

Introduction to the Symposium: Self and Other: Cognitive Perspectives on Trust, Empathy and the Self

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"Self and Other: Cognitive Perspectives on Trust, Empathy and the Self" is the inaugural symposium of the newly founded Institute for Law and Rationality at the University of Minnesota Law School.

The following collection of articles represents the product of a conference held in April 2007 at the University of Minnesota, hosted and sponsored by the Institute for Law and Rationality and co-sponsored by the Gruter Institute for Law and Behavioral Research. All views expressed in the symposium articles resulting from the conference are those of the authors and do not necessarily represent the views of the *Minnesota Journal of Law, Science & Technology*. To view the full video of the conference and for more information, visit <http://local.law.umn.edu/iflr/april2007conferenceagenda.html>.

The Institute for Law and Rationality was founded to encourage scholarship that "gets it right" about people—an antidote, as it were, to the admittedly unrealistic rational person model, as modified by the supposedly more realistic behavioral law and economics model. I have argued that behavioral law and economics, in its first wave, has entrenched many of the more problematic pathologies of the rational person model.¹ Deviations from the orthodox model are accepted, but characterized as "irrationalities." The Institute seeks to depart from this paradigm, in which there is an orthodox model from which there are deviations, "irrationalities." Rather, it seeks to develop a process-based notion of rationality, in the tradition of the Nobel prize-winning economist and

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. Claire A. Hill, *Beyond Mistakes: The Next Wave of Behavioural Law and Economics*, 29 QUEEN'S L.J. 563 (2004).

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account. Economists go wrong in thinking of preferences as being for "traditional objects of choice." Once preferences are acknowledged to be importantly about second-order attributes (such as happiness, status, views of oneself and so on); that they are necessarily constructed becomes clear. It is only recently that the term "carbon footprint" came into currency. The preference for being, seeing oneself as, and being seen as, someone who does not leave much of a carbon footprint will clearly dictate particular ways of comporting oneself, ways that will change not only as the concept evolves but also as the person balances this view of herself with others she holds (of herself as, for instance, hard working and punctual and hence spending as little time commuting as possible). An inquiry about the principles of preference construction is hence inevitable.

A companion piece by Hill, *The Myth of Discovery*, argues that the idea that preferences are fixed is part of a greater "myth of discovery" wherein preferences pre-exist, to be discovered. That preferences are partly discovered and partly created presents a theoretical reason that complements the mounting empirical evidence that more choice is not necessarily better.

Peter H. Huang's *Authentic Happiness, Self Knowledge & Legal Policy* surveys happiness research, and argues that it ought to have a more prominent place in policymaking. Happiness as an academic subject is a relatively recent addition in the social sciences (although of course, not in fields such as philosophy). Huang considers various domains in which policymakers might advance happiness.

In *Heterosexual Sexual Behavior Is Governed by Social Exchange and Basic Economic Principles: Sexual Economics Theory*, Kathleen D. Vohs and Jannine Lasaleta explain, and argue for the explanatory power of, Sexual Economics Theory, a theory akin to one espoused in evolutionary biology and other related fields, in which women parcel out sexual favors selectively, with men spending considerable time and energy to obtain such favors. They consider and discuss research that shows this phenomenon in many different contexts, including advertising; they consider some future directions for research in the area.

In *Straight Acting*, Dale Carpenter argues against the disparagement implicit in the concept of "straight acting" gays. The conduct associated with "straight acting" need not be either "straight" or "acting," he says. Carpenter discusses ways in which law promotes the pernicious straight acting concept and hence the associated oppositional identity. True liberation would be for people to feel as though they need not "perform" either a stereotypically gay identity or a stereotypically straight identity.

In *Empathy and Compassion*, Richard Warner argues that empathy is an important means by which we can know what someone else thinks, but that frequently we think we have empathy in a particular case when we do not. Recognizing that someone else's felt experience may be quite different than we imagine may help us be more tolerant.

In *Social Influences on Moment-to-Moment and Retrospective Evaluations of Experiences*, Suresh Ramanathan and Ann L. McGill argue that when two people experience certain types of common consumption activities together, they react more similarly to one another and enjoy the experience more than would be the case if they were experiencing the activity separately.

Emanuela Carbonara, Francesco Parisi and Georg von Wangenheim argue, in *Legal Innovation and the Compliance Paradox*, that when the law's expressive force is strong, if law is made more severe, violations decrease, as does resistance to the law. But where the law's expressive force is weaker, sudden increases in penalties may lead to greater resistance and more violations.

In *Intentions, Guilt and Social Interactions*, J. Atsu Amegashie considers situations where intentions affect payoffs. One making an invitation may be motivated by guilt rather than sincerely wanting the other to accept the invitation. In different contexts, people may have different reactions to insincerity, for instrumental or intrinsic reasons. Taking insincerity into account shows that sometimes, mutually beneficial trades do not happen.

Mario J. Rizzo argues, in *Justice Versus Benevolence: A Modern Humean View*, that the same action can be viewed as an application of justice or a denial of beneficence depending on whether one is construing it at

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a higher or lower level of abstraction. There may be a tendency to look at lower levels of abstraction thus introducing a bias into the system. The paper suggests that mechanisms to counter this bias might be desirable.

In *Social and Emotional Influences on Decision Making and the Brain*, Mauricio R. Delgado and James G. Dillmore consider how learning may be affected by one's prior beliefs. More specifically, if a person has prior social information about another, she may interpret the other's behavior differently than she would without such information. Her prior information that someone is "good" may make her slow to take in the other's bad behavior and interpret it as such. The authors present evidence of their thesis from scans showing the extent and areas of brain activation. The paper discusses implications for law; it cautions particularly to be mindful of a person's preconceptions as she's being considered for possible inclusion on a jury.

Some of the assertions from the symposium papers are: The concept of "straight acting" pushes people towards either acting straight or having an "oppositional" identity; both are inauthentic. It is too easy for us to think that we can analogize from our experience to another's: empathy can indeed be a good tool for understanding others, but only when used with appropriate cautions and caveats. Our prior beliefs about someone may influence how we take in future information about that person, making us slow to believe "bad" things about someone we have thought of as "good." Our reactions to various experiences are not dictated by the "fundamental" nature of the experience itself: aspects of the situation in which one has the experience, including whether one is alone or with another person and, if the latter, what the other person thinks, is relevant. What we think of as our "identity" may be malleable; identity may properly be thought of as part discovery part creation. Our preferences, too, may properly be thought of as part discovery part creation.

The symposium papers, taken as a whole, show the richness of a process based concept of rationality; they show, too, through theoretical and empirical explorations and methodologies, the different dimensions of the human psyche that can be illuminated by an inquiry into

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how people come to their views of the world and themselves rather than one that takes a narrow view of rationality as its baseline and identifies deviations. The symposium encouraged a dialogue that is continuing, and will continue in the future.