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Book Review: Legality

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To the extent that the worth of scientific or philosophical efforts can be assessed by the number of productive research avenues they open up, this is definitely an important book. It deserves careful consideration by scientists, mathematicians, psychologists, and philosophers. Since it does not fit neatly into any usual category but rather stands athwart many research areas, its reception may depend on precisely who attends to its bold claims. This book aims to answer two questions: “What criteria should we use to evaluate analogical arguments used in science?” and “How can we provide a philosophical justification for those criteria?” (ix). Paul Bartha recognizes that analogies are widely used in all areas of human action—but claims: “We have no substantive normative theory of analogical arguments” (3). He persuasively argues that none of the theoretical approaches to analogical argumentation that previously have been developed is generally applicable. But he holds that the uses of analogies in science and mathematics are “key or ‘leading’ special cases that provide an excellent basis for a general normative theory” of analogical reasoning (3). This book proposes a systematic theoretical treatment, and a set of evaluation criteria, that (Bartha claims) apply to all varieties of analogical reasoning—both in science and elsewhere. This assertion is not modest, but careful arguments support it well. The claim seems quite plausible.

Analogical arguments involve “source” (S) and “target” (T) domains that are similar to each other in certain respects. Positive analogies occur when property P and relation R pertain to domain S, and corresponding property $P^*$ and relation $R^*$ pertain to T. If the target domain T has feature $A^*$ but the source domain S lacks that feature (so that ~ $A$ applies to S), this constitutes a negative analogy. The question at issue is: Under what conditions (and with what degree of confidence) would it be correct to infer that if S has a feature Q, then T has a corresponding feature $Q^*$?

In favorable cases deductive reasoning may lead to conclusions that are considered correct with a high degree of certainty. In contrast, analogical reasoning at its best leads to results that are ‘plausible’—that is “they have some degree of support” (15). Plausibility can be interpreted probabilistically, so that plausible statements are understood to have a rather high probability of being true, and additional relevant evidence may increase that probability. In
an alternative “modal” interpretation, ‘p is plausible’ can be taken to mean “there are sufficient grounds for taking p seriously.” “To take a hypothesis seriously is to regard further investigation as reasonable, subject to feasibility and interest. It is to single out the hypothesis from an undifferentiated mass of logical possibilities” (16). Such “prima facie plausibility” either applies or does not apply—it does not pertain in variable degrees.

This book develops a normative theory of analogical argumentation—“The Articulation Model” (24)—which is based on two main principles. The first is “The Requirement of Prior Association: The description of the source domain must include an explicitly stated vertical relation which the analogy is supposed to extend in some way to the target domain” (25). Two important classes of such “vertical” relations are:

- **Mathematical analogies**—P refers to a set of assumptions, while Q is a theorem about the source domain. The prior association is a proof that P (together with other assumptions) entails Q. The analogical argument is intended to make it plausible that similar features P* of the source domain entail a similar conclusion Q* about the target domain” (25).
- **Explanatory analogies**—Q refers to a hypothesis and P to observed consequences. The prior association is that Q explains P. The analogical argument is meant to provide support for the idea that similar features P* in the target domain are explained by a similar hypothesis Q*. Darwin’s analogy exhibits this pattern” (25).

The second principle of the Articulation Model is *The Requirement of Potential for Generalization*: a good analogical argument is one where, at a minimum, there is no compelling reason to deny that the prior association that obtains in the source domain could be generalized in a way that extends to the target domain” (25). In the cases of the two varieties of prior association just described, this works out in the following ways.

- “In mathematical analogies, the features that play a central role in the prior association are the assumptions used in the proof of the theorem Q. The analogical argument stands or falls depending on whether the analogous assumptions are known to hold, or at least not known not to hold, in the target domain” (26).
- “In explanatory analogies, any known observable consequence of the hypothesis Q counts as central to the prior association. The strength of the argument depends on the extent to which we know that these consequences have analogs in the target domain. This criterion

1. The analogy is that between artificial selection as practiced by plant and animal breeders and the natural selection that Darwin postulated.
Various contemporary disciplines employ what seem to be different criteria for evaluating analogical arguments: analogies that seemed quite appropriate in past historical periods no longer appear to be plausible. Hopefully, “such variation can be located primarily in the different forms of prior association that occur in analogical arguments” (28), both in present-day scientific fields and in earlier historical periods.

Providing philosophical justification for the Articulation Model of analogical argumentation faces two main problems: one is occasioned by the variety of types of reasoning that fall under the “analogical argumentation” designation, and the other is raised by the modesty of the goals of such approaches—“plausibility” is what is sought, rather than “truth.” Nevertheless, this book claims to provide “a general philosophical defense of analogical arguments—in fact two such defenses” (29). The first, a “top-down” justification, is based on the widely accepted legal principle of *stare decisis*, 2 which enjoins adjudicators to decide present cases on the basis of the same reasoning that was used in similar cases in the past. This judicial custom rests on three ethical considerations: (a) *Stare decisis* “provides a relatively stable basis on which people can predict the actions of the courts and make their plans”; (b) “it serves as a check on arbitrary decisions by an inexperienced or foolish judge”; and (c) it “allows for gradual evolution in the law. The doctrine thus allows a balance between conservative and progressive moral values” (251). The author argues (analogously) that “in scientific thinking, analogical arguments are justified for assessing the plausibility of hypotheses because they achieve an optimal balance between *conservative* epistemic values (such as consistency and coherence with existing theory) and *progressive* epistemic values (such as fruitfulness and theoretical unification). This is [a] top-down (goal-oriented) justification” (29). The second, “a bottom-up (constraint-based) justification[, is] founded on the principles of symmetry” (30). “Like problems demand a like solution. Symmetry acts as a constraint on our reasoning and lies at the heart of every analogical argument. . . . In a case of perfect symmetry, one has as much reason to treat the target hypothesis as worthy of investigation as one does the source hypothesis. In the case of an analogical argument that satisfies the requirements” of the Articulation Model “one has *adequate* reasons for doing so” (30). These two lines of justification of the theory are taken as “partial validation . . . relative to accepted norms of scientific practice” (30). This is said to be “the most that one can demand by way of justification for a general theory of analogical arguments” (29).

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2. This designation is taken from a Latin maxim, *Stare decisis et non quieta movere*. This can be roughly translated as “Stand by decisions and do not disturb the undisturbed.”
Chapter 1 clarifies and develops the Articulation Model and includes detailed discussion of many specific examples of analogical reasoning drawn from a variety of fields and historical periods. (Some of these examples are referred to repeatedly throughout the book.) Chapter 2 considers several prior philosophical approaches to the problem of justification of analogical reasoning, including those of Aristotle and Mary Hesse. Prior philosophical treatments generally used simplified models that do not apply to all varieties of analogical reasoning. Some prior studies tended to “force all analogical reasoning into the mold of deduction or enumerative induction” (57) and/or to leave insufficient room for assessment of what similarities are relevant. The Articulation Model does not merely list similarities and differences between source and target domains but rather focuses on connections (the Prior Association) and on a criterion to assess the relevance of positive and negative analogies (the Potential for Generalization) (57).

Chapter 3 deals with the large number of computer-based models of specific types of analogical reasoning that have recently been developed in the fields of cognitive science and artificial intelligence (AI). Two types of models are considered: “On the structuralist approach, the relevance of a predicate or function is determined mainly by systematicity: the extent to which it enters into complex networks of relationships. . . . By comparison, CBR [case-based reasoning] programs are oriented around a set of indexes that includes every factor deemed to be relevant” (61). The author finally asserts, No existing computation theory . . . provides a good, normative model of analogical arguments in science. . . . Both the structuralist and case-based approaches . . . encounter difficulties in identifying relevant similarities and differences, and both fail to provide adequate norms for analogical arguments. . . . Insofar as these studies incorporate any norm it is the systematicity principle. . . . Systematicity is at best statistically connected with plausibility. Nothing rules out deeply systematic analogical arguments that are implausible, or good analogies that depart from systematicity. By contrast . . . case-based reasoning models are confined to well-understood problem domains with a rich history. (88)

He also reports: Despite these limitations, the work in cognitive science provides . . . four particularly important ideas that might never have emerged without the computational models. . . . [1] We must recognize the importance of focusing on the conventions governing how a domain is represented by the user. . . . [2] We need a clear idea of how the initial representation of the source and target domains should be elaborated, prior to determining correspondences and evaluating an analogical argument. . . . [3] There are a variety of ways to deal with multiple analogies: . . . it is not necessarily
the best strategy to pick a unique winner. . . . [4] Computational models provide a big clue as to how we should approach the problem of identifying relevant similarities and differences. Siding with the structuralists, we should do this dynamically, rather than working with a static list. Siding with case-based reasoners however, we should incorporate prior knowledge about relevance . . . and we should base our judgments . . . on the nature and strength of the vertical relations, rather than on their systematicity. . . . There is evidently much philosophical work to be done. (89)

Chapter 4 develops the Articulation Model in more detail and applies it to additional cases of diverse sorts of analogical reasoning. Four logical types of analogical arguments are identified: 1) Predictive \((P \rightarrow Q)\), 2) Explanatory \((Q \rightarrow P)\), 3) Functional \((P \leftrightarrow Q)\), and 4) Correlative \((P \Downarrow Q)\) (96–97). The two principles of the Articulation Model apply somewhat differently in each of these four cases. “To understand individual analogical arguments we should focus first . . . on clarifying the exact nature of the relations within the source domain that are to be transferred to the target domain. . . . The most important objective is to define workable criteria for \textit{prima facie} plausibility—demonstrable potential for generalizing the prior association” (148). Support for the Articulation Model is weaker in the case of correlative analogies than in the other logical types because the prior association "becomes less precise and less informative" (149) in this case.

Shifting from an emphasis on vertical (prior-association) relationships to an emphasis on horizontal ones (similarity), chapter 5 considers a wealth of well-worked-out specific examples of the use of analogical reasoning in mathematics. In good analogical arguments in mathematics, “every assumption used in the proof in the source domain must correspond to something true, or not known to be false, in the target domain” (186). The examples in this chapter show how this test may be usefully applied.

The murkiest part of the test is the notion of correspondence between the domains. . . . It is both feasible and valuable . . . to avoid three prevalent and misleading assumptions: (1) that relations of similarity can always be reduced to identity and difference, (2) that inter-domain relations can best be modeled by the notion of isomorphism, and (3) that similarity is an unanalyzable primitive relation. . . . We should move to a pluralistic approach that aims for a set of precise, but diverse, models of similarity. . . . We should not expect to eliminate entirely the role of good judgment in the evaluation of analogical argument. . . . These conclusions apply to nonmathematical as well as to mathematical analogies. (187)

The discussion of similarity continues in chapter 6 with yet more analyzed examples of analogical reasoning. The chapter begins with the identification of three common types of similarity: feature matching, formal similarity, and
parametric similarity (195). Analogical arguments based on these three relationship-types tend to yield diverse sorts of generalization: extensions of kinds, common mathematical structure, and uniform or invariant relationships, respectively. This chapter discusses several examples of analogical reasoning that are of major historical and scientific importance, such as the arguments used by Maxwell and Schrödinger in developing the great advances in physical understanding for which these scientists are famous. Some of these arguments appear to involve questionable “Pythagorean” analogies—arguments that are based only on formal mathematical similarities between separate areas of science, in the absence of any valid indication of physical similarities underlying those (perhaps superficial) similarities. Bartha points out that, in each of the challenged cases, an accusation of Pythagoreanism is more readily made when considering summary versions of the argument than when dealing with the detailed context in which that argument was originally made: “They appear Pythagorean only if we lift part of the reasoning free of the full argument” (218). With this clarification, the cases discussed in this chapter strongly indicate the importance—‘indispensability’ might be a better word—of analogical reasoning to scientific understanding and its progress. As Rom Harré pointed out some time ago, analogies (including “models” of many sorts) are integral to theorizing that leads to “scientific discourse in which the referring expressions purport to denote objects of possible experience.” This kind of discourse is “always involved in the development of a science from one stage to the other”—the Maxwell and Schrödinger examples discussed in this chapter illustrate this.

Chapters 7 and 8 provide further support for the two philosophical justifications for analogical reasoning that were sketched at the outset: the top-down argument based on stare decisis and the bottom-up justification from symmetry. (The discussion of the latter case includes relevant Bayesian considerations.) The final chapter of the book explores the likely relevance of the proposed new theory of how analogical arguments work to science and to mathematics, and also to wider human concerns. To the extent that the thesis of this book, and the Articulation Model, become widely accepted, this book will have clearly made a major contribution to philosophy of science and also to science itself. This book also does a great service by bringing together careful discussions of analogical reasoning in many disparate fields: pure mathematics, physics, cognitive science, and the law, to name only a few of the areas touched upon.

One of the cases that this book considers in several chapters is the discovery of the painkilling properties of the chemical substance we now call ‘Demerol’. This important finding followed when someone noticed that this material

4. Ibid., 118, 119.
induced a peculiar S-shaped tail-curvature in mice—a deformity that was quite similar to one of the effects of morphine on similar laboratory animals. This is an example of the use of analogical reasoning in what might be considered a “chemical” context. Regrettably, the book does not deal extensively with the well-established and sophisticated sorts of analogical reasoning that are used in advanced chemical research on synthetic methods, structure-determination, and reaction-mechanism elucidation. Chemists—and philosophers working in the currently emerging discipline of philosophy of chemistry—should find this book to be especially interesting, and also suggestive of ideas for productive future research.

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Scott Shapiro’s important new book, *Legality*, is the most thorough defense in years of legal positivism. It is required reading in the field not just because of its powerful responses to all the major objections to positivism but also because of its important insights about the legal phenomena that theories of law must explain. Eschewing the common tendency to write primarily for other contributors in the field, Shapiro has produced a book that is at once a highly original contribution and an accessible introduction to the central competing positions and their problems. Those who believe that the literature on the traditional “what is law?”-questions has declined into Scholasticism will see from this book how philosophically exciting and legally relevant the topics remain.

Shapiro defends a deceptively simple thesis: “The fundamental rules of legal systems are plans” (119). In the paradigm case, the “fundamental rule,” or “master plan” of a legal system, is a shared plan among officials allocating responsibilities and powers to holders of offices. Particular laws, such as laws against possession of burglary tools or laws specifying how to get a business license, are usually, also, plans; they are subplans of the master plan formulated by some official to whom the master plan grants the power to produce them.
Shapiro argues that, when this position is appreciated, we can understand both the nature of law’s authority and its relationship to morality. But perhaps the book’s greatest accomplishment is its development of a conceptual framework through which to situate competing conceptions of how legal texts should be interpreted by judges, a framework that Shapiro shows to follow from the idea that lawmaking is a form of social planning.

Shapiro’s primary innovation over other forms of positivism, such as H. L. A. Hart’s, is his development of the implications of a similarity between the way in which law guides conduct and the way in which plans do. As Michael Bratman has emphasized, plans settle deliberative questions and so place planners under various normative pressures, including pressures not to reconsider in the absence of powerful reasons to do so. Further, when we plan in groups, we often arrange things so that one person makes plans for another and thereby places him or her under normative pressure to conform. A chef might plan for a sous chef to cook fish, and, assuming that both parties have the right attitudes toward the activity and each other, the sous chef will thereby be placed under normative pressure not to deliberate about the question himself or herself but to defer, instead, to the chef’s plan. Plans settle deliberative questions both intrapersonally and interpersonally. This is a tool with many benefits. Thanks to it, for instance, we often manage to deliberate when we are in a frame of mind to do so, rather than in the heat of the moment, and we manage to coordinate our behavior both with our future selves and with other people by providing normatively grounded expectations about what we are going to do.

Laws, as Shapiro emphasizes, play many of the same roles in guiding conduct, and have many of the same virtues, as plans. Instead of asking whether it is a good idea to dump waste on a particular site, we ask whether it is legal to dump waste on that site. Instead of asking whether a federal judge is the best person to settle a dispute between two parties, we ask whether the dispute legally belongs in federal court, rather than elsewhere. Instead of answering the ethical or prudential question, that is, we guide our conduct by the law’s answer. The law “do[es] the thinking for us” (178). Further, deference to prior plans, like deference to the law, is normatively mandated, rather than physically forced. The pressure to conform to the law, like the pressure not to reconsider one’s plans, is the pressure to conform to norms. Add that the normative pressures involved in planning are present even when the plans in question are deeply immoral—thanks to the agent’s intention, he or she can be under normative pressure to do what’s necessary to clean the blood off the upholstery—and we can see the sense in which law and morality are separate. The similarities that Shapiro details between the guiding roles of plans and laws are of the first importance and, insofar as they have been noted by others, they have been underemphasized.

The deep similarity between the guiding roles of plans and laws has important implications. Laws function in many of the same ways that plans do, especially plans shared by groups, and much can be learned about legal
practice and substantive areas of law from this similarity. But Shapiro holds, also, that his account of law’s identity answers the most fundamental questions in jurisprudence, questions that are inextricably linked to heady questions in both metaethics and political philosophy, such as what the source of law’s normativity is, and in what sense, if any, citizens remain obligated to obey the laws of an evil regime.

One could think that laws are similar to plans without holding that laws are plans. After all, plans are not the only tools we use to settle questions and obviate the need for later deliberation on the merits. Plans are distinguished from other such tools by the particular normative pressures under which they place us. Consider how a plan can be transformed into a sacred value, so that it comes to impose a different set of normative pressures on those who accept it. At some point, some religious leaders planned for their followers not to eat pork. But to suggest that the prohibition on pork functions for Orthodox Jews today as a plan is to radically understate the situation. They are under much greater normative pressure from their attitude toward not eating pork than they would be if they merely intended not to do so. Typically, for instance, it is appropriate to reconsider plans in light of new information not taken into consideration when the plan was formed. But under what conditions would it be appropriate for an Orthodox rabbi to reconsider whether to refrain from pork?

To show that the fundamental laws are plans, Shapiro needs to show that the normative pressures they impose are those distinctive of plans in contrast to other attitudes. Shapiro does argue persuasively that the relevant normative pressures are distinct from those imposed by mere conventions, as some have proposed. But there are many other contenders that differ importantly from plans. Perhaps, for instance, legal systems begin with a master plan, but law persists even when that plan comes to be viewed by most as something much more like an ethical value, with its distinctive normative pressures, than a plan. In short, to conclude from the fact that laws function in many ways like plans that they are plans is to overlook the range of other things that could also so function. Solutions deriving from the planning role of law to the deep problems pertaining to the source of law’s normative authority, however, depend on an identity between laws and plans. If the fundamental laws are merely planlike, there may be reason to doubt the solutions to those problems that Shapiro offers.

Shapiro shows that one of the distinctive features of complex, nested social plans (and, we might add, of many complex, nested structures of social attitude similar to, but different from, plans) is the way in which they allocate trust to the groups over which they reign. They settle some questions while specifying who is to do the work of settling others, and in what respects. The chef is to set the menu, but the sous chef is to determine how finely the carrots are to be diced, and the carrot chopper is to settle which knife to use. Trust can be thought of analogously to a good distributed among members of a group. The result is, in Shapiro’s useful phrase, “an economy of trust.” A legal
system’s economy of trust is its distribution of the power to settle deliberative questions that remain unsettled by the explicit directives of the system. Shapiro argues that which interpretive methodology is proper in a particular legal system—whether “originalism” or “the living Constitution view,” for instance, is the correct method of Constitutional interpretation in the United States—is a function of the system’s economy of trust. He demonstrates ways in which actual debates over proper interpretive methodology are, ultimately, debates about the legal system’s economy of trust. And he argues against Ronald Dworkin’s influential theory of interpretation on the grounds that it is inconsistent with the economy of trust of the United States, and many mature legal systems. This is extremely exciting material the examination of which ought to occupy scholars for some time to come.

This new framework for thinking about interpretive methodology does not require an identity between the fundamental laws and plans. Even if the fundamental laws are similar to plans, without being plans themselves, they will imply an economy of trust. In fact, we can expect that the economy of trust of a system in which the fundamental laws are sacred values, for instance, to be somewhat different from the economy of trust in which the fundamental laws are plans. This would imply that it would be possible for a disagreement over interpretive methodology to be ultimately rooted in a disagreement over the nature of officials’ attitudes toward the fundamental laws of the system. If they merely intend those laws, one method of interpretation might be appropriate, while if they treat them as sacred values, then another might be the right methodology.

The success of Shapiro’s book does not turn entirely on whether the fundamental laws are plans, a claim about which skepticism might be warranted. In drawing attention to the roles that law plays in social planning, and to the implications of the fact that law plays such roles, Shapiro has opened the door to a way of linking traditional problems of jurisprudence with reflection on the actual practice of law. This will be a lasting and important contribution.

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This book views human rights as universal moral rights whose single defining role is protecting people’s ability to form and pursue conceptions of a worthwhile life—a capacity that Griffin refers to as “autonomy,” “normative agency,” and “personhood.” This ability to form, revise, and pursue conceptions of a worthwhile life is taken to be the exclusive source of human dignity—and hence of rights (27–44). Griffin believes that people value this capacity “especially highly, often more highly than even our happiness” (32).

*On Human Rights* is an ambitious, humane, and well-crafted book. It is important because it updates and develops the tradition of autonomy-based theories of human rights and offers a well-worked-out alternative to the “political” conceptions of human rights advocated by Rawls and Beitz. Chapter 9 sketches a useful view of basic liberties as human rights, and the final section on applications offers illuminating discussions, guided by the overall theoretical perspective, of topics such as the right to die, privacy, democracy, and group rights.

Griffin claims that human rights suffer even more than other normative concepts from an “indeterminacy of sense” that makes them vulnerable to proliferation (14–15). He thinks that linking all human rights to a single value is the best way to remedy this deficiency. He criticizes the frequent invention of new human rights and the “ballooning of the content” of established rights (220). Still, Griffin is friendly toward most of the rights found in the Universal Declaration of Human Rights. He endorses rights to “life (without it, personhood is impossible),” “security of person (for the same reason),” “a voice in political decision (a key exercise of autonomy),” “worship,” “free expression,” “assembly,” and “a free press (without them, exercise of autonomy would be hollow),” “basic education,” and “minimum provision” (33, 149).

These examples suggest that Griffin is mainly concerned with political rights, but in fact he is equally concerned with interpersonal moral rights. In the current dispute between “moral” and “political” conceptions of human rights, Griffin strongly sides with those who see human rights as fundamentally moral rights (for criticisms of Rawls and Beitz, see 22–27). For Griffin, human rights include every child’s right against his or her parents to education (163) and every adult’s right to commit suicide against anyone who would intervene (222–23).

Griffin classifies the various protections that human rights provide under three headings: autonomy, liberty, and welfare. Autonomy is the psychological capacity for “self-decision,” of forming and revising day by day a con-

ception of a worthwhile life (150–57). Liberty is enjoying a large realm of action in which others do not stop us from pursuing the lives we have chosen (150, 159–75). And minimum provision for welfare covers protections for subsistence, health, and education (176–87). Such provision for basic needs is not advocated on grounds of equality or welfare; it is a matter of rights only because it is indispensable for the development, maintenance, and exercise of autonomy. Introducing some intermediate-level abstract rights is a useful move in human rights theory, but I suspect that more than three are needed. Security might be added, as might rights against severe unfairness and severe cruelty.2

Griffin’s thesis that all human rights are grounded in normative agency is not put forward primarily as a description of the concept of human rights. Instead Griffin advances it as a proposal, as the best way of giving human rights unity, coherence, and limits (4, 32). This is not to say, however, that Griffin rejects the goal of fidelity to human rights practice. Indeed, he advocates a “bottom-up” approach—one that “starts with human rights as used in our actual social life by politicians, lawyers, social campaigners, as well as theorists of various sorts” (29). He uses, however, a broad conception of human rights practice that includes the “Enlightenment tradition” of moral and political theorizing as well as contemporary human rights law and politics (see 2–6, 30–32, 186–87). In contrast, Rawls and Beitz would interpret human rights practice mainly by looking at the role(s) of human rights in international law and politics today.3

To combat proliferation and give human rights a more determinate sense, Griffin proposes assigning human rights a single defining function or role, namely, prescribing protection for autonomy and its indispensable preconditions such as security and minimal welfare. This demarcation proposal is retrogressive and unlikely to be widely accepted. Even if protecting autonomy were the single original role of human rights (and I am far from confident of that), other functions have been added over the years. Additions include protecting people against cruel treatment, ensuring fairness in the administration of criminal justice, prescribing greater political participation and democracy, promoting nondiscrimination and basic equality for women and minorities, and combating global poverty. As with other useful tools, we find new jobs for human rights as new problems, better practices, and expanded resources emerge.

Griffin recognizes that today’s conception of human rights has strong egalitarian dimensions, particularly in its commitment to equal rights, to nondiscrimination in the exercise and enjoyment of those rights (39–44), and to

economic and social rights. Griffin has reservations about equality as a matter of rights, however, and that may explain why he does not highlight this aspect of human rights practice and recognizes no abstract right to equality or fair treatment (see 196–200). He is opposed to linking human rights to a strong conception of distributive justice and denies that there is a human right to “equality of opportunity” (39–44, 162).

This is complicated, however, by the fact that Griffin allows that fairness comes into play in the content and elaboration of some specific rights (41). But he holds that this concession does not commit him to a pluralistic theory that takes both normative agency and avoiding severe unfairness as fundamental values that human rights protect. He says that fairness plays a role only in “working out the implications” of human rights and that it would be “a non sequitur to move from a value’s being indispensable in working out these implications of human rights to its being foundational to the notion of a human right itself” (43).

Griffin thinks that we can get sufficient universality for human rights by seeing normative agency as a threshold conception. “Personhood is a threshold concept: once inside the class of persons, there are no degrees of being a person” (67). Treating agency in this way, however, is itself a normative stance, not just a fact about concepts. It is perfectly possible to proportion people’s rights to the varying levels of normative agency that they display. This is what we do with children—their rights grow as they develop greater agency and responsibility. Some conception of basic human equality is needed to justify treating agency as a threshold conception.

One might be more inclined to accept Griffin’s downplaying of the egalitarian dimensions of human rights if tying human rights to normative agency alone yielded a sharp line between human rights and other values and norms. It cannot succeed at this, however, and it does little to limit proliferation. Griffin recognizes the main reason, namely, that the “generative capacities” of normative agency are “quite great” (33). A better strategy for constraining proliferation involves imposing demanding tests throughout the justificatory process—and particularly near its end when questions of burdensomeness and feasibility are considered.

Griffin thinks we can get greater determinacy by taking into account “practicalities.” Indeed, he calls practicalities “a second ground” of human rights (37). It prescribes making the boundaries of rights clear by not having them “take too many complicated bends,” making rights a bit larger than considerations of autonomy suggest so as to provide a “safety margin,” and consult-

4. Buchanan has an extended discussion of this in “The Egalitarianism of Human Rights.”
ing “human nature” and “the nature of society” (37). Still, Griffin’s account of practicalities is not nearly as extensive or systematic as it should be.

Despite these alleged shortcomings, Griffin’s book is a major contribution to the philosophy of human rights. It has many merits and repays study.

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The problem of Mary and the black and white room is well known. Mary is a neuroscientist and knows all the physical facts about color vision. She has grown up in a black and white room and has never experienced red. When she leaves the room and sees red for the first time, there is a strong intuition that she learns something new: something along the lines of “this is the experience of red” or “this is what it is like to experience red.” If she learns a new fact on exiting the room, then this fact is not a physical fact, as ex hypothesi, Mary knew all the facts relevant to color vision while in the room. If there are nonphysical facts, then physicalism is false.

There is a popular solution to this, which Tye calls the “phenomenal concept strategy.” According to the phenomenal concept strategy, Mary acquires new concepts when she leaves the room. With these new concepts, Mary is able to think new thoughts, and make new discoveries. These new discoveries are facts whose truth conditions Mary already knew but that she knew via other concepts.

The concepts that Mary acquires upon leaving the room and seeing red for the first time are called by proponents of the phenomenal concept strategy “phenomenal concepts.” Tye has two aims in this book. One is to argue that the phenomenal concept strategy is wrong because, according to him, there are no phenomenal concepts. The other is to present his own solution to the Mary puzzle, and other puzzles about consciousness facing physicalists.

Tye explores various accounts of phenomenal concepts and finds them all unsatisfactory. One account he considers is Ned Block’s account that phenomenal concepts are demonstrative concepts using phenomenal sortals. According to this view, when Mary leaves the room, she acquires a new concept.
of the property of being red, and that concept is a demonstrative concept of the form \textit{that phenomenal property}.

Tye’s main concern with this view is about how the references of the phenomenal concepts are fixed. Suppose I have an experience that represents the property of being scarlet, and I think the thought “that phenomenal property.” Tye asks, “Which of the . . . properties is the one to which the demonstrative concept \textit{that phenomenal property} refers?” The options, Tye says, include scarlet, dark red, red, and being colored. Tye calls this “the problem of too many eligible candidates.”

The problem of too many eligible candidates, and the problem of determining reference generally, has analogues outside of the realm of the debate over phenomenal concepts. Quine argued with his example of ‘gavagai’ that there were too many eligible candidates for the meaning of ‘gavagai’. Kripke discussed the difficulties of determining whether ‘addition’ means addition or “quaddition.” When someone points at a scene and says “that is interesting,” there are normally many eligible candidates for the reference of ‘that’, and therefore there is a question of how reference succeeds, as we assume it does.

It is not clear why the problem that Tye identifies of reference-determination for phenomenal concepts isn’t the same problem as one that concerns reference generally. Tye doesn’t address what the relation is between the problem of reference for phenomenal concepts and the problem of reference generally. It would be interesting to know his thoughts here.

Another concern that Tye raises is that there may not always be an appropriate conscious experience of red to anchor the demonstrative phenomenal concept \textit{that phenomenal property}. After Mary has seen red and has acquired the relevant phenomenal concept, she may think “postboxes are red” without having an experience of red at the time of thinking that thought.

One reply available to proponents of the phenomenal concept strategy is to say that there are demonstrative ways of thinking about red, and non-demonstrative ways of thinking about red. When red is presented in experience, as, for example, when Mary leaves the room and sees red for the first time, the demonstrative way is available to her, and it isn’t otherwise (unless, perhaps, it is presented in another phenomenally conscious state such as memory or imagination).

The defender of the phenomenal concept strategy can say that the fact that there isn’t always an anchor state making demonstrative thought about red possible doesn’t mean that, when there is such an anchor state present, demonstrative thought about red isn’t possible, or that it doesn’t occur. Defenders of the phenomenal concept strategy just need phenomenal concepts to be available to Mary when she experiences red for the first time; they don’t need phenomenal concepts to be available to Mary all the time.

After rejecting the phenomenal concept strategy, Tye develops his own solution to the Mary puzzle and to other puzzles about consciousness that
threaten physicalism. Tye’s solution to the puzzles turns on the notion of acquaintance. According to Tye, there is both propositional knowledge, which is knowledge of propositions, and there is thing knowledge, which is knowledge of things. Acquaintance is thing knowledge. According to Tye, when I say “I know Athens,” or “I know my brother,” I am expressing thing knowledge, or acquaintance, of the things in question.

According to Tye, when Mary leaves the room and experiences red, the key epistemic achievement she makes is that she becomes acquainted with the color red, and thereby comes to know red. This particular discovery is not a discovery of a fact, and so physicalism is not threatened. Mary does not come to know any new facts upon leaving the room.

The notion of acquaintance is an interesting one, though I thought it was somewhat underexplored in the book. Although Tye never says this directly, from a number of descriptions of acquaintance that he provides throughout the book, I came away with the impression that Tye thinks that the state of experiencing red is both necessary and sufficient for the state of being acquainted with red. If this is the case, then, in Tye’s mind, the property of experiencing red and the property of being acquainted with red are equivalent.

If one’s intuition is that Mary, upon leaving the room, makes an epistemic achievement that goes beyond simply experiencing red, then it doesn’t seem that Tye’s notion of acquaintance can explain that intuition. If being acquainted with red just is experiencing red, and if one asks “What epistemic event occurs in Mary’s mind when she sees red for the first time, over and above the event of her experiencing red?” saying that Mary becomes acquainted with red is not available as an answer. “Becoming acquainted with red” is available as answer to a question like that only if being acquainted with red is not equivalent to experiencing red.

There is also a question why, on Tye’s account, Mary can’t become acquainted with red while still in the black and white room, given her comprehensive neuroscientific knowledge. Suppose that Mary is investigating via a cerebroscope the brain of a subject called “Bill.” Like Mary, Bill has also grown up in a black and white room and has never experienced red. While investigating Bill’s brain, Mary induces in Bill a hallucination of red. According to Tye’s view of hallucination, this hallucination enables Bill to be acquainted with red. Since acquaintance is a physical relation, and red is a physical property, there is a question whether Mary’s comprehensive knowledge of everything going on in Bill’s brain should enable her to become acquainted with the object of Bill’s acquaintance, namely, red. It seems hard to see what could explain how Mary fails to become acquainted with red in this situation, and yet it’s a part of Tye’s view that Mary is not acquainted with red while still in the room.

Another way of putting this is that the phenomenal character of red is not elusive to Bill when Bill is undergoing the hallucination of red, but somehow
it is elusive to Mary. Given that Mary knows all the physical facts about Bill’s brain, why is that?

The discussion of the consciousness puzzles forms the main part of the book, but there are also chapters on the admissible contents of experience, change blindness, and privileged access.

The book is thought provoking. I enjoyed reading it and thinking through its arguments. I would have liked to see a more extended discussion of the notion of acquaintance, especially on the question whether acquaintance is supposed to be identical to experience or not. It turns out that Tye used to be a major proponent of the phenomenal concept strategy in earlier work. It is nice to see someone say, “I was completely wrong before. Here is my new view!”

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Sydney Shoemaker’s *Physical Realization* represents the continued development of the views of one of today’s foremost metaphysicians and should be essential reading for philosophers concerned with the mind-body problem and the metaphysics of nonfundamental objects and properties more generally. Shoemaker’s main aim is to offer an account of a concept of *physical realization* (a family of related concepts, actually) and then to apply it to a wide range of metaphysical issues, including the mind-body relation, mental causation, the nature and possibility of emergence, material constitution, and qualia. All of this (and there is much more) occurs in a mere 141 pages, however, and it must be admitted that the book is exceptionally dense and difficult at times. This is especially so when it breaks new ground, as in its approach to questions of material constitution.

Shoemaker’s “first approximation” account of realization is:

Property P has property Q as a realizer just in case (1) the forward-looking causal features of property P are a subset of the forward-looking causal features of property Q, and (2) the backward-looking causal features of P have as a subset the backward-looking features of Q. (12)
An instance of Q realizes an instance of P in an object just in case the object has both properties and Q realizes P (12). The forward-looking features are the more important of the two kinds. These are properties of bestowing conditional powers on the possessors of the property, where those are powers to cause an effect E conditional upon circumstances B. So, the overall idea is that a mental property such as believing that it is raining has numerous conditional powers associated with it; neurophysiological realizers of it have those powers, and more besides. Silicon-based realizers may well be possible too; those would have the causal features of the belief and differ from the neurological realizers on other causal features.

Shoemaker argues that this “subset” account of property realization is superior to more traditional accounts in terms of supervenience or the satisfaction of second-order conditions (“having some property P such that \( \Phi(P) \)”). He says that his view is a “version” (14) of the traditional account—it characterizes realization with a second-order condition about causal features. But there is at least a prima facie case that Shoemaker’s account is actually less specific than the traditional account. If by whatever means Q metaphysically necessitates P (possibly given prevailing laws), then any causal powers associated with P will also be associated with Q (given those laws). So, metaphysical necessitation would seem to imply realization in Shoemaker’s sense. But the converse does not obviously obtain. Consider a sort of dualism that holds that there are nonsupervenient qualia that are nonetheless tied to physical matters by brute psychophysical laws. Suppose F is a such a quale, and the brute law is: \( Fx \iff (G_{1,x} \text{ or } G_{2,x}) \). Then F would have all and only the causal features common to \( G_1 \) and \( G_2 \) in the (possibly weak) sense of its being lawfully necessary that any object with F has the relevant powers. If in addition, \( G_1 \) and \( G_2 \) share some powers and not others, then the powers associated with F would be a proper subset of those of \( G_1 \) and those of \( G_2 \). So, F appears to be physically realized by \( G_1 \) and by \( G_2 \) on Shoemaker’s account. That seems to be an unwelcome consequence. Shoemaker can potentially avoid this worry by appeal to other views of his that have the consequence that qualia of F’s sort are metaphysically impossible.1 But these views are somewhat contentious, and in the wider space of philosophical possibilities, the

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1. In other places, Shoemaker defends the “Causal Theory of Properties” (CTP), that the causal profile of a property is essential to it and definitive of it. In Physical Realization, Shoemaker sets this view aside (though the appendix provides a brief restatement and defense of it). He replaces CTP with the weaker assumption that for any causal profile, at most one property can lawfully have the profile: “in the actual world, and worlds nomologically like it, having that causal profile is sufficient for being that property” (5). Either CTP or this weaker assumption would serve to render the dualist quale F impossible. By hypothesis, F is nomically coextensive with \( (G_1 \text{ or } G_2) \) and so has exactly the causal features of \( (G_1 \text{ or } G_2) \) in nomologically possible worlds. So, the weaker condition requires that \( F = (G_1 \text{ or } G_2) \), contrary to the dualist assumption that F is not physically supervenient. In addition, Shoemaker clarifies later that the weaker condition is supposed to be
subset of causal features account of realization at least appears to be weaker than a characterization in terms of supervenience.

The main advantages of Shoemaker’s account of realization over traditional ones are supposed to be that this account gives us genuinely efficacious realized properties while also avoiding overdetermination worries about them (13). Shoemaker suggests that the traditional account “goes with” the view that instances of realizer and realizing properties are identical (16), while the subset account “goes nicely with” (17) the view that these instances are distinct. If the instances are identical, then “supposing that the realized property has causal features of its own will seem like positing a bizarre form of overdetermination” (16). But if they are distinct, then “second-order properties have causal profiles of their own” (17).

The genuinely efficacious second-order properties seem to be the ones that “have causal profiles of their own”; this in turn seems to be a matter of their instances being distinct from instances of their realizers. This distinctness of instances would seem to raise overdetermination worries, however. In response, Shoemaker compares a case of mental causation to that of a firing squad, only one of whose members actually hits the target (13, 53). In discussing Jaegwon Kim, Shoemaker says that on his own view “the causal powers of an instance of the realized property will be a [proper] subset of the causal powers of the instance of the property that realized it” (17, the “proper” qualification is added in the next sentence). In the analogy, the members of the squad seem to represent the causal powers of the property instances; the “active” power is the one shooter that hits the target. This power belongs to the mental property instance; it also belongs to the physical property instance, but the mental one has, if anything, a better claim on it. So, overdetermination is avoided because there is only one active power.

There may be a minor problem with this solution. Conditional powers appear to be properties themselves: individuals can be similar or dissimilar with respect to powers. So the powers of property instances could be either types or tokens themselves. The firing-squad analogy appears to require that they are tokens; and if so, the tokens would appear to be distinct unless the property instances were identical themselves. The token of a certain type of power had by x’s having M would seem to be distinct from the token of that power had by x’s having P if x’s having M is distinct from x’s having P in the first place. The power tokens would be distinct by virtue of having different subjects. If overdetermination is supposed to be avoided by virtue of there being only one instance of the relevant causal power, that instance seemingly must be treated in a different way

metaphysically necessary itself (60). So, it requires that this F is metaphysically impossible, and not just lawfully so.
than other sorts of property instances (Shoemaker individuates instances by the subjects, properties, and times they involve; 3n3).

More generally, however, both Shoemaker’s account of genuine efficacy for realized properties and his solution to overdetermination worries rely on the claim that instances of realized properties are (sometimes) distinct from instances of their realizers. If, as I suggested, supervenience of P on Q entails that P is realized by Q on the subset account, it seems to remain something of an open question what exactly gives rise to this distinctness of tokens. Supervenience cannot require identity of tokens; and the seemingly weaker relation of subset-style realization would not seem to deliver distinctness by itself. Later, Shoemaker says that the task of distinguishing which disjunctive properties are “genuine” as opposed to “phony” is “equivalent to” the task of distinguishing whether the property’s instances are distinct from those of its realizers (82). “Only in the latter cases [distinct instances] will the disjunctive property have a causal profile in its own right,” Shoemaker says (82). So, among realized properties there is a very tight connection between properties that have causal profiles “in their own right,” the efficacious ones, the genuine ones, and the ones whose instances are distinct from instances of their realizers. As far as I can tell, Shoemaker does not explain the connections among this complex of ideas terribly well. It remains something of an open question which elements give rise to which others, and how the whole complex relates to his subset of powers account of realization.

Possibly the most novel developments in Physical Realization concern its account of microrealization (chap. 3) and the subsequent application of this account to issues about material constitution (chap. 5). Shoemaker’s discussions here are especially intricate. His Neo-Lockean view of personal identity leads him to accept that persons are merely coincident with their bodies (6–7, 89–90). Persons have “thick,” persistence-involving properties such as intending to swim tomorrow, where possessing this property involves having a power to bring it about that the subject of the property goes swimming tomorrow. Typically, no mere aggregate of molecules will possess that sort of power or property. (Chap. 5, sec. 4, offers an argument concerning such properties for endurance over perdurance accounts of persistence.) But there are microphysical states of affairs (“mSoA”s) involving (some of) the particles that currently compose me, which are “microrealizers” of the thick property-instance in roughly the sense that they require that something has the property (though not the aggregate). The causal features of an mSoA can bear an “isomorphism” (40) to the causal features of a thick property, and such mSoAs realize the thick properties by an extension of the subset account (40–41). These thick properties also involve “synchronic unity conditions” (40, 108–9). Shoemaker uses these unity conditions to suggest answers to puzzles about material constitution, such as that of Tib and Tibbles and the “problem of the many” (chap. 5, sec. 5). He also offers
an ambitious account of which microentities constitute a macro one (109–10). Here is the “simple” version:

A set of micro-entities constitutes the existence of a macroscopic object at a time just in case there is a maximal set of synchronically unified property instances such that every micro-entity in the set is a constituent of the core of the realizer of one of the property instances in that set, and every micro-entity that is a constituent of the core of any realizer of a property instance in that set is a member of the set of micro-entities. (110)

It seems likely that this account should also be read as an answer to Peter van Inwagen’s “Special Composition Question,” “When do some objects compose another?” On this reading, sets of microentities that do not satisfy the condition correspond to mere pluralities, rather than genuine objects.

Read in this way, Shoemaker’s account embodies an entirely novel approach. Contemporary metaphysical discussions tend to think of composition as involving some sort of stickiness among parts. But there do not seem to be any terribly good relations that will stick together the parts of a galaxy without also sticking together your nose and my foot; so recent views of composition tend toward the extreme answers (“Any objects compose another,” “No objects compose another”). Shoemaker’s approach by contrast is instead more like the claim that microentities compose something when they participate in a causal unity. This account is potentially important, but it is also extremely abstract and depends upon the difficult concept of “synchronic unity conditions” among property instances. Are there such conditions for in-cars and trout-turkeys? If not, that would presumably be because properties such as being an in-car are not “genuine” ones but mere “phonies.” And that is related to the complex of ideas that includes a property’s “having causal features” in the strong sense of having them “in its own right.”

Shoemaker’s thought has a systematic character, and sometimes it can be difficult to see which elements really bear the main weight. The system is undoubtedly philosophically important, however, and has enormous scope (which I have only touched upon here). Physical Realization further articulates and develops the parts of this system in relation to one another. I, for one, look forward to further developments.

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*Hegel’s Critique of Metaphysics* consists of two parts whose composition is separated by a decade. The first is a translation of Longuenesse’s *Hegel et la Critique de la Métaphysique* (1981), and the second contains two papers from the early 1990s. The parts are unified by their subject matter, Hegel’s *Science of Logic*, though they differ in that the first deals primarily with the second book of Hegel’s *Logic* (the Doctrine of Essence) and the second with the third book (the Doctrine of the Concept). Furthermore, though they are partially unified in outlook on Hegel—since both parts take Hegel’s relation to Kant to be fundamental—they differ substantially in what they make of that relation. Given constraints of space, I will say only the following about the second part: it contains two very good papers that are important reading for anyone interested in the relation between Kant and Hegel, and the preface includes a concise and intriguing examination of the difference between the two parts.

The heart of the book is clearly the first part’s leveraging of Hegel’s relation to Kant to motivate specific readings of the concepts of reflection in the Doctrine of Essence. As Longuenesse constructs Hegel’s view, it is in opposition to both empiricism and dogmatic rationalism. Hegel both denies that appearances provide the ultimate foundation or content of thought and that there is anything else behind the appearances on which they could be grounded: “There is nothing other than appearance, nothing beyond appearance. And yet, appearance is not what is true” (7). This then leads Hegel to search for the principles of unity of objects within appearances, and he frames this search by use of the idea of reflection. Engaging with Dieter Henrich’s work, Longuenesse traces the development of Hegel’s thinking on reflection. At first, Hegel thinks of reflection as negative: the understanding’s destruction of unity. But then he starts to see it as a necessary stage, an indispensable tool for philosophy. Finally, in the *Phenomenology of Spirit*, he distinguishes between external and absolute reflection, where the latter is reflection not on objects but on reflection’s own modes of determination, where this is the reflection of their content in itself. In terms of the *Logic*, this notion of absolute reflection entails that there is a subject and an object, but the subject is the concept’s unifying function, and the object is whatever is unified. Reflection is therefore the interplay between the subjective activity of unification of determinations and the resistance of those determinations, and thus reflection is an element of the absolute: “The dimension of alterity and the discrete concatenation of determinations subsists in reflection. But this alterity is the alterity of thought within itself, and the concatenation of determinations is guided by an immanent unifying ground” (33). To say that reflection is a positive element in the Absolute destroys pre-Kantian metaphysics because we no longer look for the “ontologi-
cal secret” (Hyppolite) behind the appearances—but rather within appearances “for the movement of thought by which the determinations of things that a non-critical thought takes to be ontological (or in Kant’s words, transcendentally real) are constituted” (35–36).

Longuenesse then turns this general framework to an account of Hegel’s conceptions of contradiction, ground, and modality. Unfortunately, there is not room in a short review to do justice to Longuenesse’s many detailed arguments and insightful readings of Hegel’s text. In particular, the discussion of ground is one of the very best in the literature. As a way of considering in somewhat more detail the application of the framework described above, consider Longuenesse’s insightful expression of the relation between Hegel and Kant on modality:

Hegel owes to Kant the idea that the modal categories express nothing other than the degree of unity between existence and a unified system of thought-determinations. But he opposes Kant in that for him, that unity leaves no room on the side of existence for a world of the beyond. And on the side of thought-determinations, the unity brought about by reflection is not that of an immutable subject faced with an object external to it. Rather, it is that of a thought process that is immanent to existence, and transformed in its very forms by its confrontation with multiplicity. (119)

Though there is much to be said specifically for framing the relation between Hegel and Kant in this way, I do worry that the emphasis on unity versus multiplicity partially obscures the radical nature of Hegel’s thinking about contingency and modality in general. Hegel thinks of actuality as a form of expression or self-manifestation, and as such the primary danger is not multiplicity but rather externality as opposed to an internal orientation of expression. And though the oppositions between unity and multiplicity, on the one hand, and internality and externality, on the other hand, are closely related, whether the contingent is in itself unitary or dispersed is not directly relevant to its tendency to disorient the process of expression. The emphasis on the relation to Kant in Longuenesse’s account obscures this feature in the same move in which it (accurately) highlights the greater internality of existence to reflection in Hegel’s account. For example, “Of course it is true that thought cannot be satisfied with the contingent, since the latter manifests the impossibility of completely taking up the given into the synthesis of the ‘I think’. The goal of thinking is to reduce contingency” (129). The emphasis in Longuenesse’s account is on the penetration of the determinations of existence by thought, but the retaining of the generally Kantian schema of the opposition of the activity of thought to its objects seems to lead her to underestimate the penetration in the opposite direction (though it is clearly acknowledged in the longer passage quoted above, and in the recognition of Hegel’s criticism of Leibniz as leaving “no room for the unpredictable character of the activity of determination and uni-
fication, for the play of the manifold against the unifying effort of thought" [133–34]). To extend a metaphor used by Longuenessese on the following page, even if the concept has “digested all otherness” (120), this digestion is just as much indigestion. So, for example, Longuenesse sees in Hegel’s claim that the possible has being or existence the view that the actual becomes the criterion of possibility, which view introduces a form of contingency that is later absorbed by absolute necessity (126). On Longuenesse’s interpretation, the possible does not retain its character when it becomes coextensive with actuality and necessity (except as a kind of resistant multiplicity, where the distinction between actuality and possibility becomes a matter of external reflection that is subsequently eliminated in absolute modality).

Perhaps the deemphasis of internality and externality here is connected with Longuenesse’s own criticism of her early work, namely, that it treats Hegel’s Logic as primarily theoretical rather than also practical (xix–xx), for surely the important function of Kant’s moral law is to provide an internal principle of action, rather than unifying our natural capacities or inclinations. This has important consequences for Longuenesse’s later view since a recognition of the important role of contingency and externality even in Hegel’s most idealist conceptions of the Absolute substantially blunts the discomfort associated with his infinite standpoint, but that is an argument for another day. The work in Hegel’s Critique of Metaphysics is of the highest quality and has the added biographical benefit of showing two substantially different stages in Longuenesse’s engagement with Kant and Hegel.

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