Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 VAND. L. REV. 745, 749 (2007) (“Studies have consistently shown that non-disabled people rate the quality of life with a disability as being significantly lower than people with disabilities rate the quality of their own lives.”).

12. See, e.g., Luis Rayo & Gary S. Becker, *Evolutionary Efficiency and Happiness*, 115 J. POL. ECON. 302, 303 (2007) (concluding that individuals care less about their absolute level of success and more about their position relative to a social benchmark that changes over time).

Russian peasant whose neighbour has a cow. When God asks how he can help, the peasant replies, ‘Kill the cow.’”¹³

The one case that this theory does not quite address is the one in which two people both start and end with the same endowments, so that a lockstep increase for both produces no change in the absolute difference in their wealth (which remains zero) or the ratio of their holdings (which remains fixed at one). Maybe someone would concede that two people would both prefer a situation where each had 20 to a situation where each had 10, even though people with a generalized malice could easily prefer the former distribution. But this example aside, there is at least some gain from lockstep improvements. The more troublesome implication of the Russian peasant maxim is that if someone else is better off, then I may perceive myself as worse off when the absolute wealth of any other person increases, regardless of what happens to me. Quite simply, we have a very new and large class of negative externalities. Any increase of wealth by one person has a negative impact on the well-being of all others. The harm principle of John Stuart Mill has been taken to a new level whereby it becomes impossible to find any action that does *not* offend the harm principle.¹⁴

The detailed empirical literature, which relies heavily on survey techniques, seems to suggest that these negative externalities are not the product of some pathological condition, but the common stuff of ordinary life. Thus, controlling for individual income, the empirical evidence suggests that “higher earnings of neighbors are associated with lower levels of self-reported happiness.”¹⁵ This conclusion is not based on directly asking individuals whether they are happier or sadder because of the increased wealth of their neighbors. Rather, the conclusion is an inference, not from revealed behavior, which is addressed later, but from census tract studies which contain large amounts of information about how people respond when measured against the actual wealth of others in whose midst they live. It appears that there is a self-defeating quality to any form of absolute improvement, in that it brings a person in contact with better-off

13. RICHARD LAYARD, *HAPPINESS: LESSONS FROM A NEW SCIENCE* 44–45 (2005).

14. JOHN STUART MILL, *ON LIBERTY*, reprinted in *UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT* 72–73 (Ernest Rhys ed., 1940) (1910). Mill explains:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.

Id.

15. See Erzo F.P. Luttmer, *Neighbors as Negatives: Relative Earnings and Well-Being*, 102 Q. J. ECON. 963, 963 (2005).

individuals who become his new reference group, offsetting, at least in part, any subjective gains the person received from improved wages and better working conditions.¹⁶

These two conclusions are in some tension with each other. If people are largely indifferent to so many features of their external environment, why do relative preferences loom so large in their own subjective functions? And even if we put these internal tensions aside, the composite portrait does not offer either an appealing or plausible view of human nature. On the first point, the indifference proposition portrays people as far too stoic given their inability to become happier with an objective, i.e. resource-based, improvement in their external circumstances. On the second, it portrays most people as far too envious, insofar as they think that gains to other individuals within some reference group (e.g., a neighborhood or workplace) produce negative utility for themselves. Thus, they would prefer the status quo to a world in which someone is made better while their material position is left unchanged. If the position is correct, then it is very hard ever to find a Pareto improvement. In the example above, suppose *B*'s material holdings increase from 20 to 22, while *A*'s stay at 10. *A* is now worse off subjectively than before, given the increase in the spread. Likewise, *B* would be subjectively worse off if *A* increases from 10 to 12 while *B*'s holding remains the same at 20, because the decrease in the spread now has a negative impact on *B*, leaving the befuddled empiricist struggling to find out which effect is the greater.

The analytical implications are odd, to say the least. The definition of an externality becomes so broad as to be useless if any shift in relative wealth between parties necessarily generates a negative externality. Practically speaking, if most people internalize this norm, then we would expect malicious behavior by individuals who would routinely be ready to expend their own wealth with the sole object of making others poorer. After all, *A* may well prefer the distribution of material resources that is 9:18 to one that is 10:20, and may be thrilled if the distributions go from 10:20 to 6:0. Lose-lose transactions look to be the dominant pattern of social behavior if envy or malice are the dominant human emotions.

One common thread in these two observations about human happiness is that each observation is offered as a good reason to criticize the assumptions of standard neoclassical economics with its preference for competitive solutions whenever possible, coupled with broad and relatively

16. See, e.g., Robert H. Frank, *Are Workers Paid Their Marginal Products?*, 74 AM. ECON. REV. 549, 570 (1984) (concluding that "a heterogeneous group of workers cannot coexist . . . in the absence of an array of compensating wage differentials that reflect the relative standing of each worker in the income hierarchy of the group").

flat taxes. But adopt these new assumptions, and the question of what form of legal rules and institutions maximizes human welfare is now up for grabs. The ubiquitous nature of the externalities makes it impossible to support any conclusion about the proper distribution of wealth. If any change produces abundant negative externalities, it would be hard to say whether the world is better off with wealth compression or wealth dispersions. Since the magnitude of these changes is uncertain, it is no longer possible to adopt any model that starts with the assumption of diminishing marginal utility of wealth, only to ask then whether the welfare gains from greater equality offset any loss in productivity—which by itself is a hard question to answer.

Before considering how these assumptions might operate, it is instructive to ask this simple question: How well does this model stack up against everyday observations about human behavior—the type of evidence that is ignored when survey techniques take over? My contention is that as a descriptive matter these assumptions do not fare very well, and that, as a normative matter, they provide little guidance as to the proper form of social organization. On both matters, we should pay greater attention to the role of revealed preferences, which often leads us back to simpler solutions that, by and large, ignore both these findings.

II. THE ROLE OF REVEALED PREFERENCES

The neoclassical model and evolutionary impulse each start with a composite portrait of ordinary individuals in which the two strands of happiness theory are woven together. The first one says that people's ability to adapt psychologically to their current state of affairs suggests they have little desire to change their current condition. The second issue, that of relative position, suggests that one notable exception to that proposition is that many individuals might be prepared to move down in terms of their material satisfaction in order to gain status relative to their new reference group. The one pattern of behavior that seems to be precluded by this model is an effort to expend resources to improve (in absolute terms) one's material and personal situation, except perhaps for status gains that could be obtained more cheaply in other ways. The acquisitive nature of most individuals most of the time seems to undermine the first of these assumptions somewhat—the question is, to what degree.

The best point of departure is the standard neoclassical model that places heavy reliance on the use of revealed preferences to evaluate individual and group choices. This reliance starts from the proposition that all self-interested individuals (including those who positively or negatively

weigh the utilities of others in their own decision function) respond to incentives, so that their actions depend on the options they choose in light of their initial situation and the objectives they hope to achieve. Individuals routinely calculate, at least in some rough-and-ready way, the value of each of their options in order to pick the one that offers the highest expected return to the individual or his or her reference group. These calculations depend in part on the positive (or negative) affinities for other persons. Parents may move into a neighborhood that has fewer restaurants and theaters in order to live in one with better schools for their children. Persons who have deep affection for other people may be willing to trade one (or more) units of gain to one's self for one (or more) unit of gain for some targeted individuals. Within the evolutionary framework, some ratios are fixed by genetic connection: a parent is willing to sacrifice at the margin one unit of personal gain for two units of gain to a child or sibling. The sentiment of love suggests that these trade-offs exist between spouses, although it is hard to predict the exact ratio for those trade-offs. Similar, but larger, ratios apply to more remote relatives, like one-quarter for a first cousin; and there may well be some positive, if weaker, interdependence of utility between friends and employees. Remember, the Russian peasant was only speaking of neighbors, not family and friends, or so we hope.

None of these private valuations, of course, are announced to the external observer. So here is where the theory of revealed preferences cuts in. We should not rely on verbal responses, or "cheap talk," which may not reflect how people will act in real situations. The common practice of using surveys to report general states of being at any point in time does not focus on these choice issues, so neither incentives nor behaviors are at center stage. The alternative approach is to try to infer the underlying preferences by looking at the overt behavior in response to various opportunities and challenges. Find out what an individual values by observing what he or she seeks. Find out what he dislikes by observing what he avoids. All sorts of speech that are not found in surveys can easily help determine these preferences or give some clue as to their intensities. But actions, as it were, speak louder than words when the two are in conflict. (The use of the comparative reminds us not to conclude that the words do not matter at all, for often they are used to explain why certain actions were taken, and in settings where the wrong words can have disastrous consequences.) The greater the effort (or movement) in either direction, *ceteris paribus*, the more intense the preference. Just watch and you can learn a lot. Indeed, one devastating characteristic of autistic people is that they cannot read the behavioral cues of other individuals, so they suffer from an emotional isolation that makes it exceedingly difficult for them to engage in social behavior.

It is just here where the emotions kick in with such strength. Evolutionary theory predicts that these emotions will (on average) work to advance the (inclusive) fitness of the individuals who have them. And so it is that the desire to have more, not less, is driven by the simple imperative that individuals, like other organisms, who command more real resources—territory, food, shelter, sexual access, and allies—will on average do better over time than those who do not. Evolution thus looks as though it must take into account absolute well-being, if not exclusively, then surely extensively. Yet, to acquire these resources, individuals evince a set of emotional attitudes consistent with the overt actions conducive to that end, which is how integrated individuals behave virtually all of the time. The objects of desire need not be money, and often are not, given that the needs for reproductive success give rise to a wide range of desires, including sexual desires, that are not easily reduced to cash but whose importance should never be underestimated in the larger scheme of things. It is for that reason that the language of everyday life has a rich vocabulary to describe, for example, rage, lust, fear, greed, anger, grief, outrage, and disappointment on the negative side, and contentment, sympathy, love, tenderness, respect, and admiration on the positive.

Indeed, it is possible to go further and insist that in evolutionary terms happiness is not always a winner; it is often a loser. On the former, happiness surely is positively correlated with well-being when it does not conflict with the interests of other individuals to whom a person is tied by blood, marriage, or friendship. A person who gets a raise or feels happy is, *ceteris paribus*, in a better position to do something for those for whom he or she has positive attachments. Hence in relationships with third persons where there are no conflicts among members of the “in” group, anything that improves wealth or happiness for the one is likely to be shared by others in rough proportion to the closeness of the relationship. It is also likely to generate affirmative responses from others in the group, all of whom have some reason to be pleased by the positive nature of the external connection which redounds to their material benefit.

These calculations on happiness, however, change radically when there are real conflicts between members of an affinity group. Thus, take the simplest case of a parent who has to care for a sick child. A person who is only concerned about his own happiness is likely to bail out on the child, whose life prospects thereafter diminish severely, especially in human beings, which are slow to reach self-sufficiency. Happiness in this context is a losing emotion because it precludes any sacrifice of parental well-being in situations where children need their help the most. Thus, parents should not report that they happily take care of sick children at some real cost to

their own well-being, or that they are happy when their children get better. At this point the appropriate set of emotional sensibilities include worry, concern, anxiety, relief, gratitude, and affection, all of which lead parents to make the needed sacrifices for their children. It is therefore no accident that parents who are struggling with difficult children report a lower level of happiness than those who have no children, at least for the short term, even if they have longer lifetime satisfactions.¹⁷ Clearly, the most sensible way to interpret this information in evolutionary terms is that the short-term expenditures yield powerful long-term payoffs to all concerned. We are programmed to take care of children, and although many people resist the temptation, those who walk down that path usually exhibit the emotions described above. That result is, of course, not usual, because given natural variation in populations, we should expect some, but not many, cases of abuse, neglect, or even abandonment, all of which should make our empathetic emotions should start to shudder.

Similar arguments can be made for the care and mutual concern that is given among children, or by children to parents, both as to the central tendencies and the occasional outliers. Behaviorally, of course, these situations do not typically show the level of flat-out determination that is found in the case of parent and child. But the explanations for these diverse outcomes all arise from within the theory, not from outside of it. Recall that the key ratio is one unit of cost to the actor must generate two units of gain to the recipient in order for actions to be in evolutionary equilibrium. These costs and benefits vary across settings. The simplest observational truth is that this ratio is commonly exceeded when competent parents take care of helpless infants. But that ratio shifts as the children become more self-sufficient. Likewise, in most situations, siblings, when young, are less able to provide the kind of support that parents can and do supply. The level of cooperative behavior is lower, because the opportunities are so different, not because the basic ratios change. And put people in crisis situations, where siblings must substitute because the parents are not there, and the behavior will quickly change as well.

In the face of these complex human interactions, any attempt to make the standard Benthamite maneuver of reducing all these emotional states to a single notion of happiness or utility surely falsifies every subjective rendering of ordinary experience.¹⁸ Happiness cannot be the sole measure if

17. For details on these findings see GILBERT, *supra* note 10, at 221.

18. On this point at least, I am at one with Martha Nussbaum. See Martha C. Nussbaum, *Who Is the Happy Warrior? Philosophy Poses Questions to Psychology*, 37 J. LEGAL STUD. S81, S83 (2008) (“Pleasures can vary in intensity, duration, certainty or uncertainty, propinquity or remoteness, and, finally, in causal properties (tendency to produce more pleasure, and so on).”).

human beings are to survive over time. We were in some sense born to suffer and sacrifice. And this imperative does not start with people, but is inbred in just about every other sentient creature, just as Justinian said (if for all the wrong reasons).¹⁹ In making this point, I am not urging a strong view of incommensurability across emotions, if that means that people find themselves unable to make decisions when two strong sentiments collide.²⁰ Quite the opposite, the evolutionary case cuts against any claim of incommensurability precisely because people are already programmed genetically to take into account the welfare of others and typically cannot ignore the welfare of other individuals. The behavior that works so well within families, moreover, encourages the formation of various alliances with outsiders given, as the experimental literature shows, the high rates of return to cooperative behavior, even if there is no assurance of reciprocal performance.²¹ Those who have the instinct and can find each other will do far better than those who lack it utterly.

As evidence for this proposition, simple observation shows that most integrated people make intrafamilial trade-offs fairly easily precisely because their utility functions are so well-defined. Of course, everyone will have genuine difficulties that are closer to the line, but that is not a distinctive feature of interactive or cooperative behavior. There are likely to be hard cases in any continuous distribution, for even the simplest expected utility models can generate close outcomes in high-stakes situations. In making these trade-offs, few people gravitate wholly to one extreme. It is not as though work always trumps family, or the reverse. It is only that for most people the internal conflicts can be reduced to manageable levels, most of the time. On this score, therefore, the fascination with aggregate survey data should not overlook the sad but powerful truth that some people do fall apart so badly from a combination of disease and ill fortune that they cannot participate in any surveys. Indeed, one feature of all the survey data is that it leaves to one side the serious cases of emotional and psychological breakdown that are all too common in any social setting.

19. See JUSTINIAN'S INSTITUTES, *supra* note 5, § 1.2. "The law of nature is the law instilled by nature in all creatures. It is not merely for mankind but for all creatures of the sky, earth and sea." *Id.*

20. See generally Richard A. Epstein, *Are Values Incommensurable, or Is Utility the Ruler of the World?*, 3 UTAH L. REV. 683, 686–87 (1995) (discussing how people routinely trade incommensurables in making personal decisions).

21. For a full discussion, see *infra* note 31 and accompanying text.

III. EVOLUTIONARY THEORY AND COMMON SENSE

The analysis of evolutionary forces suggests that the new data offers a poor account of human behavior even if we put to one side the complexities introduced by inclusive fitness. Let us begin with the first point: that most people are largely indifferent to wealth and material well-being, which is implicit in the assertion that happiness over time is largely invariant to the increases in national wealth or crime levels, as the data suggest. The first observation here is that people take strong steps to protect their interests as they perceive them. Anyone who has done a day of work in administration or personnel will treat these platitudes as self-evident truths. People feel very strongly when they think they are underpaid or have been treated unjustly. These people both voice and act on these complaints. (Their talk is not cheap, as it often represents an attempt to win supporters, gain allies, squash the opposition, or get the boss into hot water.) Most people are quite nervous about asking for salary increases but they are often visibly upset when they do not receive raises. The concern with working conditions, travel reimbursements, fringe benefits, and promotion prospects do not reflect a stoic indifference to external circumstances. Instead, these concerns are borne of individuals' complete confidence in their ability to adapt to changes in their financial or physical well-being.

And why would they be indifferent? Relative status is surely a part of this concern, but usually in a specialized way. First, standing alone, relative incomes are not a source of resentment, at least in a well-run firm. Secretaries do not expect to make as much as their bosses. The resentments only kick in during good times, when their superiors hog all the gain and do not pass down any fraction of it to lower-level employees. These employees expect not parity but consideration. Envy is a corrosive attitude in any workplace, and the first job of any manager is to maintain a supportive culture with high morale. No major professional establishment could achieve these key objectives if large disparities in income were enough to trigger status resentments.

The problem of relative wages becomes much more ticklish when comparisons are made between individuals who are in the same work cohort. When team production is required, tension can easily flare up when a diligent employee wants to take measures to resist the slacker getting paid for work performed by the diligent employee. In many cases, the question of who has performed well adds another layer of complexity to the issue. However, this determination does not negate the point that employers in well-run firms have to make sure that wage and salary levels do not build in or preserve indefensible cross-subsidies between workers: the party who

pays the subsidy is far more likely to quit than the worker who receives it. Here, status concerns are intimately tied with what is rightly termed a theft of labor, which people should be worried about under the standard neoclassical framework.²²

One cannot easily explain this phenomenon by assuming that employee agitation is confined to those individuals who have never gone through the bootless process of getting a raise only to find that it does nothing to improve their quality of life. Individuals are constantly seeking new jobs to achieve some mix of higher wages and better working conditions. Nor is this agitation confined only to people with limited incomes for whom the money might really make a difference. Whatever one thinks about the diminishing marginal utility of money, we commonly see actors and athletes negotiating hard, at a real cost in time, emotion, and money, for that last million dollars. Because leisure is always an option, it is hard to reconcile this form of aggressive behavior with the view that people are indifferent to wealth. Nor does it seem credible that the sole driver of this acquisitive conduct is the effort to improve one's relative position in a given reference group. People tend to like money, all else being equal. Individuals are often determined to move up from lower-status occupations to higher-status occupations, even if these changes mean that they knowingly decline in status relative to their new peer groups. Indeed, virtually no one decides to take a cut in pay or a demotion in order to gain a higher relative ranking in some low-status field. Nor should we think that there is any magic in the commonplace observation that happiness does not always increase with wealth. We should expect people forced to work long hours in hostile situations to demand a wage premium for their efforts. For these workers, their basic position increases with overall social wealth because they can command a higher wage for the same level of personal privation. The model depicts constant adjustment at the margin, not one of relative indifference.

This model also applies to housing. If people were indifferent to their external circumstances, then why do they work so hard to scrape together a down payment to move to a better neighborhood? And how many people who can afford to live where they presently do move to a more dangerous neighborhood—remember, the survey data show a remarkable indifference towards level of criminal activity²³—in order to improve their relative status? No detailed study is required to confirm that people are

22. For a perceptive account of how these differences work, see TRUMAN F. BEWLEY, *WHY WAGES DON'T FALL DURING A RECESSION* 310 (1999) (explaining the asymmetry between increases and decreases in starting pay).

23. See JOHNS & ORMEROD, *supra* note 9, at 36 (stating that increased crime in European countries and the United States “does not seem to have had any discernible negative effect on happiness”).

always looking to move to better neighborhoods that they can afford or that people welcome neighbors whose addition to the neighborhood will make their lives better, or that people are seeking to raise zoning and other barriers to keep out those whom they do not want. The amount of agitation surrounding land use decisions before zoning boards is evidence of the degree to which people are sensitive to these decisions.

The most instructive example of the lack of external indifference is health. On this point the evidence is quite striking. One happiness study suggests that people undergoing dialysis are not particularly unhappy relative to others, as they learn to adapt to their condition. Do not believe it for a second. There is an evident tension between the theory of revealed preferences and the happiness literature. On the medical side, no one disputes the dreadful quality of life for patients on dialysis,²⁴ whose life expectancy is approximately four or five years from the onset of treatment.²⁵ The happiness literature suggests that the mental well-being of people on dialysis does not decline as much as healthy individuals expect.²⁶ But the observed pattern of behavior tells a different story, for other studies report a far higher rate of depression and other psychological disorders among dialysis patients. More emphatically, the rate of suicides among dialysis patients is estimated to be one hundred times that of the normal population.²⁷ In addition, as much as twenty-five percent of deaths among individuals on dialysis result from withdrawal from treatment, usually in older patients with other complications.²⁸ Here the behavior tells a more accurate story than the surveys.

24. For one stark account, see Benjamin Hippen, *The Case for Kidney Markets*, 14 NEW ATLANTIS 47, 48 (2006), available at <http://www.thenewatlantis.com/publications/the-case-for-kidney-markets> (explaining the daily hardships endured by dialysis patients).

25. Almost half of the dialysis population is over sixty-five years old. U.S. Renal Data Sys., 2006 Annual Data Report Reference Tables 112 tbl.D.11 (2006), available at <http://www.usrds.org/reference.htm>. The majority of those patients will die within five years after starting dialysis. *Id.* at 298 tbl.I.4, 300 tbl.I.6, 301 tbl.I.7 (2006).

26. Jason Riis et al., *Ignorance of Hedonic Adaptation to Hemodialysis: A Study Using Ecological Momentary Assessment*, 134 J. EXPERIMENTAL PSYCHOL. 3, 3 (2005).

27. Katherine T. Kelly & Mark P. Knudson, *Are No-Suicide Contracts Effective in Preventing Suicide Patients Seen by Primary Care Physicians?*, 9 ARCHIVES OF FAM. MED 1119, 1119 (2000), available at <http://archfami.ama-assn.org/cgi/reprint/9/10/1119.pdf>.

28. See Lewis M. Cohen et al., *Practical Considerations in Dialysis Withdrawal*, 289 J. AM. MED. ASS'N 2113, 2114 (2003) (indicating that ESRD affects mainly the severely ill and geriatric population); Lionel U. Mailloux et al., *Death by Withdrawal from Dialysis: A 20-Year Clinical Experience*, 3 J. AM. SOC'Y NEPHROLOGY 1631, 1636 (1993) (stating that "withdrawal from dialysis may be a common cause of death, especially in the older patients with the more serious renal diagnosis of diabetes mellitus and renal vascular disease"). Needless to say these figures have to be taken with care. People on dialysis suffer from painful or debilitating conditions, such as advanced diabetes, which might prompt the withdrawal. Michael J. McCarthy, *The Choice: Years on Dialysis Brought Joe Mole to a Cross Roads*, WALL ST. J., Nov. 3, 2005, at A1. For my critique of the statistical analysis, see Richard A. Epstein, *Altruism and Valuable Consideration in Organ Transplantation*, in WHY ALTRUISM IS NOT ENOUGH 79, 88–89 (Sally Satel, ed. 2008).

The same is true for less dramatic conditions. If individuals were resigned to adapt to their injuries, then what explains the enormous level of public resources and private effort that goes into physical therapy and other types of rehabilitation from various kinds of diseases and injuries?²⁹ Not only do athletes undergo these treatments, but so do millions of people from all walks of life who seek, with both cash and labor, to recover some element of their lost function. If they can adapt to the conditions gracefully, then why would they make themselves poorer? Because the differences matter. Any sense of stoic indifference compromises their survival instinct.

So what then do we make of the surveys on this point? Here evolutionary theory explains why some individuals opt for constant work towards improvement and others express quiescence at their respective state. Let us assume that we have crippled individuals for whom nothing else can be done. They may be forced to live the rest of their lives in a wheelchair, or they may suffer from some serious personal disorder. At this point of prognosis, the survival instincts have to adjust to the fact that no amount of effort will alter the condition in question. So now the emotions act endogenously. Self-deception becomes a survival mechanism. In order to improve the quality and length of their lives, it is important for these individuals to will themselves into a state of happiness. If they get gloomy and morose, it will negatively impact everything from appetite to circulation. Feeling happy and content is now the best survival strategy. In some cases, this feeling of happiness is so internalized that individuals come to believe what they say, even as those around them cannot believe them. That is why people go out of their way to “cheer up” their less fortunate friends. But if some possibility of a cure comes forward, quiescence is no longer the optimal strategy. So long as there are some options that promise a chance of improvement, we should expect people to expend enormous resources to get the preferred treatment. This is exactly what people do when using potent off-label drugs or enrolling in cancer trials that offer some prospect of remission. People do so even at some very high cost in terms of short-term pain. And if by some miracle scientists could with certainty reverse paralysis by mending the spinal cord, does any empirical economist think that most, or even any, paraplegics or quadriplegics who have announced themselves happy in their stricken

29. For recent figures on health spending, see U.S. Dep't of Health and Human Servs. CMS, National Health Expenditure Projections 2007–2017, <http://www.cms.hhs.gov/NationalHealthExpendData/Downloads/proj2007.pdf> (last visited Apr. 2, 2009). For example, “[a]s a percentage of Gross Domestic Product (GDP), health care spending is projected to increase to 16.3 percent in 2007 from 16.0 percent in 2006. By the end of the projection period, health care spending in the United States is expected to . . . comprise 19.5 percent of GDP.” *Id.*

conditions would sit contentedly by? No way. Every one, regardless of wealth or social station, would move heaven and earth to get that magic elixir as quickly as possible. At this point quiescence no longer has survival value, and therefore the emotions will quickly change to deal with necessities at hand. The survey data are correct in what they report. But this data is misinterpreted. Put a cure on the table and the people who were content with their lot yesterday will move heaven and earth tomorrow. Once cured, these individuals frequently block out their past conditions, which is what happens with most individuals who have endured severe torture or privation. Ask people who have recovered from serious illnesses, whether they dwell on their conditions once they have passed. They do not because doing so does not help them in living life going forward. They had to learn to laugh and be cheerful when they had the condition, for otherwise, they might not have lived through it at all.

A second major finding of the happiness literature is that individuals often feel better when their material conditions improve relative to those of others.³⁰ Hence, the finding is that people are less happy when they are among the poorer individuals in their neighborhoods. Once again my arguments about revealed preferences suggest that this finding is seriously incomplete. People have all sorts of residential choices and rarely do we see anyone striving mightily to have the highest income in a neighborhood that is less attractive and less safe than their current neighborhood. The issues associated with residential sorting are complex, but, if anything, general theoretical considerations suggest that people will tend to move into neighborhoods with other people who are pretty much like themselves. They do not move into places where they stand out as having the greatest wealth and, hence, the highest status.

The point can be demonstrated by looking at the sorting mechanisms used to determine membership in voluntary residential groupings, such as planned unit developments, cooperatives, or condominiums. All of these voluntary associations have rules to restrict the entry of new arrivals, which vary with the type of organization in question. The checks run by co-op boards, for example, are not to ensure that the new arrivals are poorer than the others so as to boost the status of those who already live there. Instead, these checks are chiefly to determine whether the new arrivals can carry their share of the debt load and will comport themselves in ways that do not disturb the tranquility of their neighbors. This sorting mechanism is not perpetually out of equilibrium, with people constantly seeking to be at the

30. See, e.g., Rayo & Becker, *supra* note 12, at 303 (“[T]he level of happiness that an individual derives from his economic success is usually affected by the success of his peers . . .”).

top of some smaller heap than the one where they currently sit. The dominant trend is precisely the opposite way. These institutions, like public neighborhoods, all provide a mix of private and common elements. The house or apartment is the former. The grounds, the hallways, and the meeting rooms are the latter. Managing these common elements requires some form of legal framework so that the majority cannot vote out the minority or otherwise make them bear the sole, or even disproportionate, levels of common expenses. The usual framework is one whereby the majority may set the rules of the game, so long as there is no explicit discrimination against the minority.

Public law imposes similar obligations on taxing authorities. Giving substance to this rule is not easy, as it applies to both financial and nonfinancial obligations. Even an ideal set of rules can only do so much good, for much depends on the characteristics of the group members. Any decisions based on these rules will work better if there is a high level of homogeneity among group members, so that the choices of the group members will tend to converge in ways that reduce the pressure on any collective decision mechanism. On matters of wealth, therefore, one tends to see individuals join these common living situations with other people of comparable wealth. One also tends to see this trend in open-access neighborhoods. Most people typically want the last dollar they spend on private homes and public amenities to be of equal value. Otherwise they could make themselves better off by increasing one type of expenditure at the expense of the other. Therefore, one reason not to live in a common-unit development where people are richer than you is that you will be forced to overspend relative to your perceived tastes. So, it is better not to join at all, or to leave, if the local environment has become too rich for your own blood. Similarly, at the other end, people who are too rich relative to the mean will be forced to underspend on these common amenities, so they will tend to move out as well. Ditto with neighborhoods, which tend to be more diverse on all these measures, because neighborhoods lack any legally defined boundaries or legal mechanism for exclusion. Generally speaking, we should predict that powerful forces will incline most individuals to aim toward the middle of the wealth distribution, which will produce a reduction of the variance that in turn reduces the stress on governance. Transaction costs, not to mention rent control, can impede the realignment of people. And some individuals may find it difficult to move because of age or health. But the centralizing tendency is to move toward the middle, instead of not locating in neighborhoods where you sit at the top of the pack.

Wealth, of course, is not the only variable that matters. One typical problem for both common-unit developments and neighborhoods involves matters of lifestyle, on which it is possible to have a high variance. But even here, variations in taste on dining and recreation are likely to be weaker among individuals at the same income or wealth level—meaning that people are more likely to find friends among their neighbors with a slighter variation in income or wealth. But on many matters, the effects may be less pronounced because no uniform rule requires that all individuals prefer people who are similar to, or different from, themselves. But on balance salient similarities matter. Many common facilities include old-age homes, some of which are organized on religious lines, or cater to retirees, or welcome children or golfers. Many forms of racial or ethnic separation may also be (benignly) explained along these lines.³¹ A common interest along any of these dimensions reduces the stresses on collective decision making. The sorting mechanism thus reduces stress on the governance structures. There is no inertia here, nor any evident desire to be at the top of the heap.

But let us assume that status matters to some, as it surely does. Given the natural level of variation in any population, status need not matter to all, or even to most. Some individuals are ostentatious about how they spend their cash; others live understated lives so as not to draw attention to their wealth. The variation in responses to wealth, like the variation in any other taste or temperament, is a constant feature of human life. Some people care about status more than others. Some do not care about it at all. Some people want their names brought to light when they make charitable contributions. Others prefer to give anonymously. Teasing out the relative levels is very hard to do.

In the midst of this confusion, however, one point does seem clear. From an evolutionary point of view, any preoccupation with social status is a loser from the perspective of inclusive fitness. To be sure, hating those individuals who pose a threat to your well-being may make sense, because now one invests in resources to ensure that his or her absolute position does not deteriorate as a function of what other individuals do. The hatred of those who pose a threat to physical safety comes at the top of the list, for weaker persons are always more vulnerable to attacks from countless different sources. And much ethnic and racial conflict stems from the obvious fear that persons of other groups are willing to hurt or destroy individuals with whom they have few genetic or affective ties. Inclusive

31. See RICHARD A. EPSTEIN, FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS 61–69 (1992) (explaining “[c]ollective [c]hoice within [g]roups”).

fitness in this context can worsen an already-explosive situation. Individuals who care about their own families will be prepared to invest more resources to attack outsiders than those who care only about themselves, because they now rightly perceive that they have more to lose from the incursion. Altruism, in a word, is often selective, not universal, in its objects.³² As such, selective criticism can intensify conflicts, not ameliorate them.

Indeed, understanding why many individuals develop deep antagonisms toward business competitors is made easier given the threat that lower prices and better goods—aside from any possibility of unfair competition by force or fraud—pose to their own well-being. The social conclusion to offer protection against force but not competition—so central to the classical liberal project—does not stem from the observation that competition does not hurt, because it surely does. Rather, it stems from the intellectual conviction, which only human beings can develop, that competition leads to a positive-sum outcome that improves overall social welfare relative to the protectionist mentality that gives an incumbent protection against new entrants, to the great detriment of consumers. (One reason why force and competition operate so differently is that force by *A* against *B* reduces the opportunity set of all *C*s, whereas competition by *A* against *B* increases the overall welfare.) One defending markets is always in a fragile position precisely because many individuals in the face of severe personal or in-group dislocation want to think that they are entitled to protection or redress from economic harms, regardless of the effect that such protection would have on the overall system.

Yet even after these risks are recognized, the one set of emotions that has no evolutionary pedigree is simple envy toward other individuals whose improvement in position poses neither a physical nor competitive threat. In these cases, this form of envy leads people to invest in making others poorer, which in turn means that they have fewer resources to devote to activities that improve their material well-being, or to protect themselves against others who do pose such threats. *A*'s act of malice against *B* could easily expose *A* to risk or require the expenditure of resources that weaken *A* for any future dispute with *C*. A more empathetic response has a far more positive rate of return. Welcome the new wealthy neighbors into the neighborhood because they generate positive externalities to diffuse populations that are difficult to purchase but valuable to have. One dominant feature in all legal systems is to afford strong protection against

32. See Richard A. Epstein, *Altruism: Universal and Selective*, 67 SOC. SERV. REV. 388, 404 (1993) (stating that "[s]elective altruism may prove more powerful than universal altruism" and more dangerous insofar as it encourages people to hurt strangers in order to benefit members of their in-group).

negative externalities through the law of trespass and nuisance, but little if any restitution for positive externalities conferred on neighbors.³³ But that conclusion does not depend on any peculiar judgment that these positive externalities do not matter, for manifestly they do in both the value of real property and the enjoyment of life. Rather, the reluctance to offer legal protection to positive externalities stems from the correct perception that remedies via private actions are ultimately unworkable. The number of physical invasions tends to be small, localized, and easily identifiable. (And, for those that are not, some collective system of pollution controls will work better anyhow.) The set of external benefits from fixing drainpipes, painting shutters, and mowing lawns are so numerous that all landowners are better off to avoid expensive and divisive litigation by relying instead on a mix of informal social sanctions, such as frowning at the neighbor who does not clear his walk, or other legal mechanisms, such as zoning, in both its good and bad guises.

That said, envy has no survival value at all if it reduces the level of indirect benefits that individuals are able to garner for themselves for free. Indeed, the key element in a neighborhood is to develop informal norms of reciprocity so that all local people invest more resources in keeping their own premises neat and tidy, secure in the knowledge that others have done, and will continue to do, the same. These norms of reciprocity and cooperation, even among strangers, suggest that far from wanting to see their neighbors worse off, most people are willing to practice and encourage unilateral actions that only make sense from a personal point of view if other persons reciprocate even when they are not under any legal compulsion to do so. The extreme versions of rational-choice theory assume that all individuals will act selfishly in any prisoner's-dilemma situation, by keeping the benefits that others supply while supplying none themselves. But that somber conclusion about the ubiquity of the prisoner's-dilemma game does not square with the common observation that neighbors often take the first step to establish good relations, even when there is no strict obligation to reciprocate.

That moderately optimistic view has, moreover, been confirmed in the experimental setting. One recent experiment looked at a variety of contexts in which individuals who did not know each other were given a fixed amount of wealth and told that they could keep it all for themselves, or put some fraction of it in a pool in which they would be one of four members,

33. On this theme, see Ariel Porat, *Expanding Restitution: Liability for Unrequested Benefits* (Tel Aviv Univ. Legal Working Paper Series, Working Paper No. 85, 2008), available at <http://law.bepress.com/taulwps/fp/art85> (outlining the case for generally allowing restitution for unsolicited benefits).

each of whom would receive back \$4 for each \$10 that the experimental subject put in.³⁴ The upshot was that any social contribution produced a net increment of \$6 to the group as a whole, but a net loss of \$6 to each contributor.³⁵ But the zero level of contributions did not materialize.³⁶ Instead, most individuals contributed some portion of their wealth to the common pool in the expectation that others would do the same, which usually happened.³⁷ Indeed, any one individual will be better off with contributions if on average the other three contributed more than fifty percent of the time. These experiments were done with anonymous persons³⁸ in which there was no opportunity to use gentle social sanctions to improve the level of participation, unlike neighborhood settings in which the failure to keep up one's own premises is apparent to all. Indeed, far from having a free ride as its end, sociability among many individuals goes further. Some people are willing to enforce social norms against violators, at some net cost to themselves, as by chastising individuals who litter in parks or who smoke in airports or, especially, elevators. The arguments that people's happiness is positively correlated with the misfortunes of others has little general traction.

To be sure, consistent with heterogeneity, these results are not uniform in all places or for all people. But, strikingly, the findings strongly suggest that in a well-integrated society, most of the efforts at voluntary discipline were by individuals who sought to punish negative deviations from social standards.³⁹ In places such as Boston and Melbourne, the ratios were overwhelmingly favorable, for example, while in other places such as Athens and Muscat, the punishment was frequently administered by individuals who wished to enforce their own antisocial behavior.⁴⁰ This suggests that the social equilibria can be quite fragile, almost along the lines of the tit-for-tat response to avoid the prisoner's-dilemma game: cooperate first until someone else defects.⁴¹ These games are not played in isolation, of course, so there is good reason to think that others can reinforce positive behavior through such simple but powerful devices as reputation. The

34. See Herbert Gintis, *Punishment and Cooperation*, 319 *SCIENCE* 1345, 1345 (2008) (reporting on Benedikt Herrmann et al., *Antisocial Punishment Across Societies*, 319 *SCIENCE* 1362 (2008) and explaining a "public goods game" employed by the authors of that article).

35. Herrmann et al., *supra* note 34, at 1364.

36. *Id.*

37. *Id.*

38. *Id.* at 1363.

39. *Id.*

40. *Id.* at 1364.

41. For the many complexities, see, e.g., ROBERT AXELROD: AGENT-BASED MODELS OF COMPETITION AND COLLABORATION 20–22 (1997).

effectiveness of these devices is often overlooked, and they should never be taken for granted. But most neighbors interact on systems that involve a live-and-let-live strategy for small negative reciprocal interactions coupled with some positive assistance on a consistent and ongoing basis. None of these observations seem remotely consistent with the view that one's primary goal is to gain status relative to one's neighbors.

IV. IMPLICATIONS FOR SOCIAL THEORY

The new emphasis on the study of happiness and emotions is often portrayed as reason to think differently about how social interactions ought to take place, but it hardly seems to meet that objective. Initially, of course, this new emphasis says nothing about innovation and wealth generation. Social mechanisms that produce innovation and wealth generation in a world where happiness and emotions are ignored are as likely to work well in a world in which these factors are systematically taken into account. There is no reason to think that we should prefer monopoly to competition in organizing the means of production, or that we should think that the case for the regulation of natural monopoly is either strengthened or weakened by an awareness of the many features that might influence human happiness and well-being. In general, more is still better. And for those who doubt it, one need only propose that individuals roll back the clock one hundred years to an age where death by disease and accident was more common, income levels were a fraction of what they are today, and hard labor was a fact of life for most individuals. And then just try to persuade people that nothing is lost by this maneuver because the survey data show that the current set of institutions and technologies has resulted in some kind of an arms race in which everyone is left exactly where they were before, at huge expenditures of wealth. The constant concern with poverty, or with the insecurities of the middle class, or with the anxieties of globalization make it clear that this program will resonate with no portion of the overall population. Do we really think that high status persons would rather die at fifty so long as the lesser mortals died at forty than to have a world in which the life expectancy and general health of all groups move up smartly, where the necessary consequence is to narrow the gaps in longevity and health between the top and bottom of the population?

Nor does this literature even tell us much about the questions of redistribution of income or wealth. If happiness is not dependent on increases in wealth, the poor should be happy with their lot. If any change in relative wealth has status effects, positive or negative, on different groups, who can sort out which set of the externalities is larger than the

other? The safe approach in these cases is to ignore all the fine points about relative preferences in order to concentrate on overall increases in productivity. If redistribution is defensible, then it is on the ground that the last dollar means more to a poor person than to a rich one, which is not to say that the rich do not suffer something when forced to make these payments, or that any losses in overall wealth are necessarily offset by the results of a more equitable equilibrium. There is, in short, good reason that for thousands of years virtually everyone who thought about the rules that governed a society paid no attention to the vagaries of individual happiness or to survey data. The best that we can do collectively is to follow the old program that says aggression, “no,” cooperation, “yes,” within a framework of stable social institutions. Let these be handled, and in the end, it is far more likely that the gains from improved production and innovation will swamp any efforts to remake the legal and social system to respond to the new learning contained in the happiness literature.