

Vanderbilt Law Review

Volume 51

Issue 6 *Issue 6 - Symposium: The Legal Implications of Psychology: Human Behavior, Behavioral Economics, and the Law*

Article 7

11-1998

Can There Be a Behavioral Law and Economics?

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Samuel Issacharoff, *Can There Be a Behavioral Law and Economics?*, 51 *Vanderbilt Law Review* 1729 (1998)

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Putting Rational Actors in Their Place: Economics and Phenomenology

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I. INTRODUCTION

The model of human behavior that is used in microeconomics is both normative and descriptive. As a normative model, it is an historical successor to the medieval concept of grace and the Renaissance concept of virtue. As a descriptive model, it is a theory of human psychology. Economists tend to deemphasize this point because psychology is a notoriously "soft" science, and economists aspire to the "hard" sciences' precision. Nonetheless, any model that states the way human beings behave under specified circumstances is necessarily a theory of the way the human mind functions, and thus belongs in the category of psychology.

The particular brand of psychology that microeconomics propounds is generally called rational actor theory, and comes in two varieties. The "weak" or "thin" variety states that people's behavior is generally designed to maximize their ability to achieve their goals. The "strong" or "thick" variety, which quite correctly declares itself to be a subset of the first, states that people's behavior is generally de-

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signed to maximize their ability to achieve the particular goal of their material self-interest. Because terms such as weak or strong, thick or thin, carry extraneous connotations, the first variety will be described in this Article as rational actor theory, and the second will be described as rational choice theory.

Both of these psychological models have been subjected to sustained criticism, ranging from minor emendations to outright rejections. The essence of this criticism has been that these models, although they possess a simplicity that makes them easy to apply, are unrealistic accounts of human behavior. Originally the criticism was based on what may be called macro-empirics, that is, observations about large-scale behaviors such as altruism, self-sacrifice, ideological commitment, and cooperation.¹ In recent years, a new criticism, based on what may be called micro-empirics, or behavioral economics, has been articulated. This is essentially a set of laboratory studies which suggest that people in a variety of simple experimental settings do not behave in a rational manner. Instead, their behavior displays a variety of systematic irrationalities that include endowment effects, regret, and excessive optimism.²

While these empirically based criticisms of rational actor theory seem convincing, rational actor theory itself has been confirmed by other empirical tests that seem equally convincing. One strategy for resolving this conflict is to assume that the theory is in fact a comprehensive account of human behavior, and that its subsequent developments, unknown at present, will be able to explain the apparently disconfirming data. The difficulty with this approach, however, is that it is based on an unjustified assumption that rational actor theory is correct. In addition, the theory's existing explanations, as they are extended across an increasingly wide range of behaviors, are already becoming counterintuitively complex. A second strategy for resolving the conflict is to assume that rational actor theory only operates over a delimited range of behaviors, and that the situations identified by the macro- and micro-empirical criticisms are explained by a different theory. This approach has the advantage of being based on the data as it presently exists, and of potentially offering more

1. See generally DONALD GREEN & IAN SHAPIRO, *PATHOLOGIES OF RATIONAL CHOICE THEORY* (1994); STEVEN KELMAN, *MAKING PUBLIC POLICY* (1987); JOHN KINGDON, *CONGRESSMEN'S VOTING DECISIONS* (3d ed. 1989); LEIF LEWIN, *SELF-INTEREST AND PUBLIC INTEREST IN WESTERN POLITICS* (1991); Michael Taylor, *When Rationality Fails*, in *THE RATIONAL CHOICE CONTROVERSY* 223 (Jeffrey Friedman ed., 1996).

2. See generally *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* (Daniel Kahneman et al. eds., 1982).

intuitively appealing explanations. It requires, however, that the boundary between rational actor theory and its alternatives be defined and that these alternatives be described by some positive theory of their own, rather than by uninformative negations like "irrational."

This Article offers a preliminary version of this second resolution. It argues that rational actor theory, and its rational choice component, are accurate theories of human psychology, but only in a limited range of situations. The limitations occur because these theories are actually subsets of a larger, more comprehensive theory, namely phenomenology. Phenomenology accounts for all the explanations that rational action and rational choice theory offer for human behavior, and also accounts for the limitations of those theories. It defines the boundary between the areas where people will behave rationally, in either sense of the term, and the areas where they will not, and it offers an explanation for human behavior in those areas where rational choice does not apply.

Part II of the Article describes phenomenology. The next part describes rational actor theory and its rational choice component. Part IV relates phenomenology to rational actor and rational choice theory, and explains how it is congruent with those theories. The final part explains how phenomenology diverges from those theories and accounts for the macro- and micro-empirical findings that those theories fail to explain.

II. HUSSERL'S PHENOMENOLOGY

Phenomenology, developed by Edmund Husserl, represents his effort to ground philosophic thought on an absolutely pure, incontestable foundation.³ This effort proceeds in two basic stages. The first

3. The description of Husserl's philosophy in this Article is based primarily upon three of his works, all of which—characteristically—were designated as "introductions" by Husserl. These are: *CARTESIAN MEDITATIONS: AN INTRODUCTION TO PHENOMENOLOGY* (Dorian Cairns trans., 1973) [hereinafter *HUSSERL, CARTESIAN MEDITATIONS*]; *IDEAS: GENERAL INTRODUCTION TO PURE PHENOMENOLOGY* (W.R. Boyce Gibson trans., 1962) [hereinafter *HUSSERL, IDEAS*]; *THE CRISIS OF EUROPEAN SCIENCES AND TRANSCENDENTAL PHENOMENOLOGY: AN INTRODUCTION TO PHENOMENOLOGICAL PHILOSOPHY* (David Carr trans., 1970) [hereinafter *HUSSERL, CRISIS*]. The Northwestern University Press edition of *CRISIS* appends several other documents not part of the book itself upon which it relies. Most notable are a lecture given in Vienna in 1935, see *HUSSERL, CRISIS, supra*, at 269-99 [hereinafter *Husserl, Vienna Lecture*], and *The Origin of Geometry*, see *HUSSERL, CRISIS, supra*, at 353-78 [hereinafter *Husserl, Origin of Geometry*]. Another source for Husserl's ideas that is particularly useful for the present inquiry is *ALFRED SCHUTZ, COLLECTED PAPERS* (Helmut Wagner & George Psathas eds., 1996). Not only was Schutz a disciple of Husserl's, but Husserl read his work and approved it as an accurate

analyzes the world, or what Husserl describes as the "lifeworld"—the totality which surrounds us as individuals—and the "natural attitude" that we adopt within that world.⁴ The second is a "phenomenological reduction" by which we set aside, or "bracket", all the validity claims that we assert within the natural attitude and reassess, from a position of radical doubt, the nature of our perceptions, our thought processes, and our identity.⁵ Only the first stage is directly relevant for the present discussion.

According to Husserl, all our knowledge of the world comes to us through our own experience as individuals. As he states at the very beginning of his first general description of phenomenology, "Natural knowledge begins with experience and remains within experience."⁶ Our thoughts, our perceptions, our theories, and our commitments are all matters of individual experience, which means that they occur within the ambit of a single human mind. What is understood by "humanity"; what is practiced by "society"; what is believed by the "community" is, in the final analysis, only what is held within the minds and contained within the experiences of concrete human beings.⁷

The claim that all knowledge is a matter of individual experience carries with it a number of important consequences—consequences which Husserl explores through the concepts of pre-giveness, intentionality, interpretation, meaning, intersubjectivity, and sedimentation. Because we are born into the world, and all our experiences are experiences of the world's reality, or more precisely, its facticity, we experience that world as pre-given, taken-for-granted, and irrefutable.

application of his own ideas. See MAURICE NATANSON, EDMUND HUSSERL: PHILOSOPHER OF INFINITE TASKS 106 (1973).

4. HUSSERL, *CRISIS*, *supra* note 3, at 103-35; HUSSERL, *IDEAS*, *supra* note 3, at 91-97.

5. See HUSSERL, *CARTESIAN MEDITATIONS*, *supra* note 3, at 7-26; HUSSERL, *CRISIS*, *supra* note 3, at 148-89; HUSSERL, *IDEAS*, *supra* note 3, at 99-167; see also RUDOLPH BERNET ET AL., *AN INTRODUCTION TO HUSSERLIAN PHENOMENOLOGY* 58-87 (1993); Herman Philipse, *Transcendental Idealism*, in *THE CAMBRIDGE COMPANION TO HUSSERL* 239, 239-322 (Barry Smith & David W. Smith eds., 1995).

6. HUSSERL, *IDEAS*, *supra* note 3, at 51 (emphasis omitted).

7. See *id.* at 48-51, 91-96. This insight, although adumbrated by a somewhat earlier group of thinkers, most notably Kierkegaard, Nietzsche, and Dilthey, was given its decisive formulation by Husserl. It is the seminal insight of twentieth century continental thought, and the primary source of its divide from the Anglo-American tradition. From it flows Husserl's own philosophy; that of his self-declared disciples, such as Schutz, Merleau-Ponty, and Ricoeur; the philosophy of Heidegger; and that of the existentialists like Sartre and the hermeneuticists like Gadamer who count themselves as Heidegger's disciples. It serves, moreover, as the starting point for Levinas, whose first book was about Husserl; for Derrida, whose first book was also about Husserl; for the later Wittgenstein; and for Foucault. When combined with Marxism, it generated the Frankfurt School of Horkheimer, Adorno, Marcuse, and Habermas, as well as the work of neo-Marxists and post-Marxists such as Gramsci and Lefebvre.

In Heidegger's phraseology, we are irretrievably "thrown" into this world;⁸ as Husserl says, it is the world "I find to be out there, and also take it just as it gives itself to me."⁹ Husserl describes this experience as the "natural attitude." He circumvents the age-old debate between realism and idealism by asserting that the world, as an experienced facticity, precedes any questions about its metaphysical reality.¹⁰

But the natural attitude should not be regarded as the passive acceptance of inflowing sensory data by the individual. It is, rather, the stance that people take toward the reality that they experience in all their modes of thought: not only observing, but also theorizing, analyzing, speculating, or creating. These processes are always active. They involve, in Husserl's view, an intentional act, specifically, an intending of the object being thought about.¹¹ When observing an object, we intend it as that object, which is why we are able to see something from different angles and yet identify it, unproblematically, as a single entity. When imagining an object, we similarly intend that object, even though we know that it is not really there. Indeed, the ease with which any person can think about non-existent objects, such as "winged steeds, white ravens, golden mountains"¹²—as part of the creative process, for example—indicates the active, intentional quality of human thought. This capacity, however, does not place us beyond the natural attitude; we recognize these non-existent objects as unreal, and indeed are able to conceive of them at all, because we accept the world that we perceive as pre-given and irrefutable.¹³

8. MARTIN HEIDEGGER, *BEING AND TIME* 174, 219-24 (John Macquarrie & Edward Robinson trans., 1962).

9. HUSSERL, *IDEAS*, *supra* note 3, at 96.

10. Husserl's analysis presents philosophic difficulties of its own, of course. *See generally* PAUL RICOEUR, *HUSSERL: AN ANALYSIS OF HIS PHENOMENOLOGY* 16-20 (Edward Ballard & Lester Embree trans., 1967) (addressing some of the gaps and inconsistencies in Husserl's phenomenology); Barry Smith, *Common Sense*, in *THE CAMBRIDGE COMPANION TO HUSSERL*, *supra* note 5, at 394, 394-437. The point here is not that it is philosophically incontestable, but that it is a seminal account whose basic features provide insights for social science. *See generally* SCHUTZ, *supra* note 3.

11. *See* HUSSERL, *CARTESIAN MEDITATIONS*, *supra* note 3, at 41-50; HUSSERL, *CRISIS*, *supra* note 3, at 82-91; HUSSERL, *IDEAS*, *supra* note 3, at 105-20, 220-26; *see also* RODOLF BERNET ET AL., *supra* note 5, at 88-101.

12. HUSSERL, *IDEAS*, *supra* note 3, at 380.

13. Those who object to movies that contain graphic violence or sex are sometimes described, or describe themselves, as claiming that impressionable viewers will be induced to kill or rape because they cannot adequately distinguish between illusion and reality. But the real objection is that some viewers will have their passions aroused or their imaginations stimulated. No one claims that these viewers think they are in a movie when they commit their crime. In fact, such a claim would defeat criminal responsibility. There is some belief that young children confuse illusion and reality, and toy companies, presumably at the suggestion of their attorneys, sometimes place disclaimers on items like Superman capes, saying "Warning:

The intended character of thought, when combined with the individual nature of experience, indicates that the world in which each individual exists is interpreted and constructed by that individual. Because the individual intends her thoughts, she does not merely receive raw sensory data, but organizes the data she receives into distinguishable objects or comprehensible ideas. Modern physiological research supports this view; the sensory impulses received by the retina do not contain nearly as much detail or clarity as the images the brain constructs.¹⁴ The Impressionist painters, who reached their peak during Husserl's formative years, made this insight central to their work. Approached closely, more closely than Western people ordinarily view paintings, Impressionist canvasses consist of splashes, streaks, and dots of color. At a normal distance, the mind resolves these bits of visual data into recognizable objects. The point of painting in this way lies partially in the technical virtuosity of generating the effect, but also in the painting's ability to capture the liveliness, the intensity, of our world by recreating the interpretive process by which we perceive it.¹⁵ Husserl insists that all thoughts, even simple ones like "that's a tree," are intended actions of the individual, generating the basic insight that these thoughts possess an interpretive character.

Although all thought is interpretive, it is not thereby uniform in nature; while casual thoughts are a good deal less casual, in Husserl's view, than they are ordinarily regarded as being, they are nonetheless distinct from our more ordered or articulated mental efforts. The distinction, however, does not reside in the process of interpretation, which is a universal aspect of perception. Rather, it depends upon what Husserl calls our internal time consciousness. Very much like his contemporary, James Joyce, Husserl regards the temporal aspect of our conscious experience as a flow, or stream, of primordial impressions. We retain these impressions briefly as they vanish into the past, and anticipate them partially as they proxi-

This garment will not enable you to fly." To the extent that this is true, however, it does not indicate a rejection of the natural attitude, but only a misvaluation of impressions received within our all-embracing world.

14. See PATRICIA S. CHURCHLAND & TERRENCE J. SEJNOWSKI, *THE COMPUTATIONAL BRAIN* 141-238 (1992). See generally STANLEY COREN ET AL., *SENSATION AND PERCEPTION* (1989); RICHARD L. GREGORY, *THE INTELLIGENT EYE* (1970); RICHARD L. GREGORY, *EYE AND BRAIN: THE PSYCHOLOGY OF SEEING* (1997); DAVID HUBEL, *EYE, BRAIN, AND VISION* (1988).

15. In philosophy, the concept of interpretation was extended and elaborated by Heidegger, Ricoeur, Gadamer, and other hermeneuticists. Gadamer, for example, argues that since our entire experience of the world is an interpretive one, the interpretation of written texts can serve as a model for all human knowledge. See HANS-GEORG GADAMER, *TRUTH AND METHOD* (Garret Barden & John Cumming eds., 1988).

mately approach. Higher mental efforts occur when we direct our attention to certain experiences that have passed through this stream: We direct our glance towards some object of recollection which chances to occur to us.¹⁶ By intending these experiences as subjects of our mental attention, we confer meaning on them, that is, we place them in a framework or context that has some sort of significance for us beyond their mere occurrence.¹⁷ Husserl uses the term "meaning" rather restrictively, but his disciple Alfred Schutz gives it the more expansive definition that corresponds to ordinary usage.¹⁸ According to Schutz, meaning is the individual's way of ordering the world so that it is both comprehensible and emotionally satisfying, or at least emotionally tolerable. It is, in Schutz's formulation, the way that an individual reflects upon past experience, and is the basis of any projects that the individual might undertake. For present purposes, the idea of meaning can be limited to its role as a motivation for human action. When people take actions that they believe to be justified and consistent with some general image of themselves, they are acting on the basis of meaning. They are motivated by the process by which they reflect on past experience, plan future projects, and organize the world about them. This rather general notion is sufficient to distinguish meaning-motivated action from action based on a material self-interest maximization or obedience to social norms.

The claim that the interpretive and constructive aspects of thought are carried out exclusively within the minds of individuals does not imply that these individuals create separate and unconnected interpretations or meanings. As Husserl says,

Each one has his perceptious, his presentificatious, his harmonious experiences, devaluation of his certainties into mere possibilities, doubts, questions, illusions. But in living with one another, each one can take part in the life of the others. Thus in general the world exists not only for isolated men but for the community of men; and this is due to the fact that even what is straight-forwardly perceptual is commonalized.¹⁹

16. See HUSSERL, *CARTESIAN MEDITATIONS*, *supra* note 3, at 31-37; HUSSERL, *IDEAS*, *supra* note 3, at 111-13, 247; see also ALFRED SCHUTZ, *THE PHENOMENOLOGY OF THE SOCIAL WORLD* 45-57 (George Walsh & Frederick Lehnert trans., 1967).

17. See HUSSERL, *IDEAS*, *supra* note 3, at 235-58. For a discussion of the concept of linguistic meaning in Husserl's *Logical Investigations*, see Peter Simons, *Meaning and Language*, in *THE CAMBRIDGE COMPANION TO HUSSERL*, *supra* note 5, at 106, 106-25.

18. Compare SCHUTZ, *supra* note 16, at 69-96, with MAX WEBER, *ECONOMY AND SOCIETY* 4-14 (Guenther Roth & Claus Wittich eds., 1978).

19. HUSSERL, *CRISIS*, *supra* note 3, at 163.

In other words, the process of interpretation and construction is intersubjective; although it occurs within the individual, each individual's personal experience includes a vast range of social communications.²⁰ These communications are the couriers of culture, both interpersonally and intertemporally. They convey the interpretations and constructions of all the people with whom the individual comes into contact, either directly or indirectly, and all the people in the past who have conveyed their interpretations and constructions to the people in the present. As a result, intersubjective communications are historically sedimented²¹ and reflect the continuity of human culture.

Because interpretations and social constructions that are communicated intersubjectively are perceived as essential aspects of the world, they will possess the world's pre-given, irrefutable character for the individual. This experience probably occurs quite often, since most of these lessons are taught to us before we learn to think, and indeed make thinking possible. On the other hand, all intersubjective communications must ultimately be received and accepted by the individual, which creates the possibility that they will be rejected. This is the epistemological equivalent of Sartre's existential "no"—the possibility, however slight, that an individual may reject any intersubjectively communicated interpretation or construction.²² Only the natural attitude, that is, one's belief in the existence of the world itself, is truly irrefutable.

The particular pattern that these conflicting inclinations will assume depends upon a variety of social and personal factors. An interpretation or construction that is communicated to individuals at an early age, that is tightly bound to other interpretations or constructions, or whose centrality is established by other intersubjective communications, is likely to be treated as a pre-given aspect of the world; as their connections or centrality decrease, these communications are more readily questioned or ignored by the individual. Moreover, a person who is a partial outsider, a rebel, or a genius may well choose to perceive even the most essential communication as contingent. Thus, Husserl's analysis of the natural attitude provides a framework that explains both the social construction of reality, in

20. See *id.* at 161-67, 244-57; HUSSERL, *IDEAS*, *supra* note 3, at 94.

21. See Husserl, *The Origin of Geometry*, *supra* note 3, at 361; see generally Husserl, *Vienna Lecture*, *supra* note 3. Husserl does not use the term sedimentation in this lecture, but it is one of his best statements of the concept.

22. See JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS: AN ESSAY ON PHENOMENOLOGICAL ONTOLOGY* 6-12 (Hazel E. Barnes trans., 1956).

Berger and Luckmann's phrase,²³ and the existence of individuals who deviate from the general pattern, no matter how comprehensive and integrated it may seem.

III. RATIONAL ACTOR THEORY

In order to explain the relationship between Husserl's phenomenology and rational actor theory, it will first be necessary to determine precisely what claims rational actor theory advances. Although its proponents often present this theory as an agreed-upon methodology, it actually consists of several different layers that are connected to one another more by mood, or by emotion, than by logical necessity. These layers are methodological individualism, instrumental rationality, and self-interest maximization.

Methodological individualism asserts that all social structures arise from the behavior of individual human beings, and are best explained in terms of that behavior. Human beings are the only autonomous, active forces in the social world, and thus the only source of explanation. When the only available building material is brick, a building cannot be poured into a mold or assembled from prefabricated modules; it must be built up, brick by brick. Similarly, social structures arise from the behavior of individual human beings and are best explained in terms of that behavior.²⁴ Methodological individualism does not, however, prohibit emergent phenomena—that is, the features of collective entities that were not intended by the individuals who comprise them. For example, to take Simmel's simplest social unit—a dyad²⁵—Stan and Jan Mergatroid are a nice couple, but they have a tendency to fight. Stan gets irritated easily, which makes Jan more determined to have her own way, which gets Stan even more irritated. The fights follow a describable and somewhat predictable pattern, but they are not intended by either Stan or Jan. It does not violate methodological individualism to describe these fights as an emergent phenomenon. They result from

23. See PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 3 (1966).

24. See JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* 11-15 (1962); MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 5-9 (1971); Jon Elster, *Introduction*, in *RATIONAL CHOICE* 1, 2-4 (Jon Elster ed., 1986); William Riker, *Political Science and Rational Choice*, in *PERSPECTIVES ON POSITIVE POLITICAL ECONOMY* 163, 171 (James Alt & Kenneth Shepsle eds., 1990). The same approach is common to other theories, such as behaviorism. See generally GEORGE HOMANS, *THE NATURE OF SOCIAL SCIENCE* (1967).

25. See generally *FORMAL SOCIOLOGY: WORK OF GEORGE SIMMEL* (Larry Ray ed., 1991).

individual behavior, although this behavior only occurs in a particular social setting. Similarly, we can say that hierarchy occurs naturally in society, provided that the claim is understood as a prediction that real individuals, when placed in a particular context, will behave in ways that generate a hierarchy.

What does violate methodological individualism are general will theories,²⁶ as well as the casual but common practice of anthropomorphizing collective entities: France has decided, Congress intends, the working class demands. Of course, dispensing with these locutions is awkward to the point of virtual impossibility. But we should recognize that they are approximations, that there is necessarily a better, more complete explanation in terms of individual behavior. Thus, we can say that the Mergatroids have agreed to come to dinner, an adequate statement in many situations. A preferable account, however, refers only to the actions of individuals; Jan took the call, checked with Stan, then returned to the phone and said that they would come.

The second layer in the rational actor model is utility maximization: the claim that social actors try to achieve their goals in the most effective manner. This is essentially the same idea as Weber's notion of instrumental rationality.²⁷ It requires that people's preferences must be relatively stable over time, that they can be rank ordered, and that people try to maximize their satisfaction, as defined by their preference set.²⁸ As a model of human behavior, this can be joined, naturally and rather effortlessly, with methodological individualism, but there is no necessary connection between the two.²⁹

The concept of instrumental rationality does not require that actors actually adopt the most effective strategy, but only that they attempt to do so. Many impediments to optimal action may exist, such as the cognitive limitations of an individual, the structural limi-

26. See, e.g., G. W. F. HEGEL, *THE PHILOSOPHY OF RIGHT* 13-18 (Robert Maynard Hutchins ed., 1977); JEAN JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND DISCOURSES* (G.D.H. Cole trans., 1950).

27. See WEBER, *supra* note 18, at 24-26.

28. See, e.g., KENNETH J. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* 9-21 (1951); DEREK PARFIT, *REASONS AND PERSONS* 3-11 (1984); John C. Harsanyi, *Advances in Understanding Rational Behavior*, in *RATIONAL CHOICE*, *supra* note 24, at 82-102; Amartya Sen, *Behaviour and The Concept of Preference*, in *RATIONAL CHOICE*, *supra* note 24, at 60-81. One standard theorem of rational action, for example, is that preferences are transitive; if a person chooses apples over peaches, and peaches over broccoli, she will choose apples over broccoli.

29. One can treat collective entities as rational actors, in this sense, which is precisely what positive political theory does when it explores the way that Congress and the judiciary engage in a repeat player game, each trying to achieve its own policy preferences. See generally PETER ORDESHOOK, *A POLITICAL THEORY PRIMER* (1992). One can also assert that all social action must be traced to individuals, but that these individuals are essentially irrational.

tations of an organization, or the lack of adequate information. In other words, as Herbert Simon and Oliver Williamson have discussed, the actor may only be boundedly rational.³⁰ The extent to which such bounded rationality approaches optimality depends upon the operation of external forces. Functionalism suggests that societies, although composed of fallible, ignorant, even irrational individuals, will be compelled to approach optimality by their need to survive in a demanding environment and to maintain internal order.³¹ Neoclassical economists believe that the competitive market will induce optimal behavior among firms by shaping those that are adaptable, and eliminating those that are not.³² There is currently a debate about whether phenomena such as path dependency will perpetuate sub-optimal behavior over long periods of time.³³

The third element in rational actor theory involves motivation. Proponents of the theory believe that actors strive to maximize their material self-interest.³⁴ This argument links naturally to methodological individualism, although there is no logical reason why it cannot be applied to collective entities. It is also easy to connect with instrumental rationality; in effect, it provides the values which the actor is attempting to achieve, or optimize. Of course, an individual or organization can be instrumentally rational, but seek to maximize some value other than material self-interest. This distinction is well understood, but not always specified with clarity.³⁵ As stated, methodological individualism and instrumental rationality will be called rational action theory; when the additional element of material self-interest maximizing is added, the theory will be called rational choice.

30. See HERBERT A. SIMON, *ADMINISTRATIVE BEHAVIOR* (3d ed. 1976); OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING* (1985).

31. See generally ROBERT K. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* (rev. ed. 1968); A.R. RADCLIFFE-BROWN, *A NATURAL SCIENCE OF SOCIETY* (1948).

32. See generally ROBERT KUENNE, *THE THEORY OF GENERAL ECONOMIC EQUILIBRIUM* (1963).

33. See generally W. BRIAN ARTHUR, *INCREASING RETURNS AND PATH DEPENDENCE IN THE ECONOMY* (1994); Symposium, *Path Dependence and Comparative Corporate Governance*, 74 WASH. U. L.Q. 317 (1996).

34. See, e.g., GARY BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 5 (1976); BUCHANAN & TULLOCK, *supra* note 24, at 31-39; OLSON, *supra* note 24, at 5-9. For example, a person is rational if he prefers charity to sex, sex to wealth, and charity to wealth, but he is not self-interested.

35. For an explication of this distinction, see generally John Ferejohn, *Rationality and Interpretation: Parliamentary Elections in Early Stuart England*, in *THE ECONOMIC APPROACH TO POLITICS: A CRITICAL REASSESSMENT OF THE THEORY OF RATIONAL ACTION* (Kristin Monroe ed., 1991). Ferejohn uses the terms "thin" and "thick" to distinguish between the postulate of rationality and the further postulate of material self-interest.

The charm of material self-interest maximizing, as a motivation for rational action, is that it seems to lead us to the Holy Grail of the social sciences, namely the ability to predict human behavior. Maximizing behavior—the effort to get more and more of something—is predictable because it means that the actor will keep moving in the same direction, without being satiated or diverted. If blocked in that forward movement by some obstacle, the actor will seek the shortest path around the obstacle and then resume its prior path.

Real predictability, however, requires that the value the actor attempts to maximize must be observable by an outsider. Material needs, such as food, clothing, shelter, and automobiles fit this requirement nicely. In addition, there is the convenient empirical coincidence, quite unrelated to the theory, that Western society provides a generalized unit of exchange, namely money, that can be used to acquire virtually any material item; thus, material self-interest is readily measurable in terms of money. Hence the theory predicts that a person, being rational, will choose more money over less.

Of course many counterexamples can be found. In an effort to make the theory of material self-interest maximization more plausible, its proponents have fallen back upon the more general concept of utility. Utility, however, eliminates the predictive power of the theory. Since any action could maximize some internal value of the actor, no definitive prediction can be made and no specific action can be regarded as disconfirming the hypothesis.³⁶ Utility maximizing accounts equally well for the behavior of the miser and the philanthropist, the sybarite and the anchorite, the workaholic and the couch potato, and thereby fails to account for anything at all. The concept has meaning mainly as a moral critique of the claim that people should sacrifice or castigate themselves in the service of some higher principle, like God, king, or country.

36. See Bruce Fireman & William Gamson, *Utilitarian Logic in the Resource Mobilization Perspective*, in *THE DYNAMICS OF SOCIAL MOVEMENTS: RESOURCE MOBILIZATION, SOCIAL CONTROL, AND TACTICS* 8, 32-36 (Mayer N. Zald & John D. McCarthy eds., 1988); GREEN & SHAPIRO, *supra* note 1, at 85-88.

IV. THE OVERLAP BETWEEN RATIONAL ACTOR THEORY AND PHENOMENOLOGY

Phenomenology begins from the same initial premise as rational actor theory, namely methodological individualism. Like the rational actor and rational choice models, it locates all human action within the individual. It thus gains the same epistemological advantages, avoiding the mysticism of general will theories and generating hypotheses that are testable by observing actual behavior. In fact, phenomenology improves upon the rational actor model by explaining why the individual is the proper basis for explanation. Rational action is based on positivism, an approach that requires us to penetrate below the level of large social structures in our explanatory efforts, but does not tell us why we should end our descent at the level of the individual. Would it not be preferable to know what creates the individual's motivation, how human behavior is generated by the physiological and psychological mechanisms that are ultimately more fundamental, and more satisfying, explanations from a positivist point of view? Microeconomics finesses this problem by asserting that consumer preferences are purely subjective, to be determined by observation and treated as exogenous variables.

In phenomenology, however, methodological individualism is not based on the effort to explain as much as one can, and to stop explaining when one's methodology has reached its limit, but rather on the theoretically argued position that the human consciousness is the irreducible arena of experience. It is useful to understand human motivations or the physiology of the brain, just as it is useful to observe the emergent phenomena of larger social structures, but the human mind is the necessary starting or ending point of these inquiries. All psychological explanations flow into it, all social explanations flow out of it, and then return to it. The mind processes and transforms these inputs and outputs in ways that are unique to consciousness. This explanation for methodological individualism establishes an orientation toward concepts that is not implicit in rational actor theory, although it reaches essentially the same result.

Phenomenology is equally consistent with the instrumental rationality component of rational action theory, although it again establishes a more conceptual orientation. Human reason plays a central role in Husserl's philosophy. The phenomenological reduction is only possible through the use of reason, and one of the principle purposes of the reduction is to explore the implications of the reasoning process. Reason is present within the natural attitude as well. In

fact, it is precisely the same reason. What distinguishes the reduction from the natural attitude is radical doubt, not reasoning capacity. Of course, the natural attitude, unlike the phenomenological reduction, does not consist entirely of reason; it encompasses the entire range of human behavior, including emotions. But neither does rational actor theory advance the unsupportable assertion that human action is exclusively rational. Both approaches view reason as a capacity that human beings deploy in certain circumstances.

At the empirical level, phenomenology strongly favors those versions of instrumental rationality that emphasize its bounded nature. This means that actors are limited by the information available to them and by their own cognitive capacities. These limits are severe, more severe than our rather abstract approach to organizations generally suggests. Most people can only use one methodology, or approach, at a time, and can only apply a small number of criteria within that methodology. They have only a small amount of information available to them, and if they had more, they could not assimilate it. Their time is limited, because they have other things to do, they are often tired, they have bad moods, they get headaches, or their offices are too stuffy. These constraints on optimal decision making often appear in studies of consumers or "street-level bureaucrats,"³⁷ that is, people whom academics regard as ineffectual, low-functioning types. In fact, such constraints apply to everybody. Everyone has limited cognitive capacities, everybody must decide on the basis of insufficient information, and everybody gets headaches.

Of course, various mechanisms can expand people's capacities to achieve instrumental rationality. In an organization, records and procedures augment individuals' memories; more generally, the written records of society allow knowledge to cumulate through time. This sedimentation process, moreover, incorporates the insights of prior generations into the thought processes of the present one. Not only does the average college physics major know more physics than did Newton, but the average elementary school student also thinks quite naturally in terms that towering geniuses like Newton struggled to conceptualize.

Once again, however, all this collective knowledge does not exist in some abstract realm, but must ultimately be activated and applied by individuals. The limits on their cognition and information demand that they develop ways to make instrumental decisions within these straightened circumstances. They do so by means of

37. MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY* 3 (1980).

simplifications, images, approximations, and the like. We sometimes call these devices metaphors, a term which implies that they are quasi-poetic, sub-optimal, or distorted ways of understanding reality. At other times, we call them concepts, suggesting that they are ways of seeing through reality to some underlying truth. From the phenomenological perspective they are simply the machinery of thought, the devices that people must employ within the natural attitude. Thus the best term is probably heuristics, which is relatively neutral. All human thought, being individual thought, is necessarily limited by cognitive and informational constraints, and must therefore proceed by means of approximation or heuristics.³⁸

New institutional analysis relies upon phenomenology to emphasize a further limit on human rationality. No person can create her own interpretation of the world,³⁹ just as no person can create a private language. While particular interpretations are within the capacities of individuals, interpretations of the world as a whole depend upon an intersubjective social process. They congeal into patterns, institutional structures, and elaborated conceptions that each individual learns as he develops from a clueless little infant into a fully competent member of society. For the most part, they appear to the individual as pre-given, like reality itself. This places a further limit beyond cognitive capacity and information availability on each individual's instrumental rationality, his ability to find optimal ways to achieve his goals.

The scope of this further limit is also a matter of intense debate at present. Social determinists of various kinds argue that all thought is culturally determined, that pre-given social mechanisms determine the context and the content of individual action. This position does not necessarily preclude instrumental rationality, but it demands fairly heroic claims about external constraints that compel

38. See Husserl, *Origin of Geometry*, *supra* note 3, at 353; see also HUSSERL, *CRISIS*, *supra* note 3, at 21-59. Precisely how extensively heuristics are employed is a matter of debate among those who acknowledge their centrality. Husserl believed that mathematics, despite its historically sedimented origins, represented precise knowledge, while Wittgenstein asserted that it was just as heuristic as an intellectually despicable subject such as law. See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 82-88 (G.E.M. Anscombe trans., 1958). Within institutional economics, Oliver Williamson restricts heuristics more narrowly than Douglass North does, having greater confidence in the disciplining power of the market. Compare Douglass North, *Institutions*, in *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* 3, 36-53 (1990) (explaining the role of both informal and formal societal constraints), with WILLIAMSON, *supra* note 30, at 15-63 (discussing the role of the market in constraining society). For present purposes, these disagreements need not be resolved. In the realm of politics, heuristics would appear to be universal and inescapable.

39. See *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 15-27 (Walter Powell & Paul DiMaggio eds., 1991).

societies to develop rational norms. Some rational actor and rational choice theorists stand at the opposite extreme, arguing that individuals generally act to achieve their goals in an optimal manner, and that cultural norms only affect their explanations for their actions. The more recent and more modulated approach acknowledges the influence of social norms on individual behavior, but tries to explain the creation of these norms in terms of rational action.

Phenomenology suggests a somewhat different intermediate position. Social patterns, institutions and conceptualizations, communicated intersubjectively and sedimented by history, often determine human action. Given the limited cognitive and informational resources of an individual, such factors will generally function as pre-given aspects of the world. They are not absolutely pre-given, however, the way the world's essential reality is pre-given in the natural attitude. Since all thought takes place within the mind of the individual, even the most compelling cultural norms are nothing more than individual thoughts. A particular person can always choose to violate a norm and adopt behavior that achieves her goals in a more effective manner than the norm would generally allow. The very same capacity that enables people to develop norms and apply such norms secures the possibility that those norms can be ignored or violated. Large masses of people who conform to social norms carry the flow of history, but that history is punctuated by individuals who achieve political influence, military success, or economic wealth by ignoring such norms and achieving their goals through previously unimagined means. This behavior is not restricted to the famous; alongside the mute, inglorious Milton in Gray's country churchyard lies a "Cromwell, guiltless of his country's blood,"⁴⁰ and perhaps a weak, ineffectual Sulla, Frederick II, or Napoleon besides. Phenomenology suggests, therefore, that the pre-given nature of social norms and the ability of individuals to reject those norms in favor of a more instrumental rationality interact in complex ways. The ultimate result will be determined by the strength of the norms, their interconnection with other norms, the amount of punishment administered or advantage gained as a result of their abandonment, the psychology of the particular individual, and her position within the society.

40. THOMAS GRAY, *Elegy Written in a Country Churchyard*, in *POEMS PUBLISHED IN 1768* 109, 114 (Arthur F. Bell ed., Frowde 1909) (1768).

V. THE CONTRAST BETWEEN RATIONAL ACTOR THEORY AND PHENOMENOLOGY

The final element of rational actor theory is rational choice: the assertion that people are primarily motivated by material self-interest, that self-interest provides the goal which each individual tries to achieve through instrumental rationality. Phenomenology takes direct issue with the claim that this goal supplies the primary motive for human behavior. According to phenomenology, human beings do not try to maximize material self-interest but to invest their lives with meaning. Their conscious efforts are designed to fit into a pattern that they recognize as possessing inherent or deontological value, with their concept of value being derived from the complex interaction of social norms and personal aspirations. People take actions that contribute to this sense of meaning, and abjure actions that oppose it, regardless of the material consequences. This account of human behavior possesses limited predictive power, but that fact may only mean that predicting the full range of human behavior exceeds our capabilities. The assumption that all such behavior will conform to a predictive theory because of our thirst for prediction violates the positivist premise of the entire effort.

Those who favor theories based upon material self-interest sometimes point to the universal, culturally independent nature of material needs. There is no doubt that human beings are animals, with real and relatively similar physical needs, but there are numerous macro-empirical observations indicating that people's behavior is not always governed by those needs. The basic human need for food does not prevent people from voluntarily starving themselves, either for the salvation of their souls or the improvement of their figures. In prior times, moreover, people ritualized food in a manner that has no connection with material needs; the one Bronze Age religion that remains common in the Western World, namely Judaism, reveals in its kosher rules the luxuriant development of non-material behaviors that were attached to food for meaning's sake. Survival would appear to be an even more basic instinct, but many people commit suicide, engage in terrorist activity against overwhelming odds, take excessive risks for thrills, or cast away their lives in battle. Looking back across the course of history, we see the free people of Chartres harnessing themselves to wagons in order to haul stones for the

construction of their vast cathedral;⁴¹ the Mayan kings cutting holes in their tongues and penises and hurling children into the cenotes;⁴² the ancient Jews engaging in suicidal war against the Romans to keep the emperor's statue out of their temples;⁴³ and at the very dawn of history, neolithic people pausing in their desperate struggle for existence to dig shallow graves, and using their meager material surpluses for red pigment to decorate their ancestors' bones. Very often, people seem to respond less to the appeal of material self-interest than to the voice of an awakened consciousness that screams "what is the meaning of it all?"

Beyond simple, material needs, moreover, identifying the nature of interest itself becomes problematic. The value of many material objects that people seek is based primarily on complex cultural patterns. Some intrinsic value attaches to having a large house as opposed to an adequate one, but what is the value of having a fancy house? And what is the value of a person's stamp collection, on which he spends resources that could otherwise be spent on more food, a larger house, or better clothes? We can account for these motivations in terms of meaning, or in economic language, subjective personal utility. Human interests are constructed by people's desire to make sense of their lives, a desire that is in turn constructed by both intersubjective and individual forces.

Phenomenological analysis does not deny that people are sometimes strongly motivated by the desire to maximize their material self-interest. It suggests, however, that they will engage in such activity when it possesses meaning for them. Self-interest maximizing behavior is common in the contemporary western world because it comports with prevailing belief systems.⁴⁴ Our political leaders, quite unlike those in prior eras, declare that their goal is to improve the material well-being of the populace. Our most important non-governmental institutions, for-profit corporations, are organized exclusively to maximize the monetary wealth of the corporation's owners, and their managers generally would be dismissed if they admitted any other goal. This is historically atypical, in part because profit-making firms were rarely the most important private organizations in

41. See HENRY ADAMS, *MONT-SAINT-MICHEL AND CHARTRES* 101-02 (1936); OTTO VON SIMSON, *THE GOTHIC CATHEDRAL* 163-65 (1956).

42. See LINDA SCHELE & DAVID FREIDEL, *A FOREST OF KINGS* 89-91, 111, 202, 266-86 (1990); cf. J. ERIC S. THOMPSON, *THE RISE AND FALL OF MAYA CIVILIZATION* 133-35 (1954).

43. See JOSEPHUS, *THE JEWISH WAR* (G.P. Goold ed. & H. St. J. Thackeray trans., 1997).

44. See generally MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., 1958).

other cultures, and in part because even those firms that did exist often justified themselves on other grounds. Hard-core proponents of rational choice theory strive to refute or reinterpret macro-empirical evidence of non-self-interested behavior; the undeniable point, however, is that this theory itself happens to have emerged in the one society where rational, self-interest maximizing is a powerful and generally-held belief. Phenomenology suggests that all the evidence—the prevalence of self-interest maximizing in our own society, the explicit adoption of this motivation as a value in that same society, the absence of this value and the corresponding examples of differently motivated behavior in other societies, and the prevalence of the position among scholars in our society that self-interest maximizing is universal and people in other societies are lying—is best explained by the position that meaning is the predominant motivation of human action.

The sacrifices of the people of Chartres in rebuilding their great cathedral following the disastrous fire of 1194 provide an example. The cathedral was the center of the Mary cult in France and housed the Sacred Tunic—the shift that Mary wore when she gave birth to Jesus. It was also a major pilgrimage site and trade fair sponsor that was responsible for the town's economic prosperity; selling reproductions of the Sacred Tunic enabled the people of Chartres to develop a thriving textile industry. A rational choice approach might suggest that the people's extraordinary efforts to rebuild the cathedral were instrumental in nature, designed to maximize their material self-interest. Clearly, we should not ignore this motivation in our admiration and nostalgia for the intensity of the people's religious faith. But it does not explain why Chartres became a pilgrimage site, it does not explain why the pilgrims would pay money for items such as a reproduction of the Sacred Tunic, it does not explain why the rebuilding effort, which was often voluntary, did not collapse as a result of free rider problems, and most important of all, it does not explain the personal experience of the citizens themselves.⁴⁵ Their observable behavior and internal states are only explicable in terms of a larger context of meaning. This theory of

45. See VON SIMSON, *supra* note 41, at 164-70. While recounting the economic reasons for the people's efforts, Simson never doubts their religious fervor. Indeed, his point is not that the people were motivated by economic self-interest, but that we twentieth century observers, who are accustomed to distinguishing between economic self-interest and religious fervor, cannot fully understand how the two were integrated in the Middle Ages. In the final analysis, the people's "rapport with the supernatural explains the mood and public effort that created the Cathedral of Chartres." *Id.* at 169.

meaning does not deny the existence of self-interest; it simply determines when that motivation will be activated. People will pursue their material self-interest in the many not invariable situations where they find self-interest to be meaningful.

The phenomenological account of human beings as motivated by their desire to create meaning also accounts for the micro-empirical data developed in the laboratory studies. One of the most robust conclusions from these studies is the endowment effect—the tendency of people to attach additional value to an object simply because they already possess it. In one experiment, Kahneman and Tversky showed one group of subjects a coffee mug and asked them how much they would pay for it. The mean answer was \$2.21. They then gave another group the same mug as their own property and asked them how much they would accept to sell the mug. This time, the mean answer was \$5.78.⁴⁶

This behavior can be labeled “irrational,” but phenomenology offers an affirmative explanation. As suggested above, a central aspect of meaning is the definition of the self, a process which includes the delineation of one’s boundaries. These boundaries are not fixed by nature; they are socially constructed by an intersubjective process that varies from one culture to another. In our culture, the definition of the self clearly includes the person’s property, as Meir Dan-Cohen has observed.⁴⁷ The reason for the endowment effect, phenomenology suggests, is that a physical object, once it becomes a person’s property in a culturally well-recognized sense, becomes part of her definition of herself as well. It is only a small and perhaps marginal part of herself, admittedly, but that is why the additional value that is attached to it is only three dollars and fifty-seven cents. If the coffee mug were given to the person for being the valedictorian of her high school, it might be given an additional value of \$3,000.

In addition to providing a positive explanation for the endowment effect, phenomenology also provides a way to trace its limits. The contribution of Jeffrey Rachlinski and Forest Jourden to this Symposium suggests that when a person’s ownership of an object is not definitive but subject to defeasance, the endowment effect disappears.⁴⁸ The potential defeasance of the person’s right of ownership

46. See Daniel Kahneman et al., *Experimental Tests of the Endowment Effect and the Coase Theorem*, 98 J. POL. ECON. 1325, 1336-38 (1990).

47. See Meir Dan-Cohen, *Responsibility and the Boundaries of the Self*, 105 HARV. L. REV. 959, 979-81 (1992).

48. See Jeffrey Rachlinski & Forest Jourdan, *Remedies and The Psychology of Ownership*, 51 VAND. L. REV. 1541 (1998).

places it outside the boundary of the self. Similarly, being given a voucher that can be exchanged for a mug, rather than the mug itself, dampens the effect. Dan-Cohen explains these variations in terms of the self's scalarity; rather than being a binary process, with everything classifiable as self or not-self, the self is a scalar process, where things can be more or less a part of oneself.⁴⁹ An object to which one has a definitive right is more a part of oneself than an object to which one's right is contingent. Defining oneself as an entrepreneur who trades in a commodity, rather than an individual who owns it, is also likely to eliminate the endowment effect, because the act of selling the item, rather than of continuing to possess it, represents the self's relationship to that object. Kahneman and Tversky's subjects became attached to a coffee mug, but a pet store owner readily sells puppies and kittens at the market price. Perhaps an experimental subject, given five mugs and told that his task was to maximize his income from the sale of the mugs, would offer to sell them to the experimenter at the market price.

Russell Korobkin's contribution concludes that experimental subjects playing the role of a lawyer prefer to retain contract terms that the client already possesses, either because those terms are the default rule or because they are part of an existing industry form.⁵⁰ But a contract term seems too abstract to display endowment effects, and an agent would be unlikely to experience such effects on behalf of the client. Instead, Korobkin concludes that the preference results from a status quo bias that he ascribes to the subject's desire to avoid regret. That is, the subject prefers to forgo an opportunity to reach an economically superior deal to avoid the possibility that he has given up something of value.⁵¹ This behavior might also result from rational risk aversion—a lawyer might believe that his client is less likely to be upset about an opportunity forgone than about the surrender of a right that it originally possessed. The latter effect, however, is likely to be weak in an experimental situation, where there is no real client; more importantly, it assumes a degree of cynicism that is characteristic of rational actor explanations, but does not conform with empirical experience. Lawyers generally cathect with their client, and try to represent the client's interests unless some special circumstance arises. This is the approach that phenomenology suggests. The

49. See Dan-Cohen, *supra* note 47, at 965, 978-82.

50. See Russell Korobkin, *Inertia and Preference in Contract Negotiations: The Psychological Power of Default Rules and Form Terms*, 51 VAND. L. REV. 1583, 1591, 1607 (1998).

51. See *id.* at 1619-20.

desire to avoid regret follows naturally; a lawyer's self-image typically involves the protection of his client's rights, and the avoidance of outright miscalculations. A subject playing the role of an entrepreneur, or an agent oriented toward business development, might not display the same preference for the status quo.

Finally, both Christine Jolls and Robert Rasmussen rely upon people's excessive optimism in their analyses. Jolls concludes that this bias might lead people to underestimate the likelihood that they will be liable for a tort,⁵² while Rasmussen concludes that it may lead them to underestimate the likelihood that the firm they manage or invest in will go bankrupt.⁵³ This can be called optimism, although the subjects might not be similarly sanguine about events unconnected with themselves, such as the future of the economy or foreign relations. Their attitudes are probably better explained in phenomenological terms. Their projects and plans become part of themselves, or their self-image of themselves, and so become endowed with additional value. The strength of this effect might vary with the individual's degree of ego-involvement with the project. Thus, the effect might be particularly strong for Rasmussen's entrepreneur starting up a small, new company, and weaker for a venture capitalist who is investing in a group of companies.

VI. CONCLUSION

Husserl's phenomenology, and specifically his analysis of the natural attitude, provides a comprehensive theory of conscious behavior. A number of such theories exist, of course, but phenomenology accounts for both the empirical strength of the rational actor and rational choice models, and for the strength of the macro-empirical and micro-empirical critiques of those models. It defines the general areas where the rational actor models apply, and identifies the limits of those models, the territory where these models no longer thrive, but begin to lose their way, sputter, and expire from implausibility. Phenomenology also offers an account of what motivates people in the absence of self-interest. This account, moreover, does not postulate two sets of inconsistent motivations that switch on or off in some mysterious way, but rather subsumes self-interest as part of a larger

52. See Christine Jolls, *Behavioral Economics Analysis of Redistributive Legal Rules*, 51 VAND. L. REV. 1653, 1661-62 (1998).

53. See Robert K. Rasmussen, *Behavioral Economics, the Economic Analysis of Bankruptcy Law and the Pricing of Credit*, 51 VAND. L. REV. 1679, 1694 (1998).

motivational system. Rational action and rational choice models, of course, still have numerous adherents who are unprepared to make any concessions. But as the empirical evidence against their view continues to mount, and the defenses of these theories' responses become increasingly convoluted, an alternative account that integrates their approach into a more plausible totality seems increasingly appealing.

