

**“Harming Irreparably:
Economists, Neoliberalism, and the Matter of Kaldor-Hicks”**

Prepared for the annual meetings of the Association for Social Economics, Boston, MA,
January 2015.

DRAFT: Please do not cite without author’s permission. Comments and criticisms gratefully accepted.

Acknowledgments:

Thanks to Emma Ekdahl, Eugenia Goh, Minsun Ji, Hanna Parakhnevich, Noelle Schaefer, Patrick Sutherland, and Michelle Woodruff for research assistance; to Ilene Gabel for valuable comments on a previous draft; and to Michael Adler, Jack Amariglio, S. Charusheela, Jonathan Diskin, Jack Donnelly, Susan Feiner, Jonathan Feinstein, Craig Freedman, Daniel Hammond, Ravi Kanbur, Donald Katzner, Lewis Kornhauser, Robert Lepenies, Deirdre McCloskey, Ric McIntyre, Erik Olsen, Ceren Ozselcuk, J. Andres Ramirez, Mark Silverman, Jacinda Swanson, Paul Turpin, Jack Ward, Lucas Wilson, Peter Wissoker, Richard Wolff and to the participants at the 2013 SCEME Seminar in Economic Methodology for their thoughtful correspondence and conversations related to themes explored in the paper.

George DeMartino
Professor, Josef Korbel School of International Studies
University of Denver
Denver, CO 80208
USA

Email: gdemarti@du.edu

George DeMartino
gdemarti@du.edu

“Harming Irreparably: Economists, Neoliberalism, and the Matter of Kaldor-Hicks”

I. Introduction:

During the 1980s and 1990s a grand economic policy experiment was effected in the global south and post-socialist transition economies of central and eastern Europe and, to a lesser but nevertheless significant extent, in the global north. I refer to the dramatic turn toward what is often called neoliberal economic policies—both domestically and internationally. Neoliberalism entailed international trade and financial flow liberalization, which occurred through a series of unilateral, regional and multilateral initiatives; and aggressive privatization, de-regulation, fiscal retrenchment, the insulation of central banks and currency boards from political influence, dollarization of economies, structural adjustment, and other means. The neoliberal project was advocated by leading academic and applied economists, from Austrians and Chicago School neoclassicals to New Keynesians, despite recognition of the fact that the project could and likely would induce substantial harm among many members of society, often trivialized as short-run adjustment costs. To the extent that they were efficacious in their advocacy—and I take it as incontrovertible that they were—economists contributed to the imposition of serious harm. Often the harm befell the most vulnerable members of society. At least some of the harm was avoidable.

For present purposes I will presume rather than demonstrate the harms associated with the neoliberal project. By now economists and researchers from other disciplines have documented the serious harms that attended structural adjustment in the global south, economy-wide institutional re-engineering in the post-socialist countries, trade and financial liberalization, intellectual property right enforcement, and other aspects of the neoliberal agenda. The harms encompass economic stagnation, a series of financial crises of increasing depth and breadth, forced relocations owing to privatization of communal property, impoverishment, declining life-expectancy, erosion of social capital, community implosions, induced migrations among desperate workers, and extraordinary increases in inequality in income and wealth.¹

How did the profession defend the imposition of the foreseeable and unforeseeable harm associated with the neoliberal project? Most advocates (though not typically Austrian economists) endorsed the project on grounds that it met the conditions specified in the Kaldor-Hicks compensation test. This is hardly surprising. After all, Kaldor-Hicks provides the normative foundation for policy assessment and advocacy in

¹ This is not to say that there were not also beneficiaries or beneficial effects of neoliberalism. Surely there were (and are) innumerable beneficiaries, and many who were affected both adversely and positively by the economic transformation. But as the discussion below will indicate, the justification of harming requires something other than the claim that the benefits to some fully offset the harms to others.

both the Keynesian and neoclassical frameworks. Typically, in abstract policy assessment of the sort that predominates in abstract theoretical work in textbooks, Kaldor-Hicks is invoked explicitly. In the world of applied economics, on the other hand, and especially when discrete projects (such as infrastructure development) that seem to allow for empirical estimates are under consideration, Kaldor-Hicks is operationalized in the cost-benefit analysis that sustains policy adjudication.

Elsewhere I have offered the term “econogenic harm” to refer to the harm that economists induce as they try to do good (DeMartino 2013). In so doing I borrow from medical practice and medical ethics, where the term “iatrogenic harm” (from the Greek, physician-induced) is explicitly recognized and confronted. In economics we lack the language necessary to discuss economist-induced harm.² Given the outsized role that economists now play in public policy and private affairs, it is surely reasonable to expect of the profession that it follow the lead of medicine by bringing to light the harms that its practice causes. It is vital to recognize in this connection that harm is inherent in economic practice—almost always some are harmed, even when economic interventions work just as they are intended to do (see DeMartino 2013 and forthcoming).³ Indeed, harm attaches to economic practice to a greater extent than it does to most other professional practice. John Hicks argued that any economic policy intervention that affects relative prices—which is to say, all interventions—“benefits those on one side of the market, and damages those on the other” (Hicks, 1939: 706). Hicks may be guilty of what philosopher Shiffrin (2012, 372) calls the “overrecognition” of harm.⁴ But he was certainly correct in recognizing the uneven impact of economic interventions in complex economies. That fact raises a series of difficult normative questions. When are economist-induced or economist-advocated harms legitimate, and when are they illegitimate? What forms of econogenic harm are warranted, and which are ethically worrisome? What ought to be the role of the economic profession (and not just individual economists) in confronting the matter of economist-induced harm? And what ought to be

² In economics the allegation of causing harm is often used to denigrate the policy proposals of one’s professional opponents. The risk of harming is not recognized as a common challenge that all economists face equally. In medicine, this not the case. There, iatrogenic harm is universally recognized as a regrettably necessary aspect of even competent medical practice. Its status as a shared concern (rather than as an accusation) permits more reasoned and responsible investigation into its origins and causes, and more fruitful steps toward its diminution.

³ The arguments that appear here apply equally to economic policy formation and to other economic interventions that economists design, advocate, undertake and/or implement. These include, for instance, the design of government regulations, market structures, financial investment or corporate strategies, and more. But they include as well economic research projects and teaching that are intended or otherwise do bear on private decision-making (such as the behavior of market actors) or public choices. While the pathways from academic work to economic impact may be indirect, that doesn’t imply that the effects of research and teaching are at all insubstantial (see DeMartino 2011a, ch. 10).

⁴ In the view of many moral philosophers and legal scholars, not every failure to satisfy a preference counts as harm. Some preferences, for instance, are just too fleeting and/or trivial to warrant moral attention. Following Joel Feinberg (1984), harm is widely taken to refer instead to a “setback to interests” where interests refer to one’s significant life plans.

the role of the community that is targeted for economic interventions when those interventions might induce substantial damage?

These are enormously important and terribly difficult questions that I cannot tackle adequately here. What I will do is argue that the Kaldor-Hicks compensation test, which is central to the way in which economists justify the harms associated with economic interventions in general, and with the neoliberal project in particular, is deeply flawed as a decision-rule. If economists are going to impose harms as they do good—if harming in order to help is inherent in economic practice, as Hicks maintains—then economists must do better than to claim their warrant in Kaldor-Hicks or any other mechanical decision rule. Economists must instead subject the harm their practice induces to stringent moral standards that encompass the voices of those who will bear the harm (Gasper, 2015).

The weakest defence of Kaldor-Hicks is utilitarian, and the defence is susceptible to the decisive critiques of utilitarianism that have arisen over the past century. It need not concern us overly here. The strongest defence is implicitly contractarian. In what follows I will elucidate this defence, and demonstrate that it, too, fails to sustain Kaldor-Hicks. And if the strongest defence of Kaldor-Hicks is irreparably deficient, then we have good reason to reject it as an ethical criterion of policy assessment in the presence of harm—especially the kinds of vast harm that attended the utopian neoliberal project. Indeed, there may be a duty to do so.

II. Econogenic Harm and Kaldor-Hicks

As their training predisposes them to do, many economists have adopted mechanical decision rules to undertake policy adjudication in cases that do and do not entail harm. More so than most other professions, economics tends toward what Radest (1997) calls “moral geometry.” Indeed, much (though not all) of the new welfare economics of the 1930s involves the hunt for secure, scientific decision rules. Economists rely on the Pareto criterion in the rare instances where a policy option presents itself that benefits some members of the economy while harming none. When instead a policy option entails harm, economists who want to be able to reach theoretically grounded policy judgments often rely on the Kaldor-Hicks potential compensation test. Under Kaldor-Hicks a policy A is preferred to an alternative policy B if the winners under A can fully compensate the losers under A while retaining net benefit.⁵ Economic growth is the

⁵ There are in fact several distinct compensation tests. The Kaldor test endorses a project “relative to the status quo if there is a hypothetical lump-sum redistribution in the project world, from project winners to project losers, such that this amended project world is Pareto efficient relative to the status quo.” In contrast a project is Hicks efficient “if there is no hypothetical lump-sum redistribution in the status quo world, from project losers to project winners, such that this amended status quo world is Pareto efficient relative to the project.” Finally, the project is “Kaldor-Hicks efficient if the project is Kaldor efficient and Hicks efficient” (Adler and Posner 2001, 272-73, fn. 2). Scitovsky proposed the latter test to correct for an inconsistency caused by “baseline dependence” in which two policies can be shown to be Kaldor-Hicks efficient to each other (see Adler 2012, 95-96). Interested readers should also consult Boadway (1974), Boadway

paradigmatic example of an outcome that is Kaldor-Hicks consistent. Under a set of restrictive assumptions (e.g., the right goods and services are produced and distributed efficiently, price changes are relatively modest, etc.) an economy with more output will be Kaldor-Hicks preferred since its surplus relative to an economy with less output ensures that the winners can have more even were full compensation to the losers to occur. Hence, the overwhelming bias in economics toward growth-promoting policies—even those that promise misery for some members of the economy. While others might flinch from growth-promoting policies that put 18th century hand weavers or 21st century programmers out of work, or that devastate communities through forced relocation to make way for a dam, economists armed with the science of policy choice that Kaldor-Hicks provides rise to the challenge.

The chief virtue of Kaldor-Hicks is that it appears to provide economists with a largely uncontroversial mechanism for generating unequivocal judgments on economic policy decisions that entail harm. In Hicks' words, there is

a perfectly *objective* test which enables us to discriminate between those reorganisations which improve productive efficiency and those which do not. If *A* is made so much better off by the change that he could compensate *B* for his loss, and still have something left over, then the reorganisation is an unequivocal improvement. (Hicks 1941: 111, emphasis added)

Kaldor-Hicks presumes *potential* compensation rather than actual compensation.⁶ Economists (including Kaldor and Hicks) tend toward the view that compensation is not required to justify Kaldor-Hicks efficient policy. Hicks summarized the “hard-boiled attitude” of economists of his era, which was “to reject all compensation on the ground that such risks *ought* to have been allowed for” (1939, pp. 711–712; emphasis in original). Whether compensation is or is not provided is widely taken to be a non-economic question.⁷ Moreover, the test is silent with respect to the matter of the distribution of benefits and harms. If one policy affords gains to the winners that eclipse the losses to the losers, then the policy warrants economists' endorsement. The

and Bruce (1984), Chipman and Moore (1978), Little (1957), Scitovsky (1941) and the citations provided in Adler and Posner (2006). The chief differences among the various compensation tests are technical rather than normative, and so they are largely orthogonal to the concerns that are the focus of this paper. For ease of exposition, then (and following Adler and Posner 2001), I will refer to Kaldor-Hicks throughout, though in fact this term as used today reflects the Kaldor test.

⁶ Actual compensation to would-be losers from a policy renders the Kaldor-Hicks test redundant as a criterion for policy choice since in the event of full compensation the policy will be Pareto efficient (Sen 1979).

⁷ On this point Kaldor (1939, 550-51) was candid: “Whether the landlords, in the free-trade case, should in fact be given compensation or not, is a political question on which the economist, *qua* economist, could hardly pronounce an opinion. The important fact is that, in the arguments in favour of free trade, the fate of the landlords is wholly irrelevant: since the benefits of free trade are by no means destroyed even if the landlords are fully reimbursed for their losses.” See Chipman and Moore (1978, 579-581) on the contrasting views of Kaldor and Hicks, one the one hand, and Hotelling, on the other.

case for liberalized trade that appears in the leading trade textbooks, for instance, is based implicitly on this reasoning (see Krugman, Obstfeld, and Melitz 2015). Trade based on comparative advantage owing to cross-national differences in endowments increases economic efficiency and aggregate real income while it also threatens the livelihoods of many economic agents.⁸ More generally, the cost-benefit analysis that grounds policy and regulation assessment across policy areas, and which is widely understood by economists to operationalize Kaldor-Hicks, typically endorses that policy that maximizes net benefits without attending to distribution, and without at the same time calling for compensation to those who will be harmed by the efficient policy (Kanbur 2003).⁹

Kaldor-Hicks provides an elegant, definitive defense of the neoliberal project. Since neoliberalism was expected to promote gains in economic efficiency and growth relative to alternative policy regimes, it passed the Kaldor-Hicks compensation test irrespective of the harms it threatened or the distribution of its benefits and harms. Of course, the neoliberal intervention represented a grand and terribly risky experiment, the precedent for which was entirely lacking in human history. But any concern over the riskiness of the project was dwarfed by the confidence with which many of the profession's most prominent members spoke of the experiment's payoffs. I have argued elsewhere that in the context of the extraordinary degree of professional hubris and closed-mindedness that prevailed during the heyday of neoliberalism—excessive even by the historical standards of the economics profession—economists embraced the “maxi-max” decision rule, advocating neoliberalism on grounds that its greatest possible payoff exceeded the best possible payoff of any alternative regime, full stop (DeMartino 2011a, chs. 9 and 10). Maxi-max presumes probabilistic knowledge of the future but, by reducing policy choice to the one datum of maximum possible payoff, ignores entirely the risk of policy failure in policy choice. This is just what neoliberal advocates did. But even the most enthusiastic advocates of neoliberalism recognized the inevitability of harming some people under their preferred arrangements to promote the greater benefit of others. Hence, maxi-max was combined with Kaldor-Hicks to generate an impenetrable defence of an epoch-making policy regime shift. Indeed, the “shock therapy” that was advocated by leading economists during the neoliberal era was intended to force through harm-inducing policies quickly, before the likely victims had time to organize to resist the onslaught that was about to upend their lives. Jeffrey Sachs often spoke of the “need for speed” to thwart “populist politicians” who will conspire “to hook up with coalitions

⁸ “Because changes in relative prices of goods have very strong effects on the relative earnings of resources, and because trade changes relative prices, international trade has strong income distribution effects. The owners of a country's abundant factors gain from trade, but the owners of scarce factors lose. In theory, however, there are still gains from trade, in the limited sense that the winners *could* compensate the losers and everyone would be better off (Krugman, Obstfeld, and Melitz 2015, 110; emphasis in original).

⁹ Adler (2012, 100; and forthcoming) argues that although cost-benefit analysis is widely taken to operationalize Kaldor-Hicks, there are inconsistencies between the two. While cost-benefit analysis relies on comparisons of monetized compensating variations (see Adler 1998, 1378-1383), Kaldor-Hicks involves potential lump-sum transfers of marketed goods from policy winners to losers. Under certain conditions the two yield contradictory results (see Boadway 1974).

of workers, managers, and bureaucrats in hard-hit sectors to slow or reverse the adjustment” (Sachs 1991, 238; 239). To the Solidarity Parliamentary Caucus in Poland in 1989 he said, “figure out how much society can take, and then move three times quicker than that” (Sachs 1991, 238; Wedel 2001, 48).

The development disasters associated especially with liberalized financial markets served to erode the hubris of the economics profession. By the early 2000s even Sachs (2005) had come to articulate a far more modest vision of the role of the development economist. The crisis of 2008 substantially compounded emerging doubts about the ability of the economic profession to engineer economic success, and induced leading economists to reflect on the culpability of the economics profession in the debacle (see DeMartino 2011b). This is all to the good. One hopes that the new humility will be sustained and that it will make it more difficult for economists to pursue economic adventurism in the future. Not least, one hopes that the profession will take better account of the possibility of failure of the policy regimes it embraces. But while the self-reflection of the profession in recent years has reawakened interest in Knightian and Keynesian uncertainty, and called into question the over-confidence associated with maxi-maxi, it has left the Kaldor-Hicks decision rule intact. Today, just as during the neoliberal experiment, it is deemed perfectly appropriate for economists to advocate policy that risks harming some, even severely, for the presumed greater benefit of others.

Kaldor-Hicks, Underlying Logic and Assumptions

The easy intuition of Kaldor-Hicks belies the complexity of the logic and assumption set upon which it depends. Kaldor-Hicks reflects the utilitarian framework from which economics draws its normative foundations. Standard contemporary approaches to economics—neoclassical and Keynesian—carry forward the consequentialism and welfarism of classical utilitarianism.¹⁰ These features entail the evaluation of states of affairs by exclusive reference to the levels of welfare of the agents affected by such states.¹¹ Welfare has been defined in diverse ways (see Griffin 1986; Adler and Posner 2006, 28ff). Within neoclassical theory welfare sometimes is taken either to refer to levels of utility; more typically, in terms of the extent of preference satisfaction where existing preference orderings are generally taken as both self-regarding and valid; DeMartino, 2000; Sen, 1987.¹² Unlike classical utilitarianism, however, the

¹⁰ Despite its break with neoclassical economics in other regards, contemporary Keynesian theory largely retains unquestioned its welfarist normative framework.

¹¹ The term “neoclassical” is imperfect since it is difficult today to draw the boundaries that separate neoclassical economics from other theoretical traditions. I will use it here to refer to the standard textbook approach to economics—what McCloskey (2006) refers to as “Samuelsonian” economics—and in particular, to applied economics. Though some of the central assumptions and conclusions of neoclassical thought are now the target of critical engagement, to date many alternative traditions (such as New Keynesianism, and behavioral economics) have not broken with the normative framework of neoclassical thought. For clarity, in what follows I identify and examine rather than presume those aspects of neoclassical economic theory that are germane to the matter of how economists theorize harm.

¹² Many critics argue for the “laundering” of preferences in welfarist accountings. See Goodin (1986) and the discussion and citations in Adler and Posner (2006, ch. 5).

welfarist consequentialism of neoclassical thought does not permit cardinal measurements of utility; as a consequence, it disallows interpersonal utility comparisons or the summation of utility levels across individuals. This last feature implies the need for a decision rule to compare alternative social states (such as policy outcomes) when some agents prefer one state, and others prefer another. Kaldor-Hicks was offered to meet this need—to substitute for the aggregation of utility standard of classical utilitarianism when assessing economic strategies and outcomes.¹³

The welfarist foundation of Kaldor-Hicks accounts for several of its central features, which are broadly shared by several predominant approaches to welfare economics.¹⁴ Kaldor-Hicks incorporates the idea that permeates neoclassical thought that all goods are *commensurable* since they are all reducible to the welfare they induce in egoistic economic actors (the utility the goods generate or the self-regarding preferences they satisfy; Sen 1987). In this approach, goods cannot have a salient surplus that escapes the welfarist accounting. The existence of meaning or significance of goods that is not reducible to welfare would threaten the commensurability that is vital to the normative framework, and the absence of commensurability, in turn, would threaten the assurance of comparability and the existence of preference orderings altogether.¹⁵

Once we concede the point that goods can be taken to represent nothing but the welfare they generate, we might then be prepared to impose a series of restrictions on preference orderings to ensure that they are “well behaved” (Adler forthcoming, 319)—that they are tractable and yield determinate welfare-driven results when comparing alternative outcomes. One such restriction—which is widely adopted within welfare economics and is central to the application of Kaldor-Hicks—is that preferences over goods are “complete”: that all goods (and all alternative bundles of goods) are comparable within the individual’s preference ordering (Boadway and Bruce 1984, 34; Adler 2012). This implies that a rational agent will be able to order any two bundles of goods either through the preference relation, where the bundle that generates greater utility will be preferred over the other, or the indifference relation, where the two bundles satisfy preferences equally.

Well-behaved preferences are also characterized by the property of “continuity” (which, too, is consistent with but not required by the logic of welfarism). This permits the derivation of utility functions mapping levels of utility onto preference orderings of bundles of goods that have no breaks or jumps; where marginal changes in the amount of any one good generates marginal changes in the agent’s utility (Boadway and Bruce 1984, 34; Adler 1998). Continuity represents a consequential step in the argument: it rules out lexicographic preference orderings “which assigns priority to a good *x* if a

¹³ This is not true of approaches to social choice theory that recognize the value of social welfare functions (Sen 1986; Adler and Posner 2006).

¹⁴ Though there are exceptions, such as Sen’s capabilities framework, to which we return below.

¹⁵ I say “threaten” and not “eliminate” because it is sometimes if not always possible to compare goods that are incommensurable in the sense of lacking some common property to which the value of the goods can be reduced (see Nussbaum 2001, 194-195). See Adler (1998) for a thorough treatment of the matter of incommensurability.

bundle with less of that good is non-preferred regardless of how much of the other goods it contains” (Boadway and Bruce 1984, 182 fn 8). Implicit in continuity of preferences (and the barrier it presents to lexicographic orderings) is the assumption of *substitutability among goods*, such that the loss of a finite amount of one good x always will be fully offset by the provision of a finite amount of some other good y . Continuity and a set of auxiliary technical assumptions which need not concern us here¹⁶ imply that the marginal rate of substitution between any two goods decreases and adjusts gradually in response to varying proportions of the two goods. Substitutability among goods, too, is enabled though not required by the notion that goods represent nothing to the economic agent but transmitters of welfare, where all that distinguishes one good from another is the amount of the homogenous welfare it supplies. The conceptual leap from welfarism to continuity of preference orderings (and substitutability of goods) many economists have been willing to make without reservation—indeed, it is central to the neoclassical canon, including the Walrasian general equilibrium model of the competitive market economy, which features tractable utility functions that yield downward sloping and continuously differentiable indifference surfaces within the interior of the commodity space (Katzner 2006, ch. 2). For any two goods, we instruct our students, there is a set of bundles of the goods that yield the same level of utility; these are the points that make up an indifference curve. The indifference construct presumes that the diminution in the amount of one good can always be made up for via its substitution by the other good, leaving the agent equally well off in the two situations. Were the two goods in principle not substitutable, indifference surfaces would threaten to collapse to individual points.

Finally for present purposes, if we take money as a good that represents access to all other goods, then we are assured by this set of assumptions that for any finite change (positive or negative) in the amount of some good x there will always be some finite amount of monetary transfer that fully offsets the change in welfare resulting from the change in x .¹⁷

Theorizing Harm

So far we have said nothing about how harm is theorized under neoclassical welfarism, but the answer is implicit in the foregoing. The approach is extraordinarily elegant. Harm appears here as the loss of welfare that is consequent upon the diminution in the agent’s access to one or more goods. Diminished access registers as diminished welfare, full stop. But the assumptions made so far allow us to say more. If preferences are continuous and goods are commensurable and substitutable—in particular, if there are no lexicographic preference orderings—then all harms are fully *reparable*: the loss of welfare consequent upon diminished access to one good can be fully offset via increased

¹⁶ Such as continuous differentiability and strict quasi-concavity of utility functions; see Katzner (2006); Boadway and Bruce (1984, 31-39).

¹⁷ As mentioned in fn 8 above, while cost-benefit analysis presumes that all benefits and harms are reducible to money, Kaldor-Hicks does not. Under Kaldor-Hicks compensation can take the form of lump-sum transfers of marketed goods. That distinction is not germane to the particular concerns in this paper, though it would be in a broader treatment of the normative aspects of cost-benefit analysis and Kaldor-Hicks, and so I will speak of monetary compensation throughout.

access to another good, such as money (Adler 1998; Adler and Posner 2006??). Hence, all harms are theorized as *compensable* via monetary transfer—they lie in the northwest cell of Figure 1, while the northeast cell remains undefined. Within this framework the loss of an apple can be compensated for in the sense of making the agent whole via the payment of the appropriate sum of money. After the monetary transfer the agent is fully repaired: she is just as well off as she was prior to the loss of the apple. Hence, she is indifferent between having the apple and having the money.

Figure 1 helps to elucidate further the relationships between the relevant concepts. As noted, commensurability and substitutability of all goods are sufficient to yield reparability of harm through monetary compensation. But while compensability requires commensurability and substitutability, reparability does not. In some cases the harm that results from the loss of a good that is prioritized in a lexicographic ordering may yet be reparable, at least in part, even if not via monetary compensation, through some non-compensatory form of *acknowledgment* (southwest cell). We return to the notion of reparability through acknowledgment below. On the other hand, some harms may be entirely irreparable via compensation, acknowledgment, or any other mechanism. These cases reside in the southeast cell of the figure.

Figure 1: Compensable vs. Non-Compensable Harm

	Reparable Harm	Irreparable Harm
Commensurable, Substitutable Goods	Compensable Harms	Undefined
Incommensurable, Non-Substitutable Goods	Non-Compensable Harms -- Apology, Recognition, Honor	Non-Compensable Harms Remedial measures unavailable or inadequate

One further point warrants attention. Welfarist reductionism—the notion that all goods can and should be reduced to their welfare content—and the additional assumptions listed here also permit the presumption of the commensurability of *benefits with harms*. Indeed, this commensurability is central to Kaldor-Hicks since the purpose of the decision rule is to adjudicate mathematically policy options when some are benefitted and others, harmed. Were benefits and harms to be assigned distinct moral status or categories, we would not be inclined to place them on the same scale, or be able to trade off one for the other quite so easily (see below). Even if one factors “loss aversion” into the welfarist accounting—where an agent places greater value on avoiding a loss than enjoying a comparable gain (Tversky and Kahneman 1991)—such as by applying a coefficient greater than one to harms—one is accepting that once the appropriate coefficient is in place the benefits and harms properly reside on the same scale. Their

comparison then reduces to assessment of their respective magnitudes, simply—to moral geometry. Moreover, if we take benefits and harms as commensurable, so then are we apt to treat as commensurable acts of benefitting that entail harm, and those that do not. We judge whether an act of harming is warranted exclusively by reference to its overall welfare consequences—by the relative magnitude of the net benefits that the act generates. Absent here are any deontological or other principle-inflected grounds of assessment of the acts of an agent—say, an economist—who confronts the possibility of harming some in order to benefit others.

III. Defending Kaldor-Hicks: The Utilitarian and Contractarian Defenses

Were we interested in supplying a utilitarian defence of Kaldor-Hicks, where the standard of judgment is aggregate levels of utility, little more would need to be added to the foregoing discussion. If in comparison with the status quo policy x is such that the winners can fully compensate the losers and still retain net benefit then, bracketing technical difficulties mentioned above, we have reason to believe that the policy enhances the total level of welfare in society. We would have derived on an ordinal scale a definitive ranking of the two states—pre- and post-policy x —with Kaldor-Hicks endorsing the utility maximizing option. If we take aggregate utility maximization as the overriding normative goal, as utilitarianism directs us to do—rather than, say, justice as fairness—we would have little basis for objecting. If the gains routinely flow to one sector of the population at the expense of the other, or if the utility-enhancing policies violate vital rights of some for the benefit of others, so be it.

The utilitarian defence of Kaldor-Hicks does not persuade as easily today as it once did. In the wake of the work of John Rawls, Amartya Sen, Martha Nussbaum, Bernard Williams, Robert Nozick, and many other rights-sensitive theorists of the late 20th century, utilitarianism has lost much of its lustre (outside of economics, at least; see Williams 1973). In professions involving clinical practice, moreover, we find a pronounced elevation of the rights of clients over the past 40 years and a proportionate demotion in the legitimacy of professional privilege grounded in utilitarian calculations. Medicine is exemplary in this regard: the agency and integrity of patients, negative and positive rights and freedoms, and justice concerns have come to trump levels of aggregate utility as bases for medical practice (Sharpe and Faden 1998, Part I). Though utilitarianism can still boast capable advocates (see J.J.C. Smart 1973), it is widely taken to be insufficiently sensitive to rights and values that do and should matter deeply in just and liberal societies.

The Contractarian Defense

The most compelling defense of Kaldor-Hicks is more sophisticated. There is a strong contractarian case to be made for potential compensation under Kaldor-Hicks, one that is not yet developed fully in the literature but is discernible in several accounts. It is that *all of us* benefit by, and therefore have good reason to consent to, constitutional arrangements that encourage social innovations (such as economic policies) that promote

rising welfare even if each of those innovations risks harm to some members of society. As Adler (forthcoming, 330) puts it:

[T]he Kaldor-Hicks test is sometimes defended not as the criterion of betterness, but as a decision procedure which, in the long run, yields Pareto-superior outcomes (Graham 2008: 414–19). If government repeatedly makes choices that are Kaldor-Hicks efficient (by repeatedly using CBA), everyone will be better off.

Indeed, McCloskey (2010, 81-85) points out that the rule utilitarian tradition that runs from Mill and Sidgwick through Harsanyi, Buchanan, Tullock, and Rawls establishes a compelling case for the legitimacy of a constitution to govern economic interactions that permits uncompensated harms (see also Polinsky 1972; Leibenstein 1965; Buchanan and Tullock 2004 [1962]). The case posits agents that voluntarily consent to participation in a series of economic games, defined by private decision-making (market behavior) and collective decision-making (government behavior) that entail risk, in order to maximize their own welfare over time. It rests on the claim of the generalized benefits of efficiency: since we are all beneficiaries of a system that generates efficiency-inducing innovations, the risk of harm that befalls any one of us from any particular innovation is ethically benign. As McCloskey 2010, 84) puts the case:

[The] gain since 1800 from economic change has massively outweighed in monetary and ethical terms the loss to English woodmen disemployed by Swedish timber, or American blacksmiths disemployed by automobiles, or Indian bullock-drivers disemployed by motor trucks. The Win-Win-Win-Win-Wins far outnumber the lone Lose. To put it back in terms of rule utilitarianism and constitutional political economy, what sort of society would you rather be born into: one that forbade every innovation that resulted in any loss whatever to anyone, and rested therefore at \$3 a day, and held that the sun “rose” and that painting must always be representational, or one that allowed innovation, perhaps with a social safety net like Norway’s, and resulted in \$137 a day, and allowed Copernicus and Picasso to make old ideas obsolete?”

In the constitutional vision predicated on hypothetical consent, demanding actual, immediate compensation in those particular instances where one is hurt would amount to “double-dipping” since each of us is already compensated in the long run for the risk of harm we bear through the diffused benefits of innovation. Aware of the risk of potential harm, each agent should be expected to make provision for temporary setbacks, as Hicks described (see above). The contractarian argument therefore presumes hypothetical approval by all of us (or by our idealized representatives, operating behind a Rawlsian veil of ignorance) of an economic system comprising economic games that will necessarily harm members without compensation—not for the greater good of the greatest number, as a utilitarian would have it, but ultimately for the greater good of each and every one of us. Polinsky (1972, p. 409) writes in this vein:

By broadening the notion of compensation to include bundles of changes that have some effective randomness in distribution, it thereby becomes possible to

leave particular individuals uncompensated and worse off for single changes, yet assure them that they can (mathematically) expect to be better off as a result of the entire bundle (with the probability of actually being made worse off set at a value approaching zero).

The contractarian endorsement of potential as opposed to actual contribution is grounded, then, in Pareto rather than Bentham (cf. Adler and Posner, 1999).¹⁸

Contractarian Assumptions and Logic

The contractarian case for Kaldor-Hicks is much more demanding than the utilitarian case, owing to the sensitivity of rational deliberators to matters of justice and rights (in addition to welfare) that require an assemblage of necessary assumptions and restrictions. But first we should take note that the contractarian defenders of Kaldor-Hicks, some of whom eschew utilitarianism in principle, must carry forward the consequentialist and welfarist logic and assumptions we've already encountered.¹⁹ The retreat to consequentialist welfarism lies in the presumption of universal compensability. Harms must be theorized exclusively in terms of the diminution of access to one or more goods; all goods must be commensurable, such as via the welfare or preference satisfaction they represent; and all goods must find readily available substitutes. As discussed above, absent continuity of preference orderings and the commensurability and substitutability among all goods, which together imply reparability of all harms, there is no reasonable expectation that all harms will be compensable, even potentially. Under these circumstances the compensation test would evaporate as an ethical decision rule for adjudicating policy interventions—for the rational deliberators presumed by contractarians, just as much as for the rational computers presumed by utilitarians. At the risk of stating the obvious, *compensation requires compensability*—that is the nub of the matter. Those advocating Kaldor-Hicks as a general (and, indeed, universal) standard for policy adjudication then, are forced to treat all harms as residing in the upper-left-hand cell of Figure 1. Moreover, like utilitarians, welfarist contractarian advocates of Kaldor-Hicks, too, must accept that harms and benefits, and the act of harming and the act of benefitting, are commensurable (hence the logic of Win, Win, Lose). Evaluation of the rightness of harming is to be determined exclusively by reference to the net welfare consequences of the act, which are reducible to a simple mathematical calculation.

¹⁸ Hicks (1941, 111) himself presented a similar argument: “If the economic activities of a community were organised on the principle of making no alterations in the organisation of production which were not improvements in this sense, and making all alterations which were improvements that it could possibly find, then, although we could not say that all the inhabitants of that community would be necessarily better off than they would have been if the community had been organised on some different principle, nevertheless there would be a strong probability that almost all of them would be better off after the lapse of a sufficient length of time.” If that’s true, then rational agents have good reason to accept uncompensated harms as the price for improving welfare.

¹⁹ Of those McCloskey cites Rawls (1971) is most explicitly anti-utilitarian, while Harsanyi (1982) advocates rule utilitarianism. For her part, McCloskey is a self-described libertarian, and yet her defense of a constitution that permits uncompensated harms (just cited) explicitly invokes rule utilitarianism.

The contractarian case encompasses several additional assumptions that need not trouble the unreconstructed utilitarian. First, all uncompensated harms must be minor—in a quantitative or qualitative sense—relative to the flow of gains that the agent will secure. Otherwise, there is no secure basis for sharing the contractarian confidence that all very likely to be beneficiaries, ultimately, of the uncompensated harm-generating system. Polinsky therefore writes, “It will be assumed that no negative reward is so large as to “bankrupt” the individual at some point and end his participation in the “game.” This assumption will also be made for bankruptcy occurring through the accumulation of negative rewards, none of which would be sufficiently detrimental alone” (1972, 414 fn 6). Second, the contractarian construct of universal consent requires some notion of basic fairness (Harsanyi 1982; Rawls 1971). At a minimum fairness would entail the condition that harms must be serially independent: being a loser from one round of policy adjustment must not predispose the agent to being a loser from successive rounds (Polinsky 1972; Kanbur 2003). Only if winning and losing are effectively randomly distributed (as per Polinsky), and if each harm is relatively minor such that they are likely to be cancelled out by a series of prior or subsequent benefits, may we conclude that each of us may be expected to benefit over time. If these conditions hold, and if the system that permits uncompensated harms produces more socially beneficial innovations on balance than alternative systems that require compensation for every harm, then there is a reasonable basis for inferring hypothetical or tacit consent by rational actors to an arrangement that casts each of us occasionally in the role of loser (see Posner 1980; Coleman 1980).

Assessing the Contractarian Defence

The most frequent criticism of Kaldor-Hicks is that it does not require actual compensation for the victims of each policy adjustment; moreover, in the real world of policy formation and politics, full compensation is rarely provided to those harmed by policy interventions. Some economists dissent from this feature on distributive grounds (see Sen 1987). As Jagdish Bhagwati laments,

Sometimes I wonder whether the younger economists today are taught what Ian Little taught us—that it is not enough that there be potential compensation; compensation must actually be made. Otherwise, imagine a situation where the rich can compensate the poor while still getting richer, yet they do not. Surely, no people in their right minds, or certainly in their true hearts, would approve of the policy change, in that event. (1994: 21)²⁰

A related normative critique of Kaldor-Hicks focuses on the fact that Kaldor-Hicks compares an *actual* outcome x —in which some agents are benefitted but others

²⁰ Bhagwati notes, however, that, in practice, compensating each victim of every policy change is infeasible. He advocates instead for a general safety net as a means to ensure compensation. See also Kanbur (2003, p. 32), who calls for automatic redistribution mechanisms and safety nets “to complement project-specific compensation,” and Gasper (2015) for a human rights approach to manage justly harm-inducing policy adjustments.

harmed—against another *potential* outcome x' that entails a transformation of outcome x involving compensation to those who are harmed. If there is a potential transformation x' that is Pareto superior to the status quo, Kaldor-Hicks approves outcome x over the status quo even if the transformation does not occur. The critique rejects this line of argument. As Sen puts it, “In what sense is a rise of “potential welfare” of interest to *actual* welfare comparisons? Even if the gainers *could* overcompensate the losers, why is that an improvement?” (1979, 24, cited in Adler 2012). Adler summarizes the critique this way:

In general, the fact that on outcome, action, individual or other item is *transformable* into an item with some attribute does not mean that the original item is normatively equivalent to one that already has the attribute” (2012,102).

But the contractarian case for Kaldor-Hicks is not weakened by the absence of compensation for individual harms, even if some befall the relatively poor, since it presumes over-compensation for *all* harms, for *all* agents, over the long run. Hence, the following claim, “any normative link to the powerful notion of consent is vitiated by the crucial point that it is hypothetical winner-to-loser compensation, not actual winner-to-loser compensation, that makes a project Kaldor-Hicks efficient” (Adler and Posner 2001, 274), leaves the contractarian case unscathed. If the contractarian premise is correct—if all members of society stand to gain from constitutional arrangements that permit non-compensated Kaldor-Hicks efficient policy relative to alternative arrangements—then both critiques lose their force. Under the contractarian argument, we are no longer judging the ethical validity of Kaldor-Hicks based on the outcome of any one discrete policy adjustment. We are instead judging its validity based on its net impact on all members of society over a perhaps long series of applications. And if we presume also, with McCloskey, that the distribution of gains is such that the disadvantaged benefit more than they would under alternative regimes, then we can also claim that the regime meets even the strong Rawlsian maximin condition of justice as fairness.

A more direct challenge to the contractarian case entails demonstrating that each of the assumptions upon which it depends is objectionable, or obviously false.

On Welfarism

Welfarism can yield an internally consistent and complete account of harm, to be sure. If we are prepared to reduce all goods to the welfare they induce, and harms to the diminution in access to goods, then whatever harms the fates may bring can be corralled under the category of welfare losses. Any event in an agent’s life then registers as a net improvement or diminution in welfare, with only the latter counting as harm. But as many have by now argued, an analysis that excludes all non-welfare information gives a very partial, stilted and biased account of harm that presumes an equally impoverished account of human nature. An exclusively welfarist account of harm trivializes what it *means* to be harmed while ignoring the diverse *forms* of harm, and *ways* people can be harmed. If we recognize human beings as being more complex than the image given by “Max-U” theory (McCloskey 2006, ch. 6)—if as Sen (1992) claims, they have life-defining projects and goals that are unrelated to their own welfare, and that might even

compromise or conflict with their own welfare—then this definition of harm won't do. An agent whose agency to pursue a risky course of action in service of others is curtailed against her will may subsequently enjoy greater “welfare” than were she able to take the risk, but her rights (Nozick 1974) and substantive freedom (Sen 1992) have been diminished. To claim that she is better off is to place her “welfare freedom” on a higher evaluative plane than her “agency freedom” (Sen, 1992)—a ranking to which she herself might very well and rightly object. An equally problematic aspect of welfarism stems from the fact that even serious harms may occur without having any impact on one's level of utility or preference satisfaction. This may occur because the agent does not recognize the event as harmful. Jon Elster's discussion of “adaptive preferences” (1982) is illustrative. The concept refers to the loss of desire by members of oppressed groups for goods that they have no hope of securing; they come to devalue the goods that are denied to them as a means of coping with the psychic pain that deprivation would otherwise induce. Once accommodated to their oppression, the agents might suffer no welfare loss from their inability to attain the devalued goods. A strict welfarist would have to conclude (no doubt with some embarrassment) that the freedom deprivation suffered by the “happy slave” is in fact inconsequential. For Elster, Sen, Nussbaum, and many others, however, the welfarist assessment merely punishes the dispossessed for their deprivation.

This discussion points to the fact that one's conception of goods and harms will reflect one's conception of human existence—human nature, desires, potentialities, rights, purposes, relationships, and so forth. A simplistic account of human subjectivity, as is given to us by neoclassical welfarism, will yield a simplistic account of harm that is reducible to a homogenous entity like welfare. In contrast, a more robust, complex account of human subjectivity and agency calls forth a correspondingly complex account of harm.

Figure 2 presents an incomplete and imprecise (but, I hope, useful) taxonomy of harmed and harmful conditions that may befall agents. Most if not all of the listed harms can arise as the direct or indirect effects of economic interventions that economists propose.²¹ Reviewing the list, we confront the diversity of harms that humans can and do suffer—ranging from assaults on their physical bodies and mental capacities, to damage to their psychological states, economic, social and more conditions, and autonomy. Some of the harms are recognized and experienced consciously by the agent; others, such as those like adaptive preference formation, occur behind the backs of harmed agents.

²¹ Especially massive economic restructuring or development projects, such as the neoliberal revolution.

Table 1: An Incomplete and Usefully Imprecise Taxonomy of Harmed or Harmful Conditions²²

Physical:	<ul style="list-style-type: none"> Pain Injury or dismemberment Loss/diminution of physical or mental capacities Death Degradation of the physical environment
Psychological:	<ul style="list-style-type: none"> Emotional or psychological suffering; depression Becoming fearful, insecure, or anxious Becoming ashamed Loss of Hope Erosion of self-respect Loss of capacity for creativity, playfulness, inventiveness, or fraternal feelings
Economic:	<ul style="list-style-type: none"> Loss of income, wealth, or welfare/utility Loss of access to valued goods Loss of genuine choice over valued goods Loss of economic security Loss of economic opportunities (to do, be, or become) Loss of economic capacities (e.g., to earn a living) Loss of control over one's economic activities and practices Alienation from one's labor, output, or nature Subjection to exploitation, discrimination, or deprivation
Social:	<ul style="list-style-type: none"> Loss of community Loss of place in community (status, influence, or role as contributor) Loss of respect, recognition, or honor Loss of political efficacy Loss of fraternity or meaningful connections with others Erosion of social capital
Moral:	<ul style="list-style-type: none"> Erosion, inversion, and/or collapse of some important ethical or spiritual values, virtues, sensibilities, and norms
Autonomy:	<ul style="list-style-type: none"> Adaptive preference formation Impairment in the pursuit of one's life plans Treatment as mere means and not also as an end Destruction of a valued way of life Constriction of one's capabilities or feasibility set Exacerbation of personal or systemic threats, risk, or instability Assault on negative or positive rights/freedoms (coercion) Denial of opportunity to participate in vitally important social, economic, or cultural processes

²² Figure reproduced with permission of Oxford University press.

Feinberg (1984, 33), who defines harm as a “thwarting, setting back, or defeating of an interest,” distinguishes between “harmed” and “harmful” conditions by reference to whether the condition compounds in its adverse effects. In his words, “A *harmed* condition of a person may or may not also be a *harmful* condition, depending on whether it has itself the tendency to generate further harm. A blistered finger may be to some small degree a harmed condition, but unless the finger is on the hand of a concert pianist or a baseball pitcher, it may not be at all harmful” (1984, 31).

The taxonomy suggests a methodological choice, one with deep practical and ethical implications. We can follow utilitarianism and accept that all harms are usefully reducible to welfare losses—that much is gained and nothing of moral substance is lost in so doing. Or we can choose instead to recognize the essential complexity of and deep diversity across the harms that humans suffer, and accept their inherent incommensurability on the basis a welfarist or any other reductionist metric. The former option yields wonderfully simple decision rules that are easily operationalized—hence, its appeal to the economics profession. The enormous cost is that it takes an extraordinarily casual view of harm and harming.²³ In contrast, recognition of the inherent complexity of harm complicates greatly the assessment of the presence and extent of harm, responsibility for harm (and harm aversion), reparability of harm, and much else besides. It places a much heavier burden on the shoulders of those, like economists, who are in position to induce significant harm to those they purport to serve. The loss of simplicity and convenience is rewarded with the potential for much greater care, and with professional practice that can stand a much higher degree of ethical scrutiny.

On the Scale of Harms

The contractarian defence of Kaldor-Hicks requires that all harms that befall economic actors must be trivial relative to prior and subsequent gains that they will enjoy, as we have seen. A cursory review of the harm taxonomy above should disabuse us of the notion that the harms actually experienced as a consequence of economic policy choices meet this condition. Some harms are of a nature that entail an enormous impact on the lives of those who suffer them. An agent who loses his job owing to, say, trade liberalization is apt to lose some income, of course, and this loss may be trivial once severance and welfare payments to which he is entitled are factored in. But if he remains unemployed for an extended period of time, he may also suffer a crisis in his identity as a provider for his family and as a contributor to society. He may suffer shame, and lose the respect of family and community members. Losing his occupational identity—and perhaps his membership in a union or professional association—he may also suffer a collapse in his political efficacy. His life may be riven with insecurity; and he may find that his change in status interferes with the fulfilment of his most significant life plans. This loss registers as a loss of his agency freedom and not, as the welfarist would have it, just of mere preference satisfaction.²⁴ Putting aside for the moment the question whether such harms are reparable, we should take note of their magnitude. The displaced worker who suffers them is not apt to be made whole through the lower prices now available at Walmart for the goods he once produced.

²³ On the trade-off between tractability and general acceptability of cost-benefit analysis, which applies also to Kaldor-Hicks, see Sen (2001).

²⁴ As Sen argues, “There is plenty of evidence that unemployment has many far-reaching effects other than loss of income, including psychological harm, loss of work motivation, skill and self-confidence, increase in ailments and morbidity rates (and even mortality rates), disruption of family relations and social life, hardening of social exclusion and accentuation of racial tensions and gender asymmetries” (2000, 94).

Grand utopian economic reform projects, like economy-wide institutional redesign, and large-scale infrastructure projects, like dam construction, are prone to harms that can be massive relative to the flow of benefits that contractarians must presume will compensate the losers. Economic engineering on this scale often entails displacement of entire communities. In dam construction, communities are often forced to relocate physically to make room for progress, and it is now recognized that those who are harmed typically never recover (Cernea 2000 and 2003; Kanbur 2003; Gasper 2015).²⁵ In economy-wide institutional re-engineering, displacement might be of a functional rather than physical or geographical nature, with a once economically vibrant community with extensive social capital marginalized and excluded from economic vitality. Harms on this scale can be life-shattering, dwarfing any benefits (if any) that will ultimately flow to the project's victims. This is certainly true of the neoliberal experiment, where communities have been devastated and life expectancy rates have fallen as a consequence of radical institutional reform that failed to take root as expected (UNICEF 1993; Calvo and Coricelli 1993; Eberstadt 1994; Murrell 1995; Stuckler, King and McKee 2009); and where a series of crises of increasing intensities, spawned by international financial liberalization, have been followed by devastating campaigns of fiscal retrenchment (see Stuckler and Basu 2013).

One can, of course, defend such reform after the fact with the claim that subsequent levels of growth are or eventually will be higher than they otherwise would have been. This is indeed the stock reply of reformers when challenged on grounds that the policies they advocate cause extensive harm. But we should take note that this defense fails entirely to sustain the contractarian case: it turns its back entirely on the Paretian claims and returns us squarely to the terrain of unreconstructed Benthamite utilitarianism. And it is exceedingly dangerous since it can be harnessed in support of even the most irresponsible and devastating policy regimes. As Nozick (1974, 298) puts it with his characteristic wit, "Utopia is where our grandchildren are to live."

On Serial Independence

It should be apparent that over the course of the neoliberal experiment, gains to the winners and losses to the losers have been serially correlated. We find dramatic evidence across the globe of an association between neoliberal reform and rising inequality. In the United States, those who have benefitted from successive rounds of trade liberalization are wealth holders and high-income earners, while workers displaced by industry retrenchment have generally failed to secure equal or better wages in the industries to which they have migrated (Scott 2013; 2003; Bivens 2008, 3; OECD 2005, 46-47; U.S. Senate Committee on Finance 2002, 19; Weidenbaum 2001, 17). But of course, the very same investors and high-income earners (themselves the chief investors) have also been the principal beneficiaries of financial liberalization and recent trends in tax reform. The net result is a historically unprecedented surge in income and wealth inequality in the United States during the neoliberal period, at the expense of the

²⁵ The risks include "(a) landlessness; (b) joblessness; (c) homelessness; (d) marginalization; (e) increased morbidity and mortality; (f) educational losses; (g) food insecurity; (h) loss of common property; and (i) social disarticulation" (Cernea 2003, 40).

overwhelming majority who lack substantial financial portfolios. Moreover, recent evidence establishes that the effect of trade and financial liberalization during the 1980s and 1990s has been the same across the developing world. Goldberg and Pavcnik (2007) find that trade liberalization during this period induced rising income inequality in virtually every developing country for which there are reliable data. The evidence regarding the effects of financial liberalization across the global south are equally disturbing (see Epstein and Grabel 2006; Weller and Hersh 2004; Cornia 2003; Baldacci et al. 2002; Eichengreen 2001). These trends provide strong *prima facie* evidence that the benefits and harms of successive rounds of liberalization have been serially correlated, in violation of the contractarian rationale for uncompensated Kaldor-Hicks innovations.²⁶

On Reparability and Compensability

The question whether all agents will be compensated in the long run by a series of gains for their short-term losses comes one step too late in the argument, since both the yay- and naysayers commit to the objectionable presumption that all harms are in fact reparable, and more restrictively, compensable. Reparability implies that a particular harm can be completely offset—that the harmed party can be rendered whole. In economic terms, we would say that there are no lexicographic preference orderings, such that an agent who has been harmed can always be restored to his previous indifference surface following the act that effects the repair. Compensability implies that this reparation—this rendering whole of whoever has been harmed—can be brought about via monetary transfer. As the economist would put it, everything has its price. No matter the nature of the harm, an appropriate sum of money can restore the agent fully to his pre-harmed state.

Are all harms reparable—and are all reparable harms, compensable? The view in law is that they are not: some harms cannot be repaired in the sense of rendering the victim whole.²⁷ The discussion of the scale of harms and another review of the harm

²⁶ Serial correlation yielding inequality stands to reason when one recognizes that policy choices of course reflect political influence and not just economic principles—though in the case of neoliberalism the two have run together. Political elites will and do use their influence to secure from among the set of available policy options those options that advance their interests. Moreover, the same political weakness that prevents policy losers from preventing harmful policies also undermines their ability to secure compensation for the resulting harms. The greater the relative power of elites in a society, and the less they are dependent on non-elites for consent in policy formation, the greater the degree of serial correlation of winning and losing that we should expect to find over time, and the more inadequate the levels of compensation to losers. From this perspective, the collapse of the American labor movement during the neoliberal era is to be understood as shifting the balance of political power toward investors, with adverse consequences for justice in policy formation.

²⁷ Though the distinction between reparable and irreparable harm is well established in the field of law, it is specified in various ways, and contested. For a range of views see Rendleman (2002); Brooks and Schwartz (2005); Lichtman (2007); Grosskopf and Medina (2009); and McGowan (2010). Kornhauser (2001, pp. 208-9) discusses several distinct senses of “irreparability,” the strongest of which is consistent with the treatment in the text: “one may not be able to restore the individual to her preloss state.”

taxonomy in Table one sustain that conclusion, and suggest that it is professionally irresponsible of those whose practice routinely causes harm to presume that they are. Those who are severely damaged physically or mentally, or killed, or are made or induced to suffer shame, the loss of self-respect, the capacity for inventiveness, access to irreplaceable valued goods (to name just a few items on the list) might not be able to be repaired, partially if at all, via compensation no matter the amount of that compensation. Partial repair, if it can come at all, might require instead the passage of time, hard work, and substantial family, professional and community assistance (see below). We should keep in view in this context that some categories of harm, such as being dishonored, are not amenable to compensation at all. As McGowan puts it, “Once lost, honor is extraordinarily hard, if not impossible, to regain . . . the very idea of [pricing honor] seems inconsistent with the concept” (2010: 589, 591).²⁸ The inappropriateness of monetary compensation for certain harms might help to explain why recent research has found that sometimes the promise of monetary compensation to a community actually *reduces* support for projects that threaten harm, such as environmental degradation.²⁹

Rights Violations as Irreparable Harm

Rights violations entail a special category of harms that are often irreparable and certainly non-compensable. To be deprived of a fundamental right, especially if the rights infringement arises at a critical moment in one’s life or endures over time, is to be harmed irreparably. Rights violations are generally viewed as too precious to repair with compensation (Rendleman, 2002): contrary to the economist’s worldview, rights have no price. This view is held by libertarians and those economists most influenced by libertarian thought, who take the value of negative rights as non-reducible to the welfare they yield and as beyond compromise even in pursuit of other valued goods, but also by centrist and left-leaning economists who tend to place greater emphasis on positive freedoms.

Libertarians such as Robert Nozick (1974) take rights to be “side constraints,” unbending dictates regarding how we, and the institutions we create, must treat each other. One’s rights may not legitimately be eclipsed by public policy for the presumed greater good, even if that good is substantial. Nor may one’s rights be violated for one’s own good. In this account, for instance, the imposition of eminent domain and forced

²⁸ A distinction needs to be drawn between non-pecuniary harms, which economists employing Kaldor-Hicks tend to recognize, and irreparable and non-compensable harms, which they do not. Kaldor (1939, p. 551) himself acknowledged “losses of a non-pecuniary kind” that attend economic policies, such as when “workers derive satisfaction from their particular kind of work, and are obliged to change their employment” or when “individuals feel that the carrying out of the policy involves an interference with their individual freedom.” In this case, “something more than their previous level of money income will be necessary to secure their previous level of enjoyment.” What Kaldor did not recognize is that some non-pecuniary harms are simply non-compensable.

²⁹ See the studies cited in Mansfield, Van Houtven, and Huber 2002. See also Anderson (1990) and Sandel (2012) on the error of treating all goods as economic goods that are subject to the market logic of valuation.

relocation of individuals to make way for an infrastructure project that will promote economic growth represents a non-compensable rights violation—one that is not justified by the economic benefits that will flow to the economy as a whole, or even to those who are forcibly separated from their land. While Nozick’s framework requires compensation for *economic losses* that attend rights violations—indeed, compensation of this sort is central to his notion of reparations—the rights violation itself is beyond repair. Hence, an individual or institution cannot legitimately choose to violate rights while intending to supply compensation since the victim of enduring rights violations cannot be made whole.

Non-libertarian philosophers and economists who value positive rights also raise objections to the idea of compensability for rights violations. The capabilities framework offered by Martha Nussbaum (1992) and Amartya Sen (1992, 2000), and now elaborated by many economists, breaks with neoclassical welfarism in ways that preclude the idea of the reparability of all harms and rights violations. In this consequence-sensitive rights-based approach, distinct functionings—the beings and doings that people have reason to value—are not fungible. Living a full human life requires having extensive capabilities to achieve a wide array of distinct functionings. Being well nourished or well paid does not substitute for deprivations in political freedom—to live in a gilded cage is still to be enslaved. Nor can other functionings substitute for inadequate access to shelter, education, or recreation. Rejecting a common denominator such as welfare to which to reduce all functionings, the capabilities approach is incompatible with the presumption of the commensurability or substitutability of all goods, and with the conclusion that all harms are reparable and compensable.

Nussbaum (1992; 2000) has gone furthest in the direction of specifying those functionings capabilities that are vital for a minimally basic human life, and for a good human life. Her Aristotelian “thick, vague account” of the good comprises non-fungible basic functionings. These include *inter alia* the ability “to live to the end of a human life of normal length”; “bodily health”; “bodily integrity”; “being able to use the senses, to imagine, think, and reason”; “being able to have attachments to things and people outside ourselves”; “practical reason”; “affiliation”; “being able to live with concern for and in relation to animals, plants, and the world of nature”; “play”; and to exert control over one’s political and material environment through effective political and property rights (2000, 78-80). Nussbaum reminds us that the “is, emphatically, a list of *separate components*. We cannot satisfy the need for one of them by giving a larger amount of another” (Nussbaum 2000, 81; emphasis in original).

Non-reparable harms happen, by intent or mishap. Obvious examples include serious injury, dismemberment, or death, or the death of a loved one, as a consequence of an atrocity of some sort, negligence, error, or risk taking by the harmed agent in the service of others. Some such harms may be at least partially reparable, provided we define repair in terms of healing, coping, restoration of the ability to function—to have a full human life, in Nussbaum’s terms—and not in the simplistic way of the economist, as restoration to one’s previous indifference surface. But these kinds of cases may require “acknowledgment” rather than compensation. Acknowledgment can take various forms,

including public *apology* for and/or *recognition* of one's loss, as often occurs in the context of post-crisis truth commissions. Here, the admission by a perpetrator of his guilt, combined with apology, may give the victim a degree of solace that no monetary sum could match (Bouris 2007). It can also take the form of the bestowal of public *honors* for those whose harm is a consequence of purposive risk taking and sacrifice on behalf of others—such as those who put themselves in harm's way to ensure the safety of one's community. Sometimes, monetary transfer accompanies acknowledgment, and this can lead to confusion among economists who are trained to see all (voluntary) transfers as an exchange of values. But in cases such as these, that involve the violation of rights or the loss of irreplaceable goods, monetary transfers serve purposes other than compensation that renders the harmed victim whole. For instance, monetary transfers can signal the genuineness, depth, and honesty of the acknowledgment. Martha Nussbaum puts it this way:

Indeed, we might say that the main importance of reparations, too, is expressive. Obviously the fact that my grandmother-in-law received a regular income from the German government did nothing to bring back the family members who had perished during the Holocaust. Although the financial support was not negligible, its primary significance was as a public expression of wrongdoing and the determination to do things differently in the future (2001, 173 fn 8, emphasis added).

Monetary transfer can also serve to diminish the social tension that might otherwise persist in the wake of a particular harm or series of harms. In this case, its purpose is instrumental—to prevent conflicts between the perpetrator and the victim of harm that would be disruptive of commerce (and social life more broadly).³⁰ Moreover, the expectation that harm will require monetary payment might also serve as an incentive for those in position to harm to take measures to reduce the risk of harm (Kornhauser 2014). What monetary transfer can't always do is restore harm victims “to their previous level of enjoyment,” to borrow Kaldor's evocative phrasing (see footnote 27 above), or to take a broader view, to restore their previous level of freedom, rights, and wellbeing.

Recent experimental research has helped to explain why groups (such as town members) that are to be adversely affected by a public project are often unwilling to accept monetary compensation in return for acquiescing to the project. Indeed, the promise of compensation sometimes stiffens community resistance (Frey, Oberholzer-Gee, and Eichenberger 1996). But such communities are sometimes willing to accept the project once offered non-monetary amenities in the form of public goods. This is equally

³⁰ The commercialization of harm in service of social peace—in which perpetrators provide monetary payments to those they've harmed—should not be confused with “compensation” as a means of making the injured party whole. That the harmed agent is willing to accept payment rather than seek revenge does not imply that he is indifferent between his harmed state plus payment, on the one hand, and his pre-harmed state on the other. What has been “purchased,” if anything, is his willingness to forgo private steps he might otherwise take to secure retribution. I pursue this matter in greater depth elsewhere (DeMartino 2015), where I discuss the view of Deirdre McCloskey.

true in cases where agents might be expected to experience guilt were they to accept monetary compensation, and in cases where guilt plays no role. Mansfield, Van Houtven and Huber (2002) attribute this finding to what they identify as the bribery effect, the crowding out of public-spirited altruism, and feelings of moral responsibility. Equally important, they speculate that “public goods may be viewed as a way to effectively mitigate the psychic harms associated with local public harms” (368). A reasonable inference from their results and other studies that have generated similar findings, one that is obscured by the convention of referring to all harm remediation as “compensation,” is that the provision of public goods is explicitly *not* regarded (or not *just* regarded) by the harmed parties as compensation; it is regarded instead (or also) as expressive of recognition of the sacrifice that the community is asked to bear for the good of society. It may very well serve the function of *honoring* rather than *compensating* those who face the risk of being harmed for the greater good.³¹

On the Commensurability of Harming and Benefiting: Violation of the Liberal Principle of “Harm’s Priority”

A widely recognized principle in liberal moral philosophy holds that harms and harming are to be privileged over benefits and benefitting. What philosopher Seana Valentine Shiffrin (2012) calls “harm’s priority” entails the idea that the duty not to harm others exerts greater moral force than the duty to benefit them. The rule, which permits of some exceptions, is that an actor who harms others deserves a harsher judgment than the actor who simply fails to benefit them. Harm’s priority also implies that harms and benefits must not be treated “as occupying opposite ends of a sliding scale, like the positive and negative numbers, or as though they were mirror images of each other” (Shiffrin 2012, 366 or 367). Shiffrin elaborates as follows:

Generally, other things being equal, harms, harming events, and opportunities to harm are more important morally than benefits, benefitting events, and opportunities to benefit. Harms (and their prospect) have a greater capacity to generate reasons for action and tend to generate stronger reasons for action than benefits (and their prospect). . . . if a person is (or is about to be) subject to harm, others have *pro tanto*

³¹ Frey, Oberholzer-Gee, and Eichenberger (1996) present the case of a town facing the prospect of receiving an unwanted low-level nuclear waste facility. The town reacted negatively to the initial promise of monetary compensation, but ultimately accepted the facility when, after the lapse of time, it was promised a public good. Cases such as these are of course open to multiple interpretations. Frey, Oberholzer-Gee, and Eichenberger hypothesize that given the passage of time, economic agents adjust their moral views to conform with their economic interests (hence, becoming more willing to accept compensation). But they also acknowledge a difference between monetary and non-monetary compensation: “Despite the loss of efficiency, in-kind compensation benefiting the community as a whole weakens the bribe effect as it evokes the notion that votes, to a lesser extent, are bought” (1311). A plausible alternative hypothesis is that the substitution of the public good for monetary compensation represents something other than a change in the *form* of compensation; it is at least equally likely that it carries a different meaning altogether—*recognition*—for the affected community.

reasons to avoid inflicting it, to prevent it from occurring, or to alleviate it. (2012, 361)

Harm's priority is central to the political philosophy of J.S. Mill, whose "harm principle" has influenced liberal thought on the nature of and limits to state authority for well over a century. Legal scholar Joel Feinberg, for instance, whose magisterial four-volume exegesis represents the most comprehensive account of harm in legal philosophy, draws heavily on Mill to make the case that the state may generally criminalize only those behaviors that threaten harm to or cause significant offense to others Feinberg (1984). Only in rare instances may the state punish someone for his failure to take reasonable steps to "benefit" another. And these instances, Feinberg argues, typically involve terminological confusion, where benefitting is wrongly interpreted as preventing serious harm. Hence, these cases, too, reflect harm's priority (1984, ch. 4).

Harm's priority helps us to make sense of our reluctance to condone some actions that help some at the expense of serious harms to others. We do not countenance organ snatching to save or improve the lives of others, even though (with proper qualifications) the action might pass a strict utilitarian test. Equally significant, we do not these days let a physician off the hook who places some patients or research subjects at risk of harm without their consent for the greater benefit of others (or even themselves). Harming to help is widely viewed with some suspicion and strong moral discomfort. Paternalistic interventions that undermine an agent's autonomy for his own good are suspect; actions that harm some for the benefit of others raise even more intense alarm. While suspicion and moral discomfort should not necessarily decide the issue in every case, they should alert us to the fact that we are on complicated moral terrain when benefitting entails harming.

It is beyond the scope of this paper to offer a compelling endorsement or critique of the liberal view of harm's priority. I cannot claim, then, that contractarian procedures for fashioning suitable arrangements for balancing harms and benefits would necessarily yield an unwavering commitment to the principle—though I think the *prima facie* case for expecting them to do so is quite strong. Instead of making that strong claim, I want to take note of a paradox. Neoclassical economic thought is generally understood by its practitioners, outsiders, and critics alike as deeply consistent with liberal moral and political philosophy. And yet, in its embrace of Kaldor-Hicks, neoclassical theory and practice fail spectacularly to reflect harm's priority.³² Harm's priority contradicts the *raison d'être* of the test, which was at the moment of its inception and is today to supply economists with a tractable, mechanical, "objective" decision-rule when an action induces both harms

³² Indeed, this way of thinking broadly infuses neoclassical economists' thinking. As Tversky and Kahneman (1991, 1056; emphasis added) put it: "*In contrast to economic analysis, which does not distinguish losses from forgone gains, the standards of fairness draw a sharp distinction between actions that impose losses on others and actions (or failures to act) that do not share benefits.*"

and benefits. To do its job, Kaldor-Hicks must treat harms as on equal moral footing with benefits, so that the two can be easily compared and traded off.³³ In this approach, to borrow from Shiffrin (2012, 366), “Harms have a negative valence, and benefits have a positive valence.” She continues:

This interpretation... is congenial to a dominant mode of economic-style thinking that is associated with cost-benefit analysis and has an attractive simplicity that may reflect some first-person reflections about how we make decisions and what we deem desirable or choice-worthy. Nevertheless, it cannot succeed as a plausible theory of harm (367).³⁴

Harm’s priority does not require that one may never inflict any sort of harm in pursuit of any sort of benefit. Like all viable moral principles, this one permits of exceptions.³⁵ What it does require is a degree of attentiveness to the matter of harm that the economics profession has been resistant to give it. It requires, minimally, that a profession that induces or contributes to harm not dismiss out of hand the morally significant distinction between harms and benefits. And yet this is just what the economics profession does every time it adjudicates policy controversies via the Kaldor-Hicks compensation test. It is difficult to imagine compelling contractarian procedures that would countenance such casualness in a domain that is so vital to human well-being and freedom.

IV. Conclusion

³³ The same is true of cost-benefit analysis. According to Sen, “While benefits can be of different kinds and are put together—to the extent they can be—through a selection of weights (or ranges of weights), costs are seen as foregone benefits. Thus, benefits and costs are defined, ultimately, in the same ‘space’” (Sen 2001, 102).

It should be noted that if utility is measured on an ordinal scale, than the value “zero” has no special significance (such as separating benefits from harms). I thank Donald Katzner for clarifying this point in correspondence. On an ordinal scale, *movements to lower/higher values* register as harms/benefits, irrespective of whether the original or subsequent value is above, at, or below zero.

³⁴ As discussed in passing above, economists might reply that the asymmetry between benefits and harms, of which they’ve been aware at least since the work of Tversky and Kahneman (1991) that revealed loss aversion, can be taken account of with an appropriately sized coefficient (greater than one) applied to harms, to generate a more accurate accounting. For marginal changes in one’s position, this response has merit—it provides a mechanism to better account for the welfare effects of the change and actual choice behavior, abstracting from the reasons for or mechanisms that brought about the change. But the response misses Shiffrin’s central point, however, which concerns the *moral* incommensurability of acts of benefitting and harming. For Shiffrin, Feinberg, Mill and many leading moral and political philosophers, the acts of harming and benefitting are assessed on distinct moral scales. Applying a coefficient doesn’t make them commensurable.

³⁵ As even Nozick seems to accept—he equivocates (though just barely) regarding the side constraint obstacle to rights violations in cases where the avoidance of “catastrophic moral horror” is at stake (1974, 30 fn).

The neoliberal project induced vast misery at the same time that it generated substantial benefits—that much is clear to reasonably objective observers, including many mainstream economists. How could it not: the extent of the benefits and harms reflected, necessarily, the scope of the policy experiment, just as Hicks might have anticipated. Aggressive excursions into economic engineering must induce widespread harms, as Adam Smith, Karl Popper, A. O. Hirschman and other theorists argued well in advance of the outset of the grand experiment (see DeMartino 2011a). The ethically relevant question is whether the harms were benign and excusable, or instead, troubling and even professionally negligent.

Answering this question requires an engagement with Kaldor-Hicks, and especially with its defense in contractarian thought. The assessment provided here finds that the contractarian defense is deficient on several counts, and weighs against the application of Kaldor-Hicks in cases of economic policymaking and assessment. Its chief theoretical deficiency is its grounding in welfarism which leads to a simplistic account of harm that permits it to treat all harms as fully reparable through compensation. It is hard to square this claim with intuition, common sense or with relatively objective observation of how people react to the harms they suffer. Just ask the father who loses a child due to the rising cost of a life-saving medicine in a de-regulated market whether he's indifferent between having the child or having the money offered to him in compensation for his loss. Would one in one hundred fathers be indifferent between the two options? Would one in a million? Were we to find a father who is, would we take his indifference as knock-out evidence of the compensability of all harms, or as someone who is extraordinarily unsuited to parenthood? (Raz 1986; Adler 1998).

The apparent virtue of Hicksian overrecognition of harm is to remind economists to be ever vigilant since even their most cherished economic interventions can damage lives. But in fact, overrecognition of harm seems to have led economists in the opposite direction. With harm everywhere, resulting from anything we might conceivably do to improve the world, the profession has become inured to harm. To pursue harmless policy options is to demonstrate one's theoretical naiveté. Economists tend to discount harm with conversation-ending aphorisms—*there's no free lunch!*—and rely on mechanical formulae to handle and hence, dispose of harm. We don't let harm get in our way as we go about doing god's work. Instead, we put to work the conceptual harm management machinery that we've inherited from Kaldor-Hicks.³⁶ Yielding tractability, that machinery nevertheless trivializes harm. If every minor disruption in our life counts as harm, we run the risk of failing to take account of harm's priority.

Theoretical concerns aside, it is difficult to accept that the conditions required by the contractarian defense of Kaldor-Hicks are generally met in actual economic policy making. Governments no doubt differ from one another in this regard, of course. Some take better care to avoid gratuitous harms, and to ameliorate those harms that are deemed necessary to the achievement of overriding social objectives. That said, surely the

³⁶ For instance, see Summers' notorious memo (1992) to the staff of the World Bank on the virtue of exporting pollution to poor countries.

contractarian conditions were not met in the case of the grand neoliberal experiment. The harms to the losers were hardly trivial relative to the gains they had and would ultimately receive. Particularly in the case of structural adjustment programs in the global south that punished those who were already most vulnerable to economic shocks, the harms were considerable (and for many, irreparable). Nor have the harms associated with the series of neoliberal reforms been serially independent. Instead, the benefits have been tightly concentrated among the relatively few, while the losers have suffered round after round of harm. For many in the post-socialist transition economies, and across the global south, the harms have been insurmountable.

It is of course difficult to know just what a committee of rational deliberators operating behind the veil of ignorance would in fact conclude about the constitution of a just society, and one should always be cautious when that analytical device is used to defend some social arrangement or other. But we are likely on safe ground in believing that the rational deliberators would reject the view that all harms from economic policymaking are reparable and compensable, that harms and benefits are universally commensurable, and that economic planners should be free to pursue harm-inducing programs provided they promise aggregate benefits.³⁷ Nor would they be apt to countenance the use of Kaldor-Hicks to justify harm-inducing policies under the conditions that obtained during the neoliberal project, or since. Under these conditions, which so clearly violated those presupposed contractarians, the economic profession has a duty to those they purport to serve to abandon Kaldor-Hicks altogether.

If the economics profession is to continue to induce harm to some while it benefits others, it must establish much more nuanced and sensitive approach to the matter of harm and to policy adjudication that at a minimum permits those who will face the risk of harm to participate meaningfully in decision-making about the imposition of harms to bring about valued social objectives. Which harms are reparable, and which are not? Which reparable harms are compensable, and which are not? Which compensable harms should be compensated, and which should not? What is to be done when economic interventions potentially threaten or actually do cause noncompensable or irreparable harm? These are questions over which the economics profession has long asserted a monopoly but long failed to ask, let alone answer.

³⁷ To accept Kaldor-Hicks as the guiding principle of economic policy formation the deliberators would have to conclude that is superior to all competitors—a fact that McCloskey (2010) ignores in her presentation of the contractarian case cited above. About that prospect Adler (forthcoming, 330) claims rightly: “it seems exceedingly unlikely that the repeated use of the Kaldor-Hicks test is Pareto efficient in the long run *relative to the long-run use of all plausible competitor procedures* (for example, the long-run use of social welfare functions that give special priority to the poor), and not merely Pareto efficient relative to governmental inaction.”

References

Adler, Matthew D. 1998. "Incommensurability and Cost-Benefit Analysis," *University of Pennsylvania Law Review*, Vol. 146: 1371-1418.

Adler, Matthew D. 2012. *Well-Being and Fair Distribution: Beyond Cost-Benefit Analysis* Oxford: Oxford University Press.

Adler, Matthew D. Forthcoming. "Value and Cost-Benefit Analysis," in I. Hirose and J. Olson, eds. *Oxford Handbook on Value Theory*: 317-337.

Adler, M. D., and E. A. Posner. 1999. "Rethinking Cost-Benefit Analysis." *Yale Law Journal* 109(2): 165–247.

Adler, M. D., and E. A. Posner. 2006. *New Foundations of Cost-Benefit Analysis*. Cambridge, MA: Harvard University Press.

Anderson, E. 1990. "The Ethical Limitations of the Market," *Economics and Philosophy*, 6: 179-205.

Baldacci, E., de Mello, L. and Inchauste, G. 2002. Financial Crisis, Poverty and Income Distribution, Paper presented at the IMF conference on Macroeconomic Policies and Poverty Reduction, Washington, DC, March 14-15, 2002.

Bhagwati, J. Jan/Feb 1994. "Which Way? Free Trade or Protection?" *Challenge* 37: 17–24.

Bivens, J. L. May 6, 2008. "Trade, Jobs, and Wages: Are the Public's Worries About Globalization Justified," Economic Policy Institute Issue Brief #244.

Boadway, R. W. 1974. "The Welfare Foundations of Cost-Benefit Analysis." *The Economic Journal* 84(336): 926–939.

Bouris, E. 2007. *Complex Political Victims*. Bloomfield, CT: Kumarian Press.

Brooks, R.W. and W. F. Schwartz. 2005. "Legal Uncertainty, Economic Efficiency, and the Preliminary Injunction Doctrine." *Faculty Scholarship Series*. Paper 1701.

Buchanan, J. M. and G. Tullock. 2004 [1962]. *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, edited by C. K. Rowley. Indianapolis, IN: Liberty Fund.

Cernea, M. M. 2003. "For a new economics of resettlement: a sociological critique of the compensation principle," in *International Social Science Journal*, 55, 17: 37-45.

- Cernea, M. M. 2000. "Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement," *Economic and Political Weekly* 35 (41): 3659-3678.
- Chipman, J. S. and J. C. Moore. 1978. "The New Welfare Economics 1939-1974." *International Economic Review* 19 (3) (Oct.): 547-584.
- Coleman, J. 1980. "Efficiency, Utility, and Wealth Maximization." *Hofstra Legal Review* 8: 509-551.
- Cornia, Giovanni Andrea. 2003. Globalization and the distribution of income between and within countries, in Ha-Joon Chang (ed.) *Rethinking Development Economics*, London: Anthem Press, pp.325-345.
- DeMartino, G. F. 2000. *Global Economy, Global Justice: Theoretical Objections and Policy Alternatives to Neoliberalism*. London: Routledge
- DeMartino, G. F. 2011a. *The Economist's Oath: On the Need for and Content of Professional Economic Ethics*. London: Oxford University Press
- DeMartino, G. F. 2011b. "The Economic Crisis and the Crisis in Economics," in *Consequences of Economic Downturn: Beyond the Usual Economics*, Martha Starr, ed. New York, NY: Palgrave Macmillan, 25-44.
- DeMartino, G. F. 2013. "Epistemic Aspects of Economic Practice and the Need for Professional Economic Ethics." *Review of Social Economy* 71 (2): 166–186.
- DeMartino, G.F. 2015. "'Econogenic Harm': On the Nature of and Responsibility for the Harm Economists Do as They Try to Do Good." In *The Oxford Handbook of Professional Economic Ethics*, edited by G. F. DeMartino and D. N. McCloskey. Oxford, UK: Oxford University Press.
- Eichengreen, Barry. 2001. Capital account liberalization: what do cross-country studies tell us? *World Bank Economic Review* 15, 3, pp. 341-365.
- Elster, J. 1982. "Sour Grapes—Utilitarianism and the Genesis of Wants." In *Utilitarianism and Beyond*, edited by A. Sen and B. Williams, pp. 219–238. Cambridge: Cambridge University Press.
- Epstein, Gerald and Ilene Gabel. 2006. Financial Policies for Pro-Poor Growth, study prepared for the United Nations Development Programme (UNDP), International Poverty Centre, Global Training Programme on Economic Policies for Growth, Employment and Poverty Reduction.
- Feinberg, J. 1984. *Harm to Others: The Moral Limits of the Criminal Law*. Oxford, UK: Oxford University Press.

Frey, B. S., F. Oberholzer-Gee, and R. Eichenberger. 1996. "The Old Lady Visits Your Backyard: A Tale of Morals and Markets." *Journal of Political Economy* 104, 6: 1297-1313.

Gaspar, D. 2015. "The Ethics of Economic Development and Human Displacement." In *The Oxford Handbook of Professional Economic Ethics*, edited by G. F. DeMartino and D. N. McCloskey. Oxford, UK: Oxford University Press.

Goldberg, P. K. and N. Pavcnik. 2007. "Distributional Effects of Globalization in Developing Countries," *Journal of Economic Literature*, 45, March: 39-82.

Goodin, R. E. 1986. "Laundering Preferences," in *Foundations of Social Choice Theory*, eds. Jon Elster and Aanund Hylland. Cambridge: Cambridge University Press: 75-102.

Grosskopf, O. and B. Medina. 2009. "Economic Analysis of the Irreparable Harm Concept in Preliminary Injunctions." Available at: http://works.bepress.com/ofer_grosskopf/2

Harsanyi, J. C. 1982. "Morality and the Theory of Rational Behaviour," in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams. Cambridge: Cambridge University Press: 39-62.

Hicks, J. R. 1939. "The Foundations of Welfare Economics." *The Economic Journal* 49 (196): 696–712

Hicks, J. R. 1941. "The Rehabilitation of Consumers' Surplus." *The Review of Economic Studies* 8 (2): 108–116

Kaldor, N. 1939. "Welfare Propositions of Economics and Interpersonal Comparisons of Utility." *Economic Journal* 49 (195): 549-52

Kanbur, R. 2003. "Development Economics and the Compensation Principle." *International Social Science Journal* 55 (175): 27–35

Katzner, D. W. 2006. *An Introduction to the Economic Theory of Market Behavior: Microeconomics from a Walrasian Perspective*. Cheltenham, UK: Edward Elgar.

Kornhauser, L. A. 2001. "On Justifying Cost-Benefit Analysis," in M.D. Adler and E.A. Posner, eds. *Cost-Benefit Analysis: Legal, Economic, and Philosophical Perspectives*. Chicago: Chicago University Press, pp. 201-221.

Kornhauser, L. A. 2014. "Incentives, Compensation, and Irreparable Harm," in André Nollkaemper and Ilias Plakokefalos (eds), *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art*. Cambridge: Cambridge University Press.

- Krugman, P. R., Obstfeld, M. and M. J. Melitz. 2015. *International Economics, 10th ed.* Boston: Pearson.
- Leibenstein, Harvey. 1965. "Long-Run Welfare Criteria," in Julius Margolis, ed., *The Public Economy of Urban Communities*. Baltimore: Johns Hopkins Press: 39-51.
- Lichtman, D. Apr. 2007. "Irreparable Benefits," *The Yale Law Journal* 116, 6: 1284-1301.
- Little, I. M. D. 1957. *A Critique of Welfare Economics, 2nd Edition*. London: Oxford University Press.
- McCloskey, D. N. 2006. *The Bourgeois Virtues: Ethics for an Age of Commerce*. Chicago: University of Chicago Press.
- McCloskey, D. N. 2010. *Bourgeois Dignity: Why Economics Can't Explain the Modern World*. Chicago: University of Chicago Press.
- McGowan, D. 2010. "Irreparable Harm." *Lewis & Clark Law Review*. 14:577-596
- Nozick, R. 1974. *Anarchy, State, Utopia*. New York: Basic Books
- Nussbaum, M. 1992 (May). "Human Functionings and Social Justice: In Defense of Aristotelian Essentialism." *Political Theory* 20(2): 202–246
- Nussbaum, M. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge, UK: Cambridge University Press.
- Nussbaum, M. C. 2001. "The Costs of Tragedy: Some Moral Limits to Cost-Benefit Analysis," in M.D. Adler and E.A. Posner, eds. *Cost-Benefit Analysis: Legal, Economic, and Philosophical Perspectives*. Chicago: Chicago University Press, pp. 169-200
- OECD. 2005. *OECD Employment Outlook*. Paris: OECD.
- Polinsky, A. M. 1972. "Probabilistic Compensation Criteria." *Quarterly Journal of Economics* 86(3): 407–425.
- Posner, R. 1980. "The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication." *Hofstra Law Review* 8: 487- 507.
- Radest, H. B. 1997. "First, Do No Harm! Medical Ethics and Moral Education." *Humanism Today* 11.
<https://web.archive.org/web/20020109023341/http://www.humanismtoday.org/vol11/radest.html>
- Rawls, J. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.

- Raz, J. 1986. *The Morality of Freedom*. Oxford: Oxford University Press.
- Rendleman, D. 2002. “Irreparability Resurrected? Does a Recalibrated Irreparable Injury Rule Threaten the Warren Court’s Establishment Clause Legacy?” *Washington and Lee Law Review* 59(4): 1343–1406.
- Sachs, J. 1991. “Poland and Eastern Europe: What Is To Be Done?” in A. Kovas and P. Marer (eds.) *Foreign Economic Liberalization: Transformations in Socialist and Market Economies*, Boulder, CO: Westview Press: 235 – 46.
- Sachs, J. 2005. *The End of Poverty*, New York, NY: Penguin Press.
- Sandel, Michael J. 2012. *What Money Can’t Buy: The Moral Limits of Markets*. New York City: Farrar, Straus and Giroux.
- Scitovsky, T. 1941. “A Note on Welfare Propositions in Economics.” *Review of Economic Studies* 9: 77–88.
- Scott, R. E. Nov. 17, 2003. The High Price of Free Trade.” EPI Briefing Paper 147. Available at: http://www.epi.org/publication/briefingpapers_bp147/
- Scott, R. E. October 10, 2013. “Displaced Minority Workers Suffered 29.6 Percent Drop in Wages from the Growing Trade Deficit with China,” Economic Policy Institute Report. Available at: <http://www.epi.org/publication/trading-manufacturing-advantage-china-trade/>
- Sen, A. 1979. “The Welfare Basis of Real Income Comparisons.” *Journal of Economic Literature* 17(1): 1–45
- Sen, A. 1986. “Foundations of Social Choice Theory: An Epilogue,” in *Foundations of Social Choice Theory*, eds. Jon Elster and Aanund Hylland. Cambridge: Cambridge University Press: 75-102.
- Sen, A. 1987. *On Ethics and Economics*. London, UK: Blackwell.
- Sen, A. 1992. *Inequality Reexamined*. Cambridge, MA: Harvard University Press.
- Sen, A. 2000. *Development as Freedom*. New York: Anchor Books.
- Sen, A. 2001. “The Discipline of Cost-Benefit Analysis,” in M.D. Adler and E.A. Posner, eds. *Cost-Benefit Analysis: Legal, Economic, and Philosophical Perspectives*. Chicago: Chicago University Press, pp. 95-116.
- Sharpe, Virginia A. and Alan I. Faden. 1998. *Medical Harm: Historical, Conceptual, and Ethical Dimensions of Iatrogenic Illness*, Cambridge, UK: Cambridge Univ. Press.

- Shiffrin, S. V. 2012. "Harm and its Moral Significance." *Legal Theory*, 18: 357-398.
- Smart, J. J. C. 1973. "An Outline of a System of Utilitarian Ethics." In *Utilitarianism: For and Against*, edited by J. J. C. Smart and B. Williams. Cambridge: Cambridge University Press, 1-74.
- Summers, L. February 8, 1992. "Let Them Eat Pollution," *The Economist*: 66.
- Stuckler, D., and S. Basu. 2013. *The Body Economic: Why Austerity Kills*. New York: Basic Books.
- Stuckler, D., L. King, and M. McKee. 2009, Jan. 1. "Mass Privatisation and the Post-Communist Mortality Crisis: A Cross-National Analysis." *The Lancet*, doi: 10.1016/S0140-6736(09)60005-2.
- Tversky, A. and D. Kahneman. 1991. "Loss Aversion in Riskless Choice: A Reference-Dependent Model," *Quarterly Journal of Economics* 106: 1039 – 1061.
- United States Senate Committee on Finance. February 4, 2002. "Trade Adjustment Assistance for Workers, Farmers, Fishermen, Communities and Firms." Washington, D.C.: U.S. Senate.
- Wedel, J. R. 2001. *Collision and Collusion: The Strange Case of Western Aid to Eastern Europe*. New York: Palgrave.
- Weidenbaum, M. L. 2001. *Looking for Common Ground on U.S. Trade Policy*. Washington, D.C.: CSIS Press
- Weller, C. and A. Hersh. 2004. The Long and short of it: Global liberalization, poverty and inequality, *Journal of Post Keynesian Economics*, 26(3), pp. 471-504.
- Williams, B. 1973. "A Critique of Utilitarianism." In *Utilitarianism: For and Against*, edited by J. J. C. Smart and B. Williams. Cambridge: Cambridge University Press, 75-150.