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IMPOSSIBLE CHOICES

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## ABSTRACT

This paper was written for, and (in part) presented at, a symposium at McKenna College in which Mr. Calabresi took part. The paper begins with a discussion of a number of ambiguities in the treatment of choice in Calabresi and Bobbit's Tragic Choices and then proceeds to develop in two different, but I think complementary, directions. On the one hand, I use their shifts of position as an occasion, or opportunity, to work out what seems to me a more realistic account of how decision-makers choose among the alternatives they encounter. On the other hand, I suggest that the shifts of position that are visible at the surface of the argument are traceable to deeper tensions among the unstated, and perhaps not fully recognized, metaphysical presuppositions on which the argument rests.

## IMPOSSIBLE CHOICES\*

W. T. Jones

Any book that, like Tragic Choices,<sup>1</sup> places itself deliberately and boldly at the intersection of economics, law, the policy sciences and moral philosophy is certain to provoke critical response. Even God himself could hardly write a book that would meet the diverse demands and satisfy the diverse criteria of all these disciplines. It is easy, for instance, for a philosopher to point out philosophical weaknesses in Tragic Choices--for instance, to point a finger at the ambiguities in Calabresi and Bobbit's treatment of choice--but hardly worth doing so if one confined oneself merely to exposing the shifts in position that occur. I shall therefore use these ambiguities as an occasion, an opportunity, to work out what seems to me a more realistic account of how decision-makers deal with different kinds of choice situations. I shall show that though Calabresi and Bobbit's rather timid criticism of the rational choice model is a step in the right direction, it is only a very small first step. That is the first theme of this essay. The second is a demonstration of what may be called the method of philosophical archaeology.<sup>2</sup> Starting from those same ambiguities that appear at the surface of Calabresi and Bobbit's treatment of choice I shall seek to uncover the implicit metaphysical and epistemological presuppositions on which their argument rests.

Specifically I shall suggest that Calabresi and Bobbit's situation with respect to the moral universe is not unlike Kant's with respect to the physical universe. Kant had started life as a confident Cartesian rationalist, and was woken from his dogmatic slumbers by reading Hume. The Critique of Pure Reason was the result. I suspect that the authors of Tragic Choices started life confident that moral world is rational and well ordered, that is, that disagreement about what one ought to do at any decision point can always in principle be terminated by showing that one of the options is better--in the sense of being productive of more utiles, or more pleasures, or more satisfactions--than any available alternative. I do not know who woke our present authors from their dogmatic slumbers, but woken they surely were. At some point they must have made the shocking (I use this term advisedly) discovery that the moral world is not quite so rational as they had believed it to be: there are some choice points, and unfortunately they are important ones, at which there is no decisively good reason for selecting one option over the other available options. Tragic Choices is the result of this revelation.

But Tragic Choices differs in an important way from Kant's Critique. Kant undertook a transcendental deduction that (at least in his view) rehabilitated physics and so reassured him that the physical world is rational "after all." Calabresi and Bobbit have not--at least not in this volume--undertaken a corresponding rehabilitation of moral rationality, nor have they yet reconciled themselves to its loss. The result is a series of shifts in position as they move back and forth

between accepting and revolting against the flaw they have discovered in their moral universe.

Although I confine myself to Tragic Choices and to trying to explain some of what is going on in that book that is otherwise puzzling, I hope that my paper will have a larger interest. Inasmuch as there are many moral philosophers who share our authors' ambivalence about rationality claims but who have buried that ambivalence more deeply than they have managed to bury it, I believe my analysis may indirectly throw light on some rather widespread features of the contemporary philosophical culture.

But before I can get to the topic of this paper—those shifts in position that are symptoms of the ambivalence I detect—I must set out what I take to be the defining properties of tragic choices, as Calabresi and Bobbit understand them. This exposition is necessary because they have chosen—unaccountably in view of the importance of the concept—to rely on examples, rather than "attempt a simple definition" (p. 17), thus leaving their readers uncertain whether the definition they have extracted from the Calabresi and Bobbit examples is the one embedded in them.<sup>3</sup> I shall start by distinguishing among difficult choices, easy choices, and what I shall call impossible choices.

Difficult choices, or Type I choices, are those for which we have a criterion that we think is applicable to both (all) options open to us at the time we need to choose, but where the criterion is hard to apply either because the fit is loose between the criterion and one or

more of the options or because the distance between the options is small. From difficult choices we may distinguish Type II, or easy, choices—those in which (i) the distance between the options is so great that we hardly have to apply the criterion—we can "eyeball it"—or those in which (ii) there is a good fit between the criterion and the options.

One useful—and therefore widely used—criterion is price, expressed in, say, dollars. Choices for which this criterion is thought to be appropriate are usually easy. Since many people experience indecision—the period between the first presentation of options and the onset of behavior—as uncomfortable or even anxiety producing, there is a widespread tendency to apply the pricing criterion in situations in which people with a higher tolerance for cognitive dissonance might regard the pricing criterion as inappropriate. In any case, choices that can be priced become difficult only when there is a failure of fit—for instance, when there is no market for the equity we are thinking of selling or for the one we are thinking of buying. (A choice under this criterion could also become difficult if the decisionmaker were terribly fussy about small differences, about, say, the difference between a price of \$.99 and \$1.00, but in that event he could transfer to pricing in terms of Italian lire.)

If one chooses option A over option B and one's choice is challenged, one proceeds to justify it by showing that in terms of such-and-such a criterion (e.g., price) A was better (e.g., cheaper)

than the price of B. If one's criterion is challenged, one justifies it by showing that, in terms of some second order criterion, the criterion one used was better (e.g., more appropriate) in these circumstances than any alternative criterion. Justifying one's choice in this way amounts to showing that it was "rational"; any other choice in this situation under this criterion would, one says, have been irrational. Since few people want to be thought irrational, still less want to think themselves irrational, most people exhaustively divide the world of choice into difficult and easy choices. All choices would then be in principle (as people say) rational, even if on occasion someone makes an irrational choice as a result of bungling, haste or weakness of will.

Are there choices that are neither easy (Type I) nor difficult (Type II)? I believe that there are. There are choices that have to be made between incommensurate options, those, that is, for which no common criterion is available. These Type II, or impossible, choices are neither difficult nor easy; they are impossible. It is not the case of course, when we face two incommensurate options, that we do nothing; we are not--at least, not often--like Buridan's ass who, being incapable of making a rational choice between his two options, starved to death. Since human beings are by no means so rational as asses, our hesitation between an A and an incommensurate B sooner or later issues in behavior. But since we want to be rational, we often experience considerable strain in the period of hesitation, and this strain may manifest itself, as in the case of the rats who had to jump but who

could no longer distinguish between the doors that were their options, in a human version of "jumping high and to the right."<sup>4</sup>

My present point, however, is not to describe the sorts of things people do when confronted with impossible choices; it is simply to note that, whether one goes for A or for B or for some unexpected Z, one cannot justify that behavior, either to others--or, worse, to oneself--by showing that, according to whatever criterion one has adopted, the option adopted was "better" than any available alternative and that was the reason it was adopted. Thus, though people always do something in impossible situations, it cannot be that they chose what they did, because by definition they had no basis for making a choice. Nevertheless, people are prone to assimilate this kind of situation to a situation in which they actually make a choice because in both kinds of situations there is hesitation, followed by a behavioral outcome, and because the culture, still dominated by an inherited rationalist bias, expects people to have a "good reason" for all that they do.

This brings me to Tragic Choices. I believe Calabresi and Bobbit will accept my account of "difficult" choices, and I think that what I call "easy" choices overlap with, but certainly do not coincide with, their "trivial" choices. But since they do not even give us examples of these kinds of choices--they mention them only to dismiss them from consideration--I cannot be sure. Finally, I believe that their tragic choices are examples of what I call impossible choices. At least, the kinds of situations they describe as tragic--choosing between saving the lives of people suffering from kidney failure and

saving the lives of people who need marrow transplants, deciding what groups to expose to the risk of losing their lives in a war and what groups to protect from those risks—are just the kinds of situations I call impossible. That is, no criterion is available that would enable us to choose between the options—say, the lives of people who need kidney machines and the lives of people who need marrow transplants—in such a way that our choice, whichever it proves to be, could be rationally justified.

I do not want to get entangled at this stage in what may look like—but is not—a mere semantic difference between our authors and myself. Accordingly, instead of using their "tragic" or my "impossible" to describe these choices I shall for the present refer to them neutrally as Type III choices, that is, choices where no common metric is available for comparing (weighing against each other) the alternatives that are open to us.

It is not clear to me whether Calabresi and Bobbit believe in what I shall call criterion incommensurability as well as in application incommensurability. Criterion incommensurability would occur if there were no ultimate, metacriterion in terms of which choices among different criteria—say, utility and rights—could be justified. I see no signs that Calabresi and Bobbit have faced this question—I suspect they have conveniently assumed a utilitarian, or consequentialist, metacriterion. But without some such metacriterion they are stuck with incommensurability at the criterion level, which might be thought to "infect" the level of application. This would be a

serious flaw in their moral universe. However that may be, since they ignore the possibility of criterion-incommensurability and concentrate on incommensurability at the level of application, I shall follow them and confine myself to arguing that even at the level of application there are a lot more incommensurate values than they recognize.

Calabresi and Bobbit, for their part, hold that there are but two<sup>5</sup> incommensurate values, life and equality. The only Type III choices they allow, therefore, are choices involving these two values, and they further limit the sphere of arationality first by confining Type III choices to what they call the first-order level of decision and then by trying—unsuccessfully, I think—to minimize the effect of this first-order arationality on the second order level. Thus Calabresi and Bobbit are reluctant critics of rational choice theory. They allow that there are Type III choices—indeed, the whole book is devoted to pointing out and developing the consequences of the fact that there are Type III choices—but they wish things were otherwise. Indeed, they wish so strongly that things were otherwise that not infrequently (or so it seems to me) they forget that on their own view things are not otherwise. As a result, their attitude toward the fact of incommensurability is strikingly ambivalent. They accept it as a fact of life but regard it as abnormal and shocking, something whose presence in the world they alternate between minimizing and deploring. One might say that Calabresi and Bobbit alternate between trying to neat things up by sweeping most of the arationality in the world under the rug and hauling it out to demonstrate to the rational choice

philosophers that things are not as neat as those philosophers think they are.

The Calabresi and Bobbit ambivalence is visible in the basic strategy of their book: "The object of public policy must be . . . to define that combination of approaches which most limit tragedy and which deals with the irreducible minimum in the least offensive way" (p. 149). Thus, sometimes they emphasize that current allocation procedures can be improved by the application of intelligence; by the use of reason the procedures can be made more rational. At these times they sound much like rational choice theorists. They make derogatory remarks about "tinkering" and about merely "customary approaches" (p. 176), and seem to forget that they believe choices involving life and equality cannot be brought within the scope of a rational scheme. On the other hand, when Calabresi and Bobbit recall that this is the case, they suggest that "a simple, muddled, collective determination may be preferable" (p. 109), and emphasize that "we are not making models for economists." Instead, "we may decide that what works all right for the mass of the citizens is the best we can do" (p. 112). In a word, so far from aiming at allocations that are systematically organized because they are based on a rational principle, we would do well to settle for allocations that reflect public opinion, whatever that happens to be.

Calabresi and Bobbits attitude toward Burke is a symptom of this ambivalence. They rightly describe Burke as "a forceful apologist" for the tinkering approach to the problem of dealing with

social change. But Burke himself and this comment are relegated to a footnote (note 23, p. 205) and the quotation from Burke, unidentified in the text, is referred to very neutrally as one "possible reply" to the advocates of systematic, long-range planning. This tactic allows our authors to acknowledge the existence of disagreement on one of the central issues they should be facing but to do so in a way that leaves them uncommitted one way or the other. It is as if one part of Calabresi's and Bobbit's minds are saying to them, "Look, you know that custom is the best you can get. Why not say so?" while another part is saying, "Well, if it is, that's a scandal!" As we read their book the text seems to harken first to one of these voices, then to the other. Occasionally, as in this passage, when they hear both at once, they are in effect silent, rather like an individual hesitating between incommensurate options.

Ambivalence is also reflected in Calabresi and Bobbit's treatment of their so-called first-order decisions. For the purposes of this discussion I shall distinguish between what I shall call original allocations and initial allocations. An original allocation--I follow Rawls at a respectful distance here--is one those in which the actual allocations are fair, and I suppose that there can be but one such original position, the one that is "really" fair. An initial allocation is just the one that is in effect now--now in 1984, now in 1884, now in 1784. . . . In a word, it is the allocation that happens to be in effect at the time at which people begin to consider whether this allocation could be improved.

Calabresi and Bobbit know, at one level of their minds--that is, one of those two voices is telling them--that there can be no original allocation in the sense defined; there can be no allocation of incommensurate values that is really fair in the sense that reasons can be given which justify this allocation against all other possible allocations. It would seem sensible, then, to concentrate on the current initial allocation and on how this allocation can be brought closer to the currently accepted set of values, for, though current allocations reflect current values, allocations and values are always to some extent out of phase. And a good deal of the discussion of conscription and of population policy in Chapter 6 presupposes this empirical and relativist approach. But some of the time Calabresi and Bobbit listen to the other voice, the one that wants them to distinguish between "the ultimate allocation of [a] good," which sounds like Rawls,<sup>6</sup> and various "historical allocations of that good" (p. 168). And when they are listening to this voice they tell us that "we must determine where . . . a decision . . . was made as a result of which the resource was permitted to remain scarce" (pp. 150-151). This implies that there is a correct, ideal nontemporal allocation from which all actual, historical allocations unfortunately deviate because they result from the pulling and hauling of various pressure groups.

Similarly, as regards this matter of pulling and hauling: part of the time Calabresi and Bobbit, writing in their empirical mode, discuss the way in which the availability of a scarce good "waxes and wanes" as the focus of society's attention shifts from one

incommensurate value to another (p. 196). An example is the way in which "the chance dramatization of a particular group" may "suffice to bring about a discrete or quantum jump" in the allocation of a scarce resource" (pp. 142-143). (We may think of the effect of Franklin Delano Roosevelt's paralysis on the allocation of funds to polio research as an example.) Such shifts in allocation, they emphasize, are not likely to be stable. Indeed, an allocation process is a "complex and curious combination of custom, unorganized moral suasion and ad hoc market incentives" (p. 157). The picture presented in these passages is anything but that of a pattern of developing allocations gradually approaching the "ultimate allocation."

But the picture itself shifts. What Calabresi and Bobbit sometime see, sometimes even on the same page, is the picture of a pattern. There is, after all, an "historical dialectic" (p. 169) to the allocations. They follow a "cyclic strategy" (p. 195); the waxings and the wanings, appearances to the contrary, have "dialectical effects" (p. 171). Though "the threads that make up a culture are too intricate" for students of allocation processes to be able "to extricate their perception from the pattern of the fabric" (p. 167) there are nonetheless "traces of patterns, 'figure[s] in the carpet,'" which, as our authors tell us, they were looking for and presumably found in Chapter 6, even though they modestly admit that the results of that chapter are only "impressionistic sketches" (p. 191).

It would be possible to cite many more examples of this ambivalence, but since they seem to me to be recurring figures in the

carpet of the Calabresi/Bobbit argument I shall instead simply describe the pattern that I detect there. Like the rationalist philosophers Calabresi and Bobbit want a world in which good reasons can be found for all decisions, in which there are no Type III choices. However, they prize life and equality so highly that they exclude these values from the pricing process; these two values are supremely precious, i.e., priceless. But, so the argument runs, what is priceless cannot be priced, and what cannot be priced is by definition incommensurate. Hence choices involving these precious values are arational; people cannot give, because they cannot find, good reasons for choosing one allocation of these values over other possible allocations of them. On the one hand, Calabresi and Bobbit believe that societies which place a price on life or equality are "contemptible" (e.g., p. 144); on the other hand, they regard tragic choices, those involving priceless values, as "pathological" (e.g., p. 190). Calabresi and Bobbit are in a cleft stick.

There are two possible ways for him to extricate himself from this uncomfortable posture, but I doubt if Mr. Calabresi will avail himself of either. One way out, and a plausible way out given one set of metaphysical assumptions, is simply to retreat to the pure rationalist position that (1) it is possible to price all values, including life and equality, (2) that people do as a matter of evident fact price life and equality all the time, different people assigning different values to life at different times, and (3) that it is precisely the people who can't, or who think they can't, price life,

who are "pathological." The other way out, which I recommend, is to recognize that the incommensurability of values, so far from being limited to two, or at most four, values, is a pervasive feature of our world, so much so that pricing is something that people, in distinction from economists, undertake only in rather special circumstances and for limited ends. If one looks at the world from this perspective social choices and the institutions which these choices generate look very different from the way they look in Tragic Choices.

I want now first to show, at least briefly, how the world looks from this perspective--one in which the tragedy of tragic choices is much diminished by the prevalence of many different incommensurate values and so of many, instead of only a very few, Type III choices. Second, I want, again briefly, to suggest why these different perspectives appeal to different people.

I shall begin with a choice which I regard as a typical Type III choice. If I am presented with the option of seeing a Monet retrospective or seeing a Renoir retrospective--I can go to either exhibition, but not to both--I have no problem; I like Monet enormously and dislike Renoir intensely. Thus this is an easy decision, but for me it is not one of Mr. Calabresi's trivial choices. If it is a matter of an option between Monet and Pissarro that too is easy--but in a very different sense of "easy": it is easy because I know that I shall enjoy whichever I attend and because I have no way of calculating which I will enjoy more. This, too, is a Type III choice--strictly speaking, not a choice at all--and certainly not tragic.

There may be an interval of hesitation between the time I am offered the two options and the time I head for (say) the Pissarro show, and this interval may be prolonged. But it isn't filled by a process remotely like pricing, whether the pricing is done in dollars, in utiles, in "pleasures," or in "satisfaction." There isn't a process, or a calculation, or an election leading to a decision to go to the Pissarro; the behavior of setting out for the Pissarro simply emerges from the hesitation.<sup>7</sup> I may terminate the period of hesitation by tossing a coin. Tossing a coin has a number of advantages. First, it effectively terminates the hesitation, which might otherwise prolong itself. Second, it is a kind of public acknowledgement that a good reason for choosing one exhibition over the other cannot be found: tossing a coin therefore relieves me from the need to invent ex post a good reason. In a word, the concept of a lottery is a very good representation of a person's situation at many choice points, and it is immaterial whether or not he recognizes this to be the case and actually tosses a coin.

What pretty clearly happens in this and similar cases is exactly what happens in Calabresi/Bobbit tragic cases, where the options are, not the Monet show or the Pissarro show, but putting scarce resources into kidney machines or putting them into marrow transplants. The only difference--and this is certainly a considerable difference--is that I may agonize more over the latter impossible choice than over the former impossible choice, because I value life rather more highly than I value impressionist paintings. But I can

certainly conceive the possibility--indeed, the likelihood--that there are people who value impressionist paintings more than they value kidney machines and/or marrow transplants for other people, and such people may value impressionist paintings so much that they regard it as tragic that they must choose between the Monet and the Pissarro shows, just as Calabresi and Bobbit regard it as tragic that he must choose between kidney machines and marrow transplants. So, to judge from E. M. Forster's writings, he would not have regarded it as the least bit tragic if he had to choose between the U.K. and the U.N. but would have regarded it as very tragic indeed had he to choose between his duty to one friend and his duty to another. In a word, what makes choices tragic is not merely that the options involved are incommensurate but that they are highly prized. All tragic choices are Type III choices, but not all Type III choices are tragic.

What would Calabresi and Bobbit say about such people--about E. M. Forster and my putative admirer of impressionist paintings? Would they say that they are mistaken or merely that they are different? Curiously enough, on this important point I have not been able to decide what their final view is. Again and again they make the flat assertion that life "is" priceless, alternatively, "is" sacred. If we take such assertions as considered--if they think life is priceless then they must hold those who deny that life is priceless, or who question whether it is priceless, to be mistaken, wrongheaded, obtuse, or insensitive. Yet towards the end of the book it turns out that there are societies that do not value life as much as our society

does, and that tragedy is "a cultural phenomenon" (p. 167).

Consider, for instance, the Calabresi/Bobbit account of what they call "color": "By the term color we mean the capacity of the factor to arouse emotion. This quality does not inhere in the factor itself, but depends rather on each society's perception of it; it varies over time . . ." (p. 154). From this it surely follows that if society  $S_1$  regards some choice (say, the choice between kidney machines and marrow transplants) as tragic and another society  $S_2$  does not regard this choice as tragic, neither is mistaken. It is simply the case that  $S_1$  colors the value of life more highly at this time and in these circumstances than does  $S_2$ . It is quite possible that at another time and in other circumstances  $S_2$  will color this choice so highly that it will now regard it as a tragic choice and that  $S_1$  will no longer color it highly enough to regard it as tragic. Instead,  $S_1$  may now have come to color highly the choice between (say) drafting all 18-year-olds and exempting those in college, in which case this has become a tragic choice for  $S_1$ . In the same way a society of art connoisseurs ( $S_3$ ) might color Monet and Pissarro so highly that a choice between seeing one exhibition and seeing the other would be regarded by  $S_3$  as a tragic choice.

It appears, then, that a part of the time Calabresi and Bobbit are making relativized sociological observations about the tensions that emerge in different societies as those societies struggle in their different ways to allocate scarce resources that these societies happen to regard as precious. At these times they are saying something like

this: "If there any chaps around who, like me, happen to think life is priceless, then they have a few problems they may not be aware of?" But they are saying that only at the cognitive level of their minds. At the gut level they so passionately believe life to be priceless that, when this level is articulate, they tell us that life is priceless, not merely that it is priceless to him.

How can Calabresi and Bobbit be unconscious of these--to me--obvious shifts from sociological observations to ethical claims? They are hidden from them, I believe, by their repeated use of the term "society" in such sentences as "Society constantly affirms that life is priceless" (p. 135) and the term "we" in such sentences as "We hold life to be priceless." For my part, I would not talk about "society" affirming, or choosing, or deciding anything; I believe it is people who affirm, choose, and decide--people in voting booths, in Congress, in the White House, in the Oval Office. The only way I can attach meaning to talk about "society" valuing life (or anything else) is to translate it into talk about preference orderings, each preference ordering being the preference ordering of some particular individual at some particular time. I don't think these preference orderings are remotely as stable across time as most economists seem to think they are, but an individual's preference ordering can't be wildly incoherent over a short time period nor can there be radical divergences from one individual's preference ordering to another's--people could hardly live in a social world if this were the case. So it may be that the notion of a modal preference ordering for some group over some time period is

a meaningful concept.

But in any society at any time--especially in any society as large as the U.S.--there are a great many different modal preference orderings, each the modal ordering for some subgroup, and that in some of these subgroups--teenage gangs in ghettos, the IRA, the KGB, the so-called Islamic Jihad, the CIA, the Israeli intelligence organization--life has a very low rating. And even in groups all of whose members regard life as precious there are numerous exceptions and variations. Americans, to judge by the size of the headlines in newspapers and the time allotted on television, regard the lives of the marines lost in the bombing of their headquarters in Beirut as a great deal more precious than the lives of the French soldiers who were killed at the same time a few miles away. And even with regard to American lives, quite different rank orderings exist: some regard the lives of the hostages which might have been lost in the embassy at Teheran as more valuable than the lives which are being lost daily on the highways; others deny this. And so on. The most that can be claimed is that many (most) people in many (most) societies in many (most) circumstances regard life as precious--a very considerable modification of the unqualified claim made in Tragic Choices.

Calabresi and Bobbit's use of the singular collective "society" instead of a plural collective--for instance, "people," "group," "subgroup" or "societies"--makes it easy for them to fall into thinking of the referent of the singular term as a single entity with a single, stable preference ordering, and so to overlook the fact that within any

society there are many different preference orderings none of which can be singled out as obviously the "right" one. And this inattention to diversity and hence inattention to the need to justify any claim that one of these diverse opinions is right, is reinforced by their use of an indeterminate "we," which can start out by meaning himself and likeminded people, in which case "we prize life as priceless" is obviously true, and then slip without noticing that he is doing so into meaning by "we" "all Americans," in which case "we prize life as priceless" is obviously false.

"Priceless" is another unfortunate term. The trouble with "priceless" is that it has at least three meanings--that which is not priced because, as it happens, no market exists for it; that which, being incommensurate, cannot be priced; that which is especially precious, rare or important. That incommensurate values are priceless is obvious. That they are necessary follows from the fact that they are incommensurate. They may indeed be priced, in the sense that a market may exist for them. But this price does not reflect their intrinsic value, only their market value. If the price of a Monet is twice the price of a Pissarro, some people will opt for the Pissarro, who might, at a different price, have opted for the Monet. A few people will be able to afford both; most will be able to afford neither. The price affects people's behavior, driving some from the market and attracting others, but it does not correspond to or reflect anybody's appreciation of the two paintings. It is meaningless to say that the Monet is twice as valuable as the Pissarro because its going

price is twice as high.

Thus, if one eliminates "priceless" in the sense of "lacking a market" as irrelevant to the present discussion, one is left with two meanings or "priceless"--a literal meaning in which "priceless" means "incommensurate" and a metaphorical meaning in which it means "precious." Clearly, not all values that are priceless in the literal sense are priceless in the second, metaphorical, sense of "priceless." Whether they are priceless in the second sense depends on where these values are located in one's preference ordering, and this varies not only from society to society but also from individual to individual. But unfortunately our authors seem to notice neither the difference between the literal and the metaphorical meanings of "priceless" nor the fact that the metaphorical meaning is observer-relative. Hence they slip from asserting--correctly--that life and equality are priceless in the literal sense to taking it for granted that they are priceless in the second sense--not just priceless to many people in many societies in many circumstances, but priceless period--objectively priceless, priceless an und f#r sich as it were.

Because the only values that are incommensurate (i.e., priceless in the first sense) for Calabresi and Bobbit happen to be life and equality and because these values also happen to be especially precious for them (i.e., priceless in the second sense), they find it easy to move from an "is" to an "ought"--from the correct empirical observation that the values some people attach to life and equality are incommensurate to the unsupported normative claim that they are really

and truly precious. If Calabresi and Bobbit were to see that in fact there are many incommensurate values (first sense), some of which few if any people regard as especially precious (second sense), they would, I think, see the great gap between their factual "is incommensurate" and their normative "is precious." But though Calabresi and Bobbit know, at one level of their minds, that "is precious" is context-relative, that is, highly colored in different societies, they are themselves so committed to life and equality--they themselves color those values so highly--that the Calabresi and Bobbit whose hearts presided over the writing much of Chapters 1 through 5 did not hear, did not take in, what was being said to them by the heads that were writing most of Chapters 6 and 7.

Our authors' shift between the literal and the metaphorical meanings of "priceless" have had a further and even more serious consequence. It looks as if they concluded that since only life and equality are precious, that is, priceless in the metaphorical sense, these are also the only values that are priceless in the literal sense. Thus life and equality appear to them as exceptions, as "flaws" that spoil the rationality and coherence of the moral universe, which is otherwise as well-ordered as the rationalist philosophers tell us it is--well-ordered because, except for these two values, all values can be priced and so systematically ranked.

So far, I have been focussing on the confusions in which Calabresi and Bobbit become emeshed as a consequence of taking life and equality as priceless. I turn now to the consequences of their belief

that there are but two priceless values regardless of what these values are. One consequence is that they perceive the choices in which their two incommensurate values are involved as tragic, whereas I, in contrast, am tempted to call the choices in which my many incommensurate values are involved whimsical but will settle for calling them impossible. Lest this be regarded as a merely semantic difference between us, I will sharpen it by saying that if I had to choose between calling impossible (i.e., incommensurate) choices tragic and calling them comic, I think I would call them comic, for there seems to me something almost comic about the high-flown expectation that the world is unflawed.

What sort of difference is it when presumably reasonable people who, in opposite to the rational choice theorists, agree that at least some choices are incommensurate—who agree on the facts of the case, as it were—see those facts so differently that are tragic to some and whimsical to others? I shall call this kind of difference a gestalt difference, which I define as one in which the same facts arrange themselves so differently for different people that those people see different pictures of the world. Look at Figure 1.<sup>8</sup>

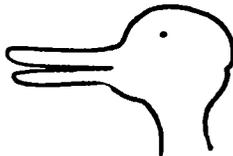


Figure 1

Do you see a duck, or do you see a rabbit? The difference between seeing a duck and seeing a rabbit is an example of a gestalt difference. All of the lines in the drawing of the duck are lines in the drawing of the rabbit; all of the lines in the drawing of the rabbit are lines in the drawing of the duck. But the lines arrange themselves so differently in the two pictures that the lines that are the duck's bill in one picture are the rabbit's ears in the other. Everything shifts, yet nothing moves.

Why do Calabresi and Bobbit see a rabbit where I see a duck? In a simple case like this the explanation may be simple: it may be that they have just finished reading "Peter Rabbit" to their children, while I am playing "Peter and the Wolf" to mine. Further, in a simple case like this it is easy to shift back and forth from one gestalt to the other, turning duck into rabbit and rabbit back into duck at will. In complex cases like the difference between tragic choices and comic choices, it is much more difficult to make a gestalt switch. But it is worth trying to make it—even if, afterwards, one returns to one's initial gestalt—because making this kind of effort teaches us a great deal about theory formation and about the relativity of the theories thus formed to their metaphysical and cosmological context, their relativity, that is, to the implicit assumptions of the theorists.

Accordingly, I am going to try to show why Calabresi and Bobbit see the human situation as tragic whilst I see it as comic or, better, whimsical. The critical factor, I shall argue, is a difference in metaphysical expectations. I shall start with two preliminary

observations about tragedy and comedy, and about the differing expectations--in this case social, not metaphysical, expectations--that make tragedies tragic and comedies comic. First, a play is a tragedy, at least according to Aristotle, if the situation represented in the play evokes a particular kind of response--emotions of pity and terror.<sup>9</sup> The first chapter of Tragic Choices is full of references to Greek tragedians; it is evident that the authors have Aristotle in mind when they write that a tragic choice arouses "emotions of compassion, outrage and terror" (p. 18), and that it "evokes truth and arouses terror and outrage" (p. 23).

What sort of situation arouses these specifically tragic emotions and in virtue of arousing them, is called tragic? It is, I suggest, a situation in which some individual for whom we expect things to go well becomes involved in a wholly unexpected misfortune. It is the unexpectedness of the misfortune that elicits the tragic emotions. Oedipus was clever, energetic, and ambitious--a man for whom the audience would predict a successful career, and certainly the misfortunes that overtake him are unusual. It isn't often that a man bashes his father on the head at a crossroads without knowing him to be his father. It isn't often that a man sleeps with his mother without knowing her to be his mother. Fewer still are the men who suffer both of these unusual misfortunes. In contrast, consider the misfortunes that occur in Aristophanes' comedies: though these misfortunes are unusual--it wasn't often that sex-roles were reversed or that a man was denied his marriage bed in the fifth century B.C.--they are down-graded

and rendered comic by being represented as occurring to every Tom, Dick and Harry in Athens--to tanners and sausage makers, not to kings and princes.

Second, the line between tragedy and comedy is narrow: a gestalt switch will occur if by design or as a result of bungling by director or actors the events occurring on the stage are taken by the audience not as exceptional but as just the way the world happens to be. The carnage that leaves the stage littered with corpses at the end of Hamlet would evoke roars of laughter--as actually happens during the not dissimilar scenes from Act V of Romeo in the film version of Nicholas Nickleby--if all those deaths are perceived by the audience, not as linked to the misfortunes of a particular protagonist, thus making those misfortunes unusual, but rather as routine occurrences at the court or Denmark or alternatively at Verona. Thus playwrights, directors and actors set up in their audiences expectations which lead either to purging tears or laughter, depending on how the events enacted on the stage match those expectations.

In the same way philosophers' theories depend to a great extent on how well or how ill the world matches their metaphysical expectations. I shall give two examples. In Nausea Sartre describes his protagonist--a thinly disguised Sartre--at the moment he discovers that "things are divorced from their names." As it happens, Roquetin is sitting in a street car when he makes this discovery:

I lean my hand on the seat but pull it back hurriedly: it exists. This thing I'm sitting on, leaning my hand on, is called a seat. They make it purposely for people to sit on, they took leather, springs and cloth, they went to work with the idea of making a seat and when they finished, that was what they had made. . . . I murmur: "It's a seat," a little like an exorcism. But the word stays on my lips: it refuses to go and put itself on the thing. . . . It seems ridiculous to call them seats or to say anything at all about them; I am in the midst of things, nameless things.<sup>10</sup>

Now, by way of contrast, Hume. As it happens, Hume agrees with Sartre that things are divorced from their names. As he put it, all things are "loose and separate," including naturally words and the objects they refer to. But Hume, so far as I know, never sat in the Edinburgh equivalent of a Bouville streetcar; certainly neither there or elsewhere did he make Sartre's shocking discovery that the world simply is, that it is not meaningful to the rational human mind. It was not a discovery, and so not shocking, because it was something he had, as it were, always known. Thus Hume and Sartre both took the fact of looseness and separateness as a fundamental feature of the world, a basic premise, but they developed radically different theories because looseness and separateness matched Hume's expectations and frustrated Sartre's.

Thus Hume used the looseness and separateness of things to demonstrate that we have no good reasons our belief in the existence of God, in the external world or in the self. What, he asked, should be one's reaction as one contemplates the "havoc" thus made? Far from being distressing, far from inhibiting action, it frees one, he thought, to contemplate "the whimsical condition of mankind, who must act and reason and believe, though they are not able, by their most diligent enquiry, to satisfy themselves concerning the foundation of these operations, or to remove the objections, which may be raised against them."<sup>11</sup>

Sartre's world is a lot like Hume's—he agreed with Hume that from looseness and separateness it follows that "the idea of God is contradictory" and that "man is a useless passion"<sup>12</sup>—but whereas Hume accepted the world for what it is, Sartre abominated it. The only appropriate response, he thought, is not cool detachment, but defiance. The lines in the drawing are the same, but they arrange themselves into a duck for Hume and into a rabbit for Sartre.

I can now state the differences between Calabresi's and Bobbit's metaphysical expectations and my metaphysical expectations, the differences that lead them to perceive incommensurate choices as tragic and lead me to see such choices as whimsical. I must, I think, be a descendant of Hume. At least I expect the world to be full of incommensurate choice because I expect the world to be arational—rationality, in my view, is something we project on the world—sometimes with moderate success, sometimes with an attendant strain—

not something we find there. Consequently, when Calabresi and Bobbit point out a pair of incommensurate values and show that the existence of these particular incommensurate values makes nonsense of all current allocation theories, I am not surprised and not disappointed. My duck has turned up in one more place.

Calabresi and Bobbit are certainly not descendants of Hume; they are descendants of Descartes. So, emphatically, was Sartre; so are the rational choice philosophers. But like Sartre and unlike the rational choice theorists, Calabresi and Bobbit see that the world is not as rational as Descartes held it to be. However, whereas Sartre was persuaded that the world is au fond arational, our authors believe that its rationality is only "flawed"--flawed by the presence of those two values that are both incommensurate and also precious. Calabresi and Bobbit alternate between attending to the fact that these incommensurate values are precious and attending to the fact that there are after all only two of them. We are reminded of The Golden Bowl and the shopping expedition made by the Prince and Charlotte Stant to purchase a wedding present for Maggie Verner. From Charlotte's point of view the flaw in the bowl that has been proposed as the gift is minor and in any case invisible; from the Prince's, it renders the bowl worthless. There is a bit of Charlotte in Tragic Choices and also a bit of the Prince.<sup>13</sup>

To put the matter differently, Calabresi and Bobbit are saved from anything like Sartre's desperate existential adjustment to an arational universe by their convenient belief that the world is

rational except for one small "pocket" of arationality. But unfortunately for Calabresi and Bobbit this pocket of arationality is something they can neither do with nor without. Unlike the Prince, they cannot simply walk out of the shop and stand in the Bloomsbury street with their backs to its window--to have done so would have been to leave their book unwritten. Hence the ambivalence I have noted: whereas Hume is comfortably lodged in his world and Sartre is lodged, however uncomfortably, in his, our authors, if I read their book correctly, are living uneasily between two worlds; like Matthew Arnold they have as yet no place to rest their heads.

So there are two worlds--the Calabresi/Bobbit world of tragic choices and my world of impossible choices. Just as nothing changes and yet everything changes as one shifts from gestalt to gestalt in Figure 1, so nothing changes and yet everything changes as one shifts from a world in which only two values are priceless in the metaphorical sense and, for this reason, also priceless in the literal sense to a world in which many values are priceless in the literal sense and some happen to be priceless for some people and others priceless for other people in the metaphorical sense.

From my duck perspective I fear I cannot but have given a biased description of the Calabresi/Bobbit rabbit; try as I may I cannot really enter into their rabbit world. And Calabresi and Bobbit, were they to undertake a description of my duck world would give a biased description of it if they cannot, and I suspect they cannot, enter into my Humean perspective on the world. What is needed, it may

be thought, is an objective outside observer. Let him look at the two pictures, the rabbit picture and the duck picture; he will know which is correct. And let him tell us which perspective on the world--the perspective in which incommensurate choices are pathological or the perspective in which they are the way of the world--is correct.

Well, what meaning can be attached to "correct" in those sentences? We understand what it means to ask whether the object of which I caught a fleeting glimpse as I was looking at the pond down there in the meadow is a duck or a rabbit. But what does it mean to ask whether the drawing in Figure 1 is the drawing of a duck or of a rabbit? It is impossible to settle the issue by pointing to any feature of the drawing that is accounted for in one view that is not also accounted for in the other. Gallileo, if challenged, could call attention to the phases of Venus, which were accounted for nicely by the Copernician hypothesis but which could not be accounted for by the geocentric hypothesis. The drawing in Figure 1 is quite different. If, straining for evidence that my view is correct, I challenge Calabresi and Bobbit, "What about the duck's bill? You haven't accounted for that" they will reply, "But of course we have. Can't you see? That's the rabbit's ears." And if they challenge me, "You've left out the rabbit's mouth," I will reply, "As anyone can plainly see, that's a little bump on the back of the duck's head." Every feature of my duck is a feature of their rabbit; every feature of their rabbit is a feature of my duck.

What, then, is the point of this admittedly inconclusive exercise? It is to show that, though Calabresi and Bobbit are left with the rabbit they started with and I am still stuck with my duck, it is not the case that we are exactly where we were before the exercise was undertaken. Though I continue to see my duck, I now know, as a result of reading their book, that there are reasonable people who see a rabbit where I see a duck, and that makes a difference in the duck that I see: I have learned that my duck is somebody else's rabbit. Similarly, I could hope that if Calabresi and Bobbit were to read this paper their rabbit looks a little different to them. Thus, though we are in a sense as far apart as ever, we may yet find it possible, instead of bickering nastily over who is right, peaceably to agree to differ.

## NOTES

- \* I am, once again, much indebted to Alan Schwartz and Bruce Cain for helpful comments.
1. G. Calabresi and P. Bobbit, Tragic Choices, W. W. Norton, New York, 1978.
  2. I have used this method in a number of recent papers, for instance, in "Julian Jaynes and the Bicameral Mind: A Case Study in the Sociology of Belief," Philosophy and the Social Sciences 12 (1982): 15-71; "Somnio Ergo Sum: Descartes' Three Dreams," Philosophy and Literature 4 (1980): 145-66; "Comment," Current Anthropology 25, 1 (1984): 34; and "Public Roles, Private Roles and Differential Moral Assessment of Role Performance," Ethics (forthcoming).
  3. At the symposium referred in the Abstract Mr. Calabresi remarked that, being himself a lawyer and writing as he did primarily for an audience of lawyers, he had naturally adopted the legal practice of citing cases as proof. That is understandable, but it is also a good example of the difficulty I have already mentioned of satisfying the criteria of several different disciplines.

4. See W. T. Jones, The Sciences and the Humanities, University of California Press, Berkeley and Los Angeles, 1965, p. 1.
5. It is possible that Calabresi and Bobbit believe there are four incommensurate values, not two. Openness and honesty may be incommensurate; I am not sure about that. But there can be no doubt about the other two, life and equality.
6. Sounds like Rawls, that is, except for the qualification "in this country," which amounts once again to empiricizing and relativizing the ultimate allocation.
7. When Lord Carrington puzzled a reporter by remarking that he had not been elected Secretary-General of NATO, the Secretary-General explained, "I think it emerge[d] more than anything else, in that curious way that things happen in international organizations" (Manchester Guardian Weekly, Jan. 8, 1984, p. 19). Actually, Lord Carrington's concept of "emergence" is by no means limited to the behavior of international organizations. Election, when it occurs, is often only the pro forma ratification, the recording, of a consensus that had developed by other, and not well understood, means. And similarly for individual men and women--their behavior often simply emerges from what is mistakenly described as a decision process.

8. See Wittgenstein's discussion in Philosophical Investigations, p. 194.
9. The Poetics of Aristotle, translated by I. Bywater, in Works, vol. XI (1924), 1452b32 ff.
10. Nausea, translated by L. Alexander, New Directions, New York, 1959, pp. 68-69.
11. An Enquiry Concerning the Human Understanding, XII, pt. II.
12. Being and Nothingness, translated by H. E. Barnes, Philosophical Library, New York, 1956, p. 615.
13. Henry James, The Golden Bowl, Pt. 1, Ch. 6.