

Principles and Political Order

The challenge of diversity

**Edited by
Bruce Haddock, Peri Roberts and
Peter Sutch**



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The liberal and democratic political order is underpinned by universal principles of justice. However, the universality of these principles is now being questioned and undermined by challenges from postmodernism, communitarianism, multiculturalism and other forms of anti-foundationalism. These challenges highlight the sheer diversity of cultures and values, treating liberal values and democratic political culture as one idea of social organization amongst many. While social and political orders are capable of almost endless variation, it may be that not every diverse order is legitimate and we can justifiably regard some forms of social organization as beyond the pale. The key concept that contributors to this volume have explored and developed as a response to the 'challenge of diversity' is the idea of a 'thin' universalism.

The core idea behind 'thin universalism' is that it is possible to rehabilitate the universalist aspirations of normative theory while acknowledging the force of many antifoundationalist and multiculturalist criticisms of universalism. This book brings together prominent international political theorists to explain and discuss this contested concept and explore how we can stand up for and act upon principles in a world characterized by cultural difference, moral scepticism, and political division. The authors present a variety of perspectives: some chapters are sympathetic to the idea of a thin universalist account of justification, some are reluctant advocates and others are sceptical about its success or even desirability.

Opening out core debates in contemporary normative theory, this volume will be of great interest to researchers and scholars working in the fields of contemporary political theory, political philosophy and IR theory.

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Introduction

Pluralism and the idea of a ‘thin universalism’

The modern political project, resting on the robust justification of a liberal and democratic political order, has become the subject of doubt. Concern has focused on the general application of the principles of justice that underpin liberal political order. Can these principles be justified everywhere and to everybody? Or are they local principles, partial in their scope and tied to a particular context? These doubts about the universality of liberal foundations have been fostered by a series of challenges, most notably from postmodernism, communitarianism, multiculturalism and other forms of anti-foundationalism. Each challenge has highlighted the sheer diversity of cultures and values, treating liberal values and democratic political culture as one idea of social organisation amongst many. It is this ‘fact of pluralism’ that is taken by many to undermine the project of universal justification. Continued attempts to generally justify liberal democracy are regarded as instances of cultural imperialism, the imposition of liberal culture on to societies to which it is alien.

The fact of pluralism is not simply regarded as problematic for liberals. To the extent that it may be corrosive of universal liberal reasons it will be equally corrosive of any alternative attempts at universal moral or political justification. The implication is taken to be that all reasons are local reasons and all justifications are particular. Conceptions of a just political order are regarded as relative to defined political and cultural contexts. On this understanding, there are no standards of just behaviour or appropriate treatment that apply to everyone.

The relativism of justice and morality is something that many political theorists have been quite comfortable with, at least in the abstract. It is a more difficult idea to countenance in the face of real moral and political dilemmas.¹ If the consequences of choice are real it is hard to regard all outcomes as equally legitimate. When the chips are down very few of us are prepared to accept that ‘anything goes’. Who responds to genocide or to systematic infanticide with a shrug of the shoulders saying, “Well, we don’t go in for that sort of thing round here”? More importantly, do we feel uncomfortable with this sort of reply just because we happen to be nice people? If we are to discriminate between forms of social organisation we would expect this to

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be on the basis of good reasons. This introduces a conception of a 'principled pluralism'. Although social and political orders are capable of almost endless variation it may be that not every diverse order is legitimate. Perhaps we are able justifiably to regard some forms of social organisation as beyond the pale. Maybe there is a 'thin' form of universalism that can underpin these judgements.

This book is the second of three that together form a five year project under the broad working title 'Principles in a Plural World' co-ordinated by the Political Theory Research Unit at Cardiff University. This project has brought together prominent national and international political theorists to focus on key aspects of the impact of pluralism in normative judgements and political institutions. *Multiculturalism, Identity and Rights*, the first volume, explored the normative implications of contemporary social and political diversity and the relationship between cultural identity and liberal democracy.² Some contributors have been more sympathetic to particularist accounts of political justification, others to universalism. However, emerging from this first volume was an increasing awareness that there is significant ground to explore between particularism and the robust or 'thick' universalism that characterised modern liberal justification. This is the ground occupied by conceptions of thin universalism.

Exactly what is thin about thin universalism is contested, both in this volume and in contemporary political theory more widely. It may be thin because rather than specify a single form of political organisation it legitimates a wide diversity of political forms. Alternatively, 'thin' may refer to the attempt to minimise the range of assumptions and presuppositions that figure in a universal justification. Some theorists identify a thin universalism in the (contingent or necessary) overlap of values or experiences between diverse cultures. Others argue that there can be a universal procedure for mediating conflicts of value or that there is a universal account of reasoning that can place limits on legitimate political expression. Exploring the normative limits of pluralism impels us to consider universal accounts of politics. But doubts about universal foundations demand an increased sensitivity to pluralism. Advocates of a thin universalism share a commitment to regard pluralism not as an obstacle to overcome or eradicate but rather as a feature of the normative political landscape to be accepted and responded to reasonably.

It is this set of ideas that has excited contributors to the first volume of the project and recognition of their importance that motivates the current volume. This is not to say that we are all enthusiastic advocates of thin universal positions, far from it. While some chapters are sympathetic to the idea of a thin universalist account of justification others are reluctant advocates. Yet others are sceptical about its success or even desirability. However, the volume is united by a shared conviction that the notion of thin universalism demands serious consideration.

Overview of chapters

Unsurprisingly, given the focus of this book, the chance to include Michael Walzer's 'Nation and universe', originally delivered as two lectures in

the Tanner lecture series, offers all of us involved in this project a welcome opportunity. The present volume is no *homage* to Walzer. It is true that some contributors are drawn to his redescription of both universalism and the project that political theorists and social critics should be engaged in. It is equally true that other contributors deny the moral and political power of Walzer's approach. Nevertheless it is also the case that all contributors feel drawn to engage with his argument, to participate in his search for a thin account of moral and political universalism, and to adopt some aspects of the language that he did so much to introduce to contemporary political thought.

'Nation and universe' represents a key moments in the work of Walzer. It contains within its pages the tools to help us reflect on his earlier work and the chief elements of his later writing. The exploration and elaboration of a 'non-standard' account of universalism that we find in this piece offers the reader a myriad of insights both into Walzer's political thinking and into the nature of (and possibilities for) moral argument in the contemporary world. In this chapter Walzer develops an account of what he calls 'reiterative universalism'. The name that Walzer assigns this idea begins to tell us about its essence. 'Reiterative universalism' describes the human processes by which values become universal. Walzer contrasts reiterative universalism with 'covering-law universalism'. He tells us,

Covering-law universalism describes the standard philosophical effort to bring all human activities, all social arrangements, all political practices, under a single set of principles or a single conception of the right or the good. The idea of reiteration, by contrast, reflects an understanding that morality is made again and again; hence there cannot be a single stable covering law.³

The heart of reiterative universalism is the idea that ethical universality should be understood as the product of human social creativity and that universal values therefore have particularist implications. This is not just an alternative story about the development of universal principles but a radical departure from what he terms the standard efforts of philosophy. Herein lies one of the key issues that this volume explores. There is a sense in which the example of covering-law universalism that Walzer describes for us is a caricature of all covering-law universalisms. The 'single set of principles or a single conception of the right or the good' that represents the goal of covering-law approaches to philosophy is writ large in the commands of an old-testament God. But the search for such principles remains a preoccupation of much philosophy, even in the work of those who acknowledge the need to establish a thin account of universalism. Most contributions to this volume are not prepared to abandon this preoccupation. They are concerned that to do so is to try and conduct politics beyond epistemology (as Rorty has it). Some search for a weak foundationalism, for a thin conception of practical reason, or for some other philosophically modest but still effective method for establishing

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the boundaries of ethics. Few are entirely comfortable with Walzer's claims for reiterative moralities where even reason provides no absolute gauge.

Reiterative universalism operates mostly within the limits of ours and theirs—not of Reason with a capital “R” but of our reason and their reason. It requires respect for the others, who are just as much moral makers as we are. That does not mean that the moralities we and they make are of equal value (or disvalue). There is no single uniform or eternal standard of value; standards get reiterated too. But at any moment in time, a given morality may prove inadequate to its occasions, or its practice may fail to measure up to its own standards or to a newly developed or dimly made out set of alternative standards – for reiteration is a continuous and contentious activity. The largest requirement of morality, then, the core principle of any universalism, is that we find some way of engaging in that activity while living in peace with the other actors.⁵

There is a complex philosophical and political story hidden in this quotation. The unease it creates stems from suspicions about Walzer's claim that ‘reiterative universalism ... is still a form of universalism’.

If reiteration is, as I believe, a true story, then it carries in its telling the sorts of moral limits that are usually said to come only from covering-law universalism. ... Reiteration is also universal in its occasions. We may make our own moralities, but we do not make them randomly or any which way.⁶

The question is, quite simply, what gives reiterative morality this force? That question is answered in very different ways by Walzer and by the other contributors to this debate. Walzer is keen to show that political knowledge (rather than philosophical knowledge) has real moral currency. Sutch (‘Thin universalism: Moral authority and contemporary political theory’) situates Walzer's approach within the wider context of this debate alongside the works of Rorty, Rawls, Pogge and O'Neill. Walzer's reiterative universalism is shown to be but one form of thin universalism and Sutch elaborates the terms of this central debate.

The key question he explores is what difference, if any, arises from the different ways in which these writers approach universalism in ethics. He presents a continuum of arguments in the form of a sliding scale ranging from stronger claims about the epistemic and moral authority of philosophical justification to much weaker claims of this sort. In short this continuum represents a sliding scale of confidence in the ability of political theory to make authoritative moral judgements that can underpin normative positions. The principal task of his paper is to find out whether this confidence is well placed and, if not, to assess the consequences for contemporary political thought.

Bruce Haddock ('Thin universalism as weak foundationalism') focuses specifically on the logic of justification implicit in any practical conception of 'thin universalism'. He endorses Walzer's broad distinction between 'thick' and 'thin' modes, but challenges the claim that justification presupposes a 'thick' cultural context in order to do effective normative work. Haddock defends, instead, a view of 'weak' foundations as a necessary presupposition of argument in any practical realm. His claim is that the way Walzer frames the distinction between 'thick' and 'thin' modes provides merely a descriptive account of the way argument is generated within cultures. It says nothing whatever about the normative status of arguments. In effect, Walzer's description of practices undermines the logical force of practical argument.

Haddock's stress is on the presuppositions of practical argument rather than the motivation of agents. In this scheme of things we may have to invoke very abstract concepts (as even the Roman lawyers did) in order to make specific practical arguments intelligible. There is no suggestion that agents need have such abstract notions in their minds when they actually deliberate. Mark Evans ('Thin universalism and the limits of justification') argues, instead, that while abstract concepts may logically underpin our view of human beings in practical contexts, they have a very limited role in framing actual practical dilemmas. Evans focuses on the messiness of our ordinary experience of the world, with all number of roles and relationships colouring what it means for individuals to see situations as problematic in the first place. He accepts that some (very thin) principles might inform any reasonable practice, anywhere, but contends that our moral and political dilemmas cannot be effectively addressed at that level of abstraction.

Precisely how principles inform practical choices is the focus of Axel Kaehne's chapter ('How do principles work'). In Kaehne's view, how and why we act cannot be rendered intelligible in terms of the general principles we might invoke in justification of particular actions or engagements. He shares Evans's suspicion that abstract principles simply leave too many options in any particular case. Whatever significance grounding principles might have for philosophers, they can (at best) function as *ex post facto* justifications in actual decisions and choices. In reality (for Kaehne) our selection of particular grounding principles will be filtered through the rich cultural assumptions that shape our lives. Following Skorupski, Kaehne envisages a role for 'bridge principles' that enable us to orientate ourselves in specific contexts. But these intermediate principles will always be part and parcel of our cultural understandings. They may appear to be universal in scope, but that would only reflect the (presumed) universal range of our cultural values.

Kaehne's position thus has strong affinities with Walzer's, though he defends it in a strikingly different manner. His focus is on what actually happens when principles are invoked, not on the logical force of justificatory argument. Indeed Peri Roberts ('Why thin universalism needs conceptions of society and person') queries whether such a strategy offers any scope at

all for justification. If justification is construed as a (more or less) plausible rationalisation of what we might be minded to do for a host of complex cultural reasons, then it can hardly be regarded as a persuasive means of clinching arguments when values are not shared. Nor can we expect such thinking to help us if we are genuinely puzzled about how we should behave in troubling situations. Roberts contends that for argument to have any status at all, we must be able to envisage conceptions of society and the person that are not simply implicit in our cultural values. Positions here are starkly divided. We are wondering what we should do, not what people with our values might be inclined to do. The questions are framed in radically different ways. For Roberts we cannot dispense with the language of justification without rendering significant areas of our moral and political lives unintelligible.

Distinguishing the significance of conceptions of society and the person, of course, is only half the story. Roberts is still left with the matter of specifying why particular conceptions should be endorsed. He does not treat such conceptions as foundational, even in the 'weak' sense defended by Haddock, but prefers, instead, to regard them as necessary conditions for whatever other more contested goods we might want to pursue. He treats institutions and practices as 'constructions', though some are so vital to human flourishing that they could not intelligibly be challenged on 'merely' political grounds.

This takes us to the heart of 'thin' conceptions of justice. John Horton ('Proceduralism as thin universalism: Stuart Hampshire's procedural justice') examines an influential attempt to defend a purely procedural view of justice. In *Justice as Conflict* Hampshire argues that defensible conceptions of justice in diverse cultural contexts will at least share a commitment to hear the other side of an argument. A judicial context in which a defendant could not respond to charges made against him would, after all, appear to transgress widely held assumptions about 'natural' justice. Horton argues, however, that the judicial model, while important in relevant spheres, is nevertheless exceedingly narrow. We might, as a matter of principle, refuse even to consider arguments in favour of racism. And we may regard it as basically unjust to consider all claims equally in special situations where particular responsibilities fall to us. Horton's point is not that a procedural view of justice could never do important normative work for us; rather that its relevance depends upon specific (and culturally 'thick') conceptions of what it might be proper to do in given situations.

The tension between universal judgements of value and the particular situations that demand a normative response has always been evident in relation to gender issues. Feminists have been among the most effective critics of the implicit assumptions that shape judgements of value. What counts as a universal normative perspective might disguise weighted conceptions that reinforce the positions of (typically male) wielders of power and influence. By the same token, the claim that women should aspire to the kind of autonomous role in civil society that is held out as a goal in developed western countries is said to be blind to a range of cultural possibilities for a worthwhile

female life. The reality of female oppression is not doubted in these accounts. Yet it is by no means clear what should count as a relevant standard of judgement in evaluating constraining social, political and cultural circumstances.

Andrea Baumeister ('Gender equality and cultural justice: How thin is Nussbaum's universalism?') assesses Martha Nussbaum's attempt to devise normative criteria that are not simply a statement of specific cultural assumptions regarding a woman's role. In *Sex and Social Justice* Nussbaum focuses on measures that might be adopted to enhance prospects for women in the world, irrespective of the specific cultural situations in which they might find themselves. The point here is to identify constraints which prevent women's lives from flourishing, however they might choose to lead their lives. Just as with Horton's treatment of Hampshire, however, Baumeister contends that particular views of a worthwhile life will necessarily frame that judgement. In Baumeister's view Nussbaum endorses a narrowly western view of autonomy in assessing circumstances that unnecessarily limit a woman's life. Here she highlights a problem that has bedevilled liberal feminist positions in particular. For while it is easy to depict the social and political practices and institutions that have prevented women from exercising their moral autonomy, it is quite another matter to make that judgement in relation to purely formal criteria.

Comparable problems arise in the context of arguments that treat cultural identity as a specifically political good. When multiculturalists and nationalists privilege the intrinsic character of a given culture as a political criterion, they clearly run the risk of marginalizing groups and individuals outside the mainstream of that culture. In practice a balance has to be struck in any pluralist polity between the claims of diversity and the limits of toleration. The problem is compounded, however, because the theoretical ground for specifying the parameters of a reasonable pluralism is deeply contentious. Gwennllian Lansdown ('Thin universalism and cultural identity: The case of Welsh nationalism') confronts the issue in relation to a particular case. She contends that the goods nationalists may legitimately claim can be defended in terms of a liberalism sensitive to the diversity of cultural experience. She takes very seriously Rawls's suggestion that a liberal polity should attend to the social bases of self-respect for all its citizens. In this scheme of things, the particular priorities of nationalists in the cultural sphere may be assessed against a wider view of human flourishing. Cultural goods thus need not be treated as somehow antithetical to the scope individuals may be allowed to fashion a life for themselves. Yet Lansdown is clear that, for this argument to work, cultural goods must be viewed as instrumental means to further the flourishing of individuals.

Pluralism is most deeply entrenched in the international relations between states. Yet even here the language of 'international community' has highlighted an increasing regard for the interdependence of states in the modern world. How far can normative theory shape the rights and responsibilities of states and citizens on a global stage? David Boucher ('Thin universalism and

distributive justice') surveys a burgeoning literature focused on the scope of international responsibility. Michael Walzer has always seen states as the primary vehicles for managing distributive issues. While other theorists (Pogge, Singer, Beitz, among others) have contended that divisions between states are arbitrary, at best administrative conveniences, and cannot be treated as fixed points of moral and political reference. Boucher accepts interdependence as a fact of life for states and citizens. We cannot isolate ourselves from one another in a context of global economy and culture. And yet claims for rights and aid have to be addressed to agencies that can actually deliver relevant goods. As things stand, here and now, states fulfil that primary role, though they require complex involvement with other states in order to work effectively. Harm may be inflicted on neighbours quite as much through inadvertence as policy. In Boucher's view, potential for harm is a universal guiding thread linking the relations between states. How much distributive weight the burden of harm might carry will remain a matter of political circumstances.

Intriguingly, fault lines on this issue run through interpretations of particular thinkers. Rawls, for example, has been read both as a proponent of a comprehensive (and necessarily universal) liberalism and as an interpreter of the principles that happen to inform modern liberal democracies. In Walzer's terms, we are asked to see him as either a reluctant covering-law universalist or as a reiterative universalist. Readers of this volume will note that the political line between these two positions is very fine indeed. Yet justifications across this divide work very differently. Rawls scholars find themselves deploring that he has not drawn appropriate conclusions from his premises, or wishing that he had adopted subtly different premises, for political quite as much as textual reasons. Martin focuses in detail on Rawls's treatment of rights in *The Law of Peoples*. Against a purely contextualist reading, Martin argues that Rawls's thin and universal account of human rights provides normative criteria that guide and constrain their 'thicker' local interpretations. He remains agnostic on the *kind* of theory Rawls is offering. Thin universalist assumptions, however, remain indispensable to Rawls's project.

It is clear from this brief overview of chapters that there is no close consensus on the nature or success of thin universalism. However, it is also clear that the idea of a thin universalism is emerging as a central concept in contemporary political theory. On the one hand our political activity seems to be more fractured and plural than ever whilst on the other our political interactions are increasingly global in scope. Making sense of how the global and local relate to each other is a key question for political theorists. A thin universalist account of justification seems a particularly appropriate way to answer this question. This volume is an attempt to significantly advance our understanding of the terms on which we co-operate with others in a complex world.

Notes

- 1 Hume, for example, argues that 'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger' (Bk.II, Pt.III, Sect.III, p. 416). However, he goes on to admit of such abstract reasoning that 'when we leave our closet, and engage in the common affairs of life, its conclusions seem to vanish, like the phantoms of the night on the appearance of morning' (Bk.III, Pt.I, Sect.I, p. 454). Hume, *A Treatise of Human Nature* (2nd edn), Oxford: Oxford University Press, 1978.
- 2 Haddock & Sutch (ed.s), London: Routledge, 2003.
- 3 Walzer, 'Nation and Universe', below pp. 24–25.
- 4 Note removed.
- 5 Walzer, 'Nation and Universe', below p. 24.
- 6 Walzer, 'Nation and Universe', below p. 21.

1 Nation and universe¹

Michael Walzer

TWO KINDS OF UNIVERSALISM

I

Much has been written in recent years about moral absolutism and moral relativism, foundationalism and contextualism, monism and pluralism, universalism and particularism – all the ferventisms – and yet our understanding of these simple polarities does not seem to advance. Advocates of liberal enlightenment confront advocates of communal tradition; those who aspire to global reach confront those who yearn for local intensity. We all know one another's lines. In every argument, we anticipate the opening gambits; we have memorized the standard replies and the follow-up moves; no one's closing flourish is at all surprising. The different positions can be defended well or badly; it is still possible to win a debate, much as one might win a game of chess, with superior skill or the quickness to seize upon an opponent's mistakes. But victories of this kind have no larger resonance. So I have looked for a way of being persuasive without trying to be victorious, a way of escaping the conventional oppositions or, at least, of redescribing them in less contentious terms. I want to argue from within what I, and many others, have taken to be the opposing camp; I want to take my stand among the universalists and suggest that there is another universalism, a non-standard variety, which encompasses and perhaps even helps to explain the appeal of moral particularism.

I shall begin my argument with the historical example of Judaism, which has often been criticized (not without reason) as a tribal religion, the very emblem of a particularist creed. And yet Judaism is one of the chief sources of the two universalisms, the first of which became standard when it was adopted within Christianity. It probably would have become standard even if Judaism rather than Christianity had triumphed in the ancient world – not only because of its strength among the Jews but also because of a certain connection, which will become apparent as I go along, between the first universalism and the idea or the experience of triumph.

The first universalism holds that as there is one God, so there is one law, one justice, one correct understanding of the good life or the good society or

the good regime, one salvation, one messiah, one millennium for all humanity. I will call this the 'covering law' version of universalism, though in Christian doctrine it is not law so much as the sacrifice of the son of God that 'covers' all men and women everywhere – so that the line 'Christ died for your sins' can be addressed to any person in any time or place and will always be true, the pronoun having an indefinite and infinite reference. However many sinners there are, and whoever they are, Christ died for *them*. But I mean to defer here to Jewish 'legalism' (and to later natural law arguments), where the aim is to provide an account of what it means not to sin, to live well or, at least, rightly. Covering-law universalism has been called an 'alternative' doctrine within Judaism, but by prophetic times it was a very well established alternative, and perhaps even the dominant doctrine, at least in the written literature of the Jews.² Jewish tribalism had by then been reinterpreted and reconstructed in a way that made it instrumental to a universal end. The Jews were chosen for a purpose, which had to do not only with their own history but also with the history of the human race. That is the meaning of Isaiah's description of Israel as 'a light unto the nations.'³ One light for all the nations, who will eventually be uniformly enlightened: though, the light being somewhat dim and the nations recalcitrant, this may take a long time. It may take until the end of time.

The end can be described in militant and triumphant terms as the victory of the universalizing tribe; or it can be described more modestly as the 'coming in' or the 'going up' of the nations. 'And many people shall go and say Come ye, and let us go up to the mountain of the Lord.'⁴ Whatever its form, the result is an identical triumph of religious and moral singularity – many people will climb one mountain. The hope for a triumph of this sort has been incorporated into the daily prayers: 'On that day the Lord shall be one and his name shall be one.'⁵ Until that day, this first universalism can take on the character of a mission, as it often did in the history of Christianity and, later on, in the imperialism of nations that called themselves Christian. You will all remember these lines from Kipling's 'Song of the English':

Keep ye the law – be swift in all obedience –
Clear the land of evil, drive the road and
Make ye sure to each his own
That he reap where he hath sown.
By the peace among our peoples, let men know
bridge the ford.
We serve the Lord.⁶

Eventually, roads and bridges built and peace secured, 'our peoples,' all the subject nations, will learn to serve the Lord on their own; for now, 'we' must rule over them. The experience of nations that do not keep the law is radically devalued. This is a common feature of covering-law universalism. The Lord's servants stand in the centre of history, constitute its main current,

while the histories of the others are so many chronicles of ignorance and meaningless strife. Indeed, there is a sense in which they have no history at all – as in the Hegelian/Marxist conception – since nothing of world-historical significance has happened to them. Nothing of world-historical significance will ever happen to them except insofar as they move toward and merge with the main current. The Christian version of this sort of thing, the inspiration of much missionizing activity, is well known, as are its secular analogues. But there is a Jewish version too, according to which the exile and dispersion of the Jews, though in one sense a punishment for their sins, was in another sense central to God's own world-historical design. It served to ensure that the true monotheistic faith would have local adherents and exemplars everywhere in the world – a dispersed light, but a light still.⁷ The exile is hard on its particulars but good for the generality. Monotheism in this view is the burden of the Jews, much as civilization is the burden of Kipling's English and communism of Marx's working class.

Since at any given moment some people know the law and some people do not, some people keep it and some people do not, this first universalism makes for a certain pride among the knowers and keepers – the chosen, the elect, the true believers, the vanguard. Of course, the rejection of pride is commonly one of the covering laws and, as I have already suggested, the triumph of God can come in ways that do not invite the triumphalism of his servants. Still, it is always the case that these men and women (we can disagree over who they are) live right now in a fashion that all men and women will one day imitate. They possess right now a body of knowledge and a legal code that one day will be universally accepted. What is the state of mind and feeling appropriate to such people? If not pride, then certainly confidence: we can recognize covering-law universalism by the confidence it inspires.

The second universalism is the true alternative doctrine in Jewish history; we have to recover it from its biblical fragments. Once Judaism is in full-scale conflict with Christianity, it is repressed; it reappears in secular form in eighteenth- and nineteenth century romanticism. The crucial fragment comes from the prophet Amos, who has God ask:

Are ye not as children of the
Ethiopians unto me, O children
of Israel? ...
Have I not brought Israel out of the
land of Egypt,
And the Philistines from Caphtor,
And the Syrians from Kir?⁸

These questions suggest that there is not one exodus, one divine redemption, one moment of liberation, for all mankind, the way there is, according to Christian doctrine, one redeeming sacrifice. Liberation is a particular

experience, repeated for each oppressed people. At the same time, it is in every case a good experience, for God is the common liberator. Each people has *its own* liberation at the hands of a single God, the same God in every case, who presumably finds oppression universally hateful. I propose to call this argument reiterative universalism. What makes it different from covering-law universalism is its particularist focus and its pluralizing tendency. We have no reason to think that the exodus of the Philistines or the Syrians is identical with the exodus of Israel, or that it culminates in a similar covenant, or even that the laws of the three peoples are or ought to be the same.

There are two very different ways of elaborating on a historical event like the exodus of Israel from Egypt. It can be made pivotal in a universal history, as if all humanity, though not present at the sea or the mountain, had at least been represented there. Then the experience of Israel's liberation belongs to everyone. Or it can be made exemplary, pivotal only in a particular history, which other people can repeat – *must* repeat if the experience is ever to belong to them – in their own fashion. The exodus from Egypt liberates only Israel, only the people whose exodus it was, but other liberations are always possible. In this second view, there is no universal history, but rather a series of histories (which probably do not converge or converge only at the mythical end of time – like the many national roads to communism) in each of which value can be found. I assume that Amos would not have said 'equal value,' nor do I want to insist that equality of that sort follows from the idea of reiteration. Nevertheless, the purpose of Amos's questions is to rebuke the pride of the Israelites. They are not the only chosen or the only liberated people; the God of Israel attends to other nations as well. Isaiah makes the same point, presumably for the same purpose, in an even more dramatic way:

For [the Egyptians] shall cry unto the Lord because of the oppressors. And he shall send them a savior, and a great one, and he shall deliver them. And the Lord shall be known to Egypt, and the Egyptians shall know the Lord in that day In that day shall Israel be the third with Egypt and with Assyria, even a blessing in the midst of the land: Whom the Lord of hosts shall bless, saying, Blessed be Egypt my people, and Assyria the work of my hands, and Israel mine inheritance.⁹

Instead of many people, one mountain, what we have here is one God, many blessings. And as the blessings are distinct, so the histories of the three nations do not converge toward a single history.

Reiterative universalism can always be given a covering-law form. We can claim, for example, that oppression is always wrong, or that we ought to respond morally and politically to the cry of every oppressed people (as God is sometimes said to do), or that we should value every liberation. But these are covering laws of a special sort: first, they are learned from experience,

through a historical engagement with otherness – Israel, the Philistines, the Syrians; second, because they are learned in this way, they impose upon us a respect for particularity, for different experiences of bondage and pain, by different people, whose liberation takes different forms; and finally, because they are qualified by difference, they are less likely to inspire confidence in those who know them. Indeed, it is always possible that covering laws of this sort will produce mental and moral outcomes that contradict their likely intention: that we will be overwhelmed by the sheer heterogeneity of human life and surrender all belief in the relevance of our own history for anyone else. And if our history is irrelevant to them, so will theirs be to us. We retreat to inwardness and disinterest. Acknowledging difference makes for indifference. Though we grant the value of Egyptian liberation, we have no reason to promote it. It is God's business, or it is the business of the Egyptians. We are not engaged; we have no world-historical mission; we are, if only by default, advocates of nonintervention. But not only by default, for reiterative universalism derives in part from a certain view of what it means to have a history of one's own. So nonintervention can claim a positive foundation: the state of mind and feeling most appropriate to this second universalism is tolerance and mutual respect.¹⁰

II

Given the 'burden' of a monotheistic faith, reiterative universalism could never be anything more than a possibility within Judaism. But a God conceived to be active in history, engaged in the world, makes it always a lively possibility. There is no reason to confine such a God – who is, moreover, omnipotent and omnipresent – to Jewish history or even to the Jewish version of world history. Is not the strength of his hand everywhere in evidence? And is not he, with regard to all the nations, evenhanded? Consider these lines from Jeremiah (once again, it is God who is talking):

At what instant I shall speak concerning a nation, and concerning a kingdom, to pluck up and to pull down, and to destroy it; If that nation, against whom I have pronounced, turn from their evil, I will repent of the evil that I thought to do unto them. And at what instant I shall speak concerning a nation, and concerning a kingdom, to build and to plant it; If it do evil in my sight, that it obey not my voice, then I will repent of the good wherewith I said I would benefit them.¹¹

Clearly the reference here is to all the nations, though each one is considered independently of the others, at its own 'instant.' We might suppose that God judges them all by the same standard; the phrase 'evil in my sight' refers always to the same set of evil acts. But this is not necessarily the case. If God covenants separately with each nation or if he blesses each nation differently,

then it would make sense to suggest that he holds each of them to its own standard. There is a set of evil acts for each nation, though the different sets certainly overlap. Or, if there is only one set of evil acts (fixed by the overlap: murder, betrayal, oppression, and so on), it might still be the case that the good is produced in multiple sets – for goodness is not (I come back to this point in my second lecture) the simple opposite of evil. It is because there are multiple sets, different kinds of goods, that there must also be multiple blessings. In either of these views, God is himself a reiterative universalist, governing and constraining but not overruling the diversity of humankind.

It might nonetheless be argued that this second universalism works best if one makes a kind of peace with the idea that divinity itself is diverse and plural. Of this there is scarcely a hint in the Jewish Bible, though the prophet Micah comes close to such an argument in the following verses (the first of which is more often quoted than the second):

And they shall sit every man under his vine and under his fig-tree; and none shall make them afraid. ... For all peoples will walk every one in the name of his God, and we will walk in the name of the Lord our God for ever and ever.¹²

The second verse is commonly taken to be a survival of some earlier belief which held that each people has its own god, the god of Israel but one among many. But to take it this way does not explain the survival. Why did successive editors preserve and include the second verse? In any case, the two verses fit together; they have a parallel form and are joined by the conjunction 'for' (Hebrew: *ki*), as if the happy 'sitting' described in the first is a consequence of the plural 'walking' described in the second. Perhaps that is Micah's meaning; it is certainly one of the arguments most often made on behalf of reiterative universalism – that the tolerance it inspires makes for peace. How many of us will sit quietly under our vines and fig trees once the agents of the first universalism go to work, making sure that everyone is properly covered by the covering law?

But perhaps pluralism under the vines and fig trees does not require pluralism in the heavens above but only a plurality of divine names here on earth: 'for all peoples will walk every one in the name of his god.' And that plurality may be consistent, at least in principle, with the single, omnipotent God of Israel who creates men and women in his own image – hence as creative men and women. For then God himself must make some kind of peace with their plurality and creativity.¹³ The artists among them will not all paint the same picture; the playwrights will not write the same play; the philosophers will not produce the same account of the good; and the theologians will not call God by the same name. What human beings have in common is just this creative power, which is not the power to do the same thing in the same way but the power to do many different things in different ways: divine omnipotence (dimly) reflected, distributed, and particularized. Here is a

creation story – it is not, I concede, the dominant version – that supports the doctrine of reiterative universalism.¹⁴

III

But however things are with divine creativity, the values and virtues of human creativity can best be understood in the reiterative mode. Independence, inner direction, individualism, self-determination, self-government, freedom, autonomy: all these can be regarded as universal values, but they all have particularist implications. (The case is the same, though the particularism is greatly heightened, with the chief virtues of romanticism: originality, authenticity, nonconformity, and so on.) We can readily imagine a covering law something like ‘Self-determination is the right of every people/nation.’ But this is a law that quickly runs out; it cannot specify its own substantive outcomes. For we value the outcomes only insofar as they are self-determined, and determinations vary with selves. Reiterated acts of self-determination produce a world of difference. New covering laws may come into effect, of course, as the production continues. But it is hard to see what value self-determination could have if it were entirely ‘covered,’ legally controlled at every point. When Moses (speaking, once again, for God) tells the Israelites, ‘I have set before you life and death ... therefore choose life that both thou and thy seed may live,’ we may agree that the choice is in some sense free, but the life that is chosen is surely not self-determined.¹⁵ On the other hand, when we watch the Jews, later on, arguing over the interpretation of God’s laws and creating thereby a *way of life* – then we see what can properly be called a process of self-determination.

Self-determination is a value that I have to defend, if I defend it at all, even if I believe that unworthy or wrongful choices will often be made. (I may oppose self-determination in a particular case, however, if the agent’s choices in that case are sure or virtually sure to violate critically important moral principles; but I would still count myself as a defender of self-determination.) People have to choose for themselves, each people for itself. Hence, we determine our way of life, and they do, and they do, up to the nth they – and each determination will differ in significant ways from preceding and concurrent determinations. Obviously, we can criticize each other’s work, urge that it be made more like our own, for example, but unless our lives and liberties (or those of other presumptively innocent men and women) are injured or threatened by it, we cannot forcibly interfere. We cannot play the part of the police, enforcing the law, for (serious injury aside) the law runs out before it can be enforced. There is no covering law or set of laws that provides a sufficiently complete blueprint for our work or theirs. Nor is it the case that the laws agreed to by one people ‘cover’ all the others, so that substantive imitation can replace procedural reiteration. There cannot be a replacement of that sort if the values and virtues of autonomy are real values and virtues.

The same argument holds for the individual as for the people/nation. If we value autonomy, we will want individual men and women to have their own lives. But if all lives are radically covered by a single set of covering laws, the idea of 'own-ness' has no scope. Individual autonomy can be and undoubtedly is constrained in a variety of ways, but it cannot be and is not entirely controlled. There is no single mode of 'having' a life of one's own. We are inclined to think that such a life must be made before it can be had, that is, we think of an individual life as a project, a career, an undertaking, something that we plan and then enact according to the plan. But this is simply our (collective) understanding of individuality; it does not get at the thing-in-itself; it does not suggest the only legitimate or authentic way of being an individual. In fact, it is entirely possible to inherit a life and still possess it as one's own; and it is also possible to find a life, literally light upon it, with no forethought at all. In any account of autonomy, there has to be room not only for different self-determinations but also for different kinds of self-possession.

Reiterative universalism is not concerned only with the varieties of selfhood. The values and virtues of attachment are also best understood in the reiterative mode. Love, loyalty, faithfulness, friendship, devotion, commitment, patriotism: any or all of these can be universally enjoined, but the injunction is necessarily abstract; it does not govern the substantive experience. 'Love thy neighbor' is a familiar covering law; every particular love relationship that it covers, however, is unique. The case is the same with group attachments, including those that constitute the family, the primary group. Tolstoy was wrong to claim that 'all happy families resemble one another.'¹⁶ Novelists have, I suppose, good and sufficient reasons to focus on familial unhappiness, but if happy families are ones whose members are (among other things) mutually attached, we can be sure that the attachments are complex and diverse, varying within families as well as among them and varying even more obviously across the range of cultures, where the very idea of familial attachment is differently understood. One can specify how lovers or family members should treat one another only in the most general ways – and these are not the ways that give the relationships their specificity and value.

Every lover must love for himself; it must be *his own* love, not some universal love, that he offers to the other person. To be sure, there is an argument within Christianity according to which the only love that we can offer to others is the overflowing love with which God loves us.¹⁷ But I think that it is a misunderstanding of the Christian God, certainly of the Jewish God, a failure to grasp the meaning of his omnipotence, to suggest that his love is always the same. We should assume, instead, that divine love is differentiated every time it is focused on a particular human being – else it would not be his love *for me* (or you). But even if divine love is not differentiated in this way, human love certainly is. When it is communicated to others, it takes on different intensities, it is expressed in different ways, and it carries different emotional and moral entailments. The differences are sometimes personal,

sometimes cultural, but they are in any case crucial to the experience. We know love in its differences and would not recognize it as love if it were ever wholly conventionalized, submitted to the rule of a covering law.

Patriotism or the love of country is similarly known in its differences: how would it be possible to love one's country if it were indistinguishable from all the others? Different countries command different kinds and degrees of loyalty. These are the attachments through which the 'self' in the phrase 'national self-determination' is constituted, and as determinations vary with selves, so national selves vary with kinds of attachment. In political life, the values of autonomy and loyalty work together to produce diversity – men and women differently associated, whose mutual attachments are differently expressed, enacted, and celebrated. If people are to love their country, Edmund Burke wrote, their country must be lovely.¹⁸ Yes; and perhaps we can find some minimal standards of loveliness that everyone will acknowledge (or, more likely, some widely recognized, because widely experienced, forms of ugliness), but for the most part what is lovely is determined in the eyes of the beholder. There is no universal aesthetic for countries.

Is there a universal ethic? Justice is certainly the chief of the values and virtues that are claimed for the covering-law account. 'But let judgment run down as waters,' says Amos, 'and righteousness as a mighty stream.'¹⁹ In the geography of ethics, as it is commonly understood, there is only one mighty stream, one Nile or Mississippi that floods and fertilizes the whole world. There is only one just social order, and all the negative injunctions of the theory of righteousness – against killing, torturing, oppressing, lying, cheating, and so on – invite covering-law expression: the general and absolute 'Thou shalt not!' Similarly, any exceptions to such laws must be exceptions for everyone, everywhere, as in the standard example of killing in self-defense.

Justice seems to be universal in character for the same reason that autonomy and attachment are reiterative – out of recognition of and respect for the human agents who create the moral world and who come, by virtue of that creativity, to have lives and countries of their own. Their creations are greatly diverse and always particular, but there is something singular and universal about their creativity, some brute fact of agency captured, as I have already suggested, by the claim that all human agents have been created in the image of a creator God. Justice is the tribute we have learned to pay to the brute fact and the divine image. The principles and rules of justice have been worked out, over many centuries, so as to protect human agents and set them free for their creative (reiterative) tasks: one set of principles for one set of agents. But there is a problem here. It is certainly possible to build an account of justice on the foundation of agency. Start with equal respect for the agents (and every man and woman equally an agent), and there is probably no clear stopping point short of a fully elaborated description of a just society. Looking at the elaborated description, however, we may well feel that we have made too much of agency – for the more we make of it, the less

there is for it to make. Why should we value human agency if we are unwilling to give it any room for maneuver and invention?

If we think of justice as a social invention, variously made, one more product of human creativity, then its making does not seem all that different from the practical working out of autonomy and attachment. What reasons do we have to expect a singular and universal justice? Is that not like protecting the plurality of playwrights while insisting that they all write the same play? But do not all the playwrights require the same protection not, to be sure, against unfriendly audiences or bad reviews, but against censorship and persecution? How are we to draw the line between covering laws and reiterative moralities?

IV

I want now to look at an attempt by a contemporary philosopher to draw this critical line – Stuart Hampshire's essay 'Morality and Convention.'²⁰ Hampshire provides an especially useful argument because he is equally sensitive to the claims of particular ways of life rooted in 'local memories and local attachments' and to the claims of a universal morality 'arising from a shared humanity and an entirely general norm of reasonableness.' The first set of claims is strongest, he thinks, in those parts of morality that have to do with 'the prohibitions and prescriptions that govern sexual morality and family relationships and the duties of friendship.'²¹ 'Govern' here is one of the verbs of particularity: in these areas, at least, we are to determine our own prohibitions and prescriptions. The second set of claims finds its proper place in the principles of right and the rules of distribution. 'Principles' and 'rules' here are nouns with global reach; their content is supplied by a reason that belongs to no one in particular.

This is to mark off autonomy and attachment from justice in a way that seems to fit nicely with the distinction between reiterative and covering-law universalism. With regard to kinship and friendship, Hampshire recognizes a 'license for distinctiveness.' With regard to distribution, he recognizes a 'requirement of convergence.' His 'license' allows for many different histories; his 'requirement' suggests a steady (and familiar) pressure toward singularity.²² The values and virtues of autonomy and attachment are matters of custom, feeling, and habit; and there is no reason why they should be the same in different societies (hence the 'license' is itself universal). The values and virtues of justice are a matter for rational argument; in principle, they should be similar, if not identical, everywhere.

It is not easy, however, to make practical sense of this distinction. Consider for a moment the question of family relationships, that is, the kinship system. In most of the societies that anthropologists study (and still, to some extent, in our own), the rules of kinship are also the rules of distributive justice. They determine who lives with whom, who sleeps with whom, who defers to whom, who has power over whom, who gives dowries to

whom, and who inherits from whom – and once all this has been determined not much room is left for the imposition of a rational and universal distributive code. Now the license for distinctiveness and the requirement of convergence come starkly into conflict, for they both seem to govern the same terrain.

Hampshire deals with this conflict by suggesting that justice serves as a kind of negative constraint on autonomy and attachment. What rationality requires, he writes, is ‘that the rules and conventions [in this case, of sexual morality] should not cause evident and avoidable unhappiness or offend accepted principles of fairness.’ This is a proposal for cultural diversity within the limits of reason alone (or of common sense: what does ‘accepted’ mean?), and the proposal will seem more or less attractive depending on how limiting the limits are. For Hampshire, the model of cultural diversity is the diversity of natural languages, with their radically distinct and seemingly arbitrary grammars and ‘rules of propriety,’ and the model of the rational limits is the ‘presumed deep structure in all languages.’²³

But this linguistic analogy is also a puzzle, for the deep structure of language, which is indeed reiterated in all natural languages, constitutes rather than regulates the various grammars. Were we ever to find a language with an alternative deep structure we would have to surrender the universality presumption; we would not set about ‘correcting’ the deviant language. But covering laws in morality – the ‘accepted principles’ of justice, for example – are precisely regulative in character: were Hampshire to find a morality without them, he would want, presumably, to criticize and correct it.

It is entirely possible that our reiterated moralities and ways of life have a common deep structure. But the more important question for us is whether they have a common substance. Is there in fact a single set of principles located somewhere in the core of every morality, regulating all the workings-out of autonomy and attachment? Put this way, the question invites a negative answer; we have only to consult the anthropological literature. Iteration makes for difference. We will find, however, an overlapping plurality of sets, each of which bears a family resemblance to the others. Hence we will know them (all) to be principles of justice, and we may well be led, by the interactions of states and peoples, say, to interpret them in ways that emphasize their common features. But our interpretations can do no more than suggest the *differentiated commonalities* of justice – for these common features are always incorporated within a particular cultural system and elaborated in highly specific ways. We abstract from the differences to a universal code, something like H. L. A. Hart’s ‘minimum natural law.’²⁴ But there can never be a single correct statement of the code, any more than there can be a single set of positive laws that gets the natural law right once and for all. Every statement is also an interpretation, carrying, let us say, philosophical freight; and it is likely to take on, additionally, the cultural freight of the language in which it is stated.

In any case, the same search for commonality and the same abstraction is possible, as the world grows smaller, in the realms of sexuality and kinship.

So if the abstracted code sets some limits on social practice, it does so across the full range of moral life, and not only with regard to justice. And the possibility of differentiation also exists across the range: there is no distinction of areas here, no separable social space where covering-law universalism can play a dominant part. When we draw the critical line, there is nothing on the other side. Either the covering law covers everything – or better, only trivialities are reiterated: each people has its own folk dances – or everything is reiterated, and (partially) differentiated in the course of reiteration, including justice itself.²⁵

V

Reiterative universalism, however, is still a form of universalism. I have already suggested the ways in which it invites covering-law expression: the warrant for reiteration (like Hampshire's license for distinctiveness) is itself universal. I do not mean that the warrant pre-exists every reiterative effort – though it might do that if we took it to be a divine warrant – but only that every claim to moral making, every claim to shape a way of life, justifies the claims that come later. And the experience of reiteration makes it possible, at least, for people to acknowledge the diversity of claims. Just as we are capable of recognizing a particular history as our own and another history as someone else's, and both of them as human histories, so we are capable of recognizing a particular understanding of autonomy and attachment as our own and another understanding as someone else's, and both of them as moral understandings. We can see the family resemblances and acknowledge at the same time the particular character of each member of the family. The acknowledgment is additive and inductive, as I suggested earlier, and so it does not require an external standpoint or a universal perspective (from which we might leap immediately to a covering law). We stand where we are and learn from our encounters with other people. What we learn is that we have no special standing; the claims that we make they make too, the children of Israel and the children of the Ethiopians, But it is a moral act to recognize otherness in this way. If reiteration is, as I believe, a true story, then it carries in its telling the sorts of moral limits that are usually said to come only from covering-law universalism.

Reiteration is also universal in its occasions. We may make our own moralities, but we do not make them randomly or any which way. The autonomous and attached agents are persons of a certain sort, morally creative human beings, and the moralities they create must fit the experiences they have.²⁶ The experiences that make for moral making have to do most often with lordship and bondage, that is, with oppression, vulnerability, and fear, and, pervasively, the exercise of power – experiences that require us to justify ourselves and to appeal for help to one another. We respond to the requirement creatively, which is to say, differently, though most often, perhaps, with the misplaced confidence that ours is the only legitimate response. What the

historical record suggests, however, is that there is a wide range of possible responses and a significant number of actual responses that are legitimate in at least this sense, that they fit the experiences; they meet the requirements of their occasions.

These requirements can be inadequately or dishonestly met, but it is hard to see how they might be missed entirely. It is a common and often accurate criticism of existing moralities, for example, that they conceal the fact of oppression and so serve the interests of the oppressors. But no morality made by human beings, in the face of human experience, can serve the interests of oppressors alone. For no particular human interest can be served without opening the way to a wider service. Consider again the exodus story, which has as its apparent moral starting point Israel's consciousness of oppression. 'And the children of Israel sighed by reason of the bondage, and they cried, and their cry came up to God by reason of the bondage.'²⁷ The bondage was the reason for the cry, and this suggests an already established understanding of what a free human life is or might be like. However such lives are socially assigned, they can be claimed by anyone. We can be sure that the Philistines and the Syrians made similar (but not identical) claims: they also 'cried' – though their cries were thematically as well as idiomatically different from those of the Israelites. Moral making encompasses and enables these cries, always providing (or sooner or later providing) principles of justice in terms of which they make sense.

Every response to a moral occasion can be criticized from the standpoint of other, earlier or concurrent, responses. We can learn from each other, even when the lesson learned is not exactly what the other intended to teach. The value of the gift is not fixed by the giver. Nevertheless, there is a value in gifts: one nation can in fact be a 'light' to another. Moral makers (legislators and prophets and also ordinary men and women) are like artists or writers who pick up elements of one another's style, or even borrow plots, not for the sake of imitation but in order to strengthen their own work. So we make ourselves better without making ourselves the same. Indeed, we cannot make ourselves the same without denying or repressing our creative power. But denial and repression are themselves creative, if perverse, uses of that same power and are always followed by other uses.

Consider now a more concrete illustration of our different responses to similar moral occasions. I begin with the strongest contemporary candidate for covering-law status: the principle that human beings are entitled to equal respect and concern.²⁸ The relevant moral occasion is the experience of humiliation or degradation – conquest, slavery, ostracism, pariah status. Some of the men and women who are conquered, enslaved, ostracized, or declassed will respond with arguments about respect – drawing on the resources of the existing morality. But because this response has to be repeated again and again in different circumstances, with different resources, the idea of respect is itself differentiated and its names are multiplied: honor, dignity, worth, standing, recognition, esteem, and so on. These are all the

same thing, perhaps, under a sufficiently abstract description; in practice, in everyday life, they are very different things. We can hardly treat everyone in accordance with all of them; nor is it clear, in fact, despite the covering law, that we can treat everyone equally in accordance with any one of them. The injunction of the covering law presupposes the universality that it is intended to create. Only God can show equal respect and concern for each of the creatures created in his image. This does not preclude particularly fashioned relationships with individual men and women, but it does preclude the sort of favouritism that the biblical God regularly displays – as, for example, when he prefers Abel's sacrifice to Cain's. The fact that even God is imagined to play favorites suggests how hard it is for us to imagine ourselves behaving differently.

In practice, again, we show equal respect and concern only when our roles require it and then only over the population relevant to the roles. Today, the injunction is most often directed to state officials: they must exemplify this sort of egalitarianism in all their dealings with citizens of the state (but not with anyone else). The citizens are, so to speak, collectively their favorites, but among citizens no further favoritism is allowed. And then the same injunction is reiterated for other officials and other sets of citizens. The effective covering law is that all officials should treat their *fellow* citizens with equal respect and concern. But this is another one of those covering laws that immediately makes for difference. Neither the same fellowship nor the same idea of respect will be universally shared – and then what demands respect is only indirectly the individual himself; it is more immediately the way of life, the culture of respect and concern, that he shares with his fellows. Hence, the law has this form: people should be treated in accordance with their own ideas about how they should be treated (or, to guard against arrogance and presumption and to protect people with inferiority complexes or what Marxists call 'false consciousness,' according to the ideal standards of their own way of life). That is not an unimportant moral rule, but it is probably best understood in the reiterative rather than the covering-law mode.

We respect the different outcomes of the rule insofar as we recognize them as reiterations of our own moral effort, undertaken on similar occasions but in different historical circumstances and under the influence of different beliefs about the world. Respecting the outcomes does not preclude criticizing them, nor need it prevent us from calling into question the beliefs on which they rest. But the most common occasion for criticism is the failure of practical outcomes to match conceptual ones: performances falling short of promises. Thus we might express a special concern for our own children and recognize that another set of parents were doing the same thing even though what they were actually doing, the concrete behavior through which their concern was expressed, was significantly different from our own. And then, since we know what it means to express concern, we will also be able to recognize cases where there was no genuine concern at all but rather abuse or neglect (or no equal concern but rather favouritism and discrimination).

Similarly with states and officials: we have little difficulty in recognizing situations where, whatever is being said, the required moral effort is not in fact being made – as in the case, for example, of British officials and Irish peasants in the years 1845–49.²⁹ But that is not to say that when the effort is made it must always be made in the same way.

So I have a special concern for my own children, my friends, my comrades, and my fellow citizens. And so do you. What reiterative universalism requires is that we recognize the legitimacy of these repeated acts of moral specialization. I make some people special, but that only means that they are special for me; and I am capable of acknowledging *and ought to acknowledge* that other people are special for you. What we might then think of as restricted or particularized covering laws extend across each field of specialization. But there is no cover across all the fields except for the cover provided by mutual recognition and then by our different accounts of the commonalities of reiteration. Perhaps there is a general rule that all the fields must be covered; we must meet the requirements of our moral occasions. We must explain and defend ourselves, ground our complaints, justify our claims, situate ourselves within the moral world, and contribute as best we can to its construction and reconstruction. But we do all these things among ourselves, in some particular here-and-now, working with a local set of concepts and values. This is only to say again that reiteration is a true story.

Reiterative universalism operates mostly within the limits of ours and theirs – not of Reason with a capital ‘R’ but of our reason and their reason. It requires respect for the others, who are just as much moral makers as we are. That does not mean that the moralities we and they make are of equal value (or disvalue). There is no single uniform or eternal standard of value; standards get reiterated too. But at any moment in time, a given morality may prove inadequate to its occasions, or its practice may fail to measure up to its own standards or to a newly developed or dimly made out set of alternative standards – for reiteration is a continuous and contentious activity. The largest requirement of morality, then, the core principle of any universalism, is that we find some way of engaging in that activity while living in peace with the other actors.

THE NATIONAL QUESTION REVISITED

I

In this second lecture, I want to try to make the argument developed in the first do some serious work – to use the ideas of covering-law and reiterative universalism in a discussion of the national question. I will begin by restating the two ideas, dwelling for a moment on the second, which is less familiar. Covering-law universalism describes the standard philosophical effort to bring all human activities, all social arrangements, all political practices,

under a single set of principles or a single conception of the right or the good. The idea of reiteration, by contrast, reflects an understanding that morality is made again and again; hence there cannot be a single stable covering law. Moral creativity is plural in its incidence and differentiated in its outcomes – and yet, it is not wholly differentiated, as if the agents and subjects of all moralities had no common kinship. In fact, they can recognize themselves and one another as moral makers, and from this recognition there follows the minimalist universalism of reiteration.

A rough analogy may serve to illustrate my argument. Think of a hundred architects, from different times and places, each one engaged in designing the same sort of building, a home, say, or a temple or a school. They are each trying as best they can to get the building right, a goal they have in common with moral makers. But they are not trying to design the same building – the one perfect building, which, if any of them did get it right, would make all future designs unnecessary (we would just go on building that one building over and over again). In principle, they could all get it right, even if all their buildings were radically different from one another. For though their efforts are similarly occasioned by the need for a place to live or pray or study, their circumstances and conceptions are dissimilar; they understand places differently, and also living, praying, and studying. In practice, of course, they will not get it right; all their buildings will be controversial, subject to criticism and improvement, serving eventually as the background of new designs and new understandings of design. At the same time, since they are all designing buildings for human beings, there will be certain features common to all the buildings, and reiterated theories about these features will always be one source of architectural criticism.

In a similar way, morally creative men and women produce many different moralities, none of them the one perfect morality that would render their creativity superfluous. From the differentiated commonalities of these creations, we can recognize all of them as the work of human hands, and our accounts of what is common and why provide us with a set (itself never perfectly understood or articulated) of universal constraints. But one can make too much of these constraints, so that they overwhelm the creative effort, pressing us all to live in accordance with a single ideal, a practical orthodoxy of one sort or another. I have argued that this is the usual thrust of the covering-law view – and that it is better, in morality as in architecture, to leave room for the reiteration of difference. But what if the things we make (buildings, codes, countries) turn out to be ugly?

II

It is not only morality but also immorality that gets reiterated in the course of human history. There are, however, important differences between the two reiterations. We would not talk of ‘making’ immoralities, only of acting immorally; for when we act immorally we do not act in accordance with a

theory of immorality and we do not conceptualize our activity or elaborate it into a series of injunctions and rules. We usually lie about what we are doing, sometimes to other people, sometimes to ourselves. We do evil, thinking or pretending that we are doing good. There are contradictions, then, between what is said and what is done whenever what is done is wrong. But the contradiction between theory and practice, pervasive in morality, is entirely missing in immorality. No theoretical construction of evil, no 'doctrine of ill-doing' exists that can be betrayed in practice.

This point is not a logical one. We can easily enough imagine a theorist of evil who was also a timid soul – a hypocrite, therefore, who failed to live down to the standards he defended. Perhaps the Marquis de Sade, despite a few tawdry adventures, was a person of this sort. But there have not been many such people. The positive doctrinal creation, the making of immorality, is as uncommon as the practice of immorality is common. People do evil in the same repetitive way in which they do good, but they do not think about evil in the same way. It may be that there is less to think about, at least in this sense: that goodness is more readily elaborated and differentiated, while evil has a more singular and uniform character.³⁰ I do not mean to deny the imaginativeness that can be invested in cruelty, say, but cruelty is imaginative in practice, not in theory. It would be a waste of creative energy to develop an account, let alone a series of accounts, of the bad life. We understand the bad life in negative or oppositional terms. But it is not the case that every version of the good life has an opposite that is a version of the bad life. Rather, one of the standard forms of badness is an opposition to or denial of the principles and rules that make all the versions possible – and then evil is an overt, active, and inventive opposition.

I can make the same point in the language of my first lecture. We act immorally whenever we deny to other people the warrant for or what I will now call the rights of reiteration, that is, the right to act autonomously and the right to form attachments in accordance with a particular understanding of the good life. Or, immorality is commonly expressed in a refusal to recognize in others the moral agency and the creative powers that we claim for ourselves. And immorality passes into evil when the refusal is willful and violent, turning the others, against their will, into beings 'less than human' (or, less human than we are). Conduct of this sort will usually be accompanied by theoretical justifications, but these will not take the form of creative immoralities. Justification is always moral in character, and the justification of evil is no exception. The central problem of moral creativity is that it encompasses and justifies evil actions. My purpose in this second lecture is to address this problem, looking in some detail at one of the most commonly reiterated theories of autonomy and attachment, the theory of nationalism.

Certainly, there is evil enough in our domestic societies, among ourselves, in families, schools, markets, corporations, and states. But it is probably true that the greatest evils in human history have occurred and continue to occur between nations, and a certain sort of nationalism has been the political

carrier of these evils, as well as their theoretical justification. To see our own nation in a certain way is also to will evil toward some or all of the others. At the same time, however, nationalism is one of the most direct expressions of collective autonomy and attachment. That is why, in my first lecture, I took national self-determination as the paradigmatic form of moral reiteration: first one nation, and then another. The paradigm, to be sure, is conceptually limited and historically contingent. The nation is by no means the most important of the collectivities within which moral ideas and ways of life have been elaborated. The experience of ancient Israel in this regard is distinctly unusual. Even with reference to self-determination, the national entity, itself differently constituted and understood in different historical periods, could as easily be replaced by the clan or the tribe or the city-state or the community of faith.³¹ The argument, for better and worse, would be the same. Any collectivity can provide the institutional structures and the patterns of agency necessary for working out a version of the good life. And any collectivity can display the egoism, arrogance, and general nastiness that we associate today with the rogue nation. In any case, it is this association that I want to investigate.

III

The nation is for us the chief representative of particularity. And on one standard philosophical view, particularity makes for nastiness; groups like the nation, as soon as they are politically organized, eagerly take up the business of self-aggrandizement, seizing, dominating, and destroying rival groups (which act in exactly the same way whenever they can). Edmund Wilson, in his book on the American Civil War, expresses this view in biological terms:

In a recent ... film showing life at the bottom of the sea, a primitive organism called a sea slug is seen gobbling up small organisms through a large orifice at one end of its body; confronted with another sea slug of an only slightly lesser size, it ingurgitates that, too, ... The wars fought by human beings are stimulated as a rule ..., by the same instincts as the voracity of the sea slug.³²

But it would be difficult to construct a plausible account of international society on this model. And if we replace instincts with interests and interests with conceptions of interest (or ideologies), we will not get anything like a uniform voraciousness. Nations, even nation-states, behave very differently according to their (reiterated and differentiated) understandings of themselves and of their place in the world. Writing about individuals in domestic society, Machiavelli suggests a class basis for such understandings: 'If we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, while the latter have only the wish not to be dominated ... to live in the enjoyment of liberty.'³³ Conceivably, there

are 'noble' and 'plebeian' nations, the first always a threat, the second always threatened. It is not only a question of instinct and size, as with Wilson's sea slugs, but also of ambition and honor. And then the classic solution to the problem of domination is this: the less ambitious or smaller and weaker individuals or nations, whose only wish is not to be dominated, band together, invent something like covering-law universalism, and create a political agency – the state – to enforce the law. In international society, covering-law universalism, were it ever to be fully effective, would require a universal state.

But the classic solution works best in domestic society, where the nobles are indeed defeated, though usually not, as Machiavelli advised, exterminated, and a state is fashioned which, sometimes at least, protects its members from domination. What lies behind this success, when and where it occurs, is the common culture of the two classes. Though their material life is very different, and though they develop somewhat different moral understandings and an often antagonistic politics, they are likely to share a wide range of cultural artifacts – language, religion, historical memory, the calendar and its holidays, the sense of place, a specific experience of art and music – and as a result of some or all of these, what we call 'nationality.' The emergent nation-state, then, can be viewed by its members as an appropriate and already familiar framework for the exercise of autonomy and the formation of attachments. The strongest evidence that they do in fact view it this way came in 1914, with the collapse of Marxist internationalism. The international proletariat, apparently, had no common culture; nor is there much commonality in what is sometimes called, with more hope than insight, the community of nations. Hence the plebeian nations are unlikely to imagine a universal state (as individual plebeians might well imagine the nation-state) as a framework within which *their own* culture could find expression. Perhaps no existing culture would find expression in such a frame; perhaps the language of the universal state would be Esperanto and its morality an Esperanto-like code. But the more plausible expectation of the plebeian nations is that universalism would take shape as a 'noble' imposition.

So it appears, indeed, to the noble nations as well. And it is at this point that their national ambition becomes morally interesting. If ambition is merely appetite, if it is satisfactorily explained as a will to power, a desire to dominate for the sheer pleasure (or for any of the other advantages) of domination, then the nobility of the noble nations has only psychological interest. We have to understand it in order to repress or contain it. But national leaders and the intellectuals they enlist commonly give reasons for their pursuit of domination. They need to justify themselves; hence their reasons are moral reasons, which take the form I am not sure that any other is available – of covering-law universalism. They seek to extend their power, so the leaders and intellectuals say, only in order to enforce the law:

Make ye sure to each his own
That he reap where he hath sown.

Kipling, of course, is a poet of imperialism, and we are likely to think of nationalism as the ideology of anti-imperial revolt. But empires in the modern world are acquired and sustained by nations, and the ideology of imperialism is also nationalist in character, inviting us to recognize (and approve of) a nation-with-a mission. Freedom is the primary goal of the anti-imperial revolt; the imperial nation aims higher – at civilization, enlightenment, modernity, democracy, communism, and so on. In a brilliant book on the nation as an ‘imagined community,’ Benedict Anderson has argued that nationalism necessarily involves an acceptance of limits:

The nation is imagined as *limited* because even the largest of them ... has finite, if elastic boundaries, beyond which lie other nations. No nation imagines itself coterminous with mankind. The most messianic nationalists do not dream of a day when all the members of the human race will join their nation in the way that it was possible, in certain epochs, for, say, Christians to dream of a wholly Christian planet.³⁴

That is true enough, and helps to explain why reiterative universalism has long been a favourite doctrine of nationalist intellectuals. But it has never been the only doctrine; there have always been other intellectuals who, if they did not dream of a wholly naturalized humanity, no foreigners left in the world, dreamed nonetheless of a humanity whose life would be shaped by the values of one of the nations that composed it – the whole world, say, made safe for democracy.

This is covering-law universalism; it is different, no doubt, from the religious version of the same thing but not entirely different. Indeed, to imagine a nation-with-a-mission is to come very close to Jewish, if not to Christian, understandings of universalism. It is appropriate, then, that one of the strongest defenses of the idea of a national mission comes from a contemporary Jewish philosopher. ‘No nation in the world,’ writes Martin Buber, ‘has [self-preservation and self-assertion] as its only task, for just as an individual who wishes only to preserve and assert himself leads an unjustified and meaningless existence, so a nation with no other aim deserves to pass away.’ Every nation, Buber says, has (or should quickly find!) a ‘mission’ of its own – a claim that sets up the central problem of his political thought: how to draw the ‘line of demarcation’ between different and possibly conflicting national missions so that all of them can be (reiteratively) pursued. But though it is his word, ‘mission’ does not seem to me the word that best expresses Buber’s meaning – for it belongs to the world of the covering law, and that is not his world. He is arguing for a commitment to the kind of belief or value that might inspire and sustain a common life and lift it out of mere existence. No doubt he has views about the most appropriate beliefs and values, at least for his own people. At the same time, however, he denies that there is any ‘scale of values’ with which national commitments can be ranked and ordered.³⁵ Among missionaries, such denials are uncommon, if

not impossible. Nor are national missions, especially noble ones, at all easy to mark off from one another. They have global reach; they reflect the highest aspirations; and they require a kind of triumph that is incompatible with Buber's commitment to reiteration. If one believes in the covering law, how is it possible to avoid the further belief that some missions are more urgent, more valuable to a suffering or benighted humanity, than others?

In fact, what I have been calling 'covering-law universalism' often takes more modest forms: the civilizing mission of this or that nation may extend only to a few neighboring tribes; the correct ideological position may be imposed only on the country next door; immoral and unnatural practices may be stamped out only in the scattered provinces of a minor empire. One does what one can. All such efforts, however, are universalist in spirit – first, because they are governed by a 'law' whose coverage is not limited to the people among whom it was first enforced; and second, because they are aimed at the good of other people. We are inclined today to doubt the legitimacy of the coverage and the sincerity of the aim except in our own case, when doubt is commonly repressed. But I suspect that the legitimacy and sincerity have always been doubted, except in the local case. Covering-law universalism is a jealous God, and all the other gods but mine are idols.

Of course, the covering law is always a cover for expansion and exploitation. But it would be wrong to assume that that is all it is. There has probably never been a case of national aggrandizement that did not draw on, that did not have to draw on, the idealism of (some of) the members of the nation. And idealism here means their belief in this or that version of covering-law universalism and in themselves as agents of the law. They carry to foreign lands a culture to which other people ought to be assimilated or a doctrine by which they ought to be ruled. They teach the others a way of life that more closely expresses natural law or divine command or historical development. Might such beliefs ever be true? In his articles on India, Marx argued that a particular set of them was true, while at the same time denying the idealism of their agents. The more advanced nations, as if moved by an invisible hand, did good for the people they conquered and oppressed.

England it is true, in causing a social revolution in Hindustan, was actuated only by the vilest interests. ... But that is not the question. The question is, can mankind fulfill its destiny without a fundamental revolution in the social state of Asia? If not, whatever may have been the crimes of England, she was the unconscious tool of history in bringing about the revolution.³⁶

In the next historical stage, socialist governments in the advanced nations would play the same revolutionary role with greater self-awareness and, presumably, less violence. But Marx's argument depends, like all other covering-law universalisms, on the further belief that mankind has a single destiny, which all its members must alike 'fulfill.' We have no way of knowing our destiny,

however, and there is probably more historical warrant for expectations of difference even in the local uses, say, of new and universal technologies. For now, at least, every attempt to enforce singularity is an act of faith, exactly as such attempts were at the time of the Islamic conquests or the crusades of Christendom.

Marx was also wrong to insist that the English in India were 'actuated *only* by the vilest interests.' No doubt, their interests were mixed, as human interests always are. We would probably not be inclined to say of John Stuart Mill, working in the London offices of the East India Company, that he was doing something vile, moved only by personal or national selfishness.³⁷ But we do judge imperial expansion and colonial domination harshly, and for good reason. Expansion and domination deny to their victims the rights of reiteration: autonomous development and freely chosen attachment. The denial is immediately effective even if its intention is, as it surely would have been had Marx or Mill been in charge, to vindicate those same rights in the long run. For what underlies this benevolent intention is the morally dangerous belief that the victims have somehow lost their powers of agency, their cultural and moral creativity, their capacity to shape their own lives. They are dim, unenlightened, barbarian, ignorant, and passive – trapped in a stagnant traditionalism, cut off from history itself, helplessly waiting to be rescued by the more advanced nations.

IV

The victim nations, plebians all, prove this belief to be false whenever they resist the power that dominates them – as the Indians did in 1857, in the Sepoy Rebellion, long before they had reaped the benefits of the English social revolution. Indeed, the resistance falsifies not only the imperial nation's view of its subjects but also, soon enough, its view of itself. To sustain their empire, the agents of enlightenment must adopt the manner and methods of the barbarian. A harsh cruelty is necessary to enforce the covering laws of civilization and to further the cause of progress. And when the resistance is renewed, the cruelty is increased. Nationalism, in its best-known version, is the creed of the resistance, especially of the resistance in its second phase, when self-consciousness has been heightened by repression. It is 'the ideology,' as Tom Nairn has written, 'of weaker, less developed countries struggling to free themselves from alien oppression.'³⁸ Each nationalist movement produces its own variant of this ideology. I shall make no attempt to catalogue the actual and possible varieties; they are best understood as the products of reiteration: similar struggles (or at least struggles to which we give the same name) with different ideological and practical outcomes. But these are now reactive reiterations, and they involve certain distortions in what we might imagine as the normal processes of cultural production – when production is free from both the constraints of imperial power and the imperatives of resistance. Perhaps normality of this sort is utopian: normal

nowhere. Distortion is still the right word to describe the pressures that push (some) new nations toward an imperialism of their own.

Nationalist ideology in the 'less developed countries' often has a forced or hothouse quality. The making of cultures and moralities is a process within which, at any particular moment, many elements are in play. But the effort to generate a coherent nationalism, driven by political urgencies, has highly artificial results; its protagonists are less interested in sustaining the process than in inventing a homogeneous and unilinear 'tradition.' And then the nationalist movement or the state that it creates will try to suppress whatever does not fit the invention. It is indeed a problem of reiterative processes that they can themselves be reiterated; there is no patent, as Anderson has written, on the idea of liberation. If the global reach of imperial covering laws is challenged by nationalism, so the local reach of nationalism can be challenged by still more localized and parochial communities – Greater India, for example, by Pakistan, Kashmir, Dravidistan, and so on – each one claiming its right to enact its own culture. The leaders and intellectuals of nationalist movements commonly demand a full stop, absolute loyalty to the nation as they conceive it. But that conception, designed to serve an immediate political purpose, is necessarily subject to further development and differentiation.³⁹ The test of every nationalism, then, is the 'nation' that comes next. I will come back to this point later on. The 'forcing' of nationalism has a second result; it helps to account for the regressive character of many nationalist ideologies. I hasten to add that 'regressive' is a misleading term if it suggests that the processes of cultural creativity move in a single direction, toward a goal that is uniformly affirmed. But they do *move*, and just as the need to generate a coherent ideology may cut off the movement, so the need to oppose the 'civilizing' or progressive ends of covering-law universalism may reverse it. Then the new ideology is likely to proclaim the sacredness of everything old and archaic in the national heritage and to assign a higher value than was ever assigned before to religious fundamentalism and cultural integrity. Gandhi's spinning wheel is the sort of symbol that many nationalists seek, evocative of a cherished, if mostly mythical, past.⁴⁰

Normally, the ancient and honorable usages of the nation are subject to a continuous (and also continuously contested) revision. Now the agents of revision are likely to be called disloyal and its products inauthentic. And though authenticity is, one would think, always relative to a particular national history (and dubious even in its relativity, given the actual variousness and the internal contradictions of all such histories), nationalist intellectuals often reach for a stronger argument: that their culture, morality, and politics is authentic *tout court* – real, historical, orthodox, organic, faithful, uncorrupted, pure, and enduring – and so superior to all the synthetic, unnatural, and hybrid creations of other peoples. Here they imitate the universalists they oppose, insisting that national cultures can be ranked on a single scale. They adopt new criteria and reverse the old order, but they retain the ranking.

In this sense, though not in many others, nationalist perversity resembles enlightenment virtue.

But this response to imperial enlightenment and its covering laws, this invention of a 'superior' traditionalism, is often inadequate to its occasion – and it suggests very nicely what such inadequacy means and how it can be recognized. The occasion is a history of oppressive and degrading rule; the response is both ideological and practical; and it is inadequate insofar as it reproduces, rather than resolves, the occasion. Nations with 'superior' traditions are quick to impose themselves on smaller and weaker nations in their midst or on their borders, quick to repeat what Isaiah Berlin, in his essay on Herder, describes as 'the barbarous disregard of ... spontaneous, natural forms of human self-expression.'⁴¹ The disregard is only made easier by the new oppressors' claim that they stand at the very top of the scale of naturalness and spontaneity.

V

The rank ordering of cultures always threatens the men and women whose culture it devalues. There is no innocent ranking, as if we could give grades that were merely hortatory and not invidious. Low grades are invitations to, and potential justifications for, 'barbarous disregard,' and that last phrase translates often enough into a politics of conquest and repression. But have I not just given a low grade to certain national cultures? Have I not set up a rank ordering according to which nations committed to rank ordering rank low? Yes, I have done exactly that: following the minimalist universalism that governs reiteration, I have proposed a very limited ranking, which is compatible with recognizing rather than disregarding (most of) the 'spontaneous, natural forms of human self-expression.' But I want to leave open the possibility that 'barbarous disregard' is also, sometimes, spontaneous and natural. If it is, then it needs theoretical devaluation and political control. This is only to acknowledge that while there are (as the prophet Isaiah proclaimed) blessings available to every nation, not every nationalism is blessed.

The point of a limited ranking of this sort is to protect the commonality of nations from the 'noble' nations – and also from plebeian nations aspiring to join the ranks of the noble. The point is to devalue nobility whenever it aims, as Machiavelli thought it always would, at domination. I have argued that covering-law universalism, in its different versions, is the most important of the doctrines that justify (I do not say bring about) this 'noble' nationalism. I want to argue now that the theory of reiterative universalism provides the best account of nationalism in general and the most adequate constraint on its various immoralities. The adequacy, of course, is conceptual, not practical; I shall not have much to say about practical constraints. But then, why is the standard of adequacy not met perfectly well by a single covering law that prohibits conquest and oppression? Do not most versions of covering-law universalism include a law of that sort? The problem lies with the other

laws, which commonly require national cultures to conform to a single standard and which devalue those that fall short. A doctrine is not conceptually adequate by virtue of one of its concepts, so long as this one is undermined by all the others. Marxism (or Marxism–Leninism) once again provides a useful example, when it simultaneously upholds the right of national self-determination and defends revolutionary wars against nations that resist the forces of historical advance. The Marxist concept of developmental stages, even when it is conceived in predictive rather than normative terms, stands uneasily alongside the concept of self-determination.⁴²

Reiterative universalism, by contrast, makes no predictions at all. Or, at least, it makes no predictions about the substance of the successive reiterations. There is a general prediction, suggested by those deviant lines from Micah that I quoted in my first lecture: if each of us walks with his own god, then all of us will sit at peace under our vines and fig trees. In his defense of religious toleration, John Locke makes a similar prediction: ‘The establishment of this one thing,’ he wrote, ‘would take away all ground of complaints and tumults upon account of conscience.’ I suppose that it is a piece of extraordinary optimism to suggest that there will not be ungrounded complaints and tumults, but that was Locke’s claim: ‘There is only one thing which gathers people into seditious commotions, and that is oppression.’⁴³ The parallel argument for international society would hold that oppression is the sole cause of all the wars of national liberation and national unification that have plagued the modern world. The peace of vines and fig trees will finally arrive when consciences are no longer constrained and nations are set free.

I have in the past defended a weakened and chastened version of this argument.⁴⁴ It does appear, however, that peace is a more immediate outcome of religious toleration than of national liberation. The most obvious reason for this is that churches do not come attached to territories, and so the reiterative processes that split and divide churches do not often provoke territorial disputes. The control of holy places is disputed, of course, but mostly it is other-worldly territory that is at issue. Nationalism, by contrast, is much more significantly an ideology of place. New nationalisms make for contested places, either because populations are intermixed or because borders are uncertain; and these contests are readily enacted in blood. But whatever nationalist leaders and intellectuals say about the places for which they fight, no body of land is like the body of the baby brought before King Solomon: it does not die if it is divided. Partition is almost always an available (though rarely a neat) solution in territorial disputes.

New nationalisms are probably more dangerous when they take on universalist missions than when they make localized claims to territory. Now they are like the old religions, before religion was domesticated by toleration, and they often assume a religious character. Advocates of enlightenment universalism are then surprised to find themselves no longer alone in the field – secular modernizers, for example, suddenly confronted by religious fundamentalists, men and women complacent about the future overtaken by

men and women passionate about the past. Theorists of reiteration, who are equally incapable of predicting the next version of cultural or political nationalism, at least expect to be surprised. They are prepared for a succession of nationalist claims, and they are also prepared to make some (modest) judgments about the successive nations.

VI

The critical test of any nationalism comes when it has to cope with the surprise of a new nation or, more accurately, of a new liberation movement laying claim to nationhood. The experience is common enough, and the test, I suppose, is commonly failed. There are many examples: Turkey and the Armenians, Nigeria and the Ibos, Iraq and the Kurds, Israel and the Palestinians, though in the last two of these, the story is not yet over. In the first two, the number of dead Armenians and Ibos suggests the extent of the evil that failure involves and helps to explain the harsh judgment that is so often passed on nationalism as an ideology. But it is important to stress that nationalism in these cases was also the ideology of the victims, and though it is always possible to condemn both sides – the victors for the murders they have actually committed and the victims for the murders they would have committed – I think it more seemly at least to consider the possibility that the defeated nation, had it encountered a less harsh opposition, would have opted for peace. Sometimes it would, and sometimes it would not: no singular judgment is possible, as if all nationalists, everywhere, stood in defiance of some universal covering law. Eric Hobsbawm argued for something like this wholesale condemnation when he wrote that ‘nationalism by definition subordinates all other interests to those of its specific “nation.”’⁴⁵ This is to understand nationalism as a form of collective egoism. It is better understood, however, as a form of collective individualism – which is to say that nationalist movements and nation-states, like individual men and women, behave both well and badly and must be judged accordingly.⁴⁶

There is nothing that we should feel bound to condemn in the nationalist politics defended, for example, by Giuseppe Mazzini, who founded Young Italy and then went on to help in the founding of Young Switzerland and Young Germany. Like the man who wanted to dance at every wedding, Mazzini was eager to endorse every reiteration of Italy’s national struggle – but he remained throughout his life an Italian nationalist. His liberal nationalism, at least as he lived it, is a classic example of reiterative universalism. When he wrote about it, however, he did not always capture the full force of reiteration. Consider his famous image of the universal orchestra. In this orchestra, each nation plays its own instrument, but apparently not its own music, for the result, Mazzini seems to suggest, is a single harmonious symphony.⁴⁷ It is useful to compare this supposedly happy picture with Marx’s reference to the orchestra, in the third volume of *Capital*, as a model for cooperative work in a socialist factory.⁴⁸ This is also odd given what we know

about the dictatorial behavior of directors in most great orchestras, but the reference is appropriate in this sense: that the workers in a factory cooperate in the production of a single product. There is no similar cooperation in international society, where the different national players are likely to produce a cacophony rather than a symphony – music only to the modernist (or perhaps the postmodernist) ear. In fact, there is not one performance but a series of performances, and nationalist intellectuals like Mazzini are to be praised when they acknowledge the right of the other players to play what they please. They are to be praised even more highly if they are also prepared to listen to what the others play.

Do not some of the others play well and some badly? It will certainly seem so to those of us who are accustomed to our own music and (even more) to those of us who take our own music to be mandated by a universal aesthetics. But all that we can say with any assurance is that they play *what they play* well or badly – and no doubt have their own critics who tell them so. This kind of criticism can also be morally important, and I do not mean to underestimate it. Nor do I mean to underestimate our own less assured judgments about the internal harmonies and disharmonies, so to speak, of particular national cultures. But these are not judgments about nationalism in general or in particular. The proper judgment of nationalism has to do with the attitudes and practices it adopts toward other nations.

There is no universal model for a national culture, no covering law or set of laws that controls the development of a nation, But there is a universal model for the behavior of one nation toward the others – a model that Herder thought natural to all nations: ‘He [did] not see,’ writes Berlin, ‘why one community, absorbed in the development of its own native talent, should not respect a similar activity on the part of others.’⁴⁹ This is indeed the core principle of reiterative universalism, but nothing in recent history suggests that the respect it enjoins comes naturally, not to old nations and not even to new ones, despite their own recent experience of oppression and liberation. Often enough, as I have already suggested, new nations are new oppressors, because of the monolithic character of their nationalist ideology or because of the claims they make to cultural authenticity or to a ‘nobility’ of their own, and then to a universalizing mission. Sometimes they are genuinely insecure in their newness, uncertain of their own political unity and physical safety, threatened by (but also, often, more fearful than they need be of) the national minorities in their midst. In all such cases, reiterative universalism operates as a constraint, ruling out policies that are inconsistent with the further ‘development of native talent’ and local cultures. But it also happens that new nationalisms, ‘absorbed’ in their own development, literally fail to see the nation that is standing next in line. They are self absorbed and blind. Now the necessary moral task is admonition, a kind of moral pointing toward the other. Martin Buber provides a nice example, very much in the reiterative mode. In 1929, responding to those of his fellow Zionists who thought Arab nationalism an ‘artificial’ (that is, an imperial)

creation, he wrote: 'We know that ... we have genuine national unity and a real nationalist movement; why should we assume that these do not exist among the Arabs?'⁵⁰

VII

The advantage of the reiterative mode is that it recognizes the value of what it admonishes. Confronting nationalist blindness, it is not itself blind to the strength and meaning of nationalism (Buber remained a Zionist). Here the contrast with covering-law universalists is especially clear, and I should like to make this contrast the conclusion of my argument. Defenders of one or another version of the covering law have sometimes also defended the cause of the nation that comes next. We may take Jean-Paul Sartre's commitment to Algerian national liberation as a classic case. (Though France was not itself a new nation, it had only just emerged from a period of occupation and resistance.) Sartre's politics in the 1950s was very brave, but it was also blind with a blindness that is as characteristic of universalism as self-absorption is characteristic of nationalism. For the foundation of his politics was the firm belief that Algerian nationalists were morally and politically identical to French leftists (like himself) and would create a just society in accordance with the universal principles acknowledged on the French left.⁵¹ The FLN, Sartre believed (setting himself up to be surprised), was the historic agent of his own covering-law universalism. This was a radically false view of the FLN, but it was held with such confidence that it is difficult even to imagine what Sartre would have said had he understood its falseness: the possibility, so far as we can tell from his writings, was never considered. What would his general position have been had he recognized that reiterated liberations produce in each case a new and different, and often morally problematic, outcome?

When it is combined with covering-law universalism, this recognition can give rise to a purely instrumental view of national liberation. According to Eric Hobsbawm, this is the proper Marxist view: 'The fundamental criterion of Marxist pragmatic judgment has always been whether nationalism as such, or any specific case of it, advances the cause of socialism.'⁵² Only those liberation movements that get things right, that hold the correct ideological position, deserve support. (Not quite true: there may be Marxist reasons for supporting a particular movement that have nothing to do with ideology but only with the international balance of power. This is an even more radical instrumentalism, and I will not take it up here.) Sartrean blindness makes it virtually impossible to criticize liberation movements; Hobsbawm's pragmatic Marxism provides a clear-cut critical standard. But this does not seem to me the right standard, for it cannot be the case that socialism is the one and only legitimate nationalist goal. It is, indeed, a misunderstanding of the phrase 'national liberation' to insist that the process it describes can have only one endpoint, for this denies to the adjective any qualifying power over

the noun. Liberation properly depends upon its subject, that is, upon the history of the nation, the autonomous processes of cultural creativity, the pattern of mutual attachment, and so on. When we criticize nationalist movements, we must look, as I have already argued, at the attitude they adopt toward other nations, not at the quality of their internal life. That is not to say, again, that we cannot also criticize their internal life. But reiterative rights do not wait upon ideological correctness.

A nation is a historic community, connected to a meaningful place, enacting and revising a way of life, aiming at political or cultural self-determination. I have waited until my last breath to offer this definition, since I do not want to suggest too strong a link between nation and community. Communities can take other forms, as they have in the past and no doubt will in the future. But all the forms have pluralism in common – if communities are real, they are also different – and nations are probably the best current examples of this pluralism. When we think of the nation we are led to think of boundaries (as Anderson argues) and then we are led to think of other nations: this is a useful intellectual progress.

Reiterative universalism offers a way of understanding and justifying those boundaries. There is no sure way, given the circumstances of national life, to get them right. Nor is it any part of my argument that these boundaries should always be state boundaries. Political sovereignty is one outcome of national liberation, not the only one, not always the best possible one. If reiteration makes for a world of nations, it also makes for what the American political theorist Horace Kallen called a ‘nation of nationalities.’⁵³ It is compatible with any political framework that permits cultural pluralism and diverse ways of life. Multinational empires, though they are inconsistent with democratic principles, are not inconsistent with the principles of reiterative universalism, so long as the different nations are allowed to live in accordance with their own ways, free from czarist ‘russification,’ for example, or any of its historical equivalents.

‘Russification’ provides a nice illustration of the wasteful and no doubt unjust war of state officials against cultural creativity and pluralism. Politics aims at unity: from many, one. But this is a unity that can be achieved in very different ways: by accommodating differences (as in the case of religious toleration) as well as by repressing it, by inclusion as well as forced assimilation, negotiation as well as coercion, federal or corporate arrangements as well as centralized states. Reiterative universalism favors the first alternative in each of these pairs. Given the first alternative, it is not incompatible with a common citizenship embracing a plurality of nations.⁵⁴

Covering-law universalism, by contrast, offers a way of explaining and justifying assimilation, integration, and unification, within and across states and empires; it looks to a time when all nations converge on the same moral and political regime or to a time when nationalism itself has been definitively superseded and all boundaries erased. These ends can be described in more evocative terms: global democracy, international communism, world

government, the rule of the messiah. I mean to disparage all of these, though not because I find the laws or ways of life they propose entirely unattractive. I mean to disparage them because they would require us to disregard or repress processes of cultural creativity and patterns of mutual attachment that we ought to value. Nor could we sustain the disregard or the repression without violating the most important of the covering laws – without acting immorally, though always, of course, with ‘noble’ intentions.

Notes

- 1 THE TANNER LECTURES ON HUMAN VALUES Delivered at Brasenose College, Oxford University, May 1 and 8, 1989. Printed with the permission of the Tanner Lectures on Human Values, a Corporation, University of Utah, Salt Lake City, Utah.
- 2 Paul D. Hanson, *The People Called: The Growth of Community in the Bible* (San Francisco: Harper and Row, 1986), pp. 312–24.
- 3 Isa. 49:6; cf. 42:6. All biblical quotations are from the King James version.
- 4 Isa. 2:3.
- 5 *Daily Prayer Book: Ha-Siddur Ha-Shalem*, trans. Philip Birnbaum (New York: Hebrew Publishing Co., 1977), p. 138. See the discussion of this line in George Foot Moore, *Judaism in the First Centuries of the Christian Era: The Age of the Tannaim* (Cambridge: Harvard University Press, 1962), 1:228–31; 2:371–74.
- 6 ‘A Song of the English,’ in *Rudyard Kipling’s Verse: Inclusive Edition, 1885–1926* (New York: Doubleday, Page, 1927), pp. 194–95.
- 7 Judah Halevi, *The Kuzari: An Argument for the Faith of Israel*, trans. Hartwig Hirschfeld (New York: Schocken Books, 1964), pp. 226–27; Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Laws and Observances*, trans. I. Grunfeld (London: Suncino Press, 1962), 1:143–44.
- 8 Amos 9:7.
- 9 Isa. 19:20–25.
- 10 See the discussion of tolerance in David B. Wong, *Moral Relativity* (Berkeley: University of California Press, 1984), chap. 12.
- 11 Jer. 18:7–10.
- 12 Mic. 4:4–5. 12.
- 13 According to the rabbis of the Talmud, human difference, if not quite human creativity, is the special feature of divine creation: ‘If a man strikes many coins from one mold, they all resemble one another, but the Supreme King of Kings ... fashioned every man in the stamp of the first man, and yet not one of them resembles his fellow’ (Babylonian Talmud, Sanhedrin 37a).
- 14 I have been helped here by David Hartman’s account of the moral meaning of creation in *A Living Covenant: The Innovative Spirit in Traditional Judaism* (New York: Free Press, 1985), esp. pp. 22–24, 265–66.
- 15 Deut. 30:19.
- 16 Leo Tolstoy, *Anna Karenina*, pt. 1, chap. 1.
- 17 Anders Nygren, *Agape and Eros*, trans. Philip Watson (Chicago: University of Chicago press, 1982).
- 18 Edmund Burke, *Reflections on the Revolution in France* (London: J. M. Dent Everyman’s Library], 1910), p. 75.
- 19 Amos 5:24.
- 20 Stuart Hampshire, *Morality and Conflict* (Cambridge: Harvard University Press, 1983) chap. 6.
- 21 *Ibid.*, pp. 134–35.

- 22 Ibid., p. 139.
- 23 Ibid., p. 136.
- 24 H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), pp. 189–95.
- 25 An argument somewhat similar to Hampshire's is suggested in Aurel Kolnai's essay 'Erroneous Conscience.' Kolnai has a fine sensitivity to the thickness and diversity of moral experience. He argues, nonetheless, against the claim that there are 'different moralities.' Morality is necessarily singular in character, but it is diversified by our 'affiliations.' For moral experience is always the experience of particular people, located in a time and place, and attached to particular other people. 'Thus the social entities to which we naturally belong or which we join by free choice embody, among other things, certain distinctive moral features, performances, and accents ... our loyalty toward them conforms to a general moral demand (i.e. a 'covering law'), and in its turn begets certain derived moral obligations: from our familial, national, religious, political, etc. affiliations will arise for each of us a set of moral by-laws.' A distinct set, not just because the bylaws have as their 'incidental point of application' different families and nations, but also because the affiliations they reflect constitute in each case a distinct 'framework of life' or 'sphere of duties' with its own 'features, performances, and accents.' Morality is particularized through the operation of what Kolnai calls 'non-moral facts' (our associational inclinations, our passionate attachments). But the processes pp. 189–95. set in motion by these 'facts' would seem to go very far toward producing, if not different moralities, then different understandings and experiences of morality – hence, different ways of life. The 'moral obligation of honesty' would doubtless survive these processes with only minor variation, but it is hard to believe that the rules of distributive justice would not be significantly differentiated in their course (*Ethics, Value and Reality: Selected Papers of Aurel Kolnai*, Introduction by Bernard Williams and David Wiggins [Indianapolis: Hackett, 1978], pp. 21–22).
- 26 Anthony Smith, *The Ethnic Origins of Nations* (New York: Basil Blackwell, 1988)
- 27 Exod. 2:23.
- 28 See Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), pp. 180–83.
- 29 C. B. Woodham-Smith, *The Great Hunger: Ireland, 1845–1849* (London: Harper and Row, 1962).
- 30 This argument was suggested to me by Adi Ophir. Compare Barrington Moore on 'the unity of misery and the diversity of happiness' in *Reflections on the Causes of Human Misery and upon Certain Proposals to Eliminate Them* (Boston: Beacon Press, 1972), chap. 1.
- 31 But see Anthony Smith, *The Ethnic Origins of Nations* (New York: Basil Blackwell, 1988), which suggests that our national communities, though not our nationalist ideologies, are very old.
- 32 Edmund Wilson, *Patriotic Gore: Studies in the Literature of the American Civil War* (New York: Oxford University Press, 1962), p. xi.
- 33 Niccolo Machiavelli, *The Discourses*, bk. 1, chap. 5, trans. Christian Detmold (New York: Modern Library, 1940), p. 122.
- 34 Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983), p. 16.
- 35 Martin Buber, *Israel and the World: Essays in a Time of Crisis* (New York: Schocken, 1963), pp. 221, 248.
- 36 Karl Marx, 'The British Rule in India,' in *Karl Marx on Colonialism and Modernization*, ed. Shlomo Avineri (Garden City, New York: Anchor, 1969), p. 94.
- 37 See Mill's defense of his role, which is not entirely different from Marx's defense: *On Liberty*, reprinted as chap. 2 in *The Philosophy of John Stuart Mill*, ed. Marshall Cohen (New York: Modern Library, 1961), pp. 197–98.

- 38 Tom Nairn, *The Break-up of Britain: Crisis and Neo-Nationalism* (London: NLB, 1977), p. 331.
- 39 See Clifford Geertz, 'The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States,' in Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973), pp. 255–310.
- 40 See Francis Hutchins, *Spontaneous Revolution: The Quit India Movement* (Delhi: Manohar Book Service, 1971), chaps. 3, 4, 5.
- 41 Isaiah Berlin, *Vico and Herder: Two Studies in the History of Ideas* (New York: Vintage, 1977), p. 159.
- 42 For a complete account of the Marxist argument, see Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984).
- 43 John Locke, *A Letter Concerning Toleration*, ed. Patrick Romanell (Indianapolis: Bobbs-Merrill, 1950), pp. 52, 54.
- 44 Michael Walzer, 'The Reform of the International System,' in *Studies of War and Peace* (Oslo: Norwegian University Press, 1986), pp. 227–40.
- 45 Eric Hobsbawm, 'Some Reflections on *The Break-Up of Britain*,' in *New Left Review* 105 (Sept.–Oct. 1977), p. 9.
- 46 'Egoism' ranks the self ahead of all other selves; 'individualism' has no such connotation. In a roughly analogous way, 'racism,' 'sexism,' and 'chauvinism' imply a rank ordering of races, sexes, and states, but 'nationalism' works differently: it is entirely compatible with a theory of incommensurability (like Buber's) or with a simple agnosticism about ranks and orders. Nationalists are more like patriots, in that they can respect and value commitments similar to their own in other people – and they can do so, unlike egoists, without viewing the others as competitors and antagonists. (This is not to say that there are not many nationalists who adopt both a collective version of egoism and a political version of racism.)
- 47 So the 'harmony' and 'mission' metaphors get mixed: 'From the harmonious interplay of [each people's] mission will derive the general mission of all peoples' (*The Living Thoughts of Mazzini*, ed. Ignazio Silone [Westport, Connecticut: Greenwood Press, 1972], p. 55).
- 48 Karl Marx, *Capital: A Critique of Political Economy*, ed. Frederick Engels (New York: International Publishers, 1967), 3:383.
- 49 *Vico and Herder*, p. 164.
- 50 Martin Buber, *A Land of Two Peoples: Martin Buber on Jews and Arabs*, ed. Paul R. Mendes-Flohr (Oxford: Oxford University Press, 1983), p. 91.
- 51 See Sartre's preface to Franz Fanon, *The Wretched of the Earth*, trans. Constance Farrington (New York: Grove Press, 1963), pp. 7–26.
- 52 'Some Reflections,' p. 10.
- 53 Horace Kallen, *Culture and Democracy in the United States* (New York: Boni and Liveright, 1924).
- 54 For a defense of this 'civil' commonality, see Geertz, 'The Integrative Revolution,' esp. pp. 309–10.

2 Thin universalism: moral authority and contemporary political theory

Peter Sutch

The attempt to construct a 'thin' account of universalism has become an essential feature of contemporary political theory. In many respects it forms the heart of the challenge of sustaining the normative projects of political theory in the face of antifoundationalism and multiculturalism. Across the broad spectrum of theories that premise their moral and political arguments on thin conceptions of universality there is the shared claim that it is possible to adapt, rather than abandon, the foundations of the modernist project in ways that do not neuter the authority of claims to justice. This turn in contemporary political theory deserves close scrutiny as the strategies adopted do have important implications for the ways in which we think about normative issues and for the ways in which we construct political solutions to the most pressing problems of the contemporary world.

In this paper I want to present some core reflections on the continuum of attempts to construct a thin universalism. The purpose of this project is not simply to characterise, or survey, this vital trend in contemporary political theory, although I hope that in presenting this continuum the sheer scope of this project will become evident. Rather, this approach is intended to allow us to examine the trend towards thin universalism in the round and to engage in a comparative and critical exploration of attempts to achieve this 'thinness'. The first task of such a project is to lay out the continuum. This part of the paper should be fairly uncontroversial as I will be using some of the most famous positions in the contemporary literature as my examples. The only issue that needs explanation is my decision to focus particularly on examples of the work of Onora O'Neill, Thomas Pogge, John Rawls, Michael Walzer, and Richard Rorty that concentrate on international justice and human rights. My choice here reflects the fact that a focus on issues of international justice, a key concern of contemporary normative thinking, serves as a harsh political test of universalism in political and moral theory. In the work on international justice we find the arguments about the relative thinness and authority of universal principles at their most stark. The arguments are exaggerated by this context, where they seem obscured by a focus on liberal democratic polities.¹

Having laid out the continuum I intend to explore the general strategies adopted by those seeking a thin universalism. In particular I intend to draw

a distinction between neo-Kantian strategies and norm-governed strategies and highlight the distinct issues each approach confronts us with. The focus of this part of the paper will be on the relative authority that a thin conception of universalism can lend to its political claims. The moral and theoretical tools that were used to devise universal conceptions of justice or ethical codes have come under sustained attack from the antifoundationalists, and from moral relativists and particularists of all stripes. These attacks take a variety of forms. However, what unites them is the claim that universalist political theories lack the epistemic and moral authority they traditionally claim. The responses of the thin universalists also take a variety of forms. In almost all cases they attempt to make their political claims less demanding in both ethical and institutional terms. More importantly they are also 'thin' in the way they alter their theoretical justification in order to accommodate or evade the antifoundationalist challenge. It is in the attempt to achieve this second type of thinness that we really begin to see a clear division of strategies designed to underpin contemporary political theory. The key question is what difference, if any, arises from the different ways in which these writers approach universalism in ethics. One way in which my continuum of arguments can be presented is as a sliding scale ranging from stronger claims about the epistemic and moral authority of philosophical justification to much weaker claims of this sort. In short the continuum represents a sliding scale of confidence in the ability of political theory to make authoritative moral claims that can underpin normative claims. The principal task of this paper is to find out whether this confidence is well placed and, if not, to assess the consequences for contemporary political thought.

Thin universalism: a continuum

Consider the following description of a continuum of approaches to contemporary political thought.



All of these thinkers have defended a thin conception of human rights predicated on a thin universalism. It is certainly the case that there are others as well but for the sake of conceptual clarity I have kept numbers to a minimum. It is also the case that these five thinkers hold well known and much discussed positions in contemporary theoretical debate. I have presented the scale this way because it is fairly clear in the literature surrounding the work of these theorists that it will not be much contested. The continuum presents a sliding scale from neo-Kantian liberalism (in O'Neill, Pogge and, very differently, in Rawls), conventionalism or particularism (in Walzer) to antifoundationalist postmodernism (in Rorty). My goal is to take the reader up the

continuum from Rorty to O'Neill in order to lay out the ground and then to come back down the continuum exploring the principal critical issues that arise from such a survey. In this paper most of my critical work will focus on the strong claims made by O'Neill. My intention is to explore a significant problem at the core of liberal-cosmopolitan conceptions of thin universalism. Not only is this interesting in itself it also reverberates back down the continuum and suggests a new agenda for the study of this contemporary turn in political thought.

Working, for the time being, from the right side of the scale and beginning with the weakest or thinnest claim we come first to Richard Rorty. Rorty's antifoundationalism is a constant touchstone in contemporary debates concerning human rights and the proper role of political theory more generally. Rorty is well known for his fervent desire to conduct politics 'beyond' or without epistemology.² In his political theory generally theoretical claims to epistemic and hence moral authority are scorned in favour of the social and motivational force of sad and sentimental stories.³ We are enjoined to turn away from the pretentious projects of philosophy all together, told to forget about the psychopath (no moral argument will convince them to change anyway) and to focus on the less grand but vital task of simply ensuring that our children do not grow up that way. In short, Rorty's argument is that we divorce politics from epistemology and thus from claims to the primacy or authority of our way of life altogether. The universal principles that his human rights argument appeals to are entirely contingent on the existence of a human rights culture and even then are not defensible in themselves. Here then universal principles have no moral authority. In the litmus test of thin universalism we can view Rorty as the neutral control. This is the thinnest of the thin positions. It has much merit and, in the context of this research, bears further scrutiny. Not least because there is a considerable possibility that all thin theories flirt with this position (see below).

Moving in from the right of the continuum we come next to the work of Michael Walzer. Walzer is most famous for his just war theory and for what is often referred to as his communitarianism.⁴ However for our purposes (and I would argue more generally) Walzer's greatest contribution to contemporary political theory is his comprehensive redescription of the role of political thought. This aspect of his work came in two episodes, both of which allow us to reconsider his position on international relations and on distributive justice. The first installment came in works such as 'Interpretation and Social Criticism' and 'Philosophy and Democracy'.⁵ Here Walzer argued that the role of the political theorist (or social critic) is the interpretation of moral norms and political cultures rather than the 'discovery' or 'invention' of moral truths or political theories. In particular he argues that we should search for and utilise 'political rather than philosophical knowledge'.⁶ There is a strong link between this idea and all thin conceptions of human rights as we shall see (below) and examining the epistemic status and authority of political as opposed to philosophical knowledge and

its relation to Rorty's position is an important aspect of this project. The second installment of Walzer's theory came later as he grappled with the question of fundamental and universal rights to life and liberty that had always been a part of his thinking but the justification of which had always been a source of criticism. The question (which is clearly relevant to our present endeavour) was simply how can we conceive of universal rights while relying only on interpretation as a source of political knowledge? In his second Tanner lecture 'Nation and Universe' (reprinted in this volume) and in *Thick and Thin: Moral Arguments at Home and Abroad* Walzer supplied the answer.⁷ Here he articulates a conception of 'reiterative' or 'thin' universalism that he contrasts to what we normally think of as universalism. The core idea is that universally shared principles are built up over time in response to shared and unfamiliar normative problems. The rider is that really unfamiliar normative problems arise in contexts where the principles we generate to deal with them are of little use in our everyday lives. Hence their thinness. There is work to be done here as well. Walzer's recent claims that the normative problems of both state politics and international relations are so acute that we must begin to think beyond the nation state system and aim to construct an institutional framework that supports what he calls 'the third degree of global pluralism' provide much food for thought here.⁸

Moving still further to the left we come next to John Rawls. Rawls's *Political Liberalism* sought to thin out his earlier theory in response to what he described as 'the fact of reasonable pluralism'.⁹ In altering his theory to accommodate reasonable pluralism, Rawls develops a political (rather than metaphysical) liberal theory that seeks to construct an understanding of an ideal normative order in reference to the fair terms of social cooperation between 'reasonable' and (in international politics) 'decent' ways of life. One of the keys to understanding Rawls's argument is to grasp the method by which we can assign the standards of reasonable and decent to individuals and to peoples. Essentially Rawls constructs these standards in reference to 'the conceptions of society and the person' found in liberal societies and 'the background conditions of international society' as they have developed in the fifty years since Second World War.¹⁰ As a normative theory it is 'thin' in the sense that political as opposed to philosophical knowledge governs much of the construction of principles of justice. There is much debate about the relation between political and philosophical claims in Rawls later work. In particular, there is division on the role that a conception of practical reason plays in the construction of his political theory (see, for example, the argument presented by Peri Roberts in this volume). My own view is that in moving away from a Kantian conception of what Rawls terms 'constitutive autonomy', which governs the order of values, to the idea of 'doctrinal autonomy', which assigns autonomy to the various reasonable comprehensive doctrines that characterise our normative order, the conception of practical reason in use is very political indeed.¹¹ Indeed, Rawls's final statement on the issue seems clear on the subject. Here, once again, Rawls's conception of

practical reason is distanced significantly from that of Kant. The following selection, we should note, comes from a section entitled 'no deduction from practical reason'.

[a]t no point are we deducing the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason in the background. Rather, we are giving content to an idea of practical reason and three of its component parts, the ideas of reasonableness, decency, and rationality. ... There is no list of necessary and sufficient conditions for these three ideas, and differences are to be expected. We do conjecture, however, that if the content of reasonableness, decency, and rationality is laid out properly, the resulting principles and standards of right and justice will hang together and will be affirmed by us on due reflection. Although there is no guarantee Though these doctrines should be relatively stable, they may evolve in the light of what, given the development [of the traditions that they draw upon], are accepted as good and sufficient reasons.¹²

It therefore seems that Rawls's claim to rely on political rather than 'meta-physical' claims should be interpreted broadly. The relative thinness of Rawls's principles of international justice are thus a consequence of the relative thinness of the normative bonds of international society and it is the political context not the character of Rawls's argument that makes the difference between *Political Liberalism* and *The Law of Peoples*. In other words, political liberalism is only liberal because it is worked out to apply to a liberal society. Nevertheless it is clear that Rawls is doing something quite different to Walzer. Here we have to focus on the content of his 'conjecture' that if we conduct our political constructivism properly we will give content to principles of practical reason and endorse them on due reflection. The big idea here, of course, is reflective equilibrium and the idea that critical reflection upon our normative world will allow us to construct better understandings of the principles of justice. This is the aspect of Rawls's work that distinguishes him from Walzer. It is what, in Walzer's terminology, marks him out as 'inventive' rather than 'interpretative'. In terms of this project the question is how much work this idea is supposed to carry and whether or not it remains thin enough to meet the challenges the initial adjustment to Rawls's theory were supposed to meet. Walzer, to Rawls's right on this continuum, does not believe that it does, or can, carry much burden at all.¹³ Indeed his argument is that, done properly, the act of turning our political knowledge of the world around us into an ideal model adds nothing. On the other hand, Walzer is also concerned that the thin, interpretative, mode struggles to find the critical distance to be useful but this is the core of the debate that thin approaches to human rights (and to normative questions more generally) have to grapple with. This is a concern that Pogge, to Rawls's left on this continuum also addresses.

Thomas Pogge is probably best known as one of Rawls's most vocal critics (although he views himself as more of a critical friend than a critic). His principal concern with Rawls's conception of human rights is that it is unnecessarily thin (even on its own terms). Here the core claim is that Rawls's work has the potential to justify a much stronger series of human rights claims while remaining thin enough to meet the challenges laid out above. In working out these claims Pogge constructs his own thin conception of human rights. Pogge's papers on this topic, recently collected in a volume entitled *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, offer an innovative and robust argument in support of all the articles of the Universal Declaration of Human Rights (UDHR) while, he argues, remaining 'thin' enough to be morally and politically compelling. In an earlier statement of his position Pogge argued that the fact of interdependence 'triggers' our obligations to those individuals with whom we share an institutional framework however loosely it may be integrated.¹⁴ This has to be justified in relation to an appropriate moral theory, no matter how thin the political theory that he draws from it, because the dormant moral principle that is activated is the Kantian injunction to treat individuals as the ultimate units of moral concern. In later work, however, Pogge constructs a much thinner account of human rights that attempts to recast the moral basis of his human rights theory.

Pogge describes his new theory as 'contextualist moral universalism'.¹⁵ This position is constructed in contrast to a monistic conception of moral universalism on the one hand and to conventionalism or 'dogmatic' contextualism on the other. A monistic conception of moral universalism holds that there must be one transcendent principle or set of principles that hold universally.¹⁶ Dogmatic contextualism simply asserts that different contexts require different principles without attempting to justify such diversity.¹⁷ The key to this idea is the refusal to engage in justificatory discourse at all. Pogge's contextualist moral universalism comes from two sources. First he is committed to what he terms 'critical contextualism', a position he believes he shares with David Miller. This is,

A moral conception holding that fundamental principles P_1 , P_2 , P_3 apply in contexts C_1 , C_2 , C_3 , respectively and offering a justification for delimiting the various contexts, and for assigning the various moral principles to them in these ways.¹⁸

Second he is committed to universalism as a defining characteristic of morality where universalism means that the same principles hold across the appropriate context. Hence contextualist moral universalism. This latter claim also has to be justified (although I do not think it difficult to do so). Pogge does so by developing a thin conception of human flourishing which comes from a reading of the minimal requirements needed for the just and even handed treatment of persons within the same context. Now, rather than begin from the thick, Kantian predicate of individual autonomy,

[w]e start from the personal and ethical value of human life – not to ascertain wherein that value lies, but to determine the social context and means that persons normally need, according to some broad range of personal conceptions of what human flourishing consists in, to lead a minimally worthwhile life. This goal expresses respect of human autonomy, especially insofar as the criterion we seek is to be based on very weak assumptions about the components of ethical value.¹⁹

This account of human flourishing is, Pogge argues, the most comprehensive ‘all-in’ assessment of the quality of human lives, something he contrasts to the more-specific accounts that emphasise pleasure, affluence or virtue.²⁰ The account is purposely underdetermined in order to achieve the ‘thinness’ he desires. The thin nature of this argument becomes even clearer when we are introduced to the conception of autonomy that it now at the root of Pogge’s cosmopolitanism. For Pogge, ‘I respect someone’s autonomy only insofar as I accept *his* measure of flourishing as well as *his* way of arriving at this measure’ (Pogge 2002: 30–1).²¹ The claims concerning moral universalism are then appropriately thin. This leads us back to the issue of appropriate context and the political framework that gives content to Pogge’s contextualist universalism.

Before exploring the issue of ‘appropriate context’ I want to turn to the more robust neo-Kantianism of O’Neill. There are many affinities between the two cosmopolitan thinkers on this continuum but O’Neill is insistent that a formal account of autonomy and flourishing that does not rely on concrete or culturally specific expressions of those values can provide cosmopolitan principles. Her insistence stems partly from her confidence in the thinness of the modal account of practical reasoning she advocates and partly from her concerns about relying upon political context to flesh out the character of ethics. In the work of O’Neill we come to the most confident expression of what most people think of as thin universalism. Let me unpack this last sentence. Most people think of thin universalism as a thin philosophical or moral basis for social and political prescriptions. Bruce Haddock calls it weak foundationalism (see Chapter 3), Peri Roberts calls it primary constructivism (see Chapter 6), and there are other descriptions throughout this volume. Of all the theorists on my continuum O’Neill is the most sanguine about the work that this thin universalism can do and the most vociferous in her rejection of approaches that do not work this way. For O’Neill the neo-Kantian approach is distinct from all the others in that it abstracts from context and relies on a modal account of practical reason to carry the argument. Her explicit rejection of Rawls, Walzer and Rorty, and the reasons she might reject Pogge’s latest position, all point this way. In exploring her claims here, however, I think we find that there are problems with this way of looking at thin universalism.

The problems I see in O’Neill’s account of thin formal universalism and its political and ethical consequences are not confined to her work. O’Neill, I think, represents the liberal-cosmopolitan tradition with a clarity not often

associated with neo-kantian constructivism. I also think that an engagement with O'Neill offers more general lessons about what it is that most thin universalists think lies at the heart of their work. My goal in the following section is, therefore, to elaborate and critique some of the core ideas associated with this contemporary turn in political thought and thereafter to show how this might affect our reading of this developing tradition more generally.

Liberal-cosmopolitanism and thin universalism

O'Neill's rejection of contextualist approaches to political theory encompasses particularism in all its varieties. While O'Neill recognises that the growth of such approaches is a consequence of the need to construct principles of ethics in the absence of metaphysical certainty, she is also convinced that it is deeply flawed. O'Neill argues convincingly that for anything to count as ethical reasoning it must be accessible to all relevant agents. That is, it must be intelligible to, and followable by, all those for whom it is to count as ethical reasoning.²² The problem is that most approaches to ethical reasoning fail even this standard. It is simply a practical problem. Metaphysical accounts of ethics will be inaccessible to those who do not share the appropriate philosophy or religion. Instrumental reasoning will appear arbitrary to those who do not share the end or goal that drives that chain of reasoning. Similarly the restricted scope of particularist forms of reasoning seems arbitrary and limiting in a world marked by multiculturalism and globalisation.²³ O'Neill's case is not just that these approaches are limited. It is that they are necessarily limiting in the sense of being unable to speak to changing boundaries.²⁴ This, O'Neill argues, is a formal failing of these styles of reasoning and it is a failure identifiable in Rorty, Walzer, Rawls and (I add on her behalf) the more recent work of Pogge.

In order to avoid the inherent dangers in contextualism O'Neill offers a formal, abstract, or modal account of the focus and scope of ethics. Indeed she begins by showing that only a formal account of the focus of ethics (constructed as an act-oriented conception of practical reason) can avoid the dangers of relativism, particularism and idealisation. Rorty, in his rejection of foundationalist philosophy, is avowedly relativist. This is both unhelpful and unnecessary. It is unhelpful because it cannot speak to the practical problems we face and it is unnecessary because, O'Neill argues, the thin conception of universal practical reason she offers is predicated entirely on banal or uncontroversial premises. Walzer offers a norm-oriented conception of ethics in his reliance upon the communal understandings of morality and in his conception of social criticism as internal critique. O'Neill rejects this as lacking objectivity and as being conservative to the point of relativism.²⁵ Rawls is guilty of a double failing. In relying upon the actual norms of a liberal democratic society (in *Political Liberalism*) or of international society (in *Law Of Peoples*) he offers a norm-oriented account of ethics. In prioritising the conception of justice found in a closed liberal society he is guilty of introducing

idealisations into the very foundation of his argument both by prioritising domestic justice over global justice and by sneaking liberal cultural assumptions into the premises of his case.²⁶ Pogge is also guilty of pandering to the contextualist turn. In constructing his account of human flourishing in reference to global pluralism Pogge makes his universalism hostage to political arguments about the nature and extent of globalisation. O'Neill believes her neo-Kantian argument avoids these failings. O'Neill argues that,

The more guarded constructivism that I shall outline follows Rawls in that it does not look for the vindication of ethical principles in metaphysical argument, or in discoveries about the world. It differs from the one Rawls has developed in two ways. In the first place it assumes only an abstract, hence non-idealising and banal account of agents and of conditions of action. Second, it aims to articulate and to vindicate a conception of practical reason without appeal either to unvindicated ideals or to unvindicated particularities.²⁷

O'Neill's major problem with Rawls (and implicitly with Walzer and Pogge) is that they conflate the motivational and the modal aspects of their theory. That is, they mix up questions of whether people do share the same values or the political motivation to arrive at shared values with questions of whether they should or could share values. In doing so they make the moral (in the shape of their conceptions of universalism) contingent on the political. O'Neill's response is to show the desirability and the possibility of abstracting away from the motivational and focusing on the modal. In many ways this abstraction is thought to be the essence of thin universalism. A successful construction of principles of practical reason predicated on undemanding arguments but specifying the core principles of moral and political conduct would indeed seem to fit the bill. In constructing an argument of this type O'Neill attempts to develop a formal, abstract or modal account of universalism in ethics and of the circumstances of justice and injustice.²⁸ However I want to argue that this conception of thin universalism is deeply problematic for a number of reasons and in doing so I want to move back down the continuum showing how my critique of this position effects an understanding of the nature of thin universalism. My concern with O'Neill's account rests on two main arguments. The first examines the claim that a modal account of practical reason can do the sort of work that O'Neill believes it can. The second questions the very nature of this abstraction. Both of these interrogations of O'Neill's argument reveal, I believe, something very interesting about the nature of thin universalism.

For O'Neill, accounts of practical reason that rely on normative arguments to provide the motivational element of their moral theory do so at the expense of accessibility and hence universality. Her solution is to abstract from the motivational or political, a solution that she believes is not prone to inaccessibility.

Reasoning can be accessible even when it is not motivationally sufficient, but it must construe the problems faced in ways that strike its audience as relevant and must propose ethical standards, criteria, and arguments which are accessible to them. If it relies on inaccessible starting points, ethical reasoning will speak in alien and irrelevant categories or rely on some mythical 'universal' mode of moral discourse.²⁹

Universality, in O'Neill's account of the focus of ethics is simply a formal property of practical reason. It is the very essence of accessibility. Nevertheless, O'Neill continues, the beauty of developing a modal (rather than motivational or contextualist) account of ethics is that we can move from this formal account of universality to a more politically exciting one. O'Neill points to two senses of universality.

The most elementary sense in which a principle may be said to be universal is ... if it applies to or holds for all rather than merely for some cases in its domain. ... The second sense ... is that the range of beings is seen as extensive: the scope of principles is inclusive, perhaps (more-or-less) cosmopolitan.³⁰

O'Neill argues that the same reasons she offers for advocating a modal account of the focus of ethics also require that we give a formal or modal account of the scope of ethics. This means that the criterion of universality requires a modal account of the scope of ethics. A modal account of the scope of ethics abstracts from political context to focus on the assumptions on which all ethical activity is predicated. These basic assumptions are described as 'plurality, connection and finitude' and essentially mean that we assume that there are others who we are connected to and whom we effect when we act.³¹ Because all other considerations are ignored and because we are more or less connected to everyone on the planet O'Neill's 'doubly modal' theory makes the transition from universalism to cosmopolitanism.

It is in this last move that the problems with the formal account of thin universalism come to the fore. In fact I do not think the first sense of universality necessarily implies the second sense at all. Thus far we have the claim that accessibility requires a very thin universalism. Essentially like cases must be treated alike in terms accessible to all relevant parties. This is so thin that it does not really do any work. O'Neill claims that it rules out the positions of the contextualists but unless it can be shown that they violate the principle of formal universality (and I do not believe it can – see below) then it does no such thing. This second move, however, is an attempt to specify who counts as a 'relevant agent' and abstracting away from the motivational or the political here requires independent argument. My concerns with these two parts of O'Neill's thin universalism are distinct. First the modal account of practical reason does not (and cannot) carry the burden she asks it to. This is true in two senses. First, the modal account of practical reason that can be

deduced from the nature of moral language is so thin that it can only say that principles apply to all relevant others within the domain. It cannot specify what makes those others relevant or work out the extent of the relevant domain.³² This additional work is handled by the later modal argument concerning scope. Second it is also the case that the formal requirement that moral principles be universalisable cannot insist that in working out the scope of moral reasoning we rely only on a modal account of relevant others and relevant domain. The thin conception of universalism does not carry this argument. Instead O'Neill relies on two further claims. The first is that contextualists cannot make universal arguments that speak to the global circumstances of justice and injustice. The second is that the major premises of her argument (the formal philosophical claims) are more important than the minor premises (the political context). Again my concerns here are twofold. I am convinced that the first claim is not true and the real dispute between O'Neill and the contextualists is really about the consequences of increased connection or globalisation. Second, and in the light of this, the abstraction required by the suggestion that we give priority to the philosophical skews the whole debate as it rules out *a priori* arguments concerning the moral value of the different contexts in which we are connected to others. O'Neill does, of course, recognise that we are connected to other people in many different ways and that this alters the ways in which we are obligated to them but this is a secondary issue. My major concern here is that this prioritisation of the philosophical is a huge and unjustified assumption at the basis of O'Neill's cosmopolitanism. This I think may be a general fault with liberal arguments that aspire to this form of thin universalism. Indeed, arguments that rely on this (often unspoken) assumption are far from 'thin' in that they incorporate assumptions about the nature of ethics that are highly contestable.

Thin universalism is usually thought of as the 'major premises' (as O'Neill puts it) or the thin philosophical basis of political argument. But a thin formal (or abstract) universalism does not warrant this status. In fact there are two good reasons why we need to treat the theoretical and the political predicates as equal partners and thus think of thin universalism as a combination of these two sorts of claims. First the formal philosophical argument cannot carry the sort of burden that is being asked of it. In order to do any work these ideas need to be situated in a concrete context. Indeed, stripped of its unwarranted assumptions, thin formal universalism necessarily collapses into thin contextualist universalism. Thin universalism may be an uncontroversial characteristic of moral discourse but the real debates are the political ones concerning who counts as a relevant agent and how we should conceive of the circumstances of justice. A useful analogy here can be drawn from the sphere of international law. We can talk about the sources of ethics just as we can talk about the sources of law. The sources of ethics are philosophical (formal) and political just as the sources of international law are juridical as well as contextual (i.e. drawn from general principles of law as well as based on treaty and custom). Just as there are debates about the relative content of and priority of the different sources of law so there is (as we have seen)

debate about the priority of the sources of ethics. The cosmopolitan liberals argue consistently that philosophical knowledge should have priority over political knowledge. O'Neill, as we have seen abstracts from the motivational to the modal and Beitz, in his critique of Rawls, argues for the priority of the ethical over the sociological thus forcing a cosmopolitan account of global economic justice from Rawls's process.³³ But why should we grant ontological primacy to the philosophical rather than the political? What special characteristics does appropriately thin philosophical knowledge have?

Thus far my concern with this prioritisation of philosophical knowledge has rested on the thought that it is not a formal requirement of ethics as the cosmopolitan liberals claim. Other arguments in favour of a formal approach to the construction of thin universalism include the claims that a modal account of ethics can speak to the circumstances of justice and injustice in ways that contextualist constructions cannot. They also argue that the philosophical is not contingent in the way that the political is. Alternatively they rely on claims that the abstraction is itself benign. Here I want to raise concerns with all three of these secondary arguments before moving back down the continuum to briefly examine the implications of my argument for the projects of those seeking to base their arguments on thin universalisms.

The first claim simply begs the question. Characterising the circumstances of justice and injustice is a core part of the political argument. An argument that abstracts to the formal will inevitably begin from cosmopolitan predicates where contextualist accounts may debate the ethical character of the global, transnational, international, or anarchical society. It is important to note here that contextualist accounts of the circumstances of justice can still be ideal-types (in the Rawlsian sense). This feeds into my rejection of the second claim. The claim that philosophical formalism escapes the contingency of political argument is the product of the foundationalist approach to philosophy so ably critiqued by Rorty. If the philosophical basis of an argument is going to be 'thin' enough to escape the antifoundationalist challenge then, as we have seen, it is going to have to put aside the claim that it is itself an epistemic authority or source of moral knowledge. This does not mean that all collapses into descriptive contingency or that practical reason has no role to play. It does, however, limit the sorts of claims we can make about the priority of the formal over the political. Finally I am not convinced by the claim that the abstraction that O'Neill and others describe is as benign as she suggests. It is true that all theory requires abstraction. It is also true that many concerns raised in connection with theoretical abstraction are in fact concerns about idealisation, where abstraction removes predicates and idealisation adds false predicates.³⁴ Here, however, I am properly concerned with abstraction. First abstracting away from the motivational seems to place serious obstacles in the path of any move from theory to practice. This is an even more pressing issue when the perceived advantages of such an abstraction are questioned. Second (and here I draw on Bikhu Parekh's 'pluralist universalism') why should we grant ontological primacy to those things that all humans share over those things that make them culturally and politically distinct?

This line of argument is not intended to restate a rigidly communitarian position but to explore the idea that, in the absence of a convincing answer, thin universalism should think in terms of a dialogical relationship between philosophy and politics or between formalism and context.³⁵

Revisiting the continuum

How then does this effect our reading of the continuum of attempts to work with a thin conception of universality? In fact I think it offers a series of useful insights because the debates surrounding liberal constructions of thin universalism incorporate the assumptions that I have been examining. This is evidently the case in the work of Pogge and Rawls (and especially in the critical work on Rawls's *Law of Peoples*). Pogge argues that his contextualist moral universalism simply seeks to impose a pre-accepted structural constraint upon moral conceptions.³⁶ He argues that this structural constraint requires that we take 'a holistic understanding of the various institutional regimes, which influence one another and intermingle in their effects which, in turn, leads to a cosmopolitan theory of justice.'³⁷ This theory of justice is underwritten by the thought that,

Human agents are not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensating for their collaboration by protecting its victims or working for its reform.³⁸ (ibid.: 70)

Here then we have a thin conception of universality (the structural constraint) allied to the contextualist framework (in this case an interconnected international society). The structure of Pogge's cosmopolitanism is very like that of O'Neill although he does not try to work out his thin universalism independently of context. As we have seen it is possible to do so and it may therefore be a mistake to rely, as Pogge seems to, on the historical fact of our acceptance of the equal moral status of human beings and of universality as a basis for moral justification.³⁹ Indeed in many of its formulations Pogge's reasoning is little stronger than Rorty's claim (following Eduardo Rabossi) that we simply have a human rights culture now,⁴⁰ or Rawls's claim that the last 50 years of international history have seen a dramatic change in our thinking about international ethics,⁴¹ or Walzer's claim that the rights to life and liberty are those we rely on most commonly in time of war.⁴² It may be the case that Pogge's decision to make his case this way is simply political. It is simpler, in purely rhetorical terms, to take this fact as given and work from this basis. There is little point fighting tough philosophical battles when there is nothing to be gained from it. However, as a formal argument this cannot do all the work that Pogge needs. This can be shown, I believe, by looking at the structure of his critique of Rawls's *Law of Peoples*.

Pogge's criticism of Rawls is that he violates the principle of moral universalism, the structural core of any coherent moral argument.⁴³ This might sound like a serious philosophical charge but in fact it merely reiterates Pogge's disagreement with Rawls's characterisation of the circumstances of justice. The philosophical charge does very little if anything. In fact, whether constructed in the abstract (as in O'Neill's argument) or worked out in relation to an holistic understanding of global institutions, the formal criterion of universality in ethical reasoning has to allow for the separation of contexts of justice. This is something that Pogge acknowledges and so the entire debate turns upon whether Rawls's depiction of the society of peoples (where peoples lack the two traditional powers of sovereignty but still prioritise domestic over international justice) is more realistic than Pogge's account of a global society. Pogge draws primarily on the acceptance of the Universal Declaration of Human Rights (UDHR) and in particular article 28 which provides that 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realized'.⁴⁴ Inferring a commitment to the third generation human rights implied by article 28 flies in the face of the development of human rights law and while a case could be made it would have to be much more than an empirical argument or the working out of Pogge's thin universalism. This is not to suggest that Rawls got it all right. In fact some of what Pogge considers to be his minor or secondary arguments are very powerful. For example, his claim that Rawls is guilty, as many are, of self-deluding explanatory nationalism is powerful.⁴⁶ It is undoubtedly the case that international political economy contributes to the suffering of millions and that we, the beneficiaries of this system, could, without too much hardship, alleviate the suffering of the losers, and it is also the case that we have a duty of justice to do so. Rawls's claim that the corrupt domestic structures of developing states are the sole (or even the major) contributing factor is highly suspect. I think it likely that, while Rawls is right to draw a distinction between the justification and operation of the difference principle in domestic society and the duty of assistance in international society, his account of the institutions of global economic justice are lacking. But the relevant point here is that Pogge's minor arguments are in fact his major arguments. The thin conception of universality cannot resolve the dispute. That being the case I am more inclined towards the contextualist interpretations of Rawls found in Andrew Hurrell's account of 'Global Inequality and International Institutions' than in the work of the cosmopolitans.⁴⁷ Once the liberal-cosmopolitans 'retreat' to thin conceptions of universality there is no longer any good reason to try and use their thin formal universalism as a trump card. All they have left is thin contextualist universalism.

If this is the case then we find that as we move back down the continuum another key issue comes to the fore. If the moral authority of philosophical knowledge is questionable where do we turn? It seems clear that Pogge, Rawls, and Walzer all rely on political knowledge rather than philosophical knowledge. It is true to say that Pogge places more emphasis on thin formal

universalism than Rawls and that Rawls, in turn, places more emphasis on philosophical knowledge than Walzer. However, we have seen that ultimately Pogge and Rawls rely heavily on the normative context of, in this instance, international society. This, it should be acknowledged is something that Walzer suspected all along. Walzer never believed that philosophy (at least good philosophy) added very much to the work of the political activist, public intellectual, or social critic. Indeed he has always been wary of those who discover or invent philosophical knowledge or the 'wisdom of the eagle'.⁴⁸ Nevertheless one of the major concerns that arises when we begin to 'thin out' the philosophical predicates of moral argument is the worry that we are setting off on a slippery slope towards Rorty's relativism. An exploration of this claim warrants more time than I can give it here. Indeed it represents the next logical step in my exploration of thin universalism. Here, however I want to lay out two possible directions and pose some questions for future exploration.

Rorty wants both to deny the epistemic authority of knowledge claims and to encourage us to engage with politics beyond epistemology.⁴⁹ While the consequences of living with contingency may turn out to be irony and solidarity this is, we should recognise, Rorty's hope rather than any definite outcome and the attempt to philosophise our way out of trouble is compared to ethnic cleansing.⁵⁰ Small wonder then that philosophers are concerned to arrest their descent to this level as soon as possible. Walzer is not quite so damning but nevertheless thinks that the philosopher who recognises the waning authority of philosophical knowledge but still wishes to engage with politics exposes himself to two risks.

The first is the risk of defeat, for although the engaged philosopher can still claim to be right he cannot claim any of the privileges of rightness. He must live with the ordinary odds of democratic politics. The second is a risk of particularism, which is, perhaps, another kind of defeat for philosophy.⁵¹

For Walzer, the political theorist, shorn of the pretensions of foundationalist philosophy, has the same status as the poet or the novelist in Rorty and shares ground with other public intellectuals and social critics. There may be more we can say here. How close to, or distant from, Rorty's position this is questionable. There is, however, at least a *prima facie* case that there is clear water between them (although our primary defence might be diminished responsibility!). But even a thin structural constraint on moral conceptions is better than the random odds of ordinary democratic politics. Walzer, throughout his work, has presented the emergence of this structural constraint as a reiteratively derived universal (or nearly universal) moral minimum. It may not be hugely helpful (or accurate) to think of these structural features of morality as deduced from practical reason but 'rather as emergent prohibitions, the work of many years, of trial and error'. For Walzer,

these universal or almost universal prohibitions barely begin to determine the shape of a fully developed or livable morality. They provide the framework for any possible (moral) life, but only a framework, with all the substantive details still to be filled in before anyone could actually live in one way rather than another. (Walzer 1985: 23)

Note the phrase 'any possible moral life'. In that phrase lies the ammunition that the social critic needs to get beyond relativism, an idea that Walzer himself elaborates in Chapter 1 (above). Second there is no real need to fear the particularist consequences of Walzer's thin universalism. Walzer's own prescriptions for international justice include a vertical and horizontal dispersal of sovereignty far beyond even that envisaged by Pogge. There is nothing about contextualist universalism that prevents us from thinking about the global context as subject for reform.⁵²

These final comments cannot stand as definitive argument in favour of the moral authority of political knowledge and there is no space to engage in such an argument here. Nevertheless they serve, I hope, as a guide to the potential focus of contemporary attempts to construct universal moral principles and political argument. The main burden of this paper has been to explore the role and function of philosophical knowledge, or thin formal universalism in contemporary liberal political theory. My general conclusion is that its presumed dominance is unwarranted. In part this is because it cannot carry the burden that it was intended to and in part it is because its force is contingent upon thin contextual universalism. Both of these features are a consequence of the process of 'thinning' out the foundations of contemporary political theory. The moral authority of philosophical claims concerning the nature of universality and the presumed priority of philosophy over politics have to be re-examined if we are to sustain the modernist political project in the face of today's challenges.

Notes

- 1 In part this is a consequence of one of the general theoretical strategies adopted by some thin universalists. The clearest example is found in the work of Rawls. The full significance of the move from *A Theory of Justice (Theory)* to *Political Liberalism (PL)* obscured by the fact that in *Political Liberalism* he is still focusing on developing principles of justice for a 'closed' liberal democratic society (Rawls, *Political Liberalism*, New York: Columbia University Press, 1993, p12). This means that the shift in method from *Theory* to *PL* seems to do relatively little work. We still have a conception of persons as having the two moral powers and we still have the same core principles of justice. These features seem to spring from his general approach to normative issues. However in *The Law of Peoples* (Rawls, J. *The Law of Peoples*, Cambridge MA: London, Harvard University Press 1999, see also Rawls, J. 'The Law of Peoples' in S. Shute and S. Hurley (eds), *On Human Rights, The Oxford Amnesty Lectures*, New York: Basic Books, 1993) the full impact of the move to political constructivism and away from his earlier neo-Kantianism can be seen. In this work the conception of persons and the principles of justice are seen to be largely norm-governed, or drawn from the background

- conditions, or the context of the argument in *PL*. The work that Rawls's conception of practical reason is doing is seen to be severely limited and our understanding of the character of his account of thin universalism has to be adjusted appropriately. I shall return to this issue later to argue that this reading of Rawls both refutes much of the critical literature on *The Law of Peoples* and sets out a new series of issues for the Rawlsian construction of principles of justice.
- 2 Rorty, R. *Philosophy and the Mirror of Nature*, Oxford: Blackwell, 1980, p. 315 also Rorty, *Contingency, Irony, and Solidarity*, Cambridge: Cambridge University Press, 1989, p. 68.
 - 3 Rorty, R. 'Human Rights, Rationality, and Sentimentality' in S. Shute and S. Hurley (eds), *On Human Rights, The Oxford Amnesty Lectures*, New York: Basic Books, 1993, p. 119.
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3 Thin universalism as weak foundationalism

Bruce Haddock

In this paper I focus on two sets of claims, both of which may be regarded as problematic. I take for granted the fact of pluralism, the challenge posed by the reality of multicultural societies to complacent modes of ethical and political justification, and the internally contested nature of modern societies. These 'facts', if we may call them that, constrain the way we can talk about our values, projects, ambitions etc. We cannot assume that the universality of our convictions will resonate universally. Indeed we are likely to find that many of our fellow citizens will be perplexed by the parochial nature of our obsessions. Despite these constraints, we still find (as a matter of fact) that we continue to express (at least some of) our ethical and political concerns in universal form. Following Michael Walzer and others, we have adopted a distinction between 'thick' and 'thin' modes of argument.¹ In what follows I will be suggesting that the way the distinction is often framed obscures the character of (some of) our deepest moral and political commitments. I will also be suggesting that the related distinction between 'foundational' and 'anti-foundational' forms of argument is unhelpful, at least as conventionally understood.

Reservations about 'thick' (or complacent) universalism do not need to be rehearsed here. We can no longer take seriously the assumptions that informed schemes of social, economic and political development in the heyday of modernism. The thought that disparate ways of life are likely to converge looks implausible and undesirable, despite recent attempts to resurrect speculative philosophies of history.² We need not be committed to the view that diversity is an end in itself, only that sustainable ways of life can take myriad forms. At the very least, this thought makes us cautious when we prescribe specific practices, even in our own societies. We are aware that forms of life must be tolerated that are not to our taste. Yet we also know that some practices strike us as so repellent that they cannot be treated as matters of taste. Of course, we are all likely to draw the line between tolerable and intolerable practices in different places. My point here is to highlight simply that we have to draw lines.

It remains possible that when we draw lines we are doing no more than asserting priorities within our cultures or belief systems. This must remain a

possibility at the back of our thoughts on this question. We must recognize, however, that this would be a radically reconstructive position, reflecting none of the priorities in the values and arguments competing for our attention. Relativism stands as a meta-ethical position that does more or less work for us. But it offers limited help to us in our practical lives and signally fails to model the difficult choices we sometimes have to make. In one form or another it has a very long history, going back at least to Protagoras and re-emerging as different universalist positions over-reach themselves. Yet for all that we can accept the theoretical possibility that a meta-ethical theory may do no ethical work for us, we are still left with the troubling thought that we cannot distinguish (theoretically) between trivial preferences and deep dilemmas. These are grounds, at the very least, for supposing that our thinking on these issues is far from reflective equilibrium.

It is clear that few of us are comfortable with the thought that moral and political practices and institutions may be justified simply by appeal to comprehensive views. At one level this merely reflects our recognition that comprehensive views are unlikely to be shared by all the potential agents in a hypothetical moral or political arena. This is relatively uninteresting from a theoretical point of view. We never seriously supposed that moral and political practices were like games in which we shared a commitment to common rules. That would be to model our thinking on the commonplace occasions when we don't have to think hard at all. We normally know what to do and function reasonably well on auto-pilot. Interesting issues arise for us when we are genuinely unsure what to do next. We must expect theory to model that possibility.

This is precisely where strong foundational and deep contextual arguments go wrong. When things are going well for us, it may be appropriate to present our practices as if they follow from first principles or firmly rooted convictions. In either case our practical thinking may be portrayed in deductive form, even though our actual decisions and choices are likely to be intuitive. I am not suggesting that it is necessarily helpful to model our everyday thinking in these terms. Traditionalists, sceptics, communitarians, sociologists and psychologists will all have concerns about over-intellectualizing practical deliberation and I have a good deal of sympathy for them. My point is that a deductive model applies best when it is needed least. We are likely to think about first principles when their implications for conduct are unclear to us, just as our convictions may trouble us when they are cited in justification of bizarre or outrageous practices. We have good reason to mistrust theory in these circumstances, but cannot evade the burden of thinking theoretically.

What thinking in these circumstances involves is, of course, the crux of the issue confronting us in this volume. Michael Walzer has offered us a distinction between 'reiterative' universalism and 'covering-law' universalism that starkly opposes two styles of argument.³ We can recognize both versions in the practice of theorists, but (arguably) in caricature form in Walzer's account.

Walzer offers redescriptions of what theorists are doing, yet the actual practice of theorizing looks contorted and constrained from these perspectives. Theorists, we may suppose, are confronting problems that simply arise for them, with no clear idea where their reflections will lead them. We may want to assert, as an article of methodological faith, that political philosophy is actually an immanent critique of ideas and assumptions implicit in the practices of a society or (in Michael Oakeshott's notorious phrase) a 'pursuit of intimations' within a tradition.⁴ Hegel came very close to such a view in the preface to the *Philosophy of Right*, treating Plato's highly abstract speculations in the *Republic* as the representation of a moment of acute crisis in the development of the Greek *polis*.⁵ Whether we choose to adopt a stance of this kind will depend entirely on what we want from theory. It fits very neatly with the interests of a historian of political ideas or philosophical historian. But it does not portray what Plato thought he was doing. And it could be an unhelpfully limiting perspective for a practical agent wondering what to do next in difficult circumstances.

Covering-law universalism fares no better. It depicts the finished form of some theories – universal in scope, generating implications in practical detail wherever human beings find themselves congregating – but leaves us with little understanding of why we might find ourselves doing theory in the first place. Walzer contrasts the interpretation of the embedded social critic with the 'invention' or 'discovery' of the contemplative philosopher.⁶ Yet we really can't say what it would mean to set ourselves the task of 'discovering' a 'new' moral or political theory. We need something to work with even when we project fantastic utopias. Our thinking will be prompted by difficulties or puzzles that we simply can't leave alone. We can't say where our thinking will take us. We can neither claim nor exclude the possibility of universal scope at the outset. We will be striving to render our (typically) confused and changing practical world more coherent and intelligible, whether with a view to amending our institutions and practices or making ourselves at home in a social world. It may be that we will finally come up with a theory resembling the pattern of Walzer's covering-law universalism in the end. But we will actually be engaged in the same sort of exercise as the reiterative social critic. What we claim for our theory may (or may not) be qualitatively different, but the social critic himself can have no clear idea of the cultural limits of his theorizing. Problems will be more (or less) local and urgent, while the form of our arguments will be relatively stable across diverse domains.

The theoretical work on this issue is done by a conception of practical reason, which Walzer effectively evades throughout his writings. Nor do I want to pursue the matter further here.⁷ My interest in this paper, rather, is with modes of justification that emerge in the styles of political theory that Walzer identifies. Social critics are working within the grain of a host of shared assumptions. Discursive effectiveness will depend upon the strong values that are highlighted in argumentative strategies. We are being alerted, in

effect, to core values rather than clinching arguments. And at a certain level it is a matter of sheer contingency whether we share core values or not.

This need not prevent us from projecting our values beyond narrow social or cultural circles. Some of our moral rhetoric is (more or less) universal in scope. But the things we share with all the human beings on our planet are unlikely to be pressing in a practical sense. Only the tiniest fragment of humanity will ordinarily figure in our schemes of social co-operation. Most of us will not feel the need to justify ourselves beyond confined groups. To insist on the universal scope of arguments in such contexts would simply be distracting.

Walzer recognizes that at moments of crisis (1989, famine, genocide, etc.) a range of peoples from diverse cultures will empathize with one another's plight. Some will be moved more strongly in these situations than others. We may find empathy infectious, with warm currents of fellow-feeling being generated. But we cannot say categorically that we should all respond enthusiastically. We are not obliged to be 'nice' people. And we certainly could not be said to have a duty to identify with anyone in particular.

I don't want to trivialize our capacity for international or cross-cultural solidarity. It is a powerful motivation to do things. A feeling of sharing a common plight can generate powerful attachments (like commitments to a 'human rights culture') that can threaten governments. But it is also somewhat blind in its focus. Walzer celebrates the partiality of our attachments. Yet while it may be right to say that, all other things being equal, we should support our side, in fact things are not always equal. Our solidarity may manifest itself as hostility to outsiders. We cannot say where our sentiments will take us. I may be in love with a psychopath. It is not easy to say how we should respond in such trying circumstances. What is certain, however, is that we can't trust our feelings.

Mistrust of sentiment can, of course, be taken too far. To acknowledge that our judgement may be overwhelmed by our feelings does not commit us to the (almost manichean) opposition between practical reason and disposition that Kant presents us with in the *Groundwork*.⁸ Our feelings are 'domesticated' by reflection and social learning and cannot be portrayed as a 'brute' realm of given impulses. Reason is neither slave nor tyrant to the passions, but a (more or less adequate) capacity to chart a course for ourselves in complex circumstances.

The dilemma for Walzer is to give practical reason any standing at all outside specific cultural contexts. He can admit cross-cutting and over-lapping sentiments, leading us (say) to champion the cause of children condemned to a life of virtual slavery. Such things simply strike us as unacceptable, given our 'thick' values and relative affluence. But he can't give us a robust language to talk about children's rights. 'Childhood' as a status is a deeply embedded social construct, varying strikingly in historical and cultural terms. Exploitation in one context is a maximization of the marginal utility of human resources in another. We may deplore these things, sentimental creatures that we are, but, in the absence of strong values, arguments are not

going to change people's minds. And in the absence of clinching arguments, political intervention would amount to a species of cultural imperialism.

The crux of the issue here is that (for Walzer) values frame arguments, while empathetic identification in wider (possibly near universal) contexts will be a by-product of our (culturally specific) experience and reflection. Reiteration can reach beyond cultural boundaries, but in unpredictable ways. What we empathize with will very likely be a distorted version of an embedded practice, seen from our specific (and necessarily partial) point of view. From this perspective, if we are serious about the limited range of practical reason we have no choice but to be pluralists in the widest context (international society), yet that commitment is perfectly compatible with adherence to rigidly exclusive values in our local contexts.

Walzer's difficulties stem not from what he endorses but from the way he couches his argument. His meta-ethical position cannot be treated as one set of values alongside others. Failure to recognize the (formal) character of our reflection on our practices can lead to inflated claims that might (in extreme cases) wreck our lives. Whatever else we may be doing in our practical lives, we are making choices in conditions of uncertainty, depending on co-operation from others that cannot be guaranteed, hoping to cope with contingencies that cannot (in principle) be foreseen.

So far all we have done is to state the formal terms of a practical dilemma. We devise a host of cultural and social strategies to meet these demands, and indeed show remarkable ingenuity in adapting to shifting circumstances. Walzer stresses the priority of our cultural resources as we strive to accommodate new situations. At a formal level he is committed to a view of human beings as culture-creating creatures, and he also insists (quite rightly) that we shape our cultures in a bewildering variety of ways. From Walzer's perspective it would be a denial of our nature as situated culture creators if we were to try to rank cultural practices and resources. But we also know that things don't always go well for us. Sometimes our choices will have unforeseen consequences that undermine our best endeavours. The centralization of political authority, for example, may have seemed like a plausible response to co-ordination problems, yet Walzer contends that in the process the practices of marginal groups are distorted and constrained. Injustice is done if (say) economic criteria are allowed to dominate any other considerations in any conceivable sphere of activity.⁹ And, of course, none of our activities are self-contained.

There really is no way out of this dilemma for Walzer. His adoption of the language of 'thin' universalism was designed to open principled reflection to a wider range of considerations. An excessively closed model of cultures fails to portray the interdependence that is simply a fact of life for us. Yet by treating our capacity for empathy with remote strangers as a (more or less) fortunate corollary of our 'thick' cultural values, he comes close to disabling what is potentially a highly fruitful position. The simple claim that we are culture creators cannot authorize all our cultural creations. Culture creation

is a dangerous game played according to deeply obscure rules. Stakes are high and the penalty for losing may be virtual invisibility. For the moment I am not suggesting that we can necessarily do much to remedy this state of affairs. That is a political question, and we may take radically different views of the value of inclusion and exclusion. My point here is that it is meaningless to value culture creation for its own sake. A capacity for culture creation is a necessary (but not sufficient) condition for human flourishing. Everything depends on what we do with it.

Walzer's argument can do real work only if we can treat social/cultural groups as given in a normative sense. This has nothing to do with the reality of growing up in a world and acquiring a sense of value and worth. It goes without saying that we are ontologically social creatures. Taken on its own, that thought has no normative implications whatever. Groups acquire normative significance when we focus on what they make possible, or the advantages we would lose if we failed to recognize the significance of social ties. And these are highly contested matters. We remain social creatures no matter what we might think of ourselves, though we can imagine more or less valuable ways of life if we viewed ourselves differently. The point is that the way we view social groups is a normative engagement that cannot be generated from the simple thought that we are the products of social groups.

This may be treated as the grain of truth at the heart of the hackneyed distinction between facts and values, though it does not follow from this that there is nothing we can sensibly say about conflicts of values. It may (or may not) help us to picture values as social constructions. We will still find ourselves arguing about the adequacy of various contrasting constructions. How we should model these disputes is the vexed question that dominates our professional lives. What we can't do, however, is restrict ourselves to descriptive accounts of the way disputes arise. Walzer gives us a highly plausible account of the ideal genesis of social criticism, which I broadly endorse.¹⁰ Yet he takes the normative sting out of the criticism. The social critic is portrayed as a social commentator. That is a part of the story, but only a part.

Note that I am not arguing that Walzer's theory is insufficiently robust. That may (or may not) be the case. Judith Shklar has argued formidably that Walzer fails to take seriously the damage done to individuals within cultures. Classically, to be a member of a minority culture within a minority culture is a horribly precarious position in most societies. And, of course, today's minority may be tomorrow's power wielders, desperate to seek retribution for the wrongs inflicted on them. As Shklar expresses the point, Walzer 'treats self-determination as analogous to personal autonomy'.¹¹ But we have no guarantees of good conduct from the groups that proclaim a right to determine their futures. And without those guarantees, relations between groups in societies may be barely better than a state of nature in its most vivid portrayals.

My point is rather different. No matter what view we might take of the normative resources in Walzer's theory for the defence of individual and

minority rights, we have first to establish its status as a normative theory. He makes very strong arguments against moral and cultural imperialism in all its forms. Yet when we look more closely at the basis of his claims, we are left with little more than contrasting pictures or metaphors which will resonate with each of us differently. We will find ourselves drawn to individualist or collectivist world views. But why should we endorse one rather than the other? Walzer can't help us.

Judith Shklar's position is intriguing in this context. She is generally regarded as an anti-foundational thinker, deeply suspicious of grandiose political projects designed to transform the human condition. And yet she has no doubt that the things Walzer values cannot be defended effectively within his own terms of reference. Her celebrated paper, 'The Liberalism of Fear', is couched in thoroughly negative terms, as if the best we can do is to prevent cruelty and harm in their myriad guises.¹² From her perspective, there is surprisingly broad agreement across the political spectrum about the evils that disfigure human life, while positive proposals for qualitative improvement are often highly contentious. Shklar does not contend that we should necessarily avoid such issues, only that the political and theoretical basis for wholesale intervention is often too fragile for the task at hand. It is also potentially distracting. We can allow our pet projects to blind us to the inadvertent damage that may be done by our tunnel vision. How we should proceed in contentious circumstances depends entirely on politics; but we cannot allow politics to authorize anything and everything that may generate popular support. As liberals we should remind ourselves that things can go badly wrong. We have to have a clear conception of the limits of a defensible politics.

Lines can be drawn for a variety of reasons. Shklar's claim that 'cruelty is the worst thing' we can do has been endorsed by a range of thinkers on the ground that we can identify with suffering without invoking contentious (and culturally parochial) theory.¹³ But that is not how she runs the argument. Of course it would be rather nice if we all happened to identify with suffering. The truth, for Shklar, is that we very often don't recognize that we are inflicting it. We may manage to persuade ourselves that not everyone counts the way we do, or that their deepest values are silly and superstitious. Theory helps to wake us up. Shklar actually endorses a strong view of personal autonomy, and focuses on the conditions that may prevent individuals from expressing and asserting themselves in their daily lives. In order 'to protest and block any sign of governmental illegality and abuse', for example, citizens will need 'a fair share of moral courage, self-reliance, and stubbornness to assert themselves effectively'.¹⁴ These are not qualities that can be taken for granted. They need to be fostered by citizens who share a responsibility for the public good. It may not be appropriate for governments to focus narrowly on the promotion of such virtues, because government efforts to fashion 'models of human perfection' may actually create timorous political conformists.¹⁵ Yet Shklar has no doubt 'what a perfect liberal would look

like'.¹⁶ She cites Kant's *Doctrine of Virtue* as a model, 'which gives us a very detailed account of the disposition of a person who respects other people without condescension, arrogance, humility, or fear'.¹⁷ The paradox here is that contemporary neo-Kantians often hesitate in the face of the detailed prescriptions in the *Doctrine of Virtue*. Shklar, we should remind ourselves, is an anti-rationalist who broadly endorses Isaiah Berlin's view of 'negative liberty'.¹⁸ She simply accepts that these positions require more vigorous theoretical defence.

I don't want to dwell on the detail of Shklar's position. My concern, rather, is to model our ordinary experience of practical reason. The thought that our normative responses are causally conditioned simply does no normative work for us, though it makes perfect sense to treat actions as mere phenomena if we are not primarily concerned with co-operative engagements in conditions of uncertainty. Making sense of our practical lives obliges us to take moral and political discourse seriously, despite our deep reservations about the capacity of human beings to act on principle. We are perfectly well aware of the temptations and illusions of practical life. We have good reasons not to trust our own (or anyone else's) responses in challenging circumstances. That is not to say that we will always act badly, rather that it is not at all clear what it would mean to act well. We cannot discount the myriad sources of self-deception in our practical dealings. Theory will not lift us out of this situation. But refusing to think theoretically will condemn us to a criterionless chaos.

At the very least we have to model what it would mean to think hard in difficult circumstances. We can't say that everything depends upon a personal perspective, though it would be absurd to discount personal perspectives entirely. When I ask someone what they think, I don't invite them to list their preferences or to justify their peccadilloes in terms of a life history. I may be interested in these questions, but conversation would quickly come to an end if that were the only information we could exchange. I'm interested here in modelling circumstances in which we are not sure what we should do, and yet recognize that we need to come to some agreement if we are to advance any of our projects. We can't simply agree to differ where co-operative action is required. And we can't flourish without social co-operation.

What is at issue here is simply the thought that consensual social co-operation is a possibility. The fact that we need it to flourish at our best does not guarantee that it can be attained. We have very good reasons to be pessimistic about the scope for sustained reasonable co-operation among strangers. Yet we also know that things could go better or worse for us. We can't give up on this thought without incapacitating ourselves as practical agents. Evolutionary factors crop up here which are more powerful than theories.¹⁹ We can't discount the demand to do the best we can for ourselves in difficult circumstances. Theory can help us to model this dilemma, without necessarily generating specific and binding solutions.

Even the most pessimistic theoretical scenarios can give us resources to work with. Pascal, for example, is often portrayed as an anti-rationalist who

offers little scope for the reasonable resolution of practical problems. Critics of liberal foundationalism (such as John Gray) treat Pascal's wager on God's existence as analogous to the pious liberal expectation that reasonableness will prevail.²⁰ Yet the thought that the ordinary things we do might presuppose assumptions that may be contentious is not an act of faith. It serves us very well in all theoretical domains. And we can't conceive of a domain that is not theoretical in some sense.

Two claims are being advanced here. One is the logical point that thinking involves presuppositions which we may regard as foundational. They will be relatively stable and abstract, compatible with a wide variety of argumentative moves. Some moves, however, will be excluded. It is difficult, for example, to portray the experience of a normative dilemma if we assume from the outset that values are merely phenomenal, though we don't have to invoke a strong sense of personal autonomy and can grant the contingency of the values we grow up with. It is thinking itself that isn't contingent.

The second claim is that thinking hard about moral questions can clarify our predicament, even if (with Pascal and Hobbes) we are sceptical about the capacity of practical reason to transform our basic situation. We are 'thrown' into circumstances that demand a theoretical response. Despite our (eminently justified) reservations about our intellectual resources, we still have to think hard in some contexts. There is nothing mysterious about this engagement. We all find ourselves doing it on occasions, no matter how ill-equipped we might feel we are. A minimal role for theory is to model what is going on in these situations.

Thinking hard presupposes that our next argumentative moves are not arbitrary. It may make sense to decide some matters by the flip of a coin (it really doesn't matter who serves first in a tennis match) but what could we say about someone who resolved to make all decisions in that way? If I really can't decide what to do about something serious, I might flip a coin after protracted agonizing. This would mark a limit to my thinking and would be done (presumably) with deep reservations. However if I were to claim that it is a matter of no consequence what I do on any occasion, I would render myself unintelligible to associates. I would certainly not be a popular figure in schemes of social co-operation.

In practice no one disputes that normative dilemmas arise. There is a temptation in contemporary theory, however, to explain the dilemma away, as if our failure to agree on normative matters could be treated as a necessary limit to our powers of practical reason. Yet we can imagine better and worse ways of modelling normative dilemmas. Equating all choices with personal preferences is unlikely to be helpful when we are really in a fix, struggling to balance contending (and possibly incompatible) demands.

The point here is to take seriously the perspective of the troubled agent, rather than to retreat to a more detached interpretative perspective. The thought is not that theory can resolve the agent's dilemma, but that the dilemma can be modelled in ways that convey the seriousness of what is at

stake. Modelling is not neutral. Different ways of framing a context of decision and choice will filter out certain argumentative strategies as unhelpful or redundant. But there is no suggestion that we can deduce options from first principles.

The principles in question here are necessarily 'thin', embracing a range of widely different (yet sustainable) ways of life. And if they are to be described as 'foundational', it must be clear that the foundation is too weak to sustain thick institutional detail. Thin universal principles may nevertheless be robust enough to do normative work for us. Rawls gives us an intriguing glimpse of what may be involved in the concluding paragraph of the introduction to the paperback edition of *Political Liberalism*. He sets his own work in the context of the 'extreme violence and increasing destructiveness' of the twentieth century, 'culminating in the manic evil of the Holocaust', and asks himself (in the light of that catastrophe) 'whether political relations must be governed by power and coercion alone'.²¹ Here, if anywhere, the ineffectiveness of a reflective politics had been most dramatically illustrated. Note that Rawls is not concerned here simply with the fact that politics had gone so horribly wrong. His wider worry is the very possibility that 'a reasonably just society that subordinates power to its aims' might be discounted.²²

The stakes are high here. On one side we have the thought that 'people are largely amoral, if not incurably cynical and self-centered'.²³ If this is the case, asks Rawls, following Kant, would it be 'worthwhile for human beings to live on the earth'?²⁴ I'm not sure what to make of this question. We are lumbered with human beings on the face of the earth, 'thrown' into situations that are often deeply precarious and threatening. Yet Rawls is remarkably robust.

We must start (he says) with the assumption that a reasonably just society is possible, and for it to be possible, human beings must have a moral nature, not of course a perfect such nature, yet one that can understand, act on, and be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its ideals and principles.²⁵

We should focus here on the force of the sentence. Rawls says that we *must* make these theoretical commitments, not merely that we should (all things considered). Without these commitments we can't begin to think normatively, and we have already granted that normative thinking is unavoidable. From the text it is clear that these are not commitments unique to democratic regimes. The positions defended by Rawls in *A Theory of Justice* and *Political Liberalism* presuppose these (weak) foundations. The politics Rawls advances cannot be deduced from them, but it might be argued that a democratic politics better reflects the primary normative dilemma than some other regimes. I don't want to get involved in the 'thick' politics here. The point to insist on is that foundations are involved that are not normatively neutral.

Consider, for example, Rawls's discussion of conceptions of the person in *Political Liberalism*. To be sure, he has retreated from the abstract account that had misled critics in *A Theory of Justice*, but he still has to presuppose a range of moral powers for the agents whose political arrangements he is considering. In a democratic context it would be appropriate to assume the freedom and equality of all citizens, which may lead us to defend a 'scheme of equal basic rights and liberties' and possibly (more contentiously) a system of distributive justice focused on the needs 'of the least advantaged members of society'.²⁶ But we can't start from that position. We must have a broader conception of what is possible for human beings. Rawls is emphatic on this issue. He is assuming that a society is a system of social co-operation (more or less fair) extending over a complete life. He is also assuming that the agents involved in such schemes of social co-operation are aware of themselves and their dealings with others, though they can articulate that involvement in all manner of intriguing ways. No matter how agents conceive of themselves, however, we must assume that they have 'a capacity for a sense of justice and a capacity for a conception of the good'.²⁷ We have to assume that all human beings have these 'two moral powers', and not simply the citizens of democratic regimes.²⁸ Of course, human beings may not always conceive of themselves in these ways. They may suppose that they are marionettes in God's hands or the products of strictly demarcated property relations. These notions may comfort them and make various aspects of their lives more or less intelligible. But they disguise the fact that they are exercising the 'burdens of judgement' in conditions of uncertainty, anxious to sustain social co-operation on at least minimally sustainable terms. In order to understand what they are thinking and doing we actually have to construe their engagements in another idiom. We would not want to accuse them of being victims of false consciousness because we all filter and structure our experience through symbols and myths. Where we differ from them is in invoking the constructive symbolism of the social world. Our disenchantment changes things radically for us. They think they are doing God's will and we think they are doing the best they can for themselves in determinate circumstances. We can take a permissive view of the way social experience is construed in different contexts. But we can't avoid meta-ethical assumptions about the 'burdens of judgement' and the 'circumstances of justice'.

Nor can we assume that meta-ethical assumptions are normatively neutral. Some ethical schemes convey the burdens of judgement better than others. As it happens, from where we stand, liberal theory offers resources for grasping social decision-making in conditions of uncertainty that are not available in other traditions, though liberal theory often errs by claiming too much for our capacity for practical reasoning. Liberal theory would also be inconceivable in its modern form without Plato, Aristotle, Roman law and medieval scholastic conceptions of natural law. And Hobbes, arguably the most rewarding modern liberal theorist, was no political liberal at all. None of this should surprise us. The philosophical theory of liberalism is much

richer than the liberal political tradition and will certainly outlive liberal politics in its modern form. Indeed it is misleading to describe the 'weak' foundational theory I am defending here as liberal in any strong sense. Neither modern ideological views of the world nor detailed institutional structures can be deduced from weak foundational theory, though it serves well enough to filter out nonsense if we are minded to attend to it. It certainly does not motivate us to do anything. What it can do, however, is to frame our more pressing political concerns. It does not aspire to be comprehensive in Rawls's sense, though it gives us a foundation for critical thinking. What we might make of it practically is a matter of politics, warts and all.

Weak foundationalism thus remains necessarily indeterminate politically. To expect more from theory is a temptation with baleful political consequences. We do well to shun rationalist utopias. Yet if our thinking is to be critical, and we can barely conceive how it could not be, we are left with a commitment to a scale of considerations. We can contest specific scales, but not the idea of a scale, if we want a coherent conception of critical thinking. We can perfectly well admit that ideal theory has a fatal tendency to over-reach itself, without committing ourselves to the view that critical criteria are always context specific. What I have in mind here is something like the relationship between natural law, the law of peoples, and civil law in Roman legal theory. Here I can offer no more than an indicative sketch of an argument that surely warrants detailed treatment.

Roman legal practice, across the expanse of a multicultural empire, obliged practical agents to take the demands of social co-operation very seriously indeed. Legal judgement is driven by practical controversy in very specific circumstances. When Justinian and his advisors sought to introduce order in the bewildering array of legal precedents before them, they were obliged to think in terms of formal organizing criteria. What we find in the *Corpus juris civilis* will not satisfy a political theorist. The twin aims of being comprehensive in scope and systematic in treatment could not be fulfilled. The initial characterization of the distinct spheres of the *jus naturale*, the *jus gentium* and the *jus civile*, for example, are left in confusion because different authorities have been followed. Thus, following Ulpian, the law of nature (*jus naturale*) is defined as 'that law which nature teaches to all animals', extending the scope of law far beyond the jurist's sphere of competence to include not only 'the human race' but also 'all animals, whether of the air, the earth, or the sea'.²⁹ While this formulation might seem to be close to the seventeenth-century view of a law regulating the operations of the universe, the important contrast between man-made law and immutable law is drawn in rather different terms. Gaius is the source in a passage which furnishes the essential line of demarcation in the *Corpus juris civilis*. Immediately after the characterization of the law of nature, the text focuses instead upon the distinction between the *jus gentium* (the law of nations) and the *jus civile* (the civil law). 'Civil law is thus distinguished from the law of nations. Every community governed by laws and customs uses partly its own law, partly laws common

to all mankind. The law which a people makes for its own government belongs exclusively to that state, and is called the civil law, as being the law of the particular state. But the law which reason appoints for all mankind obtains equally among all nations, and is called the law of nations, because all nations make use of it.³⁰

It is clear that the *jus gentium*, like the *jus naturale*, serves both descriptive and prescriptive purposes. Any organized community will be seen to have adopted a common core of legal practices; and, because it is deemed to be the rationality of such practices which recommends their universal acceptance, there is a *prima facie* case for the arbitrary enactments of the *jus civile* to defer to the *jus gentium* in the event of conflict between them.

The theoretical uncertainty in the specification of the three spheres reflects practical political pressures. For most practical purposes, the *jus naturale* and the *jus gentium* could be identified. It was accepted that some institutions (like slavery) had flourished in all communities 'as occasion and the necessities of human life required' but yet remained 'contrary to the law of nature' which specified that 'all men are originally born free'.³¹ But this was not allowed to blur the fundamental distinction between the *jus naturale* and the *jus gentium* on the one hand (which gave expression to the universal features that would be evident in the arrangements of any organized society) and the *jus civile* on the other (which was the sum of the enactments that a particular society had been able to devise in response to fluctuating circumstances). The position is classically summed up in a passage which conflates the earlier characterizations of the *jus naturale* and the *jus gentium*: 'The laws of nature, which all nations observe alike, being established by a divine providence, remain ever fixed and immutable. But the laws which every state has enacted, undergo frequent changes, either by the tacit consent of the people, or by a new law being subsequently passed.'³² The point in the context of this essay is not, of course, that Roman legal distinctions should be adopted as they stand; rather that something like these distinctions need to be invoked in order to understand the complex business of organizing social co-operation among strangers.

Intriguingly from a modern perspective, Roman political and legal practice had to accommodate deep cultural pluralism. It was also strikingly under-theorized, depending upon assumptions drawn from Aristotle's *Nicomachean Ethics* that had barely been fleshed out to reflect the vastly different Roman world. Yet we can see in specific instances how thinking hard about practical contingencies can commit us to a wider theoretical perspective. Legal defence in a particular case might require a larger account of the idea of legality. Cicero, for example, in a celebrated defence of the rightful inheritance of Aulus Caecina (the details of which need not concern us) moves from interpretation of specific statutes to the wider question of maintaining basic social practices. How, he asks, is property secured and enjoyed in Roman society? Not, certainly, through the generosity of benefactors, who are in no position to ensure that their instructions are in fact followed. '... the property which any of us enjoys', he argues, 'is to a greater degree the legacy

of our law and constitution than of those who actually bequeathed it' to us.³³ Without implicit reliance on the law, we are all vulnerable to the machinations of others when we try to secure an appropriate disposition of our properties. And it is not, of course, law as arbitrary command but law as a set of rules that is being invoked here. 'The law is that which influence cannot bend, nor power break, nor wealth corrupt; if law be overthrown, nay, if it be neglected or insufficiently guarded, there will be nothing which anyone can be sure either of possessing himself or of inheriting from his father or of leaving to his children.'³⁴ The point is broader than our right to dispose of, hold or inherit property. What the law provides is 'freedom from anxiety and litigation'.³⁵ Neglect of specific rights to private property should thus be seen in a wider context, for though 'the individual only is affected if he abandons his inheritance, ... the law cannot be abandoned without seriously affecting the community.'³⁶ In a broader context, in *On Duties* (which was his last work and provides something of an overview of his moral and political ideas) Cicero focuses specifically on the significance of stable expectations for a flourishing polity.³⁷

From Cicero's account we can see that the relationship between natural law and civil law remains uneasy, and his practical concerns are framed narrowly by a Roman legal perspective. The point to stress here, however, is that the problem necessarily arises whenever we try to think about wider questions of social co-operation among strangers. Civil law can be well or badly devised. And at its worst it may undermine the very idea of a legal order. Among modern philosophers the issue has been best addressed by Hart in his magisterial *The Concept of Law*.³⁸ Significantly, Hart saw his own work as a reworking of central themes in the legal positivist tradition. A theory that was deeply sceptical of a traditional 'moral' account of natural law could not avoid recourse to some of its core ideas. We cannot avoid a universal (and necessarily normative) theoretical framework if we are to ask ourselves what it means for something to count as a legal order or pronouncement. How the relationship between particular acts and a wider theoretical context should be construed will, of course, remain an open and disputed question. That the issue is unavoidable is more significant in this context than its specific iteration on any actual occasion.

Roman law may seem to be worlds removed from problems of justification in modern contexts. Yet its decidedly practical preoccupations should be instructive to us if we are suspicious of the over-reaching ambitions of theory. Its chief concerns reflect our own efforts to understand social co-operation among strangers in culturally diverse situations. Issues that confront us as theorists are similarly generated by the most mundane problems of practical life. Wires get crossed in the most unlikely ways. Theoretical problems arise while we are (ostensibly) minding our own business. That even the narrowest of concerns might demand theoretical treatment should alert us to the dangers of adopting too confined a view. All critical thinking starts somewhere. And critical thinking requires, at the very least, a weak

foundation, as even practically obsessed Roman lawyers had to acknowledge. Parochialism and universalism are perfectly compatible, viewed in the right way. They actually become problematic only when attempts are made to separate them categorially.³⁹

Notes

- 1 See Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame: University of Notre Dame Press, 1994.
- 2 See Francis Fukuyama, *The End of History and the Last Man*, New York: The Free Press, 1992.
- 3 See Michael Walzer, 'Nation and Universe', above pp. 10–41.
- 4 See Michael Oakeshott, *Rationalism in Politics and Other Essays*, London: Methuen, 1962
- 5 See G. W. F. Hegel, *Philosophy of Right*, trans. T. M. Knox, Oxford: Oxford University Press, 1952, p. 11.
- 6 See M. Walzer, 'Nation and Universe', above pp. 10–41.
- 7 For further discussion of this issue see Bruce Haddock, 'Practical Reason and Identity', in Bruce Haddock and Peter Sutch, eds., *Multiculturalism, Identity and Rights*, London: Routledge, 2003, pp. 10–24.
- 8 See Immanuel Kant, 'Groundwork of the Metaphysics of Morals', in his *Practical Philosophy*, ed. Mary J. Gregor, Cambridge: Cambridge University Press, 1996, pp. 41–108.
- 9 See Michael Walzer, *Spheres of Justice*, Oxford: Blackwell, 1983.
- 10 See Michael Walzer, *Interpretation and Social Criticism*, Cambridge, Mass.: Harvard University Press, 1993; and Michael Walzer, *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century*, New York: Basic Books, 2002
- 11 Judith N. Shklar, 'The Work of Michael Walzer', in her *Political Thought and Thinkers*, ed. Stanley Hoffman, Chicago: The University of Chicago Press, 1998, pp. 383–4.
- 12 See Judith N. Shklar, 'The Liberalism of Fear', in *ibid.*, pp. 3–20.
- 13 See especially Richard Rorty, *Contingency, Irony, and Solidarity*, Cambridge: Cambridge University Press, 1989, pp. 74, 89, 146.
- 14 Judith N. Shklar, 'The Liberalism of Fear', in her *Political Thought and Thinkers*, p. 15.
- 15 *Ibid.*, p. 15.
- 16 *Ibid.*, p. 15.
- 17 *Ibid.*, p. 15.
- 18 See *ibid.*, pp. 10, 189, 383.
- 19 See Robert Nozick, *Invariances: The Structure of the Objective World*, Cambridge, Mass.: Harvard University Press, 2001, pp. 236–301.
- 20 See John Gray, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age*, London: Routledge, 1995, pp. 66, 112.
- 21 John Rawls, *Political Liberalism*, New York: Columbia University Press, 1996, p. lxii.
- 22 *Ibid.*, p. lxii.
- 23 *Ibid.*, p. lxii.
- 24 *Ibid.*, p. lxii.
- 25 *Ibid.*, p. lxii.
- 26 *Ibid.*, pp. 5–6.
- 27 *Ibid.*, p. 19.

- 28 *Ibid.*, p. 19.
- 29 Thomas Collett Sandars, *The Institutes of Justinian*, London: Longmans, Green and Co., 1903, p. 7.
- 30 *Ibid.*, p. 8.
- 31 *Ibid.*, p. 8.
- 32 *Ibid.*, p. 13. For discussions of the *jus naturale*, the *jus gentium* and the *jus civile* see W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, Cambridge: Cambridge University Press, 1963, third edition, pp. 52–5; H. F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, Cambridge: Cambridge University Press, 1972, third edition, pp. 102–7; and Barry Nicholas, *An Introduction to Roman Law*, Oxford: Oxford University Press, 1962, pp. 54–9.
- 33 Cicero, *Pro Caecina*, trans. H. Grose Hodge, Cambridge Mass.: Harvard University Press, 1927, p. 171.
- 34 *Ibid.*, pp. 169–71.
- 35 *Ibid.*, p. 171.
- 36 *Ibid.*, p. 171–3.
- 37 See Cicero, *On Duties*, trans. Walter Miller, Cambridge, Mass.: Harvard University Press, 1913.
- 38 See H. L. A. Hart, *The Concept of Law*, Oxford: Clarendon Press, 1961.
- 39 I am especially grateful to John Horton, Peri Roberts and Mark Evans for comments on earlier versions of this chapter.

4 Thin universalism and the 'limits' of justification

Mark Evans

I Thinness, universalism and justificatory philosophy

Although the term 'thin universalism' is of recent coinage and has, perhaps, yet to achieve the circulation it merits, the commitment to the idea that there is a minimal but nevertheless determinate morality with a universal domain of applicability is a venerable one indeed.¹ Its persistent attractiveness lies in its conjunction of two powerful considerations:

- [1] the belief that 'being human' has an invariable normative significance that places moral limits on the kinds of society fit for people to inhabit (the *universalism*);
- [2] a respect for the plurality of human values, cultures and belief-systems, which implies that a truly universal morality necessarily under-determines the full moral character of any particular form of society (the *thinness*).

What I think distinguishes the contemporary thin universalism discussed here from its forebears is a heightened sensitivity to the aforementioned plurality: 'heightened' not just by yet more Enlightenment-anthropological discoveries of how different human beings can be but also by [a] post-Enlightenment scepticism about the kind of 'metanarratives' which have propped up so many other universalisms; and [b] a concomitant celebration of 'contingency', of provisionality and fluidity of belief and commitment, which calls into question, among other things, the solidity and sway of at least some of the norms that these other universalisms once steadfastly upheld. This sensitivity often encourages the two considerations to pull away from each other and nowadays it is often said that any putatively universal principle is nothing but a particular in disguise, arrogantly and violently attempting to assimilate a world of difference. Those who say this are sometimes inclined towards what is sometimes called an 'anti-theory' position, defining 'moral theory' as in part concerned to identify or formulate and thereafter apply universal principles. This they reject on the grounds that proper moral judgment is too

particularistic to be conducted with such supposedly context-insensitive, generalised, 'abstract' universals.²

Born not least out of the historical experience of cultural imperialism, today's thin universalism is alert to the failings of its predecessors in this regard. But it insists we cannot jettison consideration [1] altogether: *that* it treats as an equally compelling lesson from history. Instead it urges us to redraw universalism's line, bringing the two considerations back into balance to assuage modern pluralistic sensibilities. Hence, on my understanding of the concept, thin universalism is comprised of a rather sparse set of principles (where 'principle' denotes a general directive or regulative ideal for how agents ought (not) to act), substantive enough to establish some fundamental norms for human co-existence but not so thickly determinate as to be completely insensitive to the concrete particular and the possibilities of variable interpretation and prioritisation when situated in the more comprehensive particular moralities and cultures required by agents for full normative orientation in their specific contexts. Thin-universalist philosophy believes that anti-theoretical concerns may count against 'thick' theories but that a thin morality can ride through their objections. (Although my purpose in this chapter is not to state directly and fully what I believe these principles to be, crucial claims about thin universalism's content necessarily emerge in my argument.)

By its very nature – its awareness of the challenges posed to the project of validating any universal principle in the midst of such plurality – thin universalism is almost obsessed with the project of its own *justification*. For my present purposes I shall say that, very broadly, to 'justify' a principle is to give a reason (or set of reasons) which suffices to warrant the holding of that principle. What it means to 'warrant' varies significantly across the different conceptions of 'justification' and for any one such conception the form and content of a justification may differ according to: [a] the audience to which it is addressed (for example, when I am trying to justify the claim to others that they should hold principle *X* I may have to cite different warranting reasons from the ones which I employ when I establish why *I* myself should hold it); [b] the precise purpose of the justification (for example, a purely *moral* justification, seeking simply to warrant the inclusion of a principle within a belief-system, may require different reasons from a more specifically *political* justification, where that is understood to be a warrant for using political power to enforce the principle). Despite their differences, however, accounts of justification tend to share some version of these two commitments: first, that the reasons offered in justification should in some sense be independent of that which they seek to justify (it is not sufficient to say, for example, that the reason that 'we should show kindness to others' is that we should be kind and not malicious, for that is merely a circular reiteration and not therefore a justification); and, second, that the reasons offered by the 'justifier' to the 'justified' must be in some sense 'acceptable' to the latter.

Being rigorously respectful of plurality, as thin universalism wishes to be, straightforwardly leads to the ‘acceptability’ requirement, for how, it is natural enough to urge, could a principle be justified with such respect in view if it was not something that a justifiee could in a relevant sense accept? And it is not too misleading to say that thin-universalisms are consequently preoccupied with the articulation and defence of what they variously mean by ‘acceptability’ – which ranges from ‘outright actual agreement’ to the little-more-than-notional conceptions of ‘what one *might* accept under some counterfactual ideal condition’. With humanity as their ultimate justificatory audience on the one hand, and with plenty of well-supported but repugnant belief-systems and practices within it which they wish to rule out on the other, they face an exacerbated manifestation of a problem which attends such justificatory philosophy more generally: can one characterise ‘acceptability’ in a way that really does show appropriate respect to the (very diverse) justifiees in demonstrating the plausibility of such acceptability but which is also robust enough not to be robbed of all content by the worst excesses in what some human beings actually seem to think is acceptable?

Unsurprisingly, much of the scepticism about thin-universalist philosophy holds that it either ends up being too ‘thick’ (proffering principles that its own sensitivity to plurality ought to show as being reasonably rejectable by some people, repeating the error of many predecessor universalisms) or too ‘thin’ (so accommodating of the diversity within its intended domain that it ends up hopelessly permissive and hollow). In the minds of many of its critics, then, the second commitment leads to thin universalism’s downfall.

II Begging the question, wagging the dog

This chapter is not as such a direct intervention into the ‘acceptability’ debate, but its thesis may provide us with a way to think around the problems posed by this requirement. Instead, it analyses the ‘independence-of-justificatory-reasons’ commitment in moral-justificatory argument (that is, arguments that justifiers propose to justifiees as to why they should embrace a proposed principle). The problem it presents stems from the generally recognised fact that, in order to prevent an infinite regress of justificatory questions (demanding a further justificatory reason for every justificatory reason given), a justification must be brought satisfactorily to a halt at some finite point. The challenge is to spell out what ‘satisfactory conclusion’ means, and how it might be reached without having to rely upon premisses embodying claims which have not themselves been justified but which stand, in this context, in need of such. (I shall hereafter refer to the reasons given in justification as the ‘premisses’ of, and that which is to be justified as the ‘conclusion’ to, a justificatory argument.³) I say ‘in this context’ because it is absurd to insist that the justification of any particular belief always depends upon the justification of absolutely everything else that has to be assumed in the case presented. This could in principle turn the justification

of any little thing that I believe into the overwhelming demand to justify *everything* I believe. But we should not be too quick to think that the necessary restraints on justificatory demands which attend our claims to 'knowledge in general' are equally present when we are asked to justify a *moral* commitment. It is less clear that the justification of any one moral commitment need not be presumed to be dependent upon the demonstrable justification of every other moral commitment in the web of belief under inspection. (Two reasons why one might entertain this doubt are: moral commitments are much less numerous than the sum of everything we claim to know, so the justification of the former may be far less overwhelming and hence more reasonable to demand; and moral commitments may be much more intimately related to each other and hence less separable in justificatory inquiry.)

Now, arguments which violate the independence-of-reasons requirement are standardly dismissed as examples of the logical error of *petitio principii*, or 'begging the question', wherein the justification for *X* is in effect taken for granted by the argument offered as to why it is justified. To be sure, question-begging arguments are not always as crude as the 'kindness' example given above; they may have a veneer of fresh and complex argumentation. But, on closer inspection, they prove to have no relevant weight which is independent of what it is they were marshalled to justify. On these grounds question-begging justificatory arguments are commonly assumed to be utterly redundant.

Yet it is also widely believed that moral-justificatory arguments always end up having to assume *something* substantively normative in their premisses. Many think that one question typically begged by them is 'why be moral?', which can be distinguished from the justification of any particular principle(s) (understood as the different question of 'why be moral *in this particular way?*'). And they will differ on how perplexed, if at all, we should be by this instance of question-begging. The problem arises more forcefully, however, when the 'something' looks sufficiently similar to that for which justification is sought as to prompt the thought that it, too, obviously needs to be furnished with an appropriate justification. Some think that the justification of some crucial part of the specific principles in question often ends up being assumed right from the start in any coherent and consistent justificatory argument for them. And they contend that the nearer we get to the justification of the most fundamental normative commitments, the more obviously and overtly is this the case.

To compound the problem, it is easy to suspect that, when we are trying to get *X* to accept the set of principles *Y*, question-begging is a probably inevitable concomitant of the 'acceptability' criterion, thus placing the two commitments about justification's nature in stark opposition to each other. The thought here could run thus: if we are not actually able in even our best justificatory arguments to offer *X* any reasons for that acceptance which are sufficiently independent of *Y*, are we not merely dogmatically reiterating *Y* to *X*? If *X* accepts *Y*, is that not due to the fact that *X* already accepted at least the crucial premisses which entail commitment to *Y* and hence did not really

need to have *Y* justified to her? If *X* is at any significant distance from *Y* to start with, and will not change her mind without what she would accept as good independent reasons to shift her position, then the justification fails.

The perceived circularity of moral-justificatory argument has provided some thinkers with another reason to adopt an anti-theory position, where ‘moral theory’ is now understood also to identify certain principles which are independent of, and more normatively fundamental than, whatever particular (i.e. non-universal) concrete moral practices happen to be at hand for actual agents in their specific social worlds. For these anti-theorists, the circularity arises because of the incoherence of the idea that one can ‘step back’ from the immediacy of moral commitment in any particular context to find meaningful independent justificatory supports for it; moral judgment and justification proceeds intelligibly only from within (and with acceptance of) one’s particular form of social life as constituted by these moral practices.⁴ This is an extremely broad-brush depiction of this type of anti-theory stance and I think that contemporary thin universalism is partly defined by *similar* assumptions about the nature of morality and moral reflection. But thin-universalist philosophy, *qua* moral theory, ultimately does not draw anti-theory conclusions from them. In fact, I claim that the normative significance which anti-theorists typically attach to their own analysis of morality and moral theory is perfectly well codifiable as a thin-universalist moral theory. A rejection of even the kind of moral theory formulated by thin-universalist philosophy renders anti-theorists unable fully to articulate their own normative concerns. That they have such concerns is immediately evident from their own moral rejection of thick universalisms and their admission (though they sometimes need intellectual prodding here) that some people’s views of what is morally acceptable (the genocidal racist, or the paedophile) actually are universally beyond the moral pale. They, too, eventually concede a ‘stepping back’ manoeuvre – perhaps when moral push comes to shove – in admitting that some norms have a universal *domain* even if they lack universal *origin* (that is, they don’t have origins or bases in every actual current norm-specifying belief-system).⁵

But before I say something more in support of this contention, we have to reckon afresh with moral-justificatory circularity. I propose that at least some crucial justificatory arguments do indeed beg the question they seek to answer and that, because they are in a sense our fundamental – ‘ultimate’ – moral commitments, thin-universalist principles are peculiarly prone to justificatory question-begging. Specifically, my case is as follows:

- [a] the desire to derive a thin universalism, and to justify it in ‘acceptability’ terms, is itself best understood as driven by certain normative concerns and attitudes – how appropriately to respond to a world whose pluralism is identified and evaluated in a specific normative way – which are actually central to, perhaps even almost wholly constitutive of, the morality that a thin-universalist justification seeks to justify. In a sense we

go into the thin-universalist philosophical project as, already, thin universalists.

- [b] For this reason, as well as because they are broaching issues of normative fundamentals, thin-universalist justifications are therefore particularly prone to exhibit question-begging characteristics. More specifically and using more benign terminology, as I do not believe it sensible to describe this as the *fallacy of petitio principii*, they employ what I call 'dog-wagging' arguments: the normative tail is wagging the justificatory dog. Dog-wagging manifests itself in two stages:
- [i] when, if it is to be at all determinate (providing normative orientation), the starting-point of a moral justification incorporates at least some of the normative claims that it seeks or needs to justify; and then:
 - [ii] when the ultimate or decisive, and perhaps the only, test by which the justificatory argument's success can be determined is whether it justifies the kind of principle we hope it will, or want it to. In other words, what the justificatory argument seeks to justify is already assumed to be justified insofar as it provides the criterion for judging the argument's success.

For my present purposes, I am not making the strong claim that all valid thin-universalist justifications are essentially circular, though I suspect this to be the case. Rather than seek laboriously to prove this claim, I not only invite readers to consider it for themselves in their own reflections on justificatory arguments but I also, and more significantly, want to develop an argument that dog-wagging circular arguments are not in fact always pointlessly vacuous – as long as we rethink certain aspects of the justificatory project. Lack of space limits how much I can say on behalf of this claim, but I venture that dog-wagging does not necessarily demarcate 'limits' to what we justifiably believe (hence the scare quotes around the 'limits' of my title). A philosophy peddling this claim should therefore have a *therapeutic* role in showing how we might live with the circularity of our moral commitments in a serious-minded way. I do not pretend that this is an easy task for it but, whatever, the anti-theorist dismissal of justificatory philosophy can be shown to be altogether misconceived.

III Some ways of being constructive in justificatory philosophy

Before dealing with dog-wagging, the case for retaining justificatory philosophy can be substantially forwarded by acknowledging its use of arguments which are 'constructive' in the sense that they are not strictly circular. A 'strictly' circular argument is one whose conclusion [a] has to be assumed to be valid in order to accept the premisses being offered to establish its validity; [b] is therefore substantially identical to the premisses: it is indeed a mere

reiteration of the latter and hence there is no ‘argument’ at all. (One might as well have posited just the conclusion, for nothing has been gained by converting it into an argument with premisses for inferential purposes.) When offered to justify a principle to justifiees, then, a strictly circular argument will only work for them if they are already pretty much prepared to buy the conclusion to start with. Let us say, then, that such an argument leaves the justifiees’ belief-systems as they are; it does no ‘constructive’ work of reform on them.

Now if the anti-theorists reject justificatory philosophy on the grounds that its arguments are strictly circular, then it is easy to rebut their view. Plenty of its argumentative strategies are usefully constructive. Two which are well known and on which I will not therefore dwell are as follows.

- [a] Justifying a practice or action in the name of a principle avoids circularity insofar as the justification of the *principle* is not at stake in the argument;⁶
- [b] Unless we believe a principle to be absolute, we may have a genuine dispute not on whether a principle is justified in general but whether it should be applied in a specific instance. Alert to the qualifications which may apply to the application of a universal norm in a specific location, this possibility is one to which thin universalism should be especially sensitive.

A perhaps less acknowledged, but equally valuable, strategy proceeds by first proposing to distinguish ‘*justificatory philosophy*’, understood as referring to the justification of fundamental or first principles, from ‘*critical-expository philosophy*’, which invites us to take certain principles as given and then seeks to develop further possible principled and practical consequences from them. For example: intellectually, it is perfectly valid to begin an inquiry by positing a commitment to human rights, leaving aside the justificatory-philosophical question as to whether we have warrant to accept that commitment, in order to expound its possible implications in terms of further moral commitments (for example, ‘what obligations are attendant on the ascription of rights to humans?’) and institutional/practical requirements (for example, ‘what form of political regime is most hospitable to human rights?’). Insofar as critical exposition employs a conditional form of justificatory argument of the form ‘*if we accept A then we can see that B follows*’, it need not be thought of as ‘begging the question’ for its method merely and explicitly *invites* us to accept certain assumptions in order to work out what follows from them. But note that the exposition of what might follow on from the adoption of fundamental principles could give us reasons to accept those principles in the first place – and, indeed, these may well yield the best available justifications for them, showing that the initial distinction between the two types of philosophy is hardly clear-cut. Yet the exposition brings in new and independent considerations to bear on the first principles’ justification.

And, most importantly, the reason why the exposition is dubbed 'critical' is because its results may well prompt major revision of the initially-positing principles in search of a reflective equilibrium.

Even arguments which do look more strictly circular can be valuably constructive. For a start, we should not overlook the way in which a circularly structured argument can still effect changes in belief among its audience if its mere airing by the justifier is enough to make a justifiee change her mind and reject her current set of opposite commitments. We could think of this as an instance of successful *rhetoric* by the justifier for it has been, say, the manner of its presentation which has been constructive. And, against Richard Rorty's argument that other types of (poetic, fictional) literature are probably more effective than 'philosophy' for performing such acts of moral conversion,⁷ it is hardly clear that cases for moral commitment set out in 'philosophical style' cannot often persuade people to ditch their current beliefs simply due to their force or attractiveness when packaged thus. Justifiers can also work on justifees' current beliefs in more subtle, less radical ways. For instance, and contrary to what many on both sides of the current debate seem to think, it is not always the case that justifees are fully clear in their own minds about their beliefs. They do not necessarily have a complete grasp on what they think: their thoughts may be inarticulate, unclear, or otherwise somewhat confused.⁸ So even if a justificatory argument is only 'sorting out' justifees' present thinking, that can nevertheless be genuinely constructive in that it is not 'mere' reiteration of what is already obvious to the audience.

Obviously, justificatory philosophy also seeks out arguments whose flaws go beyond mere unclarity in order to dispel them as well, lest they inadvertently discredit what they want to justify. And, of course, it is concerned to show that the justifications for any opposing principles fail. By way of illustration, let us briefly consider another form of argument which I regard as significant in justificatory philosophy since it seems to me crucially to structure so many of them, good and bad: the 'belt-and-braces' argument.

Let us say that a 'perfect' belt-and-braces argument is one whose conclusion is grounded upon two or more premisses, each of which is sufficiently compelling by itself to secure that grounding. The argument's conclusion is, in other words, over-determined: because one premiss suffices, the other could be discarded without weakening the conclusion.⁹ But in 'imperfect' belt-and-braces arguments, the individual premisses on offer – though ostensibly robust in themselves – are in fact not always strong enough to do the job on their own. Sometimes, no significant damage is thereby done to the conclusion: trousers will stay up even if the belt is too loose when there are sufficiently taut braces in place. But sometimes a visible supporting consideration is presented as by itself sufficient to ground an argument when in fact certain other important assumptions, invisible in the argument's presentation, also have to be made for the argument to hold. The analogy here is with the illusion of a visible belt being that which is holding up the trousers

when in fact it is too loosely buckled to do so. In reality, a pair of braces hidden by a jacket is doing the work. I think it is fair to say (though I have no space to expand on this point here) that many justificatory arguments exhibit something like this structure: their stated premisses are offered as sufficient when in fact further assumptions, invisible in the argument's formal ensemble, are playing crucial and perhaps decisive roles in holding up the conclusion. A lot of justificatory philosophy is devoted to the exposure of arguments' inner workings and this is perhaps especially valuable when arguments that initially *look* well supported are found to depend upon such surreptitious props which, on inspection, prove not to be strong enough to do the job either.

Of the many other kinds of flaw that justificatory philosophy may expose, I shall briefly mention the illegitimate conversion of a minor or subordinate consideration into a major one, and *vice versa*, thus reversing the appropriate order of what should be justified with respect to what (with further, spin-off errors resulting). In the same way that it is odd to say, in response to the question 'why do we wear trousers, or a skirt?', that they provide something for a belt to hold up, we might, for example, readily think that the neo-conservative answer to the question 'why should we promote globalised liberal-democratic capitalism?' which runs 'because this is the way to secure the politico-economic hegemony of the United States' had entirely misplaced the focal point of justification. Even if capitalism should be supported, and even if it is true that it would secure American hegemony, we may dispute the latter fact's credentials as a justification for capitalism.¹⁰ Philosophy can also expose arguments which are weaker still due to outright falsehoods or indifferences to truth, *irremediable* unclarity, banalities, trivialities and other deformations in their structure, all of which have seriously clouded arguments in moral justification.¹¹

Finally in this section, I want to return to strategies that more positively help justifiees to embrace the desired conclusion substantially from within what they already think. For unclarity with respect to current belief is not the only form of dissonance in justifiees' belief-systems that justificatory argument can constructively address without requiring in those systems a root-and-branch overhaul. There may also be certain lacunae which initially preclude acceptance of the justificatory argument but which that argument can seek to fill in. This can be done in ways which show justifiees how they could accept its conclusion without the kind of significant reform of their other beliefs that they may refuse to undertake.

One lacunae-addressing argumentative strategy is characterised by the metaphor of 'bootstrapping' and is particularly well-suited to the generation of acceptable principles from premisses shareable by justifiees. The latter, who initially cannot see how they can or should adopt the conclusion on offer, are shown how they can pull themselves up to it by their own bootstraps by putting more philosophical effort into employing what they can already accept as premisses to this end. As Barbara Herman puts it,

the attraction of bootstrapping is that you use a bit of what you already have to get to some place you haven't been before, but need to go. As a strategy of argument, it is environmentally neutral. No new resources – new entities or capacities – are called for; little of what you start with is wasted.¹²

The basic materials of the argument are already present in the belief-system of the justifiee and, unlike the 'unclarity' scenario, she may have a perfectly sound grasp of them. But the justifier's arguments prompt further thought about those materials, illuminating different ways of grasping and utilising them, to tease out previously unnoticed implications and inferences. In other words, the argument allows the justifiee herself to fashion, from these new insights, the strap which provides the leverage needed to reach the desired conclusion. This process is hardly a mere reiteration of what she already believes, even though she has not been asked to utilise any substantively new belief in accepting the conclusion: she has only been shown how, with a little thought, she can already get there herself.

Sometimes justifiees lack the key bootstrapping material yet all that would be needed is a relevant *new* premiss which would comport well with their other current beliefs and which, if accepted, could complete the justification. This novel premiss might fill a gap in the justifiees' belief-systems or it might replace one which they can come to see is less congruent after all with their other current beliefs and can be discarded. Whatever, this addition acts to conjoin the otherwise disparate existing beliefs to yield the justification's conclusion where formerly they failed to do so. To continue the metaphorical theme, we might call this a 'bootzipping' argument, the 'zip' being the distinctive but unobtrusively congruent device whose insertion is needed to gather in and fasten the otherwise unsecured material in the justifiee's belief-system, enabling it now to perform as a unit in clinching the desired conclusion. (Or, if the argument requires more intricate and laborious philosophical moves than is implied by the pulling up of a zip, perhaps 'bootlacing' is the more appropriate term).

Given its pluralist sensitivities, thin universalism needs to be alive to the possibility, indeed probability, that the wider its justificatory audience (and, of course, ultimately that audience is humanity) the more varied its justificatory arguments may have to be. Different members of that audience, with divergent belief-systems (and perhaps, for some, differing types of flaw in those systems) are likely to require different arguments. Another widespread, often implicit assumption that thin-universalist philosophy should doubt, then, is that when we want to justify a common morality to the audience in question we are necessarily constrained to look for a single argument that its members can supposedly accept in common. Instead, it may have to aim for a 'patchwork' justification of divergent arguments aiming to bring a diverse audience to a single conclusion: the ends, but not necessarily the means, are what is to be shared 'in common'. Assembling this patchwork,

and ensuring that it can be woven together for this common purpose, remains a critical function of justificatory philosophy; bootstrapping and bootzipping arguments are just two of the tools it may need.

IV Constructive dog-wagging

Now it is wholly reasonable to point out that the above forms of argument are all, in effect, strategies to construct ‘acceptability’ of principles on the part of justifiees. They form part of a larger argumentative engagement on the part of justifier and justifiee – and this, it may be charged – *does* circularly assume the validity of the principles at stake because the justifier does not have at her disposal any genuinely independent validating reason for holding the principles she is trying to ‘justify’. Put differently: we have shown how justificatory philosophy can be ‘constructive’ at a secondary level of establishing acceptability, but this is merely a business of showing justifiees *how* they can complete a particular circle of argument for themselves. *Why* they should is not addressed at this level except in a purely circular manner, but *that* is the key justificatory question. Hence the anti-theorists charge that ‘justificatory philosophy’ doesn’t actually deliver what it promises.

Let us accept the circularity thesis. Does this really vitiate justificatory philosophy? Recall that a dog-wagged justificatory argument was defined as one [a] in which decisive elements of its conclusion are substantively present in its premisses; and [b] one which treats its conclusion – that which it seeks to justify – as criterial in the judgment of its’ argument’s success. The validity of such an argument is in effect held to lie in its yielding or supporting the kind of principles we want it to ground. An argument’s failure to do so is treated as evidence not that the principles it has failed to support are therefore unjustified and should be rejected, but that it is the argument that is at fault and *it* should be jettisoned in favour of one that is thus supportive. This is the circularity: the argument can only establish the justification of the principles on the basis of a test whose own validity assumes that these principles are indeed justified. Principles that are dog-waggingly justified thus have to be treated as ‘foundationalist’, not in the common but rather misleading sense of being grounded on some metaphysical claim about human nature,¹³ but in its ‘proper’, epistemological meaning that they are self-justified, or non-independently justified, as opposed to unjustified or ‘non-justified’.

Now I think the validity of ‘dog-wagging’ justification is more commonly assumed than many philosophers would care to admit. A simple example, which also renders vivid what I mean by ‘dog-wagging argument’, is as follows. Think of those arguments which seek to dismiss utilitarianism as a method for formulating moral norms on the grounds that it could sanction the ‘tyranny of the majority’, or that it violates ‘the separateness of persons’ and ‘personal integrity’. For these arguments to be valid, the principles upon which they are based have to be regarded as already justified, otherwise *ceteris paribus* there is no basis not to conclude that it is the principles, not the

utilitarian method, which should be abandoned. My claim is that at least some of these anti-utilitarians will ultimately justify their anti-utilitarian methods on the basis that they do yield the hoped-for principles which were absent in utilitarian outcomes. And it is probably fair to say that many utilitarians meet this kind of charge by trying to (re)construct the premisses of their arguments so that such principles do, after all, emerge from their method. If it is true that many justificatory arguments are ostensibly more complex than this, I also think that many of them are readily, and not distortingly, boiled down to this form.

Using the 'acceptability' criterion once again, but this time to try to refute the validity of dog-wagging, one might claim that, insofar as justification is only forthcoming with the 'acceptability' of an argument to its justifiees, we have no reason to think that securing this among the latter is necessarily guaranteed in the way that the circularity of a dog-wagging argument presumes. Whatever questions justifiers beg in their own arguments, how the justificatory audience responds is another, independent matter. In response: 'dog-wagging' is indeed only a thesis about the structure of an argument often offered by justifiers. But it is crucial to note that the 'acceptability' criterion is itself a reflection of a moral commitment, to wit, that justifiees' agreement, in some form, *should* be secured. It is not a value-neutral pragmatic requirement as to what form of justification will 'work', i.e. to secure actual compliance, because what it means for a justification to 'work' is itself value-laden (given that, for example, compliance could be easily secured in the face of widespread dissent by massive coercion but this is never on the table for justificatory philosophy). Further, insofar as 'actual universal agreement' is almost certainly impossible and undesirable (would a morality that accommodates the rapist's or paedophile's ethics, for example, really be one that a thin-universalist would accept? Of course not), the 'acceptability' criterion is itself hedged by morally-laden qualifications as to what counts as, shall we say, 'acceptable acceptance.' For this reason, its mantra-like invocation as criterial of a morality's justification should at the very least be qualified by recognition that it is itself constituted by substantive moral commitments. Especially if the latter are part of what an argument is trying to justify, then the 'acceptability' criterion does not help us to by-pass dog-wagging argument.

Above, I claimed that the nearer one approached moral fundamentals the more reliant their justification becomes on dog-wagging arguments because there is just less that can be non-circularly said (ultimately, there is nothing 'more fundamental' than the fundamental). To support this contention, the present thesis maintains that thin universalism is peculiarly prone to this reliance because the very idea of a thin universalism and the project to justify it are not morally neutral. They *emerge* from direct, explicit and *fundamental* moral concerns. Certain beliefs about how human beings should treat each other – the respect that their differences in belief and modes of living is owed and the constraints which are rightfully placed on them to constrain

the violence that we always have the potential to do to each other¹⁴ – are what motivate the search for a universalism that is thin. Furthermore, I suspect that the outcome of many a contemporary thin-universalist justification will yield something very much like these moral commitments which impel it from the start: clarified, qualified and nuanced, perhaps, but still substantially similar. And the justificatory argument will be both structured by, and judged on, its success in inferring these commitments from its premisses.

I have already cautioned that lack of space here means what persuasiveness these observations have must come in part from readers' reflections on the structure of their own moral belief-systems and how they think their own principles are justified. (I am confident, of course, that these will be substantially vindicated as a result). But I want now to ask what point could there be to a dog-wagging justification?

Building on the theme of clarification of moral commitments in justificatory argument already discussed, I want to suggest that arguments which are circular in this way may nevertheless 'amplify' the principles they are avowedly assuming to be justified from the start. They may supplement or bolster a commitment through redescriptive reiteration. Further such support may be derived from showing how other considerations which justifies may accept can reinforce the commitments in question. This is a form of coherentist justification, in which the individual beliefs are justified in terms of their mutual fit in an acceptable, edifying whole – the important qualification being that, on my version of thin universalism, the fundamental principles are not *primarily* justified by virtue of the support they receive from other elements in the justificatory web. (The latter must be thought of as the belt to the fundamental principles' trousers; hence this is coherentism at a 'secondary' level, reinforcing the 'foundationalistically' justified principles.)

Conveying the strength of commitment can obviously aid the justification of principles to others, but one important dimension that is usually overlooked at this point is the value that this exercise has with respect to one's *own* moral convictions. Justificatory argument may discharge the psychologically useful function of reaffirming our commitment to certain values: in a variety of ways, perhaps, they are fragile – incomplete in their articulation, free-floating in their bases – and we constantly feel we *need* to justify them in our arguments. This may partly be a way of ensuring that our commitments do not become 'dead dogmas', in the way that Mill feared truths would become if they were exempted from contestation in free speech by virtue of their truth-value.¹⁵ By keeping our commitments thus under review, we remain ever alert to the possibilities that they should be refined or perhaps even changed in some way simply by looking at the same arguments from different angles; vigilant caution and modesty in our convictions is thus encouraged. But such argument can also help to *reassure* us that our commitments are valuable, worthwhile, important. Hence the purpose of such justification is not simply (and perhaps not even *primarily*) to convince others, but to embolden *ourselves*. Uniting this point with the clarificatory function,

Stanley Cavell suggests that justificatory argument is an act of *self-disclosure*, or self-explication:

whose direct point it is to determine the positions we are assuming or are able or willing to assume responsibility for; and discussion is necessary because our responsibilities, the extensions of our cares and commitments, and the implications of our conduct, are not obvious, because the self is not obvious to the self.

It is not just the justifiees who may be unclear in their thinking. Particularly given that a justifier's moral commitments may be opaque to herself as well, moral (justificatory) argument leads 'to a knowledge of our position, of where we stand; in short, to a knowledge and definition of ourselves.'¹⁶

V Grounds of conviction: doubt, faith and dogmatism

This account is admittedly brief and nebulous as it stands, and many (not just anti-theorists) may find it radically unsatisfactory in apparently providing no *reason* for believing any one principle rather than any other. When such circularity in a moral argument is unavoidable, on what basis can we still call it a *justification*, as dog-wagging does? Did we not therefore reach the limits of justification in what was outlined in section three? Here I can only sketch, rather baldly, the elements of a response, but the connection between dog-wagging and thin-universalist justification can be made clearer and substance can be added to the Cavellian point of dog-wagging justification mentioned above.

The real concern is that dog-wagging leaves us with an unapologetically blunt arbitrariness in the adoption of principles which in fact undercuts the justifiability of self-justification. Isn't this just licence for any one to affirm whatever principle they may choose? If we have no reason other than our commitment to our principles for why we proceed from them rather than others then *ex hypothesi* surely we have no reason not to have a different set of commitments, no matter how horrible (from our present perspective) they appear to be? In effect, are we not morally untethered, adrift in a normative vacuum and *de facto* empowered to act in whatever way we choose? We may feel ourselves unrestrained and omnipotent in our own legislation of values, no matter what the consequences of that may be, or we may feel cowed and *disempowered* by the overwhelming normative void that this view implies – neither being desirable plights.

Such scenarios have famously haunted the philosophical imagination for centuries and I will not pretend to be able to dismiss it properly here. But the first point we should make is that it is not that we have 'no reason' to believe *X* in a dog-wagged justification: *X* is posited as itself reason enough to think that we have good reason not to opt for the horrible alternatives. We should also focus on what it is that is supposed to make the supposed

'no-reason' scenario a *problem*. For the concerns that motivate this critique are themselves primarily moral: they are fears about what morally objectionable outcomes this view might end up justifying on its own terms. It is easy to spot the elements of a dog-wagging argument here: the account of justification is being attacked in this critique because it threatens a failure to deliver the kinds of principle one wants to hold – which must assume that the principles are already justified if they do indeed undermine the account. In which case, we can then demand of the critique, on what is *its* justification based if it is not this kind of foundationalist principle? And if it is thin universalism which is at justificatory stake in the dog-wagged argument, I think it plausible to suggest that it is thin-universalist morality which is fuelling the attempted rejection of dog-wagging justification.

To be sure, it is not difficult to sympathise with those who find this foundationalism existentially dizzying, disorientating and/or nauseous, but these reactions seem to result from a perspective that, though it thinks itself divorced from, or outside of, the moral belief-system they are questioning, is powered by normative concerns which, again, may very well be similar to what thin universalism peddles. Admittedly, is not the *angst* displayed by the critic the more appropriate response to the circularity of that perspective's justification? Well, now speaking on behalf directly of thin-universalist principles more positively, we should not shirk from the point that it is precisely but ultimately only our commitment to those principles and not others that renders our convictions 'non-arbitrary': the 'reason' we have to rebut the charge that we have 'no reason'. Our moral commitments matter to us ultimately and only because they matter to us. But insofar as they *sincerely* matter to us, we do not believe ourselves licensed to chop and change our principles at will: it is those principles that forbid this for us. By the same token, it is those commitments alone that ultimately restrain how we react to others: we have no others, or no other source for such others, but as long as we cling to the commitments from which we begin, do we really need any others? And aren't our critics really in the same meta-ethical boat, relying upon the same principles in the reservations they believe to be justified?

There is a powerful sense in which this foundationalism is inviting us to take its principles 'on faith'. If the Anscombian point is right that the kind of principles most thin-universalists are seeking to justify are the mortal remains of overtly theistic ideational traditions in which religious commitment was indeed the basis of justificatory argument,⁷ perhaps it is to be expected that we have ended up still accepting them in some sense on faith. And why, precisely, should this demarcate the 'limit' to justification? Consider this passage from William James:

To preach scepticism to us as a duty until 'sufficient evidence' for religion be found, is tantamount ... to telling us, when in the presence of the religious hypothesis, that to yield to our fear of its being error is wiser and better than to yield to our hope that it may be true. It is not intellect against all passions, then: it is only one passion laying down its law. And

by what ... is the supreme wisdom of this passion warranted? Dupery for dupery, what proof is there that dupery through hope is so much worse than dupery through fear? I, for one, can see no proof; and I simply refuse obedience to the scientist's command to imitate his kind of opinion, in a case where my own stake is important enough to give me the right to choose my own form of risk.¹⁸

It might be observed that the modern preference for Cartesian-style scepticism as a default position in the construction of justified belief-systems has a sound, historically shaped motivation behind it, to wit, the grip that so many of what we now regard as nefarious falsehoods have exercised on 'credulous' as opposed to 'sceptical' minds. And, perhaps naturally enough, this passage might lead one to complain that dog-wagging simply restores blind faith as a justified form of belief-holding, which it was precisely the purpose of justification to reject. Yet it is again crucial to stress that the faith is anything but 'blind': thin universalists believe, as passionately as any, that certain moral claims *matter* very importantly and immediately (and the critics who worry about the effects of what they are calling 'blindness' passionately believe something very similar – and in the same way). However few in number they may be, most of us hold fast to certain convictions with a fierce passion, never *ultimately* wanting to concede the remotest shred of validity to the 'morality' of the genocidal racist or the paedophile. Terry Eagleton has written that '(f)aith is a cleaving to whatever you find you cannot walk away from, no matter how hard you try. What we find ourselves unable to relinquish, even at the point of death, when it is ourselves that we relinquish, is definitive of who we are.'¹⁹

So dog-wagging foundationalism's plausibility is best established when we appreciate how we – most of us, at any rate – have some moral convictions that we cannot imagine relinquishing. And I think that thin universalism gets to the very heart of such convictions in specifying the kinds of norm which we could not imagine being permissibly absent in any form of morally tolerable social world. It is this kind of stand-taking on behalf of humanity for which thin-universalist dog-wagging justification can function as a Cavellian act of taking responsibility: a declaration of our deepest commitments as the outcome of a philosophical process of working out with what it is that we most identify as moral agents, and a preparedness to stand and live by them.

This does not mean that thin-universalists, dog-waggingly justifying their own beliefs, are necessarily dogmatists in their convictions, oblivious to a fallibility in moral judgment from which we should never believe ourselves to be free and which is disrespectful of plurality, running roughshod over all the contingencies of circumstance that make the application of generalised normatives so crudely blunt. From this perspective, even a thin universalism might look to its critics like Michael Oakeshott's 'morality of ideals', which 'has little power of self-modification; its stability springs from its inelasticity and its imperviousness to change. It will, of course, respond to interpretation, but the limits of that response are close and severe.'²⁰ This, so the argument

runs, is typically reflected in the justifier's tone, sounding like Foucault's 'polemicist' who

proceeds encased in privileges that he possesses in advance and will never agree to question. ... For him, then, the game does not consist of recognising this person as a subject having the right to speak, but of abolishing him as an interlocutor, from any possible dialogue; and his final objective will be, not to come as close as possible to a difficult truth, but to bring about the triumph of the just cause he has been manifestly upholding from the beginning. The polemicist relies on a legitimacy that his adversary is by definition denied.²¹

But, once more: this critique doesn't arise from the sheer facts of plurality, contingency and a fallibilist disposition in the light of these uncertainties but a concomitant normative injunction to respect these facts which, among other things, yields the caution and modesty of fallibilism. And, there is no reason to think that the latter cannot be attendant on thin-universalist commitments: I think that the same cautious and modest concerns partly *motivate* thin universalism and, as identified above, give us reason still to expound and explore its justificatory arguments even when they are ultimately dog-wagging. Indeed, and as already suggested above, given that it explicitly acknowledges that its content has to be substantiated in specific settings and that this may prompt significant divergences, thin universalism may be peculiarly *well* disposed not just to fallibilist caution but to reflection, dialogue and openness to divergent views as its adherents set about the business of giving it thicker content.

VI The solace of moral conviction

A dog-waggingly justified thin universalist philosophy should not, then, be thought of as some stubbornly, arrantly unbending set of rules, hubristically insisting upon its absolute infallibility. It is open to qualification, nuancing, revision and caution in its application. But it does not confuse 'openness' with complete 'open-endedness' of moral commitment – and I have tried to show that anti-theorist criticism of a dog-waggingly justified foundationalism only intelligibly proceeds from something very much like this moral position, which I wager few readers would wish to reject.

Where the anti-theorists go wrong is in thinking that 'theory' cannot codify the elements of this position as a universalised set of moral precepts. The fear that they seem to exhibit of 'tying themselves down' by specifying such 'pre-given' norms cannot make proper sense even of this fear itself. Some of them persist with the anti-theory position with an ironic insouciance about moral commitment. But this, I submit, is actually difficult and definitely undesirable when we are fully alert to the real world of moral dilemma and conflict. Certain moral principles are just too important in our world not

to take them seriously in the way thin universalism does and hence formulate them as general norms in the act of setting out our moral stall. To be sure, we know how disastrous a politics of conviction can be, in this age of genocidal wars, suicide bombings and the like. But our horror at these and other shocking aspects of human behaviour is equally rooted in (a different) morality of conviction. And we should not automatically assume that the attitude of animus towards a theoretical 'pre-closure' of our convictions, settling key moral beliefs in theory and in advance of our confrontation with relevant events, necessarily secures us any better from such malevolence. Reversing the critique of *a priori* convictionism, Camus observes,

(f)or the Greeks, values pre-existed all action, of which they definitely set the limits. Modern philosophy places its limits at the end of action. They *are not but are becoming* and we shall know them fully only at the completion of history. With values, all limit disappears, and inasmuch as conceptions differ as to what they will be, since all struggles, without the brake of those same values, spread indefinitely, today's Messianisms confront one another and their clamours mingle in the clash of empires.²²

Even if we think God is dead, we do not want to believe that 'everything is permitted' and that is why we feel impelled to proceed from a moral belief-system in which some things, in some way, are ruled out from the start. Thin universalism can give us this, the solace of moral conviction in the troublesome world human beings are still making for themselves.

But ... it *is* difficult to wish away the lingering anxiety over the dog-wagging foundationalism with which God's death may have left us. The legacy of his presence weighs heavily upon us still. Thus Rorty thinks this anxiety is 'a symptom of power-worship – of the conviction that unless something large and powerful is on one's side,' something independent and decisively strengthening, 'one shouldn't bother trying.'²³ In response to a similar Nietzschean diagnosis of the plight, Berlin quotes Schumpeter's quasi-Nietzschean solution: 'to realise the relative validity of our convictions ... and yet stand for them unflinchingly, is what distinguishes a civilised man from a barbarian.'²⁴ Dog-wagging foundationalism invests its principles intrinsically with the power that God once independently gave them, but 'civilised' people still often feel they *should* demur from embracing them on this basis alone. In a possible explanation as to why, and with another echo of Nietzsche, Martha Nussbaum argues that the longing for such transcendence is explicable at least in part with reference to a 'shame' at being human, as if principles that were ultimately not independent of our attitudes and convictions could not possibly be strong or secure enough to do the work we want them to do.²⁵

In reply we might conclude that, by our all-too-human lights, human beings, now and throughout history, have a very great deal to be ashamed of, which is not only why we still so desperately need a moral compass but also why

we remain so uncomfortable at the idea that only human beings can set it. But even at this point we can glimpse the validity of the thesis presented here when we appreciate that, to set it for us, we would wish to appeal only to a God who – in terms of normative commitment at least – had indeed made us in his image.²⁶

Notes

- 1 Insofar as it insists that we need not give up our particular and local attachments, Stoic cosmopolitanism might be regarded as an early expression of a thin-universalist ideal. The ‘sales pitch’ of many liberalisms in the Enlightenment tradition has, of course, been based on their claim that they are uniquely thin-universalist, even if this particular terminology was unfamiliar to them. The concept of thin universalism with which I am working is thinner than these, however, under-determining any full-blown, distinctively liberal position.
- 2 ‘The anti-theorists’ is a broad and somewhat diffuse grouping and this is but one feature of the ‘anti-theory’ position which they may not all explicitly share. Nevertheless, this is a recognisably prominent anti-theory belief. For discussion, see Robert B. Loudon, *Morality and Moral Theory*, Oxford: Oxford University Press, 1992, Chapter 5. For the present analysis, I need make no distinction between ‘theory’ and ‘philosophy’ and so the terms appear here as interchangeable.
- 3 Note that the nature of the inference between premiss and conclusion can vary between justificatory arguments; the terminology does not imply any commitment to a specific conception of such.
- 4 For discussion of this kind of anti-theory argument, see Dwight Furrow, *Against Theory*, New York: Routledge, 1996, especially Introduction and Part Two.
- 5 The failure to distinguish questions of the ‘domain’ and ‘origin’ of principles is, in my view, a key flaw in many attacks on universalism.
- 6 This familiarly calls to mind Rawls’s distinction between justification of a rule and justification of a practice falling under that rule: see ‘Two Concepts of Rules’ in *John Rawls: Collected Papers* ed. Samuel Freeman, Cambridge MA: Harvard University Press, 1999.
- 7 See, for example, ‘Private Irony and Liberal Hope’ in his *Contingency, Irony and Solidarity*, Cambridge: Cambridge University Press, 1989, pp. 73–95. To be fair to Rorty, his use of ‘philosophy’ differs from the one here and his position is more subtle than this comment might imply.
- 8 Justificatory philosophies sometimes do themselves no favours by assuming that the belief-systems of justificatory audiences are always internally coherent and consistent, which makes the justificatory challenge harder than sometimes it actually is. Impugning a belief-system for exhibiting these structural failings does not necessarily violate a pluralist principle of respect for different belief-systems and pluralists, too, may sometimes be guilty of assuming all relevant belief-systems to exhibit the same high degree of internal coherence and consistency.
- 9 That is not to say that in perfect belt-and-braces arguments one premiss is always to be regarded as utterly redundant as long as the other is properly in place. Rawls’s political liberalism is an instructive example in this regard: the political conception of justice is adequately justified when it is given a freestanding justification but it is importantly strengthened when it becomes incorporated into the set of reasonable comprehensive doctrines to form the object of an overlapping consensus. My remarks on patchwork justification indicate a disagreement with Rawls’s belief that the achievement of either a singular freestanding justification or an overlapping consensus among otherwise divergent belief-systems is either

- realistic or necessarily desirable, given pluralism's extent. See John Rawls, *Political Liberalism* 2nd edition, New York: Columbia University Press, 1996, Lecture IV.
- 10 Sometimes, of course, it is perfectly justifiable, in reply to the question 'why are you wearing that *particular* skirt?', for someone to say 'in order to wear this particular belt with it,' so – as ever with analogies – we should not push this one too far in a generalising direction.
 - 11 What I have in mind here are the various types of what some academics have bluntly labelled 'bullshit': for example, that identified by Harry Frankfurt and defined as discourse which is essentially indifferent to the truth in his *On Bullshit*, Princeton NJ: Princeton University Press, 2005; and 'unclarifiable unclarity', as identified by G.A. Cohen and bemoaned for being peculiarly common in academic discourse, in his 'Deeper into Bullshit', in Sarah Buss, Lee Overton (eds) *Contours of Agency*, Cambridge MA: The MIT Press, 2002, pp. 321–39. I think that 'clarifiable unclarity' – the over-intellectualised, over-complicated expression of simplicities – is a third type of discourse deserving this label, and the over-intellectualisation of banal or trivial subjects a fourth. Both, but perhaps particularly the third, can distort moral-justificatory argument in their own ways. Christopher Bertram argues that public-justificatory arguments should be intelligible to the public that they are meant to address but often fail to be so because of their complexity: 'Political Justification, Theoretical Complexity, and Democratic Community', *Ethics* 107 (4), 563–83. I make the related – and I think obvious but serious – point that they should also be free of all four types of 'bullshit.'
 - 12 Barbara Herman, 'Bootstrapping', in Buss and Overton (eds) op. cit., pp. 253–74, at p. 253.
 - 13 The present analysis is neutral with respect to *that* meta-ethical issue regarding the nature of the type of principle in question.
 - 14 That 'humanity' is the relevant moral community is, of course, another principled commitment itself.
 - 15 J.S. Mill, 'On Liberty', in *Utilitarianism, On Liberty and Considerations on Representative Government* ed. H.B. Acton, London: J.M. Dent, 1972, pp. 69–185, at p. 103.
 - 16 Stanley Cavell, *The Claim of Reason*, Oxford: Oxford University Press, 1979, p. 312. Cavell's invocation of an ethic of responsibility in the excerpted passage is conceptually necessitated by his conception of morality and moral argument. If we don't sincerely engage in such moral discourse, then our discourse is not genuinely 'moral' at all. My analysis here therefore embraces this part of Cavell's conception.
 - 17 Elizabeth Anscombe, 'Modern Moral Philosophy', in *Philosophy* 33, 1958, 1–19.
 - 18 William James, *The Will to Believe, and Other Essays in Popular Philosophy*, Cambridge MA: Harvard University Press, 1979, pp. 30–1. Whatever quibble we may have here with James's account of the scientist's methodology is not here germane.
 - 19 Terry Eagleton, *The Gatekeeper*, London: Penguin, 2001, p. 34.
 - 20 Michael Oakeshott, 'The Tower of Babel', in his *Rationalism in Politics*, London: Methuen, 1974, pp. 59–79, at p. 69.
 - 21 Michel Foucault, 'Polemics, Politics and Problematizations: An Interview', in *The Foucault Reader* ed. Paul Rabinow, London: Penguin, 1984, pp. 381–90, at p. 382.
 - 22 Albert Camus, 'Helen's Exile' in *The Myth of Sisyphus*, London: Penguin, 1975, pp. 167–71, at pp. 169–70.
 - 23 Richard Rorty, 'Feminism and Pragmatism', in *Radical Philosophy* 59, 3–14 at 12 n. 21.

- 24 Isaiah Berlin, 'Two Concepts of Liberty', in his *Four Essays on Liberty*, Oxford: Oxford University Press, 1969, pp. 118–72, at p. 172.
- 25 Martha Nussbaum, 'Human Functioning and Social Justice' in *Political Theory* 20 (2), 202–46, at 213.
- 26 For helpful discussion on predecessor versions of this chapter, I thank Rhys Andrews, James Beard, Heidi Brown, Maria Paz Calvo Felton, Alan Finlayson, Bruce Haddock, James Hill, John Horton, Gaynor Howells, Rex Martin, Richard Murphy, Adrian Osbourne, Peri Roberts, Peter Sutch and Richard Van Der Watt. As always, Anne Evans's help in scrutinising the text was invaluable.

5 How do principles work?

Axel Kaehne

Principles are the building blocks of constructivism. They are the centre of interpersonal agreement that is critical to any constructivist project in political philosophy. They also feature prominently in accounts of liberal universalism. There, so theorists hope, they will provide thin but resilient ground on which political agents can erect the edifices of cross-cultural understanding and accord.

In both roles, principles must possess a minimal amount of revisability that allows agents to review their validity in light of contingent situations and when confronted with unfamiliar norms and beliefs. Thus principles face huge demands in constructivist and universalist projects. In this paper I intend to say something about how principles work. It is probably in order that I mention what has prompted my thinking on principles in the first place. The issue of revisibility of principles has occasioned many comments but little debate so far. Most commonly we assume that to revise principles somehow proceeds naturally, we would, as it were, simply know what to do. Commenting on Rawls's notion of reflective equilibrium, Roberts writes:

Reflective equilibrium requires potentially extensive revisions of both our convictions and our principles. In fitting one to the other, we can imagine an adjustment process that moves back-and-forth from convictions to principles to background theories, adjusting each in turn until a satisfactory equilibrium is attained.¹

In the current paper I take this process of revising principles to be problematic in a philosophical way and try to provide some arguments that would support my view. I will proceed as follows. In section one I will dwell on some implications of the naturalistic fallacy for the concept of principles. Part two of the chapter will review an argument of Korsgaard against moral realism which is instructive for our purposes insofar as it highlights the problem of identifying the exact source of the obligatory force of ethical norms. In the last and third section I will draw on Nozick's interpretation of the symbolic function of principles to back up further my argument that principles are unlikely to play the role assigned to them in constructivist conceptions of morality.

I

Universalism is an ambitious project. It tells us to be hopeful in identifying values and beliefs across cultural and political divides, which can act as the foundation for social and political reconciliation. Universalism makes claims about *likeness* that may, one day, translate into conflict resolution and peace.

Given its liberal pedigree and credentials, it is only reasonable that universalism places great emphasis on justification. Liberals naturally would feel uneasy with a philosophical doctrine that features elements of coercion and manipulation. So the philosophical project of universalism is distinct from that of universalism as a political programme, a point worth mentioning in a world where the export of political institutions has become a widely endorsed practice in international relations. Universalism as a philosophical doctrine thus embraces justification wholeheartedly as a litmus test for its liberal intentions. Justificatory procedures, however, thrive on dispute and consensus; they are grounded in the conviction that individuals have the capacity to form their opinions when placed in an environment free from undue pressures and motivated simply by the search for truth. In order to debate sensibly and reach agreement in debates we furnish each other with reasons for our arguments. Although these reasons will often have only a limited appeal, due to their contextual nature and limited scope of applicability, we can be said to be engaging in philosophising as soon as we genuinely intend to back up our stories and beliefs with reasons that may have justificatory force. The best reasons we can point towards however in our debates, so philosophers think, are principles, a belief they incidentally share with politicians who evidently believe that principled conduct in the political world is worthy of our support and endorsement, ostensibly far more so than actions for which we may have simply good reasons. Principles often *are* reasons and they play a crucial role in justification and justifying action. But it is worthwhile noting here that principles may not be the only good reasons for action. In fact, it is doubtful whether they often give us greater justificatory strength in defending a particular course of action.²

One advantage of principles as justifying devices in the universalist debate may be that they possess potential appeal across different particular convictions, sentiments and beliefs. Whatever we may think about particular actions in a given specific context, we may be able to agree on fundamental principles that order and subsume certain courses of action, and here we may have identified (so our hope goes) the kernel of wider social and political consensus from which we can set out to solve the intractable problems and conflicts in our world. Principles are thus the constructive devices for universal consensus, a belief that is deeply enshrined in the notions of universal and public reason so characteristic for much of Enlightenment philosophy.

Principles evidently have many advantages that lend themselves to such a constructive role in philosophical universalism. They contain an element of abstraction that is welcomed by philosophers insofar as it reduces the

dependence on contingent factors and contextual aspects which may generate disagreement and dissent. Principles suggest an absence of contextuality that is appreciated by philosophers trying to identify the foundations of universal agreement.

Furthermore, principles may offer to philosophical work a generality that allows the subsumption of many different cases in neat categories. Principles therefore permit us to sanction or mandate particular actions once they have been recognised as a specific manifestation of a valid and accepted principle. As Rawls understood it, principles in short may be ideally placed at the intersection between our intuitions and the more elaborate theories we may have about our social world. They may usefully act as transmission belts to generate agreement in our debates on the scope and shape of social institutions.

Now, the particular focus of this chapter will be on moral principles, principles that provide us with good (or insufficient) reasons to engage in a certain action. This captures only a small part of the categorial work that principles do in our life. But it is one that presents particularly troubling questions to philosophers. More specifically, I will attempt to clarify the role of principles in universalism and claim that the hopes we have in principles and their role in constructing a viable liberal notion of justice is mainly misplaced. Much depends, so I will argue, on whether or not we can comprehend principles as non-contingent reasons.

In what follows I will review some of the literature and contributions of philosophers, some recent, others more dated, but still pertinent to our question though perhaps somewhat overlooked, to the problem of principles in universalism. Before we start I would like to make two clarifications, however, that are of particular importance. The first concerns the relationship between universalism and constructivism. The second deals with what is commonly called the naturalistic fallacy.

Universalism should by no means be taken to be synonymous with the constructivist project that has enjoyed such a renaissance since the publication of Rawls's *A Theory of Justice*.³ Although the latter may be seen as one of the main achievements in formulating a universalist account of social morality based on broadly liberal convictions and norms, Rawls himself notably mitigated the universalist ambitions of his earlier work in subsequent publications. Also, and more importantly, constructivism in liberal political theory understands itself as a challenge to utilitarianism, a theory of justice that harbours similar universalist aspirations, the success of which you may judge differently depending on your perspective and philosophical allegiances. Thus, by no means is universalism congruent with constructivism, we may rather say that the main impetus of constructivist work in moral philosophy has universalist implications. While constructivism asks which principles may be acceptable to individuals who often fail to share fundamental beliefs about the social world but can nevertheless be understood as possessing the capacity to reason and understand the urgency to identify common norms regulating their shared society, universalism explores the nature of reasons

which agents may be able to accept as compelling when deliberating on a particular course of action.⁴

Constructivism and universalism are thus located within distinct yet inter-related debates. While the following comments will not deliberately diffuse this important distinction they may at times fail to pay sufficient respect to it insofar as it takes Rawls's particular theory of justice as articulating core themes for both universalism and constructivism. The boundaries are therefore not deliberately blurred but acquire less relevance as philosophers have tried to respond to Rawls's numerous and stimulating ideas.

The second aspect I would like to raise prior to engaging in the discussion proper is of a simply reiterative nature. Put in a polemical way, strictly speaking we should not consider principles to be reasons for actions at all. In a way, my previous comments on the relationship between principles and reasons were inexcusably sloppy. In a shorthand fashion we may point to principles as our main motivational reason to engage in an action but this would entail that a principle can be *eo ipso* a reason for A to do R. As Toulmin and many others have pointed out frequently, this cannot be the case. Toulmin puts it this way:

Although factual reasons (R) may be good reasons for an ethical conclusion (E), to assert that conclusion is not just to assert the reasons, or indeed anything of the same logical type as R. It is to declare that one ought to approve of, or pursue, doing something-or-other. It is a wicked man who beats his wife: but to say that he is wicked is not just to say that he beats his wife – or, for that matter, to assert any other fact about him. It is to *condemn* him for it.⁵

This point is conventionally referred to as the naturalistic fallacy and I cannot see that this argument has been challenged effectively in the literature and I will rely on it subsequently. As for principles in this context, they consequently cannot act as reasons for an agent to do R, simply because the fact that a principle is recognised by an individual does not compel the individual to do the action the principle prescribes. If this were so, principles would be self-motivating reasons and the consensus amongst various agents on a particular course of action would not be dependent upon the agent's will to act upon this principle. Universalism would become a straitjacket rather than a means of relying on the notion of the autonomous will as Kant anticipated it. More accurately, it is because an agent recognises a principle as pertinent in a given context that a fact exists which is a reason for A to do R. In short, it is the willingness of A to do R that is the reason for carrying out the action. Tilley formulates the same point from a different angle.

To say that a desire 'provides' a reason for A to ϕ is to say, not that the desire itself is such a reason, but that because A has that desire a fact exists which counts as a reason for A to ϕ . Very likely, that fact refers to

the desire in question, but that's not the key point. The key point is that A's possession of the desire brings into being a *fact* which constitutes a reason for A to φ .⁶

This has important implications for universalism. As universalism employs principles as foundation stones for its philosophical edifice, principles cannot take up the function of reasons as such. As Skorupski notes, what we need to construct a viable link between ethical principles and practical judgements are *bridge principles*.⁷ Only so can Universalism avoid its voluntarist pedigree embedded in the Kantian notion of individual autonomy and the free will.

II

Let us now formulate more accurately the problem of principles in ethical universalism. The strength of the constructivist version of universalism stems from its cognitive ambition. It tries to identify a viable route to transcend the numerous problems that realism encounters. Korsgaard, in contrasting the advantages of constructivism with the shortcomings of cognitivism and prescriptivism, shows that the debate between cognitivists and non-cognitivists runs into a dead end as soon as one considers the nature of principles of practical reason. While normative concepts can be seen either as aiding us in understanding reality (i.e. ethical concepts function, broadly speaking, as cognitive devices to locate and detect moral facts) they have also been understood to be simply 'expressive' or prescriptive, hence lacking any substantial claim to truthfully describe reality. Some philosophers have interpreted Kant this way, perceiving norms as creations of the autonomous will. Korsgaard points to the resultant difficulty in deciding how to understand principles of practical reason within these interpretative frameworks. The categorical imperative would possess a double nature in this respect. It can be integrated into either of these models.⁸ The wider scheme in which Korsgaard discusses constructivism is useful and I will briefly rehearse her main argument since it helps us to understand the challenge that universalism poses to the notion of principles.

Korsgaard contrasts Williams's account (which she holds to be of realist import) with Rawls's constructivism. In short Williams claims (according to Korsgaard) that ethical concepts are true if they are approximations of how the world really is.⁹ The proof comes with how effectively they facilitate orientation in the social world. Korsgaard now proposes that this is an impermissible conflation of knowledge with action. She writes:

Goodness in action cannot just be a matter of applying our knowledge of the good – not even a matter of applying our knowledge of what makes action itself good. This is because the ability to apply knowledge presupposes the ability to act. ... For even if we know what makes an

action good, so long as that is just a piece of knowledge, that knowledge has to be applied in action by way of another sort of norm or action, something like an obligation to do those actions which we know to be good. And there is no way to derive such an obligation from a piece of knowledge that a certain action is good.¹⁰

The main thrust of Korsgaard's argument is, of course, directed against Williams' supposed realism in ethical theory. Yet, the passage just cited is instructive for our question as well. It points to the complex structure of the obligatory character of principles. Rules of action do not create their mandatory strength from themselves, but require a second rule that obligates agents to apply this rule in particular circumstances. In short, obligations to follow principles are different from what principles prescribe. The obligation to act in accordance with a recognised principle does not derive from the existence of this principle itself. We are not interested here how this argument may affect realist or constructivist accounts of ethics. The purpose of recapitulating Korsgaard's point here is simply to prepare the ground for the more detailed arguments to follow. In fact, at closer inspection, we may notice that Korsgaard's argument echoes Toulmin's warnings about the naturalistic fallacy.

Korsgaard's second protagonist, however, surely is of utmost importance to the discussion of how principles may work in moral theory. Korsgaard places Rawls's notion of justice at the centre of her considerations on constructivism. Rawls's project is well known so we may presuppose a reasonable familiarity with his main thesis. The question his project poses is, to put it simply, how to live in a society where people draw on different conceptions of the good in giving reasons (to themselves and others) for supporting a particular setup of social and political institutions. The problem is how to generate reasons for a reasonably stable social arrangement and within Rawls' theory principles do indeed act as a medium to create this hopefully lasting linkage between variant conceptions of the good and notions of social and political justice. Now, the main point to note here is that in Rawls' wider scheme of things, reasons are derived from principles while the specific problem for Rawls, of course, has been to ensure that individuals do not select principles of justice (this constitutes an action for which I have to furnish my fellow citizens with a reason) on the basis of any *particular* principle. For Korsgaard this approach offers an invaluable advantage over realism. In essence it is an attempt to find a practical solution to a problem rather than formulating a claim on reality.¹¹

However, looking at it more closely, we may have doubts about the ground on which she differentiated between Williams and Rawls's moral theories. She states correctly that in Rawls's theory, the correct application of the various procedures of fairness produces moral truth.¹² This, however, presupposes that there is a singular accurate way of following the outlined procedures. For many interpreters of Rawls this re-introduces a universalist ambition that may effectively mandate the imposition of a particular social and political consensus on society.

But here we need to remind ourselves of the chasm between principles of action and principles that prescribe obligations to act. The fact that a particular norm has been correctly applied in a particular case does not present us with an obligation to act upon this principle. It simply produces a fact which provides us with a reason to ϕ . This may seem like a trivial point. But consider this example. Let us assume that we agree on the truthfulness of the principle not to kill. Since this principle is of a normative nature, we can say A must abstain from ϕ is true. Now suppose we also accept that abortion is an action that can be correctly subsumed under this principle. So if $(\phi)(A)$ and (A) is true then ϕ is impermissible. The point to note, however, is that it may be entirely plausible to endorse the principle (hold that A is true) and *permit* abortion. The failure to initiate sanctions does not reflect a lack of concern but rather a recognition that the obligatory character of principles derives from something else than simply being considered true. To put it differently, coherent applicability of Rawlsian procedures does not produce moral obligations to introduce the approved social and political arrangements. It may produce an array of facts that may be considered by agents as sufficient grounds to implement the Rawlsian social and political consensus. But the reason to do so does not derive from the coherence of principles applied in deliberation but from the willingness of the authors of this action to believe in the overall benefit of establishing such an arrangement.

Now, I do not intend to suggest that there is no connection whatsoever between somebody reasonably satisfied with the fairness of the procedures by which we produce a mutually acceptable notion of social justice and the motivation to act upon it. The point here is that the obligatory character of the concept of justice is not determined by the correctness or fairness of the procedural arrangement. Otherwise we would eradicate the voluntarist element in the Rawlsian conception of justice, something that would sit uneasily with the Kantian foundations of his theory.

If this is so, however, we need to accept, it seems to me, that principles are not the only reasons that may motivate us to do a particular action in a given situation. These other reasons may not even be principles at all. We do not need to stray into the depths of individual psychology to find that reasons of obligatory character may be of only limited scope and applicability but still recognisable as such. The troubling question is why principles often assume such an overriding capacity; why would we have to assign primacy to principles over contextual reasons?

This privileged nature of principles is particularly disquieting when we think about the revision process in Rawls's theory of justice. Daniels has laudably spent a considerable amount of work on elucidating this revision process although he has hardly managed to convince the critics so far.¹³ His clarifications on Rawls's idea of how to revise principles certainly illuminate the intricate structure of the relationship between principles of justice, considered judgements and background theories of our social world. What is less clear is the nature of this revision process. What we still lack is a theory

of attitude revision or of moral intelligence.¹⁴ Problems include such puzzles as what we need to revise first and what the grounds are on which we may feel compelled to revise this particular element in the triadic relationship rather than another. It amounts in total to the dilemma to decide at what time we have reached reflective equilibrium, or, as Bonvenac puts it, how do I know that I have achieved reflective equilibrium? What criteria do we have to determine that we have indeed established a match between principles of justice, background theories and considered judgements?

Daniels seems to argue that principles are of prime importance, hence possess cognitive and evaluative priority in the validation process (i.e. the evolution of reflective equilibrium). Yet, if this is so, the reasons why we endorse them must be of non-contingent quality, to put it sloppily. But we already pointed out that the best we can hope for is that they constitute a fact which may function as a reason for a particular agent to act upon them. In turn, our motivation to act upon them may be the product of a complex combination of factors, not all of them rational and plausible to others. The point again here is that only if we think that principles are reasons can we claim that the revision process is a straightforward affair in which we simply match our considered judgements to more abstract ethical maxims and background theories. But we already expressed our misgivings about this simplistic construct of moral theory, and noted that this argument seems unavailable to advocates of a non-realist version of ethics.

Skorupski illustrates this point nicely in his defence of 'strict sentimentalism' versus desire-satisfaction theories and instrumentalism. He writes:

It simply does not follow deductively from the fact that I desire X and ϕ -ing is a way of achieving X that there's reason for me to ϕ . The question is, whether there is reason for me to desire X. It is true ... that what I desire is a defeasible criterion of what there is *reason* for me to desire, just as what I am bored by is a defeasible criterion of what there is reason to find boring. But it would be a fallacy to treat that criterial relation as though it sustained a deduction. And only if there is reason for me to desire Z and ϕ -ing is a way of achieving X can we go on to argue ... that there is reason for me to ϕ . Judgements of what is morally wrong and about what is excellent are evaluative judgements about what one has reason to blame and what one has reason to admire. But whence comes the principle that there is reason not to do what is wrong, ... or that there is reason to pursue excellence...? [This task is assigned to] bridge principles which take us from a species of evaluative judgement ... to a practical judgement about what there is reason for someone or everyone to do.¹⁵

Building on these comments, we can offer two arguments that may present plausible objections to a reading of principles as evaluatively and cognitively privileged reasons in the revision process. The first argument draws on Nelson Goodman's observation that the function of something in a meaningful

context is predicated upon its capacity to be symbolically constructed or to be a symbolic representation of that something (in our context of moral value and possessing obligatory strength). In short, Goodman convincingly argues that the rightness of a principle is the product of the symbolic functioning of an action or course of action. As with literary or artistic style (the field in which he develops his argument) it presupposes the ability to recognise the various elements that constitute the particular characteristic of right or wrong. Goodman writes:

A style is a complex characteristic that serves somewhat as an individual or group signature ... although a style is metaphorically a signature, a literal signature is no feature of style. Why do such properties, even though plainly who-when-where relevant, fail to qualify as stylistic? Briefly, because they are not properties of the functioning of the work as a symbol. ... Style has to do exclusively with the symbolic functioning of a work as such.¹⁶

Since Goodman can hardly be accused of realism we can assume a significant affinity (or at least absence of overt, impassable conflict) between his philosophical project (Goodman of course favours nominalism¹⁷) and that of constructivism in ethical universalism. We simply need to supplant style by ethical obligations and we understand why principles fail to obligate in an immediate way. It requires the willingness of agents (observers) to recognise the validity of a particular principle in a given context. To say that abortion is wrong does not mandate any particular action, just as the signature of Rembrandt on the painting of the 'Nightwatch' would not make this a Baroque painting.

The key point here is that principles in order to be acknowledged as moral principles with justificatory force for a particular action require the cognitive ability on the side of the agent, something that embeds the process of political and social obligation deeply in the web of contingency. Moreover, the evaluative characteristics of principles would depend on the moral susceptibility of the agent which is contingent upon her induction into a given particular ethical world. How far this requires a certain amount of foundationalism in ethics and how compatible this is with constructivism is open to question. But, notwithstanding the role of intuitions in Rawls's theory of justice, it seems doubtful that constructivism has much love for the idea that we all share a residue of moral susceptibility that points us in the same direction universally. It is this symbolic functionality of principles that concerns also Nozick in his explorations of how principles work.

III

Despite their pivotal role in political philosophy, many theorists treat principles with benign neglect. They often assume a basic shared understanding

of what principles are and suppose that they can rely on an uncontentious usage of the idea of principle in their theories. They take them as philosophically unproblematic while they are prepared to concede that the content of principles requires theoretical efforts. Rarely in politico-theoretical literature do we come across a definition of principles (such as notably in Scanlon¹⁸) that goes beyond characterising principles in functional terms as reasons in justification. This functional perspective, however, overlooks an important (constitutive) aspect of principles. Nozick offers us an opportunity to appreciate this particular aspect as he develops it in his work on rationality. In the chapter somewhat ironically titled 'How to do things with principles', he writes:

Principles of action group actions, placing them under general rubrics; linked actions are then to be viewed or treated in the same way. ... Principles are transmission devices for probability and support.¹⁹

Nozick distinguishes four different functions (intrapersonal, interpersonal, personal, and intellectual) of principles but, while leaving the intricate detail of his decision theory aside, I will focus on the role that has most serious implications for political philosophy. Explicating the personal function of principles prompts Nozick to declare a further (sub-) role or function: their symbolic utility. He makes an instructive reference to Freudian theory and neurotic behaviour when explaining what he means by the symbolic value of principles. He writes:

... irrational actions and symptoms have a symbolic significance that is not obvious; they symbolize something else, call it M. Yet merely having such symbolic meaning cannot alone explain the occurrence or persistence of an action or symptom. We have to add that what these actions and symptoms symbolize – that is, M – itself has some utility or value ... for the person: and ... this utility of the M which is symbolized is imputed back to the action or symptom, thereby giving it greater utility than it appeared to have.²⁰

Further below he elaborates on this connection between symbolic utility and certain actions with regard to social policy:

One mark that it is an action's symbolic connection to an outcome that plays a central role in the decision to do it, rather than the apparently causal connection ... is the persistence of the action in the face of strong evidence that it does not actually have the presumed causal consequence. ... On these grounds one might claim that certain antidrug enforcement measures symbolize reducing the amount of drug use and that minimum wage laws symbolize helping the poor.²¹

Nozick thus makes it clear that symbolic value of principles is not just an aspect observable in neurotic behaviour. In fact, most of our principles are held not just for their direct value, i.e. their utility which adhering to a particular principle in the course of action brings about. Instead the act of adherence *means* something beyond the simple connection between action and its direct expected utility. Principles may be said to involve an element of identity confirmation insofar as my adherence to them often declares my commitment to the social values that they are supposed to translate into descriptions of action. There is a faint ring here of acting as disclosure, as Oakeshott put it, something that may well be part of social expectations and, consequently be ritualised in certain societies.²² What strikes me as most significant in this context is that the symbolisation process is dialogical in nature and necessarily so. This must leave its imprint on the issue of revisability on which I will say more later.

Summing up briefly, it is this aspect of disclosure or surplus value M that is imputed back to actions through principles that I would like us to bear in mind. Now, in order to delve further into the topic we need to clarify one more aspect of the symbolic function of principles. And in order to do so I will briefly compare what Nozick calls the interpersonal and the symbolic value of principles.

Nozick describes the main interpersonal function of principles in society as one of creating a sense of reliability. Others, that are located outside the familial boundaries, our strangers engaged in co-operative schemes if you like, gain the impression that they can count on me if they hear of my commitment to principles they share. A whole range of agent oriented psychological interpretation possibly opens up here. The point I would like to emphasise, however, is that for prospective agents in a situation which requires social co-operation the description of the action to be undertaken or adhered to and the effect of this action are correlated. Principles reconfirm this unmediated correlation through reformulating the action in more general terms, but add nothing new. An example would be a business venture that requires the payment of a particular sum or delivery of goods. A conceivable scenario would be that agent A would confirm his commitment to agent B to pay promptly by referring to the principle that may be worded something like this: 'Always pay promptly.'

Now, this places agent B in a position to directly infer from the action undertaken subsequently whether or not this principle is in fact a true statement. The revision process of the principle in question can be embarked on on the evidence instantiated by the action undertaken. The interpersonal function of principles is thus easily translatable into a demand for revision.

Now consider a statement that involves a symbolic function of principles. Let us assume that it is commonly held by Americans that to assist the governmental agencies in the war against terror (ϕ) is to be a good American citizen. This proposition qualifies as a principle insofar as it groups a certain

number of actions and attaches a normative quality to them (to be a good American citizen). Now, it is the symbolic function of principles that is predominantly at work here simply because the description of a particular action and the anticipated outcome have no direct causal relationship. Rather they represent a correlation of a belief that is socially held and sustained. What is present, however, is the imputation of value M ('being a good citizen') to the action ϕ ('supporting the war on terror'). This is clearly not an evidential linkage but one of social construction. Providing evidence that ϕ -ing actually does not make you a good citizen is not to disprove the symbolic correlation of this principle but can possibly only erode the socially sustained belief that this relationship holds. Principles that have a primarily symbolic function thus are immune to being invalidated by presenting 'evidence to the contrary'. Where there is no empirical connection, nothing is amenable to factual evidence.

This underlines the dialogical nature of symbolisation through which principles come to be held within societies. Now, interpersonal function and symbolic functions can go hand in hand, blend into each other and are generally difficult to keep apart. But the foregoing remarks clearly show that there are significant differences between them which point at the additional normative content of principles created through the process of symbolization.

Within this context, a new picture emerges with regard to the revisability issue. The process of revision is triggered in the case of symbolically charged principles not through producing factual evidence but by a decline of belief that sustains the imputation of certain actions with the surplus value M. Now these principles are by no means rare in our societies. In fact, we find it often entirely normal to refer to them even in our normative work as theorists. They may even figure prominently in our construction of national and personal identity or be the expressions of the values and commitments we espouse as citizens of a particular society.

Henry David Thoreau already learned in the nineteenth century how difficult it is to shift common perception of the imputed connection between paying taxes and being a good citizen. Little did his rational arguments matter to citizens or to the tax collectors, for that matter. Any chance for substantial revision depends upon the loss of relevance of this particular connection in a given social context. In a way, symbolically charged principles are being 'revised' by decreasing their capacity to facilitate the production of shared identity.

VI

Throughout this essay I have presented arguments of widely different nature: some analytical, others hopefully persuasive in virtue of the analogical dimension. It is time to tie up the loose ends to see how viable universal constructivism remains. We started off by distinguishing the obligatory force of principles from their prescriptive content. It seemed that this distinction

would be an essential element in any Kantian construction of ethical universalism, safeguarding the voluntarist dimension of human conduct. Our argument then migrated to the triadic relationship and the notion of revision that Daniels (and implicitly Rawls) perceives as the centre piece of moral constructivism. I pointed out that the process of finding a match between considered judgements, principles of justice and background theories of our social world, is by no means as straightforward as Daniels (and Rawls) anticipated. In the main, success in establishing reflective equilibrium depends crucially on agents being able to sequence properly the revision process. Daniels operates implicitly with the assumption that principles are of privileged nature in a cognitive and evaluative sense, a viewpoint that has become strongly challenged.²³ I did not present additional arguments in support of Stark's thesis but have instead tried to show that principles are social constructs and provide us with good reasons in virtue of being so. Goodman's notion of the symbolic function of style and Nozick's argument about the symbolic aspect of principles provided us with the necessary material to raise sufficient doubts about principles as analytically cleansed tools for universal constructivism. The conclusion must be that choosing principles depends on situated agents, i.e. the provision of contingencies from which agents initiate their process of understanding. That sounds, however, difficult to accommodate within Rawls's constructivism. The choices agents make in particular situations may involve the symbolically charged general precepts that are so inimical to Rawls' constructivist agenda. Contingently loaded agential judgements that lead to choices do not reveal the agent's sense of justice but simply disclose the system of belief that underpins her conduct. That does not mean that Rawls' project is incoherent or that universal ambitions of constructivism are doomed to fail. It simply means that we are as universal as our conceptual understanding is.

Notes

- 1 Peri Roberts, 'Identity, Reflection and Justification', in Bruce Haddock and Peter Sutch (eds). *Multiculturalism, Identity and Rights*, London New York: Routledge, 2003, p. 151.
- 2 Herman E. Stark, 'Reasons Without Principles', *Inquiry*, 47, 2004, 143–167.
- 3 John Rawls, *A Theory of Justice*, Oxford: Oxford University Press, revised edition, 1999.
- 4 Here we can distinguish between a strong universalism which would assert the compulsory character of reasons for carrying out an action, and a weak universalism which understands the mandate of reasons for actions in a less binding fashion, reasons exerting a more contributory influence on our deliberations on actions, as it were.
- 5 Stephen Toulmin, *An Examination of the Place of Reason in Ethics*, Cambridge: Cambridge University Press, 1968, p. 55.
- 6 John Tilley, 'Desires, Reasons, and Reasons to Be Moral' *American Philosophical Quarterly*, Vol.41, No.4, October, 2004, 288.
- 7 John Skorupski, 'Reasons and Reason', in Garrett Cullity and Berys Gaut (eds), *Ethics and Practical Reason*, Oxford: Clarendon Press, 1997, pp. 345–367.

- 8 Christine Korsgaard, 'Realism and Constructivism in Twentieth Century Moral Philosophy', Philosophy Documentation Center, Harvard University, 2003 pp. 99–122 at p. 105 (also forthcoming in *The Journal of Philosophical Research*).
- 9 Cf Bernard Williams, *Ethics and the Limits of Philosophy*. London: Fontana, 1993.
- 10 Korsgaard, 'Realism and Constructivism', pp. 110–111.
- 11 Korsgaard, 'Realism and Constructivism', p. 115 and *passim*.
- 12 Korsgaard, 'Realism and Constructivism', p. 117.
- 13 Norman Daniels, 'Wide Reflective Equilibrium and Theory Acceptance in Ethics', *The Journal of Philosophy*, Vol. 76, No.5 (May), 1979, 256–282. (reprinted in Norman Daniels, *Justice and Justification. Reflective Equilibrium in Theory and Practice*, Cambridge: Cambridge University Press, 1996. For a critical response see, for example, Daniel Bonevac, 'Reflection without Equilibrium', *The Journal of Philosophy*, 2004, 363–388.
- 14 Bonevac, 'Reflection without Equilibrium', 366.
- 15 Skorupski, 'Reasons and Reason', 359.
- 16 Nelson Goodman, *Ways of Worldmaking*, Indianapolis: Hackett, 1978, p. 35.
- 17 Nelson Goodman, *Ways of Worldmaking*, pp. 94–5.
- 18 Thomas Scanlon, *What we owe to each other*, Cambridge Mass: Harvard University Press, 200, pp. 197–200.
- 19 Robert Nozick, *The Nature of Rationality*, Princeton New Jersey: Princeton University Press, 1993, *passim*.
- 20 Nozick, *The Nature of Rationality*, p. 26.
- 21 Nozick, *The Nature of Rationality*, p. 27.
- 22 Michael Oakeshott, *On Human Conduct*, Oxford: Clarendon Press, 1990, p. 58, p. 86.
- 23 Stark, 'Reasons Without Principles'.

6 Why thin universalism needs conceptions of society and person

Peri Roberts

A commitment to 'thin universalism' is a commitment to the possibility of universal principles. The thought is that there are at least some basic principles of political morality that apply everywhere, despite the wide variety of distinct accounts of the good life, of competing conceptions of just political organisation and of particular communities and cultures. Such universalism is 'thin' as a response to the challenge posed to the justification of universal principles by this moral and political pluralism. It is the recognition of this pluralism that leads Walzer away from what he refers to as a 'thick' covering-law universalism to his account of a thin reiterative universalism that accepts the inescapability of particular contexts (Chapter 1 of this volume). He understands the thickness of covering-law universalism to be dependent on a denial of pluralism, or at least on a denial that the existence of different communities, cultures and world views, each with their own values and understanding of morality, makes any significant difference to the justification of principles. Instead Walzer regards these particular contexts as constitutive of morality, value and identity; our 'thick' cultures and languages make us who we are and shape our self-understandings. Therefore, justification must take this basic pluralism seriously and any universal justification will exist in a possible 'thin' space of sympathetic overlap between 'thick' cultures. For Walzer, any universalism must accept the constraints imposed by pluralism and in doing so will find its justification both necessarily thin and also limited by, or tied to, the variety of thick particular moralities. As Walzer understands it, a thin universalism is never only thin, nor is it ever only universal, but always retains its links to thick and particular contexts each with its thick set of social understandings.¹

Constructivist positions such as John Rawls's are also attempts to understand the possibility of a thin universalism.² However, I do not believe that these constructivist positions need accept Walzer's characterisation of that thinness. Rawls, and other constructivists such as Onora O'Neill, accept pluralism as a part of the circumstances of justice just as does Walzer. These circumstances are an account of the background conditions for justification. Rawls recognises that any plausible justification of political principles cannot avoid confronting this pluralism. Indeed, Rawls goes further when he shows

us that such pluralism is not something to be combated, confronted or even regretted. Rather than adopt the hostile 'covering-law' attitude to pluralism, for Rawls 'pluralism is not seen as a disaster but rather as the natural outcome of the activities of human reason'.³

In his alternative response to the challenge posed by pluralism Rawls outlines a procedure whereby the principles of justice follow from 'practical reason in union with conceptions of society and person' rather than from the overlap between thick cultures or moralities.⁴ In this chapter I want to think seriously about this account of the generation of principles of justice, about whether this account could underpin a distinct understanding of thin universalism and ask why we should think of justification in this way. It is not immediately obvious why a thin universal justification of principles of justice should orient practical reasoning with appropriate conceptions of society and person (whatever appropriate might mean here). However, Rawls is clear that it should as a conception of practical reasoning as ongoing critical reflection in search of reflective equilibrium has run throughout his work and it is also clear that he believes that such practical reasoning must work with conceptions of society and person. He goes so far as to claim that 'without conceptions of society and person, the principles of practical reason would have no point, use, or application' and that 'ideas of society and person ... are as basic as the ideas of judgement and inference'.⁵ This chapter will go some way to support this claim but also go on to show that not only must practical reasoning be oriented by appropriate conceptions of society and person (this could simply imply a range of particular conceptions, each appropriate in a particular context) but that if a thin universal justification is possible then it is precisely because (and perhaps only because) there is at least one context in which the appropriate conceptions of society and person are themselves thin and universal; that is, bare concepts of society and person, not tied to any particular culture or way of life, that it is difficult to understand how any thick particularism could deny. This is a big claim and whether it is a plausible one is a question that is posed to us by Rawls and the constructivists and is explicitly denied by Walzer, Rorty and other particularists.

The practicality of practical reasoning

When Rawls claims that without orientation by conceptions of society and person practical reason would have no point, use or application he is inviting us to take a step back and attempt to understand what it is that makes practical reason practical. It is important that we accept this invitation as this understanding is a necessary preliminary to assessing the possibility of a constructivist account of thin universalism. What follows is just such an attempt to explore the practicality of practical reason.

Ordinary usage draws a distinction between the practical and the idealistic. We describe as idealists those people who are otherworldly, with their

heads in the clouds, and regard the practical man as someone who is at home in the world, comfortably making plans and undertaking courses of action with at least a possibility of success. Likewise, an idea or a plan is labelled idealistic if it is considered to be impractical, to pay insufficient attention to the way the world is, or works, to be of any use in guiding our thought and actions. If idealistic reasoning is in some way disconnected from the 'real world', practical reasoning must at least be concerned with, adapted to, make reference to or relate to 'the world.' Without wanting to place too much weight on ordinary usage I would like to run with the thought that there is mileage in exploring how far we can work with such ideas and how helpful they might be to our characterisation of reasoning practically. The hope is that in adopting this approach the notion of practical reasoning need not be made confusing or over complicated.

So, our first thought is that reasoning practically involves giving reasons that are *disciplined by the world*, reasons that are adapted to the situation in which they are to count as reasons. Here I am not making a claim that there is a privileged description of the world out there that presents itself to all people with adequate powers of perception. This may or may not be the case but what I say is equally consistent with the claim that the world we perceive is intersubjectively constructed, or with the claim that our perceptions of the world are constrained by our standpoints (so long as our standpoints are revisable). All I am concerned with is that our reasoning, if it is to be practical, must avoid inconsistency with available information about the world however that is presented to us. This suggestion that we secure the practicality of our reasoning by ensuring that the world disciplines or constrains our reasons must consist of more than the injunction to avoid wild flights of fancy or against indulging in the construction of fantasies. We need to explore what measures might be necessary to discipline reason in this way, to explore what constraints on our reasoning we must adopt if it is to be properly practical. The first step towards this is taken if we recognise that we are required in this way to offer reasons that are *at least possible*. Our reasoning does not function in a vacuum but always within particular environments and so reasoning could not be practical if it proceeded from assumptions or expectations of these environments that were untrue of them, or could not be true of them. Practical reasoning must 'fit', be guided by, or at least be appropriate to, the environment(s) within which it is to function as reasoning as it is concerned to offer reasons for action or for the adoption of principles for action and so must be responsive to the relevant normative and political environments. We must therefore be prepared to offer reasons that are at least possible reasons given the range of expectations we can legitimately have of the environments in which these reasons are to count. This constraint on practical reasoning has been widely recognised in political theory in the assumption of an account of the circumstances of justice. An account of these circumstances involves making a claim about the assumptions that it is appropriate to make about the normative and political environments

in which the associated political theory can be regarded as justified. In effect it is a recognition that the reasons for action a theory offers hold only insofar as the account of the circumstances of justice accurately reflects 'the world'.⁶

Rawls has been at the forefront of those contemporary political theorists who have helped us to recognise that both the normative and the political environments in which practical justification takes place are plural where once they may not have been.⁷ Historically political theorists have often felt that they could legitimately assume that the normative environment in which their justificatory reasoning was to apply was not plural but monistic. The foundational claim that practical reasoning, in order to be justified, must track the Form of Justice or the Good is a claim that we inhabit a single normative environment. Likewise the claim that the only legitimate moral authority is the revealed word of the one true God available to all is monistic, as is the claim that history has a normative direction that will inevitably culminate in the global victory of liberal democracy or of communism. Rawls's injunction that we accept the fact of normative pluralism based on recognition of the burdens of judgement is an acknowledgement that such monistic visions of normative justification are harder to sustain in contemporary accounts of practical reasoning.⁸ This is not to say that there is no one substantive conception of the good life that has a singularly special status. It is to say, however, that even if this were the case then the practicalities of judgement and evidence are such that 'it is not to be expected that conscientious persons with full powers of reason...will all arrive at the same conclusion' and that this seems to 'set limits on what can reasonably be justified to others.'⁹ The normative environment in which our practical reasoning takes place consists of a plurality of competing and probably incompatible conceptions of the good life. If the constitution of this environment were different, if there were an overwhelmingly and obviously correct conception of justice or morality, then our practical reasoning may be different in reflection of this. We do not currently appear to be in a position to dismiss all but one of these understandings of the good life nor, given the burdens of judgement, should we ever expect to be in such a position. As such, if our reasoning is to be practical, to be disciplined by 'the world', it must take account of this plural normative environment.

Likewise, Rawls has also been important in encouraging us to take seriously contemporary political pluralism. If political theorists have often in the past assumed that their justificatory reasons were to function in a monistic political environment then they can do so no longer. It may once have been possible to assume unproblematically that political environments were homogenous; today it would be problematic not to acknowledge their heterogeneity. The state is not now, if it has ever been, easily identified with a single nation, tribe, ethnic, cultural or political grouping. Instead political environments reflect a certain plurality, where at least several different such groupings coexist in any given territory. This is reflected in the widespread

political and theoretical recognition that we inhabit multicultural societies and also in the widespread concern for minority rights.¹⁰ Reasoning that is practical must acknowledge this political plurality and take some account of it, a failure to do so would be impractical.

This recognition that in order for our reasoning to be practical it must be responsive to the normative and political environments in which the reasons that it offers are to count as reasons is central to ensuring that our reasons are disciplined by the world. This disciplining also involves the recognition that we must *start from where we are*. Indeed, responding to our plural normative and political environments is one part of starting from where we are in our practical deliberations. We must recognise that without access to a self-evident range of normative considerations whose special epistemic status is widely acknowledged we have little choice as to where to start. In reasoning practically we must make some initial assumptions about normative and political environments. In Rawls's account of justification we must start from our 'considered convictions'.¹¹ These embody our basic assumptions about our contexts and environments. Faced with plural environments we can only start with the resources available to us, our convictions or intuitions or basic judgements. To do otherwise would be to attempt to use resources that we do not have and there could be nothing practical about that. If our reasoning is to guide actions, or justify the principles that are to guide action, then it must bear some sort of 'relation to who we are or what we believe'.¹² It does this by keeping its feet firmly on the ground through its use of only resources that are 'to hand' or available. As the practical man works with what is at hand instead of trying to use what is not so does reasoning that is practical start from available starting places. Our convictions, basic assumptions about our moral reasoning, form a significant part of the normative environment for our reasons and so taking them seriously is being guided by the world in which those reasons are to function.

Reasoning in such a way that our reasons are disciplined by the world means that we must also avoid making further assumptions that are not accurate of that world. Assumptions that are inconsistent with available information about the world are no basis for practical reasoning. It is in this light that we should regard, for example, Onora O'Neill's injunction to avoid making assumptions about other people or agents that are untrue of them. If we do so she claims that we run the risk of producing reasons that are 'inapplicable to the human case'.¹³ That disciplining reason with the world, in the form of avoiding assumptions that are inconsistent with available information, is necessary for reasoning to be practical seems a straightforward point. It is obviously similar to O'Neill's claim that we should avoid the idealisation involved in assuming false predicates of those to whom we offer reasons.¹⁴ It is also obviously necessary if we are to ensure that whatever reasons for action or principles for action our attempts at practical reasoning issue in they are at least possible. This is the point of making our reasoning responsive to plural normative and political environments, of using only resources that are at

hand and of avoiding assumptions untrue of the world. We must be attentive to at least these considerations in order for our reasoning to have any chance of being properly practical.

The recognition that the environments for our reasoning are plural is of further consequence for justification. If reasons are to 'fit' environments when environments are plural then reasons may have to be adapted to suit the variety of environments we encounter. In order for our reasoning to be practical we must offer different reasons in different environments. What might be a reasonable expectation of one normative or political environment may not be so of another. As we have seen, disciplining reason with the world involves making basic assumptions in order that our reasoning can get started. Therefore reasoning that 'fits' environments may have to make different basic assumptions in different environments in order to ensure the appropriateness of its starting points and thus of the justified reasons. Some assumptions about the 'facts' or relationships that constitute each environment must be regarded as 'fixed' loosely in any justification appropriate to that environment. We can regard a set of basic assumptions as constituting a 'fixed' environment for a particular justification.¹⁵ This is roughly equivalent to recognising that different justifications may be appropriate for different audiences, that we address different audiences differently. Whenever we attempt to justify an action or a principle the reasons we give call on a wide range of assumptions and presuppositions about the audience. The assumptions that we make when offering reasons to one group of people with whom we share a certain relationship may differ from those we make when offering reasons to another group with whom we share a different relationship. For example, in most families a basis in a profound and shared love for each other is assumed and therefore a general altruism in crisis situations can be presupposed by any reasons we offer in justification of certain actions to members of our family. Assuming such altruism of total strangers on the other hand might be dangerous as well as misguided and some alternative basic assumption would be more appropriate. Likewise, it is fairly safe to assume that there are good grounds for presupposing a greater homogeneity of interests at the national than at the global level. Basic assumptions, and therefore reasons and justifications, vary with intended audience. I take it that this is in part what Rawls was referring to when he said that 'justification proceeds from what all parties ... hold in common' and that 'It is perfectly proper, then, that the argument ... should proceed from some consensus. This is the nature of justification.'¹⁶ Justification, in contrast to proof, is always targeted at an audience, even if the audience is ourselves. Ensuring that our assumptions are appropriate to the relevant environment and the relationships that compose it is a necessary part of ensuring that the reasons we offer are potentially followable by the people in those relationships and to whom we offer reasons and justifications. This is not to say that these people will follow our reasoning but that it is at least possible that they will.¹⁷ This much at least is necessary if our reasoning is to be practical.

We have so far explored the claim that reasoning practically involves being responsive to the relevant environment and audience for justification. We have, however, not yet touched upon an absolutely central aspect of such responsiveness and thus of reasoning practically. This is the recognition that environments are not static. The relationships and groupings that constitute normative and political environments are not themselves fixed but shifting, they change and evolve over time and our account of the conditions on practical reasoning must acknowledge this basic point. We must acknowledge that disciplining reason with the world is not a once and for all process but a continual one. Since relationships change so the assumptions that we make as appropriate to that justificatory environment and so regard as 'fixed' may become, over time, inappropriate or less appropriate than an alternative set of assumptions. If the basic assumptions underlying our reasoning become inappropriate then the practicality of the reasons and justifications based on those assumptions becomes suspect. If we suspect that such an evolution in environment is occurring then we are given reason to re-examine our basic assumptions in order to ensure their appropriateness. We are also given reason to change our basic assumptions if we confirm that a change in environment has occurred and we are faced by novel circumstances. This would seem to be necessary if our reasoning is to maintain its practicality. Reasoning practically will demand the recognition of the provisional nature of basic assumptions. That we regard them as 'fixed' for the purpose of a particular justification does not mean that they really are fixed or refer to fixed features of an environment. Our awareness of this basic point is involved in our suspicion of fanatics. The fanatic's unwillingness to recognise that environments evolve is an unwillingness to recognise that basic assumptions become inappropriate. To maintain the practicality of past reasons in the face of change is to descend into dogmatism.

Recognition of the necessity of revising basic assumptions is the recognition that our reasons and justifications may also change. This highlights the provisional or perhaps temporary nature of any properly practical reasons. Their dependency on environment ensures their provisional standing, as all environments and relationships change over time. No environment can be assumed to be fixed for all time. What we have drawn out here is the necessity to practical reasoning of an ongoing reflection that continually revisits the appropriateness of basic assumptions and starting points, the processes of reasoning built on them and the reasons that are justified as a result. In other words, we have drawn out the necessity of regarding our reasoning as, or at least regarding it as subject to, an ongoing process of *critical reflection*. This is an appropriate response to both novelty and criticism. That reasoning aimed at the justification of normative principles may require this process of revisiting our reasons is central to one of Rawls's most important contributions to political theory, the idea of seeking a reflective equilibrium. Rawls claims that justification is a matter of seeking a reflective equilibrium between considered convictions as 'fixed' starting points and principles of

justice. Attaining such equilibrium involves making basic assumptions in order to get reasoning off the ground but also a commitment to revisiting those assumptions in the process of justification. Just as we have found necessary in our account of reasoning practically, Rawls recognises that ‘even the judgements we take provisionally as fixed points [of moral reasoning] are liable to revision’.¹⁸ Indeed he goes further, acknowledging that,

Although in order to get started various judgements are regarded as firm enough to be taken provisionally as fixed points, there are no judgements on any level of generality that are in principle immune to revision.¹⁹

Let us briefly summarise the progress so far. Broadly speaking we have found that reasoning practically is itself a matter of recognising two simple injunctions. First, reasoning practically involves ensuring that we *offer reasons that are disciplined by the world* in order that these reasons are at least possible reasons. Our reasons, if practical, should respond appropriately to the normative and political environments in which they are to function. Responding appropriately to the environments in which we find ourselves is a matter of starting from where we are, of making assumptions appropriate to our environment. We must also recognise that such environments are plural and that different assumptions might be appropriate in different environments and so different justifications may have to be offered to different audiences. Second, reasoning practically involves the recognition that the environments in which we and our reasons function are continually changing. Reasoning practically in a changing world is a matter of a willingness to revisit and revise basic assumptions, reasons and principles to ensure that they remain appropriate as that world changes. Reasoning practically involves a commitment to a process of ongoing *critical reflection*.

Reasoning about principles of justice

So far we have indulged in a fairly abstract, but necessary, exploration of the idea of the practicality of reason without yet broaching our central concern with the justification of principles of justice. In effect, in exploring practical reason we have focused more on what it is to make our reason practical and less on how we might ensure that our practice is reasonable. I do not mean to imply that if we reason properly we will be able to read off a determinate account of reasonable practice. Instead making practice reasonable will be a matter of reaching an account of the limits of reasonable practice, not of its content. It is to engage with these issues of reasonable practice, of identifying principles of justice to constrain our political practice, that Rawls introduces a ‘procedure of construction that expresses the principles of practical reason in union with appropriate conceptions of society and person’.²⁰ To understand why Rawls introduces these conceptions in this way we need to

examine how it is possible to reason practically about the principles of justice that might make our practices reasonable.²¹

Pluralism and conceptions of society and the person

The difficulties in drawing a clear distinction between the public and the private do not prevent us from either thinking or acting with the categories of public and private every day. We can't outline them wholly, nor draw sharp boundaries between them, but we do so well enough for our usual purposes and when they seem to function inappropriately we are encouraged to look again at how that distinction is being used in a particular case. This is what liberal feminism has done repeatedly. Likewise, in using the idea of political or moral practices I am simply referring to our modes of interaction, whatever they are. I hope to rest nothing on a claim to be able to sharply differentiate practices from each other or to identify the essential qualities of a particular practice. Indeed, the observations thus far suggest that our practices are continually evolving and the arguments below suggest that they are unavoidably interconnected and overlapping. There is a fluidity rather than a rigidity that is central to this understanding of our interactions. Still, if we are thinking about principles of justice then our reasoning will be concerned with moral and political practices, the environments in which we reason practically, and so we must identify basic assumptions appropriate to those practices. It is necessary to supplement the understanding of reasoning practically developed above with accounts of the basic assumptions currently underlying our moral and political practices. When Rawls claims that we should orient our practical reasoning with conceptions of society and person he is pointing out that these basic assumptions underlying our practices will include at least some conception of society and some conception of the person. Some form of these conceptions will already structure our everyday thinking about morality and politics. The claim is that when we think about politics, justice and ethics we are likely to refer to our general beliefs about what people are like and societies are for. This is a plausible claim since these ideas of society and the person have a conceptual relationship with the circumstances of justice, circumstances taken to structure moral and political interaction. The sort of normative considerations that principles of justice respond to are at issue only when there is a group of people whose actions affect each other. Reasoning concerning these considerations then assumes an account of that plurality, a conception of the society, and an account of the people who make up that plurality, a conception of the person. In scenarios where there is no plurality or where there is no possibility of interaction between people there can be no normative questions of politics or morality and we are outside the circumstances of justice.

So, if we are reasoning about our moral and political practices we will have to make a range of basic assumptions that at least include assumptions

about society and the person. What we have learned from our discussion of reasoning practically is that some such assumptions are necessary. We have also learned that the assumptions that we make have to be responsive to environment, appropriate to context. As a result we must conclude that different conceptions of society and the person may be appropriate in different circumstances. In *Political Liberalism* Rawls is clear that he thinks conceptions of society as a fair system of social co-operation for reciprocal advantage and of the person as a free and equal citizen are appropriate to reasoning about the practice of justice in a democratic political environment.²² It is clear that such conceptions might be highly inappropriate for all manner of historical and contemporary societies or practices. The conceptions of society and the person that it is appropriate to assume for reasoning in a particular environment will be those that, in O'Neill's phraseology, it is at least possible will be acceptable for those in that environment for whom this is to count as reasoning.²³ Because, as we have seen, environments are plural and diverse, reasons and justifications are likely to be plural and diverse also. We should go further and recognise that justifications will not only be plural, but plural and perhaps overlapping. Whilst environments may occasionally be entirely distinct, on the whole they infringe on each other in all sorts of ways. This overlap in justification occurs because justifications operate at different levels of abstraction and different levels of social organisation. As we noted above, basic assumptions about the person within the family group may differ considerably from those appropriate in alternative environments such as clubs, churches or at the level of the broader community. Whilst there will be different accounts of the basic conceptions underlying reasoning in these environments, those assumptions and reasons will often overlap or be appropriate in more than one environment. Justification and reasoning is complicated by the necessity of speaking differently to different people.

The possibility of universal principles of justice

Given the impact that the recognition of pluralism has on this account of practical reasoning it is natural to ask whether our reasoning is limited by that pluralism. Are all reasons and justifications appropriate only within particular and limited environments? If so, this would be a severe blow to any attempt to outline a substantive universalist normative position, thin or otherwise. Are there necessary boundaries to justification such that making practices reasonable is always severely contextually limited? The account of practical reasoning that we have explored thus far has led to the understanding that reasons and justifications operate within settled environmental or contextual boundaries at least most of the time. This is the point of recognising that different reasons must be offered to different audiences and that our basic assumptions must be appropriate to environment. However, I do not think that we have yet been given reason to accept that any particular

environmental boundary to reasons is itself a necessary one. It may be that we must admit that, in principle, we cannot rule out the possibility that justification is possible across any particular boundary.

We can approach this issue in two related ways. First, we can ask if there are any necessary theoretical limits to our reasons, and second, any necessary practical limits. I have tried to show elsewhere that we have no reason to accept the necessity of any theoretical limit to justification and that we cannot regard any particular boundary as necessarily impermeable to reason.²⁴ This is because no one assumption, or set of assumptions, that we make in certain environments is necessarily fixed beyond the possibility of revision. Recall that we found that because environments evolve over time a process of critical reflection on basic assumptions was necessary to ensure that they remain appropriate to the potentially novel circumstances that change thrusts upon us. Here we drew attention to the possibility broached by Rawls that a properly reflective reason could not regard any part of a reasoning process as fixed in any way other than provisionally, waiting on a demonstration that it was still appropriate to context. What we must recognise is that if reasoning subjected to ongoing critical reflection is capable, at least in principle, of addressing the novel normative circumstances that result from the evolution of settled environments then there is no reason to think that it is necessarily incapable of addressing novel normative circumstances that result from encounters across boundaries between environments. Indeed, encountering novel ideas and assumptions as we encounter novel normative environments encourages us to turn our critical gaze inwards upon our own assumptions in order to assess their appropriateness for a world that contains environments and ideas with which we were previously unfamiliar. What the ever-present possibility of encountering novel environments demonstrates is that if our reasoning is to be disciplined by the world we cannot rule out in advance the possibility of revising or redrawing any particular boundary to justification.

It may be that even if there are no theoretical limits to normative justification that there are instead practical limits, impermeable political boundaries to our practical reasoning. Again I am unpersuaded that these boundaries are such that they can always rule out the appropriateness of boundary crossing reasons. O'Neill's arguments concerning our inability to set limits to the possibilities of our connection with others are worth considering here.²⁵ She argues that there are no necessary political boundaries over which we cannot be connected in morally relevant ways to others. This is not simply the claim that our actions presuppose the existence and actions of many others. When we post a letter, for example, we assume all sorts of things not only about the addressee, but also about the people involved in the collection and distribution of mail, in the manufacture, distribution and sale of the pen, paper, envelope and stamp, in the maintenance and manufacture of the post-box and delivery vans etc, etc. Our activities usually presuppose a great many connections with a vast and intricate network of

people. Aside from these 'facts' of connection, O'Neill wants to make a further conceptual point that we cannot know with any great certainty the limits of the effects of our actions. There is always an ongoing uncertainty about the boundary of effect for any action and as a result it is difficult to fix an outer limit to the scope of our connection to others. As such, we cannot assume that any environment for the justification of actions or principles for action necessarily has normatively impermeable boundaries. Rawls in 'The Law of Peoples' attempts to outline one of the ways in which practical and normative boundaries can be crossed by a widening political justification that he claims is 'universal in reach'.²⁶

I do not want, in this chapter, to make claims about the priority of practical reasoning and justification at a universal level. Instead I have simply attempted to draw our attention to reasons to consider only that our practical reasoning is not necessarily bounded or limited by any particular context. Whilst we have been clear that any example of practical reasoning takes place within a specific environment, we have established no reason to acknowledge the impossibility of a universal or cosmopolitan environment for some reasoning. Indeed, if we take seriously the claims about the non-necessity of any particular normative or practical limits to reasoning then we may have to acknowledge the arbitrariness of a less than universal scope in certain instances. It may be that the ability of our reasoning to cope with novel environments, combined with the recognition that limits to our actual connection to others are hard to set, should lead us to conclude that on some questions the prospective audience, and so the relevant environment, may be global. What we should note is the potential space for a possible universal normative construction that is highlighted by casting doubt on the existence of absolute theoretical or practical limits to particular constructions. Whilst many particular constructions have practical and normative limits, for example those appropriate within the family based on assumptions of unquestioned altruism, there is no certainty that all particular constructions have these limits.

Elsewhere I have referred to this possible universal level of normative construction as primary constructivism and to the particular constructions as a variety of secondary constructivisms.²⁷ This prompts us to ask the key question for a thin universalism; what would have to be the case if such a primary construction is to be not just a conceptual but also an actual possibility? We need to consider what is needed in order to draw a range of substantive conclusions from this understanding of some minimal conditions on practical reasoning and it is in this context that Rawls's understanding of the constructivist justification of principles of justice should be re-examined. As we have seen, any example of practical reasoning functions in a particular environment. It necessarily makes certain basic assumptions of that environment. If the relevant environment is the thin universal one of a primary construction then the basic assumptions will have to be as inclusive as possible. Such a primary construction would require the most minimal (or thin)

assumptions regarding the appropriate conceptions of society and the person, perhaps what are effectively bare concepts of society and the person if these can be identified. The appropriateness of these assumptions would be in proportion to their inclusiveness. It may be that they could be inclusive enough so as to not rule them out as possible assumptions for all those for whom universal reasons are to count (everyone). In these circumstances we would be in a position to move from merely noting the possibility of a primary construction to working out what such a construction entails substantively. Other reasons, based on partial and therefore less inclusive assumptions, are part of secondary constructions. Having identified this space for a universal primary construction we need to understand how it might be filled. These bare concepts of society and the person function not only as building materials for a Rawlsian constructivism but also as gateways into this space from every particular secondary construction as the thought is that an inclusive account of bare concepts would underlie particular conceptions, or at least not be in conflict with them. Indeed it is in this claim to bar no one from entry to this 'space' that the universalism of this space lies. This distinction between primary and secondary constructions, the universal and the particular, is not an account of different forms of practical reasoning. The practical processes of reflection and judgement do not change with context but are instead oriented by different sets of assumptions and so apply across different contexts. Primary constructions have a universal and cosmopolitan scope whilst the scope of secondary constructions is constrained. So, secondary constructions are distinguished from the primary in that they take partial sets of assumptions as characterising more or less fixed environments for justification. The idea is of a primary 'thin' universalism contrasted with the variety of 'thick' particularisms. If it is possible to show that the primary level of universal reasons is anything more than a conceptual possibility then we make space for a potentially universal, constructivist normative justification.

As we have noted, orienting practical reason with bare concepts of society and the person is a necessary part of fleshing out a substantive primary constructivism and identifying the content of a thin universalism. This is very probably a necessary step if the constraints on practical reasoning are going to be anything other than simply formal at the universal level. This claim receives implicit recognition from both Rawls and O'Neill, and in their work we can identify two different attempts to understand what bare concepts of society and the person could be. Alongside Rawls's identification of conceptions of society and the person appropriate for a democratic society (a conception of the person as a free and equal citizen and of society as a fair system of reciprocal co-operation) he outlines his understanding of more abstract bare concepts. The basic concept of society is simply as a fair system of social co-operation variously conceived.²⁸ He is very clear about the concept of the person when he says, 'Beginning with the ancient world, the concept of the person has been understood ... as the concept of someone who can take part in, or who can play a role in, social life.'²⁹ Elsewhere he clarifies this.

We ask: what must persons be like to engage in practical reason? To answer we say that persons have the two moral powers [they are reasonable and rational] as well as a determinate conception of the good. Their being reasonable and rational means they can understand, apply, and act from ... practical principles.³⁰

This is a basic conception of the person intended to be universal and inclusive, just what is necessary to underpin a thin universalism. Rawls claims that 'no sensible view can possibly get by without the reasonable and the rational as I use them.'³¹ As we saw at the start of this chapter, he even says that these conceptions of society and of the person are necessary assumptions of any conception of the right or the good, 'they are as basic as the ideas of judgement and inference, and the principles of practical reason.'³² One aim of this chapter has been to engage with a process of understanding the weight that Rawls gives these conceptions of society and person. On initial examination, they appear to be necessary assumptions if our reason is to be practical at all.

Likewise O'Neill's constructivism utilises bare concepts of society and the person in a similar fashion but here they are drawn from a minimal construal of the circumstances of justice. Justice is a concern wherever there is a society, conceived of as 'a plurality of at least potentially interacting agents' where there is no 'pre-established harmony' or any common commitment to a value or set of values.³³ She works with an equally thin concept of the person. This consists of two parts. First, 'a meager and indeterminate view of rationality' where persons are credited only with 'the capacity to understand and follow *some* [or other] form of social life and with a commitment to seek *some* [or other] means to any ends ... to which they are [happen to be] committed.'³⁴ Second, 'a meager and indeterminate view of the identity and mutual independence of agents' assuming only that persons have 'capacities for varying sorts and degrees of dependence and interdependence.'³⁵ Although exceptionally thin, O'Neill claims that these concepts are necessary assumptions of our reasoning about justice (and, as they manifest themselves in further assumptions about plurality, connection and finitude, necessary assumptions of any action) and she believes that they enable the construction of substantive but thinly universal principles of justice.³⁶

Conclusion

This chapter has drawn more or less explicitly from both Rawls and O'Neill in order to understand the possibility of a thin universal account of principles of justice. In particular I have used an exploration of the practicality of practical reason to assist our understanding of Rawls's claim that principles of justice follow from practical reason in union with conceptions of society and person. I have also noted that O'Neill's constructivism makes similar claims and that both Rawls and O'Neill, in outlining the basics of a constructivist thin universalism, make use of bare concepts of society and person.

Some such understanding of these bare concepts may be necessary if any account of the conditions on practical reasoning is to be used to underpin a substantive thin universalism about justice. Given the exploration undertaken in this chapter it seems likely that a constructivist position that does not rely on some idea of bare concepts of society and person will be partial in scope and particular in outcome. Any example of (what I refer to as) primary constructivism is going to have to offer us a plausible account of these bare concepts. If such an account cannot be provided then the thin universal project may fail. If these bare concepts cannot be identified then we can only orient practical reason with whatever local conceptions of society and person are available to us. In different contexts distinct and particular conceptions will be appropriate. If all we have available are these local conceptions in particular contexts then all justification will be relative to context and no universal justification of principles of justice will be possible.

This sets the bar for successful justification very high indeed. It is likely that we will find plausible accounts of these concepts difficult to provide. Moreover, it is important to acknowledge the provisional nature of any specific account of the concepts of society and person. Any successful justification must expect to be challenged by new situations and novel ideas that call into question that specific account and we must expect to revise our understanding of society and person in response. However, this provisional status does not undermine the importance of an account of the bare concepts to the thin universal constructivist project.

As Walzer seems to understand things, either there is a thinly universal minimal morality that can be found at the overlap between maximal moralities or there is not. If there is no overlap then there is no universalism and can be no universal justification. If there is such an overlap this stands in need of understanding and explanation. Either this overlap is contingent, the result of a happy accident that perhaps should not be too closely examined, or it exists for good reason.³⁷ This chapter explores one way of understanding this good reason and shows us further good reasons why we should expect that if a thin universalism is possible it will probably look something like the constructivist projects of Rawls and O'Neill. Key to these projects is the idea that universalism is most definitely not a matter of contingent overlap between thick moralities. Instead, it is a matter of identifying bare concepts of society and person such that it is difficult to see how any conception of right, good, culture or morality could be consistent without assuming them. Each such conception would (probably) also contain much fuller conceptions of the person and society but these could not deny the bare concepts consistently. Indeed, O'Neill goes so far as to claim that they are basic assumptions of any human action at all whilst Rawls regards them to be as basic as ideas of judgement and inference, a necessary part of practical reason. Without judging the particular claims regarding bare concepts that these constructivists advance, I will reiterate the simple idea that some such claims

are necessary if a thin universalism is to be both thin and universal and, above all, if it is to be successful.

Notes

- 1 For Walzer, what makes a thin reiterative universalism 'different from covering-law universalism is its particularist focus and its pluralizing tendency', *Nation and Universe*, this volume, p. 13.
- 2 J. Rawls, *Political Liberalism*, (2nd edn), New York: Columbia University Press, 1996. J. Rawls, *The Law of Peoples*, Cambridge MA: Harvard University Press, 1999. For alternative constructivist accounts of what can be regarded as thin universalism see Onora O'Neill, *Constructions of Reason: explorations of Kant's practical philosophy*, Cambridge: Cambridge University Press, 1989 and *Towards Justice and Virtue: A constructive account of practical reasoning*, Cambridge: Cambridge University Press, 1996. Also, Thomas Scanlon, 'Contractualism and utilitarianism', in A. Sen & B. Williams (eds), *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982 and *What We Owe To Each Other*, Cambridge Mass. and London: Belknap University Press, 1998.
- 3 Rawls, *Political Liberalism*, p. xxvi.
- 4 Rawls, *Political Liberalism*, p. 90. Rawls also phrases this as 'the union of practical reason with appropriate conceptions of society and person' (*Political Liberalism*, p. 107).
- 5 Rawls, *Political Liberalism*, p. 108 & p. 110.
- 6 For example see the classic statement of the circumstances of justice in David Hume, *An Enquiry Concerning the Principles of Morals*, in *Enquires* (3rd edn), Oxford: Oxford University Press, 1975, Sec. III, Part I, pp. 183–192 and *A Treatise of Human Nature* (2nd edn), Oxford: Oxford University Press, 1978, Bk. III, Part II, Sec. II, pp. 484–501. See also Rawls, *A Theory of Justice* (revised ed.), Oxford: Oxford University Press, 1999, Sec.22, pp. 109–112. The account of the circumstances of justice offered by both Hume and Rawls is of a group of roughly equal and finite individuals with a range of coinciding and conflicting interests coexisting in a situation of moderate scarcity.
- 7 See, for example, *Political Liberalism* p. xviii. For examples of other thinkers who likewise highlight pluralism see Hampshire, *Justice is Conflict*, London: Duckworth, 1999; Kukathus, *The Liberal Archipelago: A Theory of Diversity and Freedom*, Oxford: Oxford University Press, 2003; Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton: Princeton University Press, 2002; and, Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Basingstoke: Palgrave, 2000.
- 8 See Rawls, *Political Liberalism*, pp. 54–58.
- 9 Rawls, *Political Liberalism*, pp. 58 & 61.
- 10 See for example Kymlicka (ed.), *The Rights of Minority Cultures*, Oxford: Oxford University Press, 1995; Taylor (with Gutmann ed.), *Multiculturalism: Examining the Politics of Recognition* (with commentary from Appiah *et al.*), Princeton: Princeton University Press, 1994; and, Haddock and Sutch (eds), *Multiculturalism, Identity and Rights*, London: Routledge, 2003.
- 11 See for example, *A Theory of Justice*, p. 19.
- 12 S. Chambers, *Reasonable Democracy*, London: Cornell University Press, 1996, p. 51.
- 13 O. O'Neill, *Towards Justice and Virtue*, p. 41.
- 14 For O'Neill's distinction between idealisation and abstraction see for example *Towards Justice and Virtue*, pp. 39–44.
- 15 See Rawls, *A Theory of Justice*, p. 507 & 18.
- 16 See Rawls, *A Theory of Justice*, pp. 580 & 581.

- 17 This way of putting the point owes a lot to O'Neill. See *Towards Justice and Virtue*, p. 57.
- 18 *A Theory of Justice*, p. 18. See also Daniels, 'Wide Reflective Equilibrium and Theory Acceptance in Ethics', *Journal of Philosophy*, 76, 1979, 256–282 and Scanlon, 'The Aims and Authority of Moral Theory', *Oxford Journal of Legal Studies*, 12, 1992, 1–23.
- 19 Rawls, 'The Independence of Moral Theory', *Proceedings of the American Philosophical Association*, 48, 1975, 5–22; p. 8.
- 20 Rawls, *Political Liberalism*, p. 114.
- 21 When discussing practices I will be concerned with our moral and political practices, not with social practices such as etiquette, professional practices such as the conduct of scientific investigation or recreational practices such as playing football. Whilst each of these can be described as practices, and each will overlap in some way with both the moral and the political, they are not my concern today.
- 22 On the conception of society see pp. 15–17 and on the conception of the person see p. 19.
- 23 See, for example, *Towards Justice and Virtue*, pp. 50–51.
- 24 'Identity, reflection and justification', in Haddock & Sutch (ed.), *Multiculturalism, Identity and Rights*.
- 25 For example, at *Towards Justice and Virtue*, chapter 4.
- 26 *The Law of Peoples*, pp. 85–6 and also the original and shorter version 'The Law of Peoples', in *On Human Rights*, Shute & Hurley (eds), New York: Basic Books, 1993, pp. 41–82, p. 46.
- 27 See 'Identity, reflection and justification' and *Political Constructivism*, Routledge, (forthcoming).
- 28 *Political Liberalism* pp. 15–17 where he notes conceptions not only of society organised for reciprocal advantage but also for mutual advantage or in terms of impartiality.
- 29 *Political Liberalism*, p. 18.
- 30 *Political Liberalism*, p. 108.
- 31 *Political Liberalism*, p. 380.
- 32 *Political Liberalism*, p. 110.
- 33 *Constructions of Reason*, p. 212.
- 34 *Constructions of Reason*, p. 212. This is remarkably similar to Rawls's conception of persons as having two moral powers, the reasonable and the rational (see *Political Liberalism*, p. 108).
- 35 *Constructions of Reason*, p. 213.
- 36 For a discussion of the necessary assumption of plurality, connection and finitude see *Towards Justice and Virtue*, pp. 100–7.
- 37 That overlap should be regarded as 'happy accident' is the position of Rorty on the existence of a 'human rights culture'. See 'Human Rights, Rationality & Sentimentality', in *On Human Rights*, Shute & Hurley (eds), New York: Basic Books, 1993, pp. 111–134.

7 Proceduralism as thin universalism: Stuart Hampshire's 'procedural justice'¹

John Horton

The prospect of addressing questions about the universality of basic ethical values seems both irresistibly important and impossibly daunting.² The cluster of issues that comprise these questions are not only philosophically fundamental and central to so many areas of political theory, but also have a compelling practical urgency and relevance to thinking about the way in which we live. Yet, not only are the various competing arguments advanced in this area manifold and complex, but as so often in philosophy the questions themselves are sometimes obscure, and it can be difficult to grasp exactly what is at stake in answering them in one way rather than another. I want to begin, therefore, by making a few general points, before turning to the main enquiry. The purpose of these general remarks is to try to situate that enquiry in a broader context, as much as anything to make clear its limits, and what it does not attempt, rather than with the intention of saying anything deeply illuminating about the broader issues.

One motivation that lies at the heart of questions about the universality of basic ethical values is a concern about what to do in the face of differences and disagreements about how we should live. Expressed in this way, it is primarily a practical concern. It is about how each of us, individually or as members of various collectivities, should respond to actions, practices or whole ways of life that not only differ from our own, but which we regard as wrong, harmful or intolerable and, at the extreme, cruel, inhuman or wicked.³ It is obvious that not all differences or disagreements about value will evoke any of these responses.⁴ Even those people wedded to the narrowest of ideas about what is a good life or acceptable forms of behaviour ('there are only two ways of doing something, the right way and the wrong way') will readily admit that there are many differences that are matters of taste, opinion or choice, and without ethical significance. These are not the sorts of difference that will be of concern here. Of course, which actions, practices or ways of life fall into this category is itself sometimes a fiercely contested question, but in so far as such differences are accepted as legitimate diversity, there is no ethically troubling practical problem of how to respond to them.

The issue of the universality of values can also be viewed from a theoretical or philosophical perspective. It may be conceived, for instance, in terms of either a metaphysical or an epistemological question: are there any universal

values? Or, how can we know which values, if any, are universal? Expressed as a metaphysical question, we seem to be asking principally what kinds of 'thing' or entity values are; and, in particular, with asking whether or not, some or all of them, possess the property of 'universality'. Expressed as an epistemological question, we are more concerned with what we can know about values, and how we can know it; and especially with whether we can know that some values are universal. Moreover, whether our question is metaphysical or epistemological, we will also be interested in what it means to attribute 'universality' to a value, and how universality connects with other problematic ideas like truth and objectivity.

Although motivated by apparently different concerns, practical and philosophical questions are often thought to hang together. Most commonly, perhaps, this is because it is believed that answers to the practical question depend upon us having, or at least implicitly assuming, answers to the philosophical ones. That is, it is only through having an adequate philosophical theory of the universality of basic ethical values that our decisions about how we should act can be fully or adequately justified. However, some philosophers, including for example Richard Rorty, think that the philosophical questions offer a wholly unproductive way of thinking about what really concerns us, which are the practical questions. We may engage with the philosophical questions as a kind of intellectual hobby, but they have nothing of significance to contribute to our practical thinking about how we should act. The reasons for this are partly to do with various criticisms, which cannot be explored here, that Rorty makes of the metaphysical and epistemological ambitions of philosophy;⁵ but also because our actions have their roots elsewhere – in our sympathies and our imaginations, as shaped in part by the culture in which we are brought up and in part by the particular idiosyncrasies of our individual psychologies and genetic constitution.

Rorty also has no time, officially at least, for any generic, substantive conception of 'human nature', and particularly for the idea that human nature can do any explanatory work in underpinning or justifying our basic values.⁶ For Rorty, nothing underpins or justifies them: they are simply the basic values that we happen to be committed to. Many critics, however, have found Rorty's position deeply unsatisfactory, with some arguing that he is inconsistent, and others objecting for a variety of different reasons.⁷ These issues, too, cannot be pursued here; but whatever one thinks of the merits of the case for his position, there can be little doubt that it seems psychologically difficult to combine Rorty's ironism about the status of even our most cherished fundamental values with the sense that they nonetheless provide legitimate reasons for coercing other people who happen to have different values. If, as Rorty says, our judgements of value are no more than a matter of description and redescription then, as I have argued elsewhere:

The difficulty for the ironist is that she is self-consciously aware that good and bad, right and wrong, are just the contingent descriptions of a particular group in a particular place at a particular time. Once the ironist

comes to see things this way – good is merely another description of bad and vice versa – then it seems hard to distinguish this view from one in which there is no sense of there being anything of fundamental importance to the distinction between good and bad. The perspective of the ironist appears less one of redescribing the difference between good and bad, right and wrong, than of dissolving it.⁸

In short, there is a tension between being a thoroughgoing ironist and thinking that our most cherished values are more than just personal opinions or the contingent product of a particular culture. And this tension at least gives us a clear motivation to look elsewhere, if for no other reason than the desire, if at all possible, to avoid it. Whether or not that *is* possible (and I leave this as a genuinely open question), we certainly seem to *want*, and arguably *need*, something stronger than Rorty allows, if, for instance, we are to feel justified, that our values can ever provide us with good reasons for coercing those who think differently.

Proceduralism

One place where we might look for something stronger, but which is sensitive to at least some of Rorty's criticisms, is to the notion of proceduralism. I take the general underlying motivation of proceduralism to lie in the thought that we cannot reasonably hope to secure general agreement about values simply by arguing about their respective 'merits'. Nor can one expect even reasonable people (whatever exactly that means) to endorse a single moral viewpoint, whether it is in the form of a philosophical theory such as utilitarianism or a comprehensive worldview, such as that of a religion like Christianity. There is too much indeterminacy in arguments and evidence, and our judgements generally reflect our own experiences. The virtue of proceduralism, however, is that it proffers as an alternative the idea that there could be some procedure for dealing with conflicts of value that might command the assent of people whose substantive values may be very different. That is, although committed to different judgements of value, people share standards of procedural rationality that can to some extent mediate conflicts that arise from differing substantive judgements. One reason why this may seem promising is precisely because people do share some standards of rationality. This does not, of course, mean that *all* standards or criteria of rationality are common between people, societies or contexts; but only that *some* must be if there is to be any possibility of intelligible communication, including the possibility of *disagreement* about values. Without some mutual understanding we can have difference, but not disagreement. The question at issue then is whether, among these common standards of rationality, there are some that can ground procedures for dealing with conflicts of value. And if so, are these procedures such that they can provide the basis for a 'thin universalism' of value – a universalism of procedure rather than

of substance? All this is rather vague, and I shall therefore begin with some points of clarification, starting with a question that seems to put the whole idea of proceduralism as a form of universalism into doubt.

Could there be a universalism that is 'purely' proceduralist, that is proceduralist through and through, or all the way down? I do not think so. Any procedure must also imply or presuppose some substantive commitments. For instance, no procedure can determine who are the appropriate parties, what the relevant constituency is, to which the procedure applies. Should it, for example, include all, but only, human beings? If only human beings, is this to include future generations (or their representatives)? On what basis (e.g. age, mental capacity etc.), if any, can some human beings be excluded? My point is not of course that 'answers' cannot be given to these questions, but that answers to them, whatever they are, must be presupposed by the procedure rather than explained by it. This does not mean that such answers cannot become subject to discussion in terms of the procedure, but only that those discussions in turn must still be premised on some notion of who are appropriate parties to it. No procedure can be without presuppositions; and, although any of its presuppositions may be open to critical examination, they, too, can only be critically examined on the basis of some other presuppositions.

However, this does not mean that it is a mistake to think that there can be a genuine proceduralist approach to questions about the universality of values. We should by now be familiar with the idea that we cannot pull ourselves up by our bootstraps with no other means of support. So, the fact that any proceduralism will involve some presuppositions that underpin the procedure is not necessarily a devastating objection. But, of course, nor is that to say that it may not give rise to problems. In practice, at least, whether or not any underlying substantive assumptions are problematic will depend upon the particular assumptions that are made, and their general acceptability. It will depend on whether or not, in fact, they are contentious between the parties to the conflict over values. It does not necessarily follow, although it may sometimes be true, that disagreement about values must carry over into disagreements about the presuppositions of a particular procedure.

No doubt there are many ways in which forms of proceduralism could be distinguished and classified. One distinction that I want to emphasise is that between, on the one hand, forms of proceduralism that are supposed to result in substantive ethical conclusions, and, on the other hand, those where it is only the procedure that provides the commonality, and the question of whether any particular substantive ethical conclusions will emerge from the procedure is left genuinely open. Let me try to explain. There is an obvious sense in which contractarian theorists like Rawls, Scanlon and Brian Barry can be regarded as proceduralists.⁹ This is because the substantive principles of justice that they endorse are thought to flow from accepting a particular procedure as the appropriate way of reasoning and deliberating about such questions. It is the procedure, broadly understood as a method of justification, which has primacy, and that is supposed to validate the resulting principles.

However, this is not the kind of proceduralism with which I shall be concerned. Rather, my interest is in the second form of proceduralism. This does not claim to justify a determinate set of substantive principles, but argues only that there can be universal acceptance of procedures for deliberating about conflicts of value. Whether or not people will actually end up agreeing with each other about any substantive values is not determined by the procedure, as the procedure is compatible with different answers even to fundamental questions of political principle or social justice.

Hampshire's procedural justice

The version of this type of proceduralist approach that I propose to examine is that of Stuart Hampshire.¹⁰ The background to Hampshire's 'thin' or 'minimal' conception of procedural justice is a rich one, and I cannot here do more than mention some of its roots. One is dissatisfaction with much modern moral philosophy: 'Most Anglo-American academic books and articles on moral philosophy have a fairy-tale quality, because the realities of politics ... are absent from them'.¹¹ A second is Hampshire's commitment to a form of value pluralism. This is the idea that there are many diverse, sometimes incompatible, sometimes incommensurable values that can be instantiated in a wide range of ways of life, which are neither superior nor inferior to each other. Connectedly, a third root is his conviction, 'at least since 1970' that it is 'a mistake to look for a moral theory, or set of propositions, that could serve as a justification, or foundation of my political loyalties and opinions, which were, and which remain, the opinions of a democratic socialist'.¹² Finally, there is his equally robust rejection of any comprehensive relativism.¹³ This probably owes something to his personal experience of interrogating leading Nazis in the immediate aftermath of the Second World War, which clearly had a profound effect on this thinking about the nature of morality.¹⁴

Hampshire interestingly locates his approach in relation to that of Hume. It is worth quoting a key passage at some length:

In many respects the metaethical theory I have been assuming is close to Hume's: that opinions about substantial justice and other virtues arise from, and are explained by, natural and widespread human sentiments greatly modified by very variable customs and social histories. But in the classical tradition Hume still believed that humanity has a tendency toward a consensus in its moral sentiments...through the idea of a constant human nature governing our sentiments and sympathies. I have been arguing that the diversity and divisiveness of languages and of cultures and of local loyalties is not a superficial but an essential and deep feature of human nature – both unavoidable and desirable – rooted in our divergent imaginations and memories. More fundamentally, our stronger sentiments are exclusive and immediately lead to competition

and conflict, because our memories, and with them our imagination, are focused on particular persons, particular inherited languages, particular places, particular social groups, particular rituals and religions, and particular tones of voice; and hence our stronger loyalties are similarly focused.¹⁵

Unlike Rorty, who, as we saw, is dismissive of the whole idea of human nature, Hampshire thinks it is fundamental. But its role is complex. For the idea of a common human nature is used to explain both some 'perennial evils' and the fact of deep and ineliminable moral differences. In particular, conflicts of value are understood not as a departure from some ideal harmony, vouchsafed by human nature – on this point Hampshire and Rorty are in agreement – but as itself a reflection of a fundamental and essential feature of human nature. Any adequate political or moral theory has to find a place for the inherently conflictual character of human nature.

In the light of what was said earlier about proceduralism generally, it should come as no surprise that Hampshire's position is not purely proceduralist. He also subscribes to a substantive moral minimum, somewhat similar to H. L. A. Hart's idea of a minimum content of natural law.¹⁶ However, Hampshire makes only a limited attempt to justify the content of this moral minimum, partly because that is not the primary focus of his argument, but more importantly because he does not think that it rests on *arguments* at all, but rather on an immediate felt perception of such evils. He writes,

The great evils are truly perennial, and we can read about the mutilations of war, tyrannies, massacres, and starvation described by ancient writers, as if one is reading a twentieth-century newspaper. Such evils, unlike visions of a better social order, are not culture-dependant. They are felt as evils directly and without recourse to the norms of any particular way of life or to any set of moral ideas. The word 'feeling', and the concept of feeling, are indispensable here.¹⁷

The point about these 'evils' is that they are 'felt as evils by any normally responsive person, unless she has been distracted from natural feeling by some theory that explains them away: for example as necessary parts of God's design'.¹⁸ They are experienced as evils without the mediation of any particular idea of the good, let alone a moral theory, and are contrasted by Hampshire with evils 'that need to be revealed and certified by argument as evil before they can be felt as evil'.¹⁹ So, for example, while starvation is a universal evil, and immediately apparent as an evil, the 'evil' of capitalism (or of communism), if such it is, is something that needs to be argued for, and those arguments will contain much that is uncertain and rationally contestable.

Although this is not the part of Hampshire's account that is my primary concern, there are three points that it may be useful to make about it. Two are clarificatory, and the third mildly supportive. First, it is important to note

that what informs these ‘perennial evils’ is a common affective response to them. They are not justified by philosophical theories or arguments. In the absence of these feelings, there may be nothing to be said that could reasonably be expected to persuade such a person. While Hampshire is not very explicit about this, it seems that these primitive affective judgements function as a kind of ethical bedrock. To the extent that someone really does not experience *these* as bad then to that extent we simply do not share a morally intelligible ethical universe. Secondly, however, even if we grant this, it may not take us very far when it comes to assessing how we should act in particular situations. We may, for example, agree that ‘the mutilations of war’ are unquestionably evil, but this does not mean that we will never think it right to go to war. Their status as evils must imply a negative attitude towards them, but this is quite compatible with undertaking actions that knowingly bring them about. And, with respect to something like starvation, although a universal evil, there is plenty of room for differences of view about what the existence of that state of affairs may require of us. Recognising a situation as ‘evil’ is inconsistent with being indifferent to it – one must accept, all else being equal, that the world would be a better place if the evil did not exist – but often all else is not equal, and no specific inferences can be drawn as to what in particular should be done about it.

The final observation goes beyond clarification. For I think that Hampshire may help us avoid a certain disabling artificiality that can sometimes afflict philosophical discussions of moral conflict and ethical relativism. This is the tendency to present any actions or practices that we would regard as obvious examples of such evils as the manifestation of different cultural traditions, ethical codes or conflicts of value when they are in fact no such thing. At least in our time, many of the most terrible acts, of genocide, torture and other forms of cruelty and humiliation, do not reflect ethical differences at all.²⁰ They are mostly either cynical stratagems of those in power, with no justification even to their perpetrators, other than simply advancing their own interests, or they are a reflection of a Hobbesian insecurity about circumstances in which it is felt, rightly or wrongly, that if ‘the enemy’ is not crushed first then the enemy will do the crushing. Many of the worst excesses have little to do with moral or cultural differences but reflect the perceived imperatives of a harsh and hostile environment, or the temptations to which unconstrained power is always liable. We are faced, that is, either with people acting wrongly by standards that are in a straightforward sense their own because they think, alas often correctly, that they can benefit from it, or with people who believe that the harm they inflict on others is a form of self-defence (pre-emptive attack), justified because they have no real option if they want to avoid similar harms being inflicted on them. In neither kinds of case are the evils perpetrated to be explained in terms of different moral codes, and nor need they give us any cause to agonise over moral relativism.

Although Hampshire believes that there is this substantive core to morality, this is not his main point. Rather, he is principally concerned to argue

for a particular type of procedural justice or fairness as an ethical universal. He contends that an important part of what is universal (or near universal) is a particular form of proceduralism,

I shall try to persuade you that fairness in procedures for resolving conflicts is the fundamental kind of fairness, and that it is acknowledged as a value in most cultures, places and times: fairness in procedure is an invariable value, a constant in human nature. Justice and fairness in substantial matters, as in the distribution of goods or in the payment of penalties for a crime, will always vary with varying moral outlooks and with varying conceptions of the good. Because there will always be conflicts between conceptions of the good, moral conflict, both in the soul and the city, there is everywhere a well-recognised need for procedures of conflict resolution, which can replace brute force and domination and tyranny. This is the place of a common rationality of method that holds together both the divided and disruptive self and the divided and disruptive state.²¹

In short, beyond the very limited 'perennial evils' there is only procedural justice or fairness. No broader substantive moral doctrine or set of values can claim universal validity. There is only a rationality of method for dealing with conflict: 'I am arguing that if we are to proselytise at all, it ought to be in the interests of denying the claim to universality of all substantive creeds, and of advocating fairness in the handling the conflicts between creeds'.²²

The simplicity of Hampshire's core idea of procedural justice will seem almost shocking to those used to the increasingly baroque systematisation of a Habermas or to the ever multiple subtle and refined distinctions that are the currency of analytical philosophers. It is contained in the legal maxim of adversary argument, *audi alteram partem* (hear the other side).²³ It is the idea that all the parties to a disagreement or dispute should have the chance to state their case; and, crucially, *that is all*. There should be no attempt to second guess or to theoretically 'construct' the outcomes that contesting parties should arrive at: 'It is reasonable to be a universalist in the cause of reasonableness in the regulation of conflicts ('hear the other side'), but not a universalist in the defence of particular outcomes of particular conflicts of moral opinions'.²⁴ Procedural justice is a principle of practical rationality that establishes, in very general terms, how conflict should be dealt with: it says nothing about what the outcome will be, leaving open as many possible outcomes as can be envisaged by the parties to the conflict. This is why it is appropriate to think of Hampshire's proceduralism as a form of 'thin universalism'.

Hampshire develops his conception of procedural justice, like Plato, through an analogy between the soul and the city, or less metaphorically between private and public deliberation; but he reverses its direction. For Hampshire,

Mental processes in the minds of individuals are to be seen as the shadows of publicly identifiable procedures that are pervasive across different cultures... The words we ordinarily use to distinguish mental processes – ‘deliberating’, ‘judging’, ‘adjudicating’, ‘reviewing’, ‘examining’, and many others – have both a public and an inner mental use. The inner mental uses are best explained through reference to the observable public activities.²⁵

Our individual processes of reasoning reflect public processes of deliberation and conflict resolution: ‘in private deliberation, the adversary principle of hearing both sides is imposed by the individual on himself as the principle of rationality’.²⁶ The very ‘idea of an individual being unbiased, open-minded and rational in his thinking has sense for us because we know what it is like for a public procedure of discussion to be unbiased, open-minded and rational’.²⁷ Furthermore, because moral conflicts are part of all of our personal experience, each of us individually employs processes of listening to conflicting arguments, weighing and assessing them, reviewing the evidence and so on in determining our own conception of the good or deciding how we should act. We become familiar with the principle of hearing both sides from our practice of rational deliberation in the face of internal conflicts of value. Thus, Hampshire contends that ‘my requirement from my moral enemies is the requirement that I impose on myself: that contrary views of what is just and fair are allowed equal hearing...and that no one conception of substantial justice in society is imposed by domination and by the threat of force’.²⁸

This line of reasoning, Hampshire says, is ‘a kind of transcendental argument. Everyone uses the balancing of pros and cons in his own mind in pursuit of his own conception of the good, as well as in common prudence in pursuit of his own interests’.²⁹ So the possibility of individual rationality, including moral deliberation, which is surely indispensable to human thought and action, is predicated on this basic conception of procedural justice. And if this reasoning is sound, it would appear to provide the strongest type of argument to support the claim that procedural justice must be universal. In short, and in more formal terms, because certain mental processes are a condition of rational thought and action, and these mental processes are in turn dependent on procedural justice for their sense, the notion of procedural justice is therefore a necessary condition of the possibility of rational thought and action. It should be noted, however, that there is some equivocation about exactly how demanding the maxim of adversary argument is. As initially stated – hear the other side – it does indeed seem fairly undemanding, but other articulations (as evident in earlier quotations) mention ‘open-mindedness’, ‘fairness’, being ‘unbiased’ and both sides having an ‘equal hearing’. ‘Equal’ and ‘fair’, though, are both small words with potentially large implications. We shall return to this question later.

There is also a supplementary aspect to procedural justice. To be effective in mediating between parties with conflicting values, the general principle of

procedural justice must be institutionalised, although institutionalisation can take a wide variety of forms. Basically, Hampshire makes two claims. The first can be seen most clearly in relation to international conflict when he argues that 'bringing into existence institutions and recognised procedures should have priority over declarations of universal principles'.³⁰ What matters above all is that there are institutions and operative processes that give practical expression to the principle of procedural justice. However, and this is the second claim, 'institutions earn respect mainly from their customary use and from their gradually acquired familiarity'.³¹ The point here is that we are not looking to some idealised model of just institutions but to practices, procedures and institutions that command the allegiance and trust of those subject to them. These will typically be institutions that are already situated in the social, cultural and ideological practices of a particular society. Viable and respected institutions that embed processes and procedures are as important as the principle of adversary justice itself.

The two elements in procedural justice – a universal rational requirement of two-sidedness and respect for locally established and familiar rules of procedure – are linked as two natural needs in our minds in their practical and political workings. If either the rational requirement or the respect for custom breaks down and ceases to operate, we should expect catastrophe. Conflicts will then no longer be resolved within the political domain but will be resolved by violence or the threat of violence, and life will become nasty, brutish, and short.³²

Finally, it is worth reiterating that Hampshire allows that, even though procedural justice is universal, it is not necessarily always more important than every other consideration,

it does not follow from the fact that procedural justice is defined by a universal principle, a principle of rationality, that it must override all other moral considerations in everybody's mind. Men and women generally recognise that there may be some exceptional circumstances in which they will hold that considerations of procedural justice and of rationality ought to be overridden in order that some other essential value which is dominant in their morality may be protected, such as the avoidance of widespread misery or the preservation of life.³³

While, in my view, Hampshire is right about this, I also believe that it creates some problems for his position. This, too, is something that I shall return to shortly.

Assessing Hampshire's proceduralism

There is much in Hampshire's position that many, including myself, will find highly congenial. It is an attractive vision that seeks to give due weight both

to a modest conception of a common human rationality, and to the diversity of human values and ways of life, and ubiquity of conflict that arises from them. It has the merit of realism in not expecting too much from common human rationality, and it avoids making excessive claims on behalf of philosophical theorising or moral argument, without being thoroughly sceptical or relativist. These are qualities that are at least desirable for any remotely persuasive 'thin universalism'. Moreover, there are surely many contexts in which his conception of procedural justice based on the maxim of adversary argument – to hear the other side – will seem a wholly appropriate response to conflicts of values. But Hampshire is seeking to offer more than a piece of useful advice. As a universal, thin theory of justice, there are a number of difficulties with the account of procedural justice that he sketches. In what follows, I seek to explore the most serious of these difficulties.

Perhaps the most fundamental, philosophical question concerns the coherence of Hampshire's argument based on his analogy between conflict within a person and between people. A crucial step in his argument is the claim that his idea of procedural justice is a feature of the structure of practical reason; that it is a feature of rational deliberation in dealing with intra-personal conflicts as well as with inter-personal conflict. According to Hampshire, our intra-personal conception of practical deliberation is modelled on our perception of inter-personal practices of argument. One immediate difficulty with this claim, however, is that it seems to presuppose that we already possess a normative criterion for distinguishing some forms of conflict resolution between people or groups as rational, and others as not. For it is not the case that inter-personal conflict resolution is always in fact conducted according to the canons of adversary argument. Far from it: conflicts are often settled, if not 'resolved', without both sides being heard. It is not immediately obvious that procedural justice is more 'natural', either in the sense of being more frequent or of having some privileged position in human nature than other forms of conflict resolution. But how then do we come to internalise procedural justice, rather than those other forms, as the 'rational' way of dealing with intra-personal conflicts of values? It seems that our capacity to distinguish and judge superior forms of conflict resolution based on procedural justice must be already determined on some other basis that Hampshire does not explain.

As an aside, we can note a related puzzling feature of what Hampshire says, and ask how far it is the notion of adversary *argument* that is fundamental? For in some places it seems that the argumentative character of the procedures is only secondary, and that what is fundamental is less an idea of rationality than one of procedural fairness. Consider, for example, the following passage.

This is justice and fairness in procedures – whether in duels, sports, games, law courts, parliaments, in all kinds of arguments and in adversary processes in which one side wins and another loses, either fairly or unfairly.

That is how politics and social life go forward, at best in controlled and recognised conflicts, sometimes enjoyably, sometimes painfully.³⁴

Notice that while duels, sports and games are properly conceived as adversary *procedures*, they are not forms of argument or discursive deliberation. Nor is this a slip on Hampshire's part. He spends a paragraph explaining how a duel can be a fair procedure for resolving disputes, quite different from, for instance, a pub brawl. The point here is that a duel is not random or unstructured violence, but a rule-governed and institutionalised procedure for resolving particular types of conflict. True, he says that 'a duel presents only a partial analogy to adversary reasoning', but he adds that 'it is a very clear example of an institution governed ... by an ideal of fairness'.³⁵ It is not that I wish to contest any of this, but I simply raise the question of why, if 'a duel fought to resolve a quarrel can be fair', we should not settle at least some conflicts by means of a duel rather than through argument? In short, is there a reason why argumentation should have primacy over other fair, institutionalised procedures of conflict resolution? But perhaps it would be wrong to make too much of this point.

There is, though, another major difficulty with the structure of Hampshire's argument based on the analogy between conflict within and between individuals. This is that he deploys it in a way that is damagingly circular. For he appears to argue that what *makes* procedural justice the appropriate response to conflicts between individuals or groups derives from its rationality as the means of dealing with intra-personal conflict, as the form of deliberation each of us adopts in the face of an internal conflict of values. But this procedure of reasoning is itself explained by Hampshire as the internalisation of public forms of conflict management. So in the end, when one traces the explanation through, procedural justice as the rational form of dealing with conflict between individuals or between groups is both the *explanans* and the *explanandum*. Something, therefore, seems to have gone seriously wrong with Hampshire's explanatory story. There are, I think, only two possible responses, assuming that Hampshire wants to preserve as much as he can of his account. Either he can argue that the rationality of procedural justice as a process of dealing with intra-personal conflict explains, but is not explained by, its rationality as a method of dealing with conflict between groups or individuals; or he can argue the reverse. Whichever he opts for, however, something important is left unexplained. That is not to say that such an explanation cannot be given; only that Hampshire does not give it.

A third difficulty with the structure of the argument is that the appropriateness of the analogy is itself contestable in ways that Hampshire does not address. For instance, it could be argued that what it is rational for me to do in deliberating about how to resolve an internal conflict of values is quite different from what it is rational to do when faced with an inter-personal conflict of values. After all, in trying to resolve an internal conflict of value I am

aiming to resolve something that is troubling to *me*. But this may not hold in the inter-personal case. In that case I may experience the conflict quite differently just because the conflicting value is *not* mine, so that in my own mind I may not be troubled at all. In one case I am not sure which is the right, best or appropriate value to embrace or act upon; in the other I may be in no doubt at all. The motivation for dealing with the conflict, therefore, seems to be very different in the two kinds of case; and so too what is viewed as a successful resolution of it. In short, it is not merely that there are dis-analogies – that is true of any analogy – but that the differences between the two types of case *make a difference*, and thus call the appropriateness of the analogy into question.

As we saw earlier, Hampshire allows that there are ‘some exceptional circumstances’ in which rationality and procedural justice can be overridden. From the examples he gives, we can style these exceptions as ‘moral emergencies’. But we might ask if these are the only circumstances in which procedural justice is, or should be, suspended? Not only is this in fact much more common than Hampshire’s reference to exceptional circumstances would suggest; it may be unavoidable and/or undesirable for at least two reasons, both of which are implied by his own account of practical reasoning. The first is the situated and contextual character of our practical reasoning. Thus, for instance, many potential conflicts are not *experienced* as conflicts because we typically ‘filter them out’ as already having been settled, or assume that some positions lack any credibility, and are obviously not worth taking seriously. On the other hand, we experience some actual conflicts as normatively pre-structured, so that one side is seen as, say, a ‘temptation’ or under some other unfavourable description (which does not of course mean that they are not still experienced as real conflicts). In this second class of cases we may think it incumbent on us *not* to treat the rejected view ‘fairly’. I shall say more about this below. The second reason is a mundane, contingent one. If, as Hampshire says, we are faced ‘in any modern society [by] a chaos of opinions and moral attitudes’³⁶ then it is simply impractical for us regularly to resort to procedural justice as a way of dealing with them. If we tried to do so we would surely be overwhelmed.

Even if as a description of how we do in fact reason in the face of intra-personal conflict Hampshire’s account seems implausible, and as a practical standard it is unduly demanding, we might still ask whether it should function as a norm or as a kind of regulative ideal? However, this too seems contestable, and again partly for reasons that are explicable in terms that Hampshire himself may help us to see. Not only do we not in fact typically put to ourselves all of what could, in some sense, be thought of as relevant considerations when faced by a conflict about how to act, it is far from clear that we think we should. Some reasons or options we might not consider because for us they are ‘unthinkable’, in the sense that we should not even consider them. While some part of what is deemed unthinkable may be covered by Hampshire’s ‘perennial evils’, there is no reason to believe that they

will be exhaustive of the category. So, for example, faced with a conflict about what I should do, I do not, say, consider as one of the options that I might steal from my mother. And what is important is that *I do not consider it*, not that I think about it, but after careful deliberation decide that it would be the wrong choice to make. I do not think about it, perhaps would not expect anyone to think about it, and would certainly not hold that a man who did was to be more highly regarded or thought more rational because he had examined both sides of the argument. In such cases, not only do we not consider both sides of the argument, we believe it a good thing – perhaps a mark of a virtuous character – that we do not do so: if the devil has even a few of the best tunes, we may do better not to risk being seduced by his music.³⁷

Can this argument, though, be convincingly applied, not only to intra-personal conflict, but also to reasoning in the face of conflicts between individuals and groups? It seems to me that at least something closely analogous can be sustained. There are some views that we either cannot or will not take seriously, and we do not necessarily regard this as a failure of procedural justice. In the former case it is simply that we can see no rationality at all in the position we reject. That is, we cannot see how people could hold such a view. Moreover, we may have no idea, given that they do, how they (or we) could be persuaded otherwise. More interesting, however, is the case where we can understand how someone might hold the view, but we refuse it a hearing because we regard it as pernicious or wrong. That is, we refuse to listen to the view, and if we have the power to do so, we may even refuse to allow it to be heard. But can we ever be justified in doing this, in advance of employing procedural justice?

One reason for thinking that we can be is supplied by Hampshire himself. Many of our most deeply felt moral commitments are not based on reason. Our values are rooted not in reason, or certainly not solely, but ‘in the imagination and in the memories of individuals and in the preserved histories of cities and of states’.³⁸ Moreover, Hampshire also effectively addresses the principal objection to this view when he writes,

The standard objection to accepting the appeal to feeling and to perception is that it is a dangerous form of irrationalism, opening the way to prejudice and bigotry. But it is not irrational not to rely on explicit reasoning and calculation in spheres in which the empirical premises required for the reasoning are known to be, or are likely to be, extremely unclear and indefinite, or difficult to analyse. An action or policy may be felt to be, or perceived to be, squalid or mean, or disloyal, or dishonourable, even though the agent can give no very precise and explicit account of why on this particular occasion he perceives the situation in this light.³⁹

Quite so: but for this very reason one might wonder on occasion what is to be gained from hearing the other side. I already have a moral perception of

the situation, a perception that is based on feelings and sentiments that are deeply rooted in me, and in my community. For instance, I am set against racism: I am not interested in and do not want to hear the other side of the case.⁴⁰ Hearing the other side is a rational requirement for me (as opposed to being grounded in some substantive doctrine of respect for persons) only if I am at least in principle open to persuasion by the other side. But I may not be; and, on Hampshire's own account, this may not betoken any irrationality on my part.

A further potential difficulty relates to the robustness of Hampshire's account of the requirement of two-sidedness, and how it relates to 'the locally established and familiar rules of procedure' that form the other element in procedural justice. Hampshire is sensitive to the point that what count as fair procedures will also often be a matter of controversy, recognising that 'disputes about the just and fair political institutions will continue indefinitely' and that 'no finality or conclusiveness in this historical process is to be expected'.⁴¹ In this, he is surely right. The problem, however, is where this leaves the idea of procedural justice, if that too is matter of substantive dispute. The notion of a 'fair' procedure is left hanging: what are the conditions of a fair adversary argument? Sometimes Hampshire seems content to interpret this in minimalist terms, but at others, like so many proceduralists, he is tempted to articulate a more robust conception of adversary argument. This then requires teasing out a number of further implications of what it is for all sides to be 'heard', or be 'heard equally', and for procedures to be 'fair'. But there are at least two problems with heading along this path. First, to go that way would be to undermine the idea that actual parliaments and most other actual institutional forms are, as Hampshire suggests, adequate instantiations of institutional fora of adversary argument. As he also acknowledges, all parliaments reflect a balance of power, and bargaining, riding roughshod over objections and the use of 'persuasive' tools other than the merits of an argument are their stock in trade. Secondly, once one starts to spell out the conditions that would make for a situation that is adequate to the requirements of adversarial argument one has to engage in the kind of substantive discussion that the procedural approach was supposed to circumvent. It certainly looks as if we are back in the business of spinning ideal theories. While it would be going too far to say that at the end of this route must lie something like a Habermasian ideal speech situation, this is broadly the same road that is crowded with deliberative and discursive democrats setting out increasingly demanding substantive conditions for procedural fairness. To travel in this direction is to pull strongly against the general tenor of Hampshire's argument.

There is one final puzzling feature of Hampshire's position. As we have seen, he typically presents procedural justice as the only viable alternative to force or violence as a means of mediating conflicts. Does this then mean that there is some obligation on the parties to a conflict to accept the outcome of procedural justice? Apparently not. Consider the following passage.

For a typical liberal democrat, as I interpret him, the fact that a particular policy is the outcome of a fair process of democratic conflict is both a necessary and sufficient condition of its acceptability. For a democratic socialist, and for typical British conservatives, that the policy is the outcome of a fair and established procedure of conflict resolution is a necessary, but certainly not a sufficient, condition of its acceptability. If the final policy seems to me extremely and evidently unjust in substance, it will often be in my view unacceptable. When a policy seems to me unacceptable, what form my opposition to it should take is a separate moral question, to be determined in the particular circumstances and in view of the extent of the evil.⁴²

Ignoring the questionable characterisation of the liberal democrat, what I want to focus on is where this leaves the idea that procedural justice is an *alternative* to force and violence. Admittedly, the term 'acceptable' may be rather ambiguous between procedurally legitimate and morally right, but towards the end of the passage it is clear that what Hampshire means to deny is that there is any obligation to be bound by a policy, even when it is arrived at through a fair procedure. He reserves the right to oppose, and to do so by whatever means are judged appropriate, the outcome of a fair procedure if it is believed to be sufficiently substantively unjust. It is perhaps too strong to say that this means that one is only bound to accept the outcome of a fair procedure when one agrees with it; but, at least when the moral stakes are high, something very close to this does seem to be the implication of Hampshire's argument. This, though, must call into question the whole idea that fair procedures are a bulwark against violence and force. It is hard now to see what real contribution the procedures are making to dealing with conflicts of values in ways that circumvent resort to force and violence.

The limits of proceduralism

For all that it offers what is in many respects an attractive attempt to articulate a form of thin universalism, it should by now be clear that Hampshire's proceduralism runs into a number of serious difficulties, both of internal coherence and general plausibility. Some of these difficulties, moreover, seem intrinsic to his project rather than incidental, and it is not easy to see how they can be overcome. Thus there may be wider lessons to be learnt from Hampshire's failure. One is that all proceduralisms seem to confront a dilemma that constantly threatens to undermine them. As we have seen, the impossibility of pure proceduralism means that any form of proceduralism presupposes some particular substantive conditions. And these may not be a problem if they really are minimal and uncontroversial between contending parties. However, while they are typically presented in this way initially, under pressure to give some determinate shape and content to the preferred procedure, these substantive conditions are prone to become increasingly more

demanding and more exclusive, and so less minimal and more controversial. In so doing, they lose their initial advantage, which was precisely their philosophical and ethical minimalism. The dilemma is that either proceduralism remains thin, but is so thin that it lacks any real ethical cutting edge; or it acquires teeth, but only at the cost of undermining its claim to be philosophically and ethically minimal.

Where, finally, does this leave us in the search for a thin moral universalism? Hampshire's direct appeal to universal evils rooted in human imagination and feeling is not without force. However, it is certainly not unproblematic, and more importantly for the argument here, it is largely independent of his argument for procedural justice as itself a universal good. Ultimately, there is an unresolved tension, perhaps irresolvable, in Hampshire's thought between a strongly conventionalist strand in which human practices and principles are fundamentally historically contingent and a desire to ground procedural justice in human nature or rationality. However, I think it would be to miss the point if, as a result, one simply dismissed Hampshire's ideas as confused. For, in my view, this tension reflects a similar tension that was identified earlier in relation to Rorty's ironist. Modern ethical thought seems forever to be caught between the need for the *terra firma* of a thin universalism, and scepticism about whether such ground is anywhere to be found. Hampshire does not free us from this tension – and at times one suspects that he, too, does not really think that he has – but he does help us to understand why it seems so difficult, perhaps impossible, to escape.

Notes

- 1 An earlier draft of this chapter was presented at the Conference on 'Thin Universalism: Principles in a Plural World' held at Cardiff University in April 2004. I am grateful for the helpful discussion it received from the participants on that occasion, and particularly to Andrea Baumeister and Bruce Haddock.
- 2 Problems begin even with knowing exactly how to label what it is that is supposed to be universal. I shall speak mostly of basic values (often simply, 'values'), but this of course glosses over the fact that not only which values are basic is disputed but so also is which of them are 'moral'. In a short paper on a large subject many important but difficult issues must remain unexplored.
- 3 I put the matter this way rather than in terms of conflict presenting us with a question about how *we* should live, because this is not usually how differences do confront us, although that is not to deny that they may do so on occasion. Typically, we are already situated in relation to the conflict: one position is already *ours*.
- 4 It should be understood throughout that differences or disagreements about value are taken to include disputes about how conflicts of interest should be dealt with.
- 5 R. Rorty, *Philosophy and the Mirror of Nature*, Princeton, NJ: Princeton University Press, 1979.
- 6 R. Rorty, *Contingency, Irony and Solidarity*, Cambridge: Cambridge University Press, 1989.
- 7 For a comprehensive critique of Rorty's attitude to human nature see N. Geras, *Solidarity in the Conversation of Humankind*, London: Verso, 1995: Chs. 3 & 4.

- 8 J. Horton, 'Irony and Commitment: An Irreconcilable Dualism of Modernity' in M. Festenstein and S. Thompson (eds), *Richard Rorty: Critical Dialogues*, Cambridge: Polity, 2001, 21.
- 9 J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971; T. Scanlon, *What We Owe to Each Other*, Cambridge, MS: Harvard University Press, 1988; B. Barry, *Justice as Impartiality*, Oxford: Oxford University Press, 1995.
- 10 The position of Hampshire's that I examine (S. Hampshire, *Justice is Conflict*, London: Duckworth, 1999) is in some important respects different from that he sets out in 'Morality and Conflict' (S. Hampshire, *Morality and Conflict*, Oxford: Basil Blackwell, 1983: Ch. 7), and which is criticised by Michael Walzer in 'Nation and Universe' in this volume.
- 11 S. Hampshire, *Innocence and Experience*, London: Allen Lane, 1989, p. 12.
- 12 Hampshire, *Justice is Conflict*, p. 7. Notice the date: the year before John Rawls published his *magnum opus* that was to push Anglo-American political philosophy decisively in the very direction that Hampshire was rejecting. No doubt this is an important part of the explanation for the relative neglect of Hampshire's work in this area.
- 13 Hampshire, *Justice is Conflict*, pp. 154–5, Hampshire, *Innocence and Experience*, pp. 62–66.
- 14 Hampshire writes that: 'The significance of National Socialism, in the context of moral philosophy, is, first, that it was an explicit and direct exaltation of injustice and of violence at the expense of justice, with a sinister minimum of hypocrisy and lip-service; second, that the rise to power of the Nazis came after a period in which liberal and secular conceptions of justice, traceable to the French Revolution, had spread through much of Europe, carried on a wave of middle-class prosperity with a corresponding decline of aristocratic moralities'. Hampshire, *Innocence and Experience*, p. 71.
- 15 Hampshire, *Justice is Conflict*, pp. 42–3.
- 16 H. L. A Hart, *The Concept of Law*, Oxford: Oxford University Press, 1961, pp. 189–195.
- 17 Hampshire, *Justice is Conflict*, p. 9.
- 18 *Ibid.*
- 19 *Ibid.*
- 20 I would be more cautious than Hampshire about judgements across historical epochs. It does seem to me that, say, the Aztecs had a very different (ethical?) sensibility to ours. But I also agree with Bernard Williams that it is unclear quite what useful work morally condemning earlier civilizations is supposed to do. See B. Williams, 'The Truth in Relativism' in his *Moral Luck*, Cambridge: Cambridge University Press 1981.
- 21 Hampshire, *Justice is Conflict*, pp. 18–19.
- 22 Hampshire, *Justice is Conflict*, p. 56.
- 23 Hampshire, *Justice is Conflict*, p. 21.
- 24 Hampshire, *Justice is Conflict*, p. 56.
- 25 Hampshire, *Justice is Conflict*, p. 20.
- 26 Hampshire, *Justice is Conflict*, p. 22.
- 27 Hampshire, *Justice is Conflict*, p. 23.
- 28 Hampshire, *Justice is Conflict*, p. 46.
- 29 *Ibid.*
- 30 Hampshire, *Justice is Conflict*, p. 45.
- 31 *Ibid.*
- 32 Hampshire, *Justice is Conflict*, pp. 91–2.
- 33 Hampshire, *Justice is Conflict*, p. 42.
- 34 Hampshire, *Justice is Conflict*, p. 35.

35 Hampshire, *Justice is Conflict*, p. 29.

36 Hampshire, *Justice is Conflict*, p. 42.

37 This argument is indebted to the so-called 'one thought too many' argument advanced by Bernard Williams against utilitarianism (B. Williams, 'Persons, Character and Morality' in his *Moral Luck*). A different kind of support can also be found in Ulysses and the Sirens style arguments see J. Elster, *Ulysses and the Sirens*, Cambridge: Cambridge University Press, 1979, 2000.

38 Hampshire, *Justice is Conflict*, p. 8.

39 S. Hampshire, *Morality and Conflict*, p. 157.

40 It might be claimed that racism falls within the category of universal evils, but a belief in human inequality has been much more common in human history than the reverse.

41 Hampshire, *Justice is Conflict*, p. 91.

42 Hampshire, *Justice is Conflict*, p. 81.

8 Gender equality and cultural justice: how thin is Nussbaum's universalism?

Andrea Baumeister

At first glance demands for gender equality and claims for cultural justice have much in common. In their search for more inclusive conceptions of justice both highlight the importance of difference and diversity. Thus both reject abstract, unitary conceptions of citizenship in favour of a contextual identity that recognises our particular attachments, concerns and perspectives. Furthermore, both are critical of notions of formal equality that define equality exclusively in terms of identical individual rights. Yet, despite these shared concerns and goals, significant tensions remain between the demand for gender equality and respect for cultural diversity. While a regard for pluralism and cultural diversity entails that we respect the desire of communities to uphold their traditional way of life, many established cultural and religious customs discriminate against women and therefore cannot be easily reconciled with the norm of gender equality. Here feminists frequently express concern about the impact upon women of practices such as female circumcision, polygamy, child marriages or forced marriages, and gender differentiated rules regarding divorce. In addition there are worries regarding gender equality in relation to access to education, employment and vulnerability to violence.¹

In *Sex and Social Justice* Martha Nussbaum develops a sophisticated response to this dilemma, which seeks to balance the claims of cultural justice and gender equality. Nussbaum argues that a feminist defence of gender equality should be grounded in a form of political liberalism that acknowledges a plurality of comprehensive doctrines of the good. Thus, while her capabilities approach seeks to defend women's fundamental rights and interests by identifying those functional capabilities that are vital for any human life to be regarded as truly human, it nonetheless acknowledges that all individuals and groups experience common needs, problems and capabilities differently and that functional capabilities can be specified in numerous ways. The capabilities approach therefore seeks to develop a thin universalism that allows for reasonable pluralism. In this context Nussbaum places particular emphasis upon three distinctive characteristics of the capabilities approach:

- (a) the distinction between capabilities and functioning,
- (b) respect for individual choices, and
- (c) sensitivity to individual circumstances.

This paper examines Nussbaum's claim successfully to resolve the tension between the demand for gender equality and the claims of difference, diversity and cultural justice. It argues that Nussbaum's approach is indeed difference sensitive in as far as it recognises that different individuals may require different resources in order to secure the same capabilities. However, her expansive view of the political, together with her scepticism regarding the choices of women who endorse cultures that significantly limit their autonomy, as well as the practical difficulties of implementing the distinction between capabilities and functioning, make Nussbaum's claim to offer a truly pluralist account problematic. These difficulties not only undermine Nussbaum's attempt to provide a genuinely thin form of universalism, but also raise complex questions regarding her conception of gender equality. One of the striking features of *Sex and Social Justice* is the absence of feminist voices that base their struggle for gender equality within non-liberal cultural and religious traditions, rather than the liberal paradigm favoured by Nussbaum. These feminist voices pose a complex challenge for Nussbaum's project of grounding a defence of gender equality as a central human right in liberal ideals.

Thin universalism as core human capabilities

In *Sex and Social Justice* Martha Nussbaum explicitly seeks to redress the relationship between feminism and liberalism.² While feminists have typically been critical of liberalism's emphasis on individualism, formal equality and abstract reason, Nussbaum believes that properly conceived and consistently implemented, liberalism provides the basis for a robust defence of gender equality as a central human right. Not only does the impartiality implied by a liberal notion of a common humanity offer a powerful challenge to often deeply entrenched discrimination against women, the liberal emphasis on self-sufficiency as economic independence constitutes an important goal for many women, who still lack sufficient resources to care for themselves. Furthermore, the primacy of the individual has much to offer to women, whose well-being is only too frequently sacrificed or subordinated to the interests of family or the wider community and who have 'too rarely been treated as ends in themselves, and too frequently treated as means to the ends of others'.³ Finally, given the patriarchal nature of most societies, women have good grounds to distrust habit and tradition. After all 'where the voice of tradition speaks, that voice is most often male'.⁴ Thus, far from rejecting the liberal emphasis on reason, women have great need of the capacity for critical reason.

While for Nussbaum the core liberal values of personhood, autonomy, dignity and self-respect offer the most effective tools for securing equality for women world wide, she is nonetheless keenly aware of the difficulties that cultural diversity and demands for cultural justice pose for any liberal universalist project. Many adherents to non-liberal life-styles and conceptions of the good remain deeply committed to their way of life and continue to uphold traditions and customs, many of which cannot be easily reconciled with the norm of gender equality. This poses a complex dilemma. After all, it is difficult to see how one could be said to respect the bearers of such conceptions of the good, without at the same time respecting their choice to continue to uphold their traditional way of life. In the face of these difficulties, Nussbaum argues that a feminist defence of gender equality should be grounded in a form of political liberalism, which acknowledges that there are a plurality of comprehensive doctrines of the good. Although political liberals insist that a 'nonautonomous life should not be thrust upon someone by luck of birth', they nonetheless respect that reasonable citizens may pursue such lives, 'given a background of liberty and opportunity'.⁵ While such an approach will require adherence to non-liberal perspectives to acknowledge the equality of women as citizens, it does not demand that non-liberal perspectives endorse women's equality as a comprehensive moral value. Thus, Nussbaum claims, her political liberalism rests upon a thin universalism that allows for reasonable pluralism.

Central to Nussbaum's project is her capabilities approach, which seeks to identify activities characteristically performed by humans, which are so central that they are definitive of a life that is truly human. That is to say they are functions 'without which (meaning without the availability of which) we would regard a life as not, or not fully, human'.⁶ Here Nussbaum stresses that her approach does not aim to merely secure the necessities for bare survival, but seeks to identify the capacities required for full human functioning. In *Sex and Social Justice* she identifies the following central human functional capabilities: A normal life span, bodily health and physical integrity (clauses 1–3); emotional, affective, social and mental development (clauses 4, 5, 7 and 9); the ability to engage in critical reflection about the planning of one's own life (clause 6); the ability to live with concern for and in relation to animals, plants and the environment (clause 8) and control over one's own environment, both in terms of political participation and control over material goods (clause 10).⁷ While some of these central capabilities, such as political liberties, can be fully guaranteed by society, Nussbaum acknowledges that others, like good health, may involve an element of chance. These items on the list are therefore best viewed as political goals that provide a useful benchmark for aspirations and comparisons between the relative well-being of men and women.

According to Nussbaum, this list of central human capabilities is neither ahistorical nor a priori, but reflects 'empirical findings of a broad and ongoing

cross-cultural inquiry'.⁸ Thus for Nussbaum these central capabilities are akin to Rawls' primary goods. They are

something that people from many different traditions, with many different fuller conceptions of the good, can agree on as the necessary basis for pursuing their good life. That is why the list is deliberately rather general. Each of its components can be more concretely specified in accordance with one's origin, religious beliefs, or tastes. In that sense, the consensus that it hopes to evoke has many of the features of the overlapping consensus described by Rawls.⁹

On Nussbaum's account the protection of these central human capabilities provides a critical standard against which existing practices can be judged and sets clear limits to the claims of cultural diversity. Thus, for example, cultural and religious practices such as sati, dowry violence and restrictions on the ability to work outside the home threaten women's life, health and bodily integrity and are therefore not compatible with a respect for women's fundamental capabilities. However, while the capabilities approach provides a robust defence of women's fundamental rights and interests, Nussbaum stresses that her approach promotes only a thin universalism and thus allows for reasonable pluralism. Not only is the list of capabilities open-ended and non-exhaustive, it is specifically designed to allow for the possibility that each component can be specified in a variety of ways. According to Nussbaum, this regard for reasonable pluralisms informs three distinctive characteristics of the capabilities approach:

- (a) the distinction between capabilities and functioning,
- (b) respect for individual choices, and
- (c) sensitivity to individual circumstances.

On Nussbaum's account her list of capabilities is best understood as a 'list of opportunities for life functioning' and thus does not entail a determinate conception of the good. Just like Rawlsian primary goods, capabilities are designed to enable citizens to choose which plan of life they wish to pursue. Hence, according to Nussbaum:

It is always rational to want them whatever else one wants. If one ends up having a plan of life that does not make use of all of them, one has hardly been harmed by having the chance to choose a life that does.¹⁰

Governments are therefore not expected to ensure that citizens act in certain valued ways, but are 'directed to make sure that all human beings have the necessary resources and conditions' and hence the opportunity, to act in these ways.¹¹

This respect for diversity inherent in the distinction between capabilities and functioning is reinforced by the central role Nussbaum's approach assigns to choice. Indeed, for Nussbaum, 'one of the central capabilities

promoted by the conception will be the capability of choosing itself'.¹² Thus the capacity for practical reasoning, political liberties and employment as a source of opportunity and empowerment all help to develop the individual's capacity for choice. Furthermore, the inclusive notion of human functioning at the heart of the capabilities approach allows for tragic choices. Given the rich plurality of distinct functions and values characteristic of the capabilities approach, there is no guarantee 'that individuals will not be faced with painful choices among these functions, in which, in order to pursue one of them well, they must neglect others'.¹³ Hence, according to Nussbaum, the capabilities approach both fosters the capacity to choose and respects the decision of citizens to lead a wide variety of ways of life, perfecting some functions at the expense of others.

Finally, the capabilities approach is sensitive to differences in the circumstances of individuals. While Rawls' list of primary goods contains some capacity-like items such as liberty and opportunity, it perceives equality primarily in terms of identical resources. However, different individuals may well require different resources to secure the same capabilities. For instance a person in a wheelchair may need more resources to be mobile than a person without such impairment or a pregnant woman may need more calories than a non-pregnant woman. The capabilities approach addresses such differences in need by focusing on what people can actually do rather than on what resources they command. According to Nussbaum, this comprehensive concern with human flourishing ensures that the approach is sensitive to differences in material and social conditions.

How thin is Nussbaum's universalism?

Nussbaum's attempt to combine a robust defence of gender equality with a genuine regard for the plurality of comprehensive conceptions of the good clearly has much to recommend it. Her emphasis on capabilities rather than resources is sensitive to differences in the needs of individuals and takes into account the impact of wider structural political, economic and social factors upon the ability of individuals to realise their capabilities. Although Nussbaum's capability approach is not unique in this regard, she is quite right to stress that her model is better placed to do justice to the claims of difference and diversity than some other prominent liberal approaches, such as Rawls' list of primary goods.¹⁴ However, while the capabilities approach is indeed sensitive to individual circumstances, Nussbaum's distinction between capabilities and functioning and her claim to respect individual choices are more problematic. Worries here centre around three aspects of Nussbaum's approach:

- (a) her expansive view of the political,
- (b) her scepticism regarding the choices of women who endorse cultures that minimise autonomy and

- (c) the practical difficulties of implementing the distinction between capabilities and functioning. Together these worries raise considerable doubts about Nussbaum's claim to offer a genuinely thin universalism.

While Nussbaum compares her capabilities approach to Rawls' overlapping consensus, the scope of her approach is significantly wider than that of Rawls' political liberalism in at least two respects. Whereas Rawls develops his political liberalism within the context of modern liberal societies, Nussbaum regards her list of capabilities as universally applicable. Furthermore, while Rawls' political liberalism only applies to the basic structure of society in the political sphere, Nussbaum favours 'wide-ranging intervention by the state and other bodies to change the family and women's place in society and in turn the comprehensive doctrines that underpin family structures'.¹⁵ Yet this expansive view of the political sits uneasily with Nussbaum's aim to develop a distinctly political liberalism. While Nussbaum rejects comprehensive liberalism because she believes that its goal of promoting autonomy across all spheres of life is incompatible with a proper regard for diversity, her expansive view of the political sphere sets significant limits to the claims of diversity and arguably brings Nussbaum's position closer to that of a comprehensive liberal than she acknowledges.

Nussbaum's discussion of freedom of religion provides a good illustration of her difficulties in this regard. For Nussbaum the ability to search for the good in a religious way constitutes one of the liberties most deserving of protection. Thus, although all citizens must acknowledge women's equality in the public realm, as a political liberal Nussbaum acknowledges that respect for citizens' different comprehensive conceptions of the good sets limits to the degree to which the state can legitimately intervene in religious and cultural practices. Hence, where laws designed to ensure non-discrimination on the grounds of gender impact upon the very core of religious practices and thus place a substantial burden on the free exercise of religion, the protection of religious liberty may at times provide a compelling ground for an exemption, 'as long as the law in question is narrowly tailored to protect that interest'.¹⁶ Thus, religious groups may, for instance, be granted an exemption from sex discrimination law in the appointment of priests. However, 'no system of religious laws should be permitted to interfere with the basic human rights of citizens'.¹⁷ Consequently, with regard to matters that fall within the public sphere, which on Nussbaum's account includes the family, the upbringing of children, and the status of women in society in general, the state has good reasons to intervene in religious practices that violate the norm of gender equality. Thus, for example, the state should not uphold any religious personal or family laws that discriminate against women. Furthermore, a religious leader who employs speech in the public realm to deny women's equal humanity, be it to justify marital rape or to attack contraception, 'should be strongly criticised as a subverter of the constitution'.¹⁸ Finally, while parents may have a legitimate interest in raising their children

within their religion, the state must ensure that all children are able to fully develop their capabilities. Therefore girls must be given an equal education that equips them for employment and citizenship and be made aware of the public commitment to the norm of gender equality.

As these examples suggest, on Nussbaum's expansive reading of the public sphere, the demand to respect women's equality as citizens will place considerable burdens on non-liberal perspectives. For instance, while Islamic law is rooted in a patriarchal view of society and advocates different rights for men and women, for many Muslims adherence to Islamic personal and family law is a 'quintessential sign of loyalty to Islam and thus for many Islamic groups constitutes the core of Islamic identity'.¹⁹ Yet, such an understanding of what comprises the core of a religious identity cannot be readily reconciled with Nussbaum's expansive view of the public sphere. After all on Nussbaum's account personal and family law falls within the public realm and thus cannot be exempt from the norm of gender equality. Similarly, Nussbaum's view of what should be viewed as an attack upon women's constitutional right to equality does not sit easily with the commitment of the Catholic Church to publicly oppose and criticise contraception. Indeed on Nussbaum's account anyone who publicly endorsed the view that life begins at conception would have to be classed a 'subverter of the constitution'. As these examples indicate, ultimately Nussbaum's expansive account of the public realm entails quite a substantive conception of the good. Yet such a thick conception of the good is incompatible with her claim to advance a form of thin universalism.

The problematic nature of Nussbaum's expansive view of the public is further underlined by her scepticism regarding the choices of women who endorse cultures that minimise autonomy. Although Nussbaum acknowledges that individuals will pursue a wide variety of different conceptions of the good, she insists that such decisions should always be based upon the individual's choice. Thus

[t]he capabilities approach insists that a woman's affiliation with a certain group or culture should not be taken as normative for her unless, on due consideration, with all her capabilities at her disposal, she makes the norm her own.²⁰

While Nussbaum emphasises the importance of individual choice, she is also keenly aware that many preferences, desires and emotions that influence the choices of individuals are learned in society and are shaped by social norms. Indeed 'people usually adjust their desires to reflect the level of their available possibilities' and hence can fail to form desires for things their circumstances have placed out of reach.²¹ Consequently, for Nussbaum, emotions, desires and preferences formed under unjust social conditions cannot be taken at face value. After all women frequently internalise the norms of their own oppression. Thus, for example, women who have been denied access

to education or employment outside the home, 'may be slow to desire these things, because they may not know what they are like or what they could possibly mean in lives like theirs'.²² Nussbaum seeks to resolve the potential tension between this social analysis of preference formation and her typically liberal regard for individual choices through her emphasis upon autonomy and critical reason in clause 6 of her list of capabilities. Thus, to be able to make informed choices, women must be allowed to develop their capacity for practical reason, so that they can 'engage in critical reflection about the planning' of their own lives.²³ For Nussbaum such critical reflection is crucial if choices are to be regarded as authentic.

Yet this emphasis upon critical reason and autonomy raises difficult questions about the way in which we should view the choices of women who are members of cultures that attach less value to autonomy. In the eyes of critics such as Phillips and Deneulin, Nussbaum's approach here gives rise to a peculiarly illiberal liberalism.²⁴ On this model, only choices that we can recognise as rational count as authentic. Indeed in *Women and Human Development* Nussbaum openly states that on her account some capabilities, such as health and bodily integrity are so important that in these areas it is legitimate to restrict the choices of individuals 'up to a point'.²⁵ Consequently, Nussbaum remains sceptical of the preferences of women who endorse cultures that limit their individual autonomy. Thus, according to Phillips, for Nussbaum, claims for cultural rights by non-liberal minorities represent 'either the self-serving interests of men in patriarchal communities, or the self denying support of women so depressed by their conditions of subordination that they are as yet unable to articulate their needs and concerns'.²⁶ This scepticism regarding the choices of women whose cultures minimise autonomy arguably rests on a rather over-idealised conception of choice in liberal societies. While for Nussbaum all authentic choice requires critical reflection, even in liberal societies committed to the promotion of autonomy, individuals typically accept many social norms and values without critical reflection. Furthermore, even where individuals exercise autonomy, the choices available to them are determined by society. Given that all societies, including liberal ones, are to some degree substantially unjust, on Nussbaum's conception of authentic choice, the preferences, desires and choices of most individuals, including most women living in liberal societies, would have to be viewed with a degree of scepticism. Such a demanding notion of authentic choice does not sit easily with Nussbaum's claim to defend a form of thin universalism.

These worries regarding Nussbaum's account of authentic choice are reinforced by the methodological difficulties inherent in her distinction between capabilities and functioning. According to Nussbaum, her list of capabilities is best understood as a 'list of opportunities for life functioning' and thus does not require that citizens act in certain valued ways or pursue a particular conception of the good. However, while this distinction between capabilities and functioning is theoretically impeccable, in practice it is difficult

to sustain. After all, in practice 'freedom cannot be easily observed unless it has been exercised'.²⁷ Consequently, often the most effective way of assessing whether a government has succeeded in providing citizens with the opportunity to develop all their core capabilities, is to look at actual functioning. If, for instance, women refuse to go to literacy classes offered to them, it will be difficult to determine whether this reflects a free choice or is based upon internalised social norms and expectations regarding the status of women. Thus, in practice the most readily accessible way of evaluating the effectiveness of a literacy programme is to look at the actual number of women who have learned to read. Nussbaum's scepticism regarding the choices of women who endorse a life-style that limits their autonomy, arguably reflects at least in part this slippage between capabilities and functioning. Because it may be difficult to establish whether women who continue to endorse such life-styles genuinely had the opportunity to develop a more autonomous life, there is a danger that only the rejection of such a life-style will be taken as conclusive proof that the women indeed had the opportunity to develop the relevant capabilities. Thus, in practice advocates of a capabilities approach may find it difficult to respect citizens' freedom not to avail themselves of certain opportunities. However, if this is the case, Nussbaum's claim that whatever else one wants, it is rational to want the opportunity to develop all the capabilities on her list is no longer quite so persuasive. If in practice a clear distinction between capabilities and functioning cannot be maintained, citizens may not be free to decline to develop certain capabilities. Thus in practice the opportunity to develop certain capabilities may de facto compel citizens to pursue a particular conception of the good. Under these circumstances it may well be rational to prefer not to have had certain opportunities in the first place.

The difficulties of maintaining a clear distinction between capabilities and functioning not only undermine Nussbaum's claim that capabilities are mere 'opportunities to function', but also challenge the pluralist credentials of her account. After all, as Nussbaum acknowledges, the idea of pluralism implies that choices between human functions and values are inevitable and that individuals must be free to reject the opportunity to develop certain capabilities. If, however, a clear distinction between capabilities and functioning cannot be maintained in practice, individuals may well lack this freedom to choose. This in turn highlights a fundamental tension in Nussbaum's account between her proclaimed pluralism and her insistence that the opportunity to develop all the capabilities on her list is a necessary condition for a fully functioning human life. If hard choices between human functions and values are indeed unavoidable and human beings must neglect some functions in order to perfect others, it is not self-evident that a truly human life requires the opportunity to choose among all the capabilities on Nussbaum's list.

Taken together these worries regarding Nussbaum's approach raise considerable doubt about her claim to offer a genuinely thin universalism. Her rather demanding conception of autonomous choice and her commitment to

promote autonomy across a very broad range of institutions and practices, make Nussbaum's liberal universalism significantly more substantive than she acknowledges and brings her account close to that of a comprehensive liberal. Furthermore, given that in practice it will be difficult to maintain a clear distinction between capabilities and functioning, the capability approach cannot be easily reconciled with a commitment to pluralism. Thus, not only does Nussbaum fail to develop a truly political liberalism, the methodological difficulties inherent in her account suggest that a capabilities approach does not constitute a particularly promising framework for a genuinely thin universalism. Ultimately, Nussbaum's substantive universalism leaves little room for the claims of diversity.

Gender equality as a liberal paradigm

These difficulties not only undermine Nussbaum's attempt to balance the claims of cultural justice and gender equality, but also raise complex questions regarding her very conception of gender equality. As noted at the onset of the chapter, Nussbaum grounds her defence of gender equality in a distinctly liberal feminism. Thus for her the liberal defence of individualism, abstract reason and formal equality provides the most promising basis for a robust defence of gender equality. However, while Nussbaum quite rightly points to many examples of women around the world who are 'using the language of liberalism' in their struggle for gender equality, at least some feminist movements do not endorse the liberal conception of gender equality, but instead situate their demands for equality within the context of their traditional culture, religion or class.²⁸ Thus, for example, the feminism of many Muslim feminists is firmly rooted in Islam, giving rise to a fight for liberation in a religious context. Rather than reject the legitimacy of traditional Islamic personal and family law, these feminists have thought to re-interpret existing law to promote greater equality via an appeal to alternative readings of the Qur'an or by pointing to inconsistencies in current practices.²⁹ In this context Muslim feminists typically stress that the aim of such a reassessment is to offer a more authentic interpretation of the Islamic tradition.

Although Nussbaum believes that such anti-liberal feminists are unwise to 'jettison the liberal account of human essence in favour of an account that gives more centrality to "accidental" features such as religion or class or even gender', she stresses that her type of political liberalism 'strives to leave space for these other identities'.³⁰ Yet, given the rather substantive nature of Nussbaum's liberal universalism, her claim to be able to accommodate a wide variety of non-liberal feminisms is at best problematic. Thus for example, Nussbaum's view of what respect for women's equality as citizens entails cannot be easily reconciled with the conception of the political realm and its relationship to Islam inherent in the position of Muslim feminists committed to the notion of Islamic personal and family law. Similarly, the strong emphasis on critical rationality and individual autonomy that underpins

Nussbaum's conception of authentic choice, will leave many feminists who have consistently attacked this typically liberal conception of identity with a considerable sense of unease.³¹ While these tensions between diverse feminisms arguably constitute a real dilemma for any feminist who seeks to ground a defence of gender equality in a liberal paradigm, it is a problem that Nussbaum does not address. Indeed, although Nussbaum claims that her approach 'lets the voices of many women speak', one of the most striking features of *Sex and Social Justice* is its failure to systematically engage with the work of non-liberal feminists, whose conceptions of gender equality challenge her liberal feminist paradigm.³² From a feminist perspective this oversight is rather telling. While feminism has been sensitive to the dangers of uncritically endorsing cultural norms, it has also been keenly aware of the perils of presenting culture specific norms as universal principles. Indeed historically much of the feminist critique of liberalism has been fuelled by worries regarding misleading claims of universalism. Yet in her quest to develop a universal defence of gender equality, Nussbaum underestimates the extent to which views of what constitutes gender equality are shaped by cultural factors. Consequently, while Nussbaum seeks to develop a difference sensitive liberal feminism, the substantive liberal universalism that informs her approach leads her to present what are culturally specific liberal values as universal norms.

This is not to suggest that the engagement between liberalism and feminism advocated by Nussbaum is necessarily misplaced. Undoubtedly the core liberal values of personhood, autonomy, dignity and self-respect potentially offer a highly effective critical tool for challenging the often deeply entrenched discrimination against women. However, if a feminism rooted in these core liberal values is to remain sensitive to the claims of cultural diversity, it must be rooted in a genuinely political liberalism that safeguards women's fundamental rights while respecting their actual choices and commitments. Such a truly political liberal feminism will not only have to recognise that core liberal values, including the goal of gender equality, are open to a variety of potentially conflicting interpretations, but also that even within feminist discourses the nature and proper scope of the public realm remain highly contested. To formulate a political liberal feminism that rests on a genuinely thin universalism poses a complex and difficult challenge. How, for example, do we stipulate choice conditions that are sufficiently robust to ensure that women have real choices, but which also respect the decision of non-liberal women to continue to follow their traditional way of life? Such complex dilemmas cannot be easily resolved. However, the first step towards a resolution must lie in a genuine engagement and open dialogue with the wide diversity of women's voices, including feminist movements that cannot be easily accommodated within a liberal paradigm. Thus rather than speak for women from other cultural backgrounds, a genuinely political liberal feminism will be sensitive to the claims of pluralism and the dangers of cross cultural judgements and will seek to engage with local and

indigenous feminist movements. It is this dialogue which is so notably absent in Nussbaums's account. Only a feminist discourse that allows the true variety of women's voices to be heard can begin to address the tensions between gender equality and the claims of difference, diversity and cultural justice and thus lay the foundations for a truly universal defence of gender equality.

Notes

- 1 See for example, D.L. Coleman, 'Individualising Justice Through Multiculturalism: The Liberals' Dilemma', *Columbia Law Review*, 96, 5, 1996, 1093–1167; M Devaux, 'Conflicting Equalities? Cultural Group Rights and Sex Equality', *Political Studies*, 48, 3, 2000, 522–539; S. Okin, 'Is Multiculturalism Bad For Women?' in J. Cohen, M. Howard and M.C. Nussbaum (eds), *Is Multiculturalism Bad for Women?*, Princeton: Princeton University Press, 1999, pp. 7–26; A. Shachar, (2001) *Multicultural Jurisdictions*, Cambridge: Cambridge University Press, 2001; and L. Volpp, 'Feminism Versus Multiculturalism', *Columbia Law Review*, 101, 5, 2001, 1181–1218.
- 2 M. C. Nussbaum, *Sex and Social Justice*, Oxford: Oxford University Press, 1999.
- 3 *Ibid.*, p. 63.
- 4 *Ibid.*, p. 79.
- 5 M.C. Nussbaum, 'A Plea for Difficulty', in J. Cohen, M. Howard and M.C. Nussbaum (eds), *Is Multiculturalism Bad for Women?*, Princeton: Princeton University Press, 1999, pp. 105–14.
- 6 Nussbaum, *Sex and Social Justice*, p. 39.
- 7 For a full account of Nussbaum's central human functional capabilities see *Sex and Social Justice* pp. 41–42. In this abbreviated account I have drawn upon Charlesworth's summary of Nussbaum's capabilities approach (H. Charlesworth, 'Martha Nussbaum's Feminist Internationalism', *Ethics*, 111, October 2000, 64–78).
- 8 Nussbaum, *Sex and Social Justice*, p. 40.
- 9 *Ibid.*, p. 40.
- 10 *Ibid.*, p. 45.
- 11 *Ibid.*, p. 49.
- 12 *Ibid.*, p. 49.
- 13 *Ibid.*, p. 53
- 14 While her account is arguably better placed to respond to the claims of difference and diversity than Rawls' list of primary goods, other conceptions of liberal equality, such as Dworkin's approach, are also sensitive to differences in need (R. Dworkin, *R. Sovereign Virtues: The Theory and Practice of Equality*, Harvard: Harvard University Press, 2000).
- 15 P. Enslin, 'Liberal feminism, diversity and education', *Theory and Research in Education*, 1, 1, 2003, 73–87, p. 83.
- 16 Nussbaum, *Sex and Social Justice*, p. 111.
- 17 *Ibid.*, p. 103.
- 18 *Ibid.*, p. 114.
- 19 T. Loenen 'Family Law Issues In A Multicultural Setting: Abolishing Or Reaffirming Sex As A Legally Relevant Category? A Human Rights Approach', *Netherlands Quarterly of Human Rights*, 20, 4, 2002, 423–443, p. 426.
- 20 Nussbaum, *Sex and Social Justice*, p. 46.
- 21 *Ibid.*, p. 11.
- 22 *Ibid.*, p. 11.
- 23 *Ibid.*, p. 41.

- 24 A. Phillips, 'Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right?', *Constellations*, 8, 2, 2001, 249–266; S. Deneulin, 'Perfectionism, Paternalism and Liberalism in Sen and Nussbaum's Capability Approach', *Review of Political Economy*, 14, 4, 2002, pp. 497–518. Deneulin argues that Nussbaum's capability approach is ultimately paternalistic, since 'interfering is justified when the choice harms the chooser herself' (Ibid., p. 510).
- 25 M. C. Nussbaum, *Women and Human Development*, Cambridge: Cambridge University Press, 2000.
- 26 Phillips, *Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right?*, p. 264. Susan Wolff voices a similar worry. For Wolff the emphasis Nussbaum places upon 'living ones own life and no one else's' appears 'to assume a superiority of individualism over communitarianism at the level of the theory that is, at least, controversial' (S. Wolff, 'Commentary on Martha Nussbaum: human capabilities, female human beings', in M.C. Nussbaum and J. Glover (eds) *Women, Culture and Development*, Oxford: Clarendon Press, 1995, pp. 105–17, p. 110).
- 27 S. Deneulin, 'Perfectionism, Paternalism and Liberalism in Sen and Nussbaum's Capability Approach', p. 502. While Deneulin develops this critique of the capability approach in the context of her discussion of Sen's capability approach, it arguably applies just as much to Nussbaum's model.
- 28 Nussbaum, *Sex and Social Justice*, p. 66.
- 29 See for example D. Eissa 'Constructing the Notion of Male Superiority over Women in Islam', *WLUML Occasional Paper 11*, November 1999 and N. Moosa, 'The interim Constitution and Muslim personal law', in S. Liebenberg (ed.), *The Constitution of South Africa from a Gender Perspective*, Cape Town: David Philip, 1995, 167–184.
- 30 Nussbaum, *Sex and Social Justice*, p. 70/1.
- 31 See for example C. Pateman, 'The Theoretical Subversiveness of Feminism' in C. Pateman and E. Gross (eds), *Feminist Challenges*, Sydney: Allen & Unwin, 1988, pp. 1–10.
- 32 Nussbaum, *Sex and Social Justice*, p. 9. As Norton notes, while Nussbaum relates the stories of typically poor and uneducated women in a manner and context that support her own contentions, she does not acknowledge the work of the many women scholars in South Asia, Africa and the Middle East who write on sex and social justice (A. Norton, 'Review Essay on Euben, Okin and Nussbaum', *Political Theory*, 29, 5, 2001, 736–49).

9 Thin universalism and cultural identity: The case of Welsh nationalism

Gwenllian Lansdown

The purpose of this paper is to determine whether a Welsh nationalist position can ever be described in liberal terms. The question that I ask myself is not whether a liberal nationalism is possible, but whether in the particular context of Wales, a nationalist position sensitised to liberal individualism can be forged. The liberal framework, in this instance, is provided by the work of Seyla Benhabib. The paper also considers the scope of a universal public goods argument as a corollary of liberalism. But why attempt to bring Welsh nationalism and liberalism together? Theoretical literature helps us find our way through the maze of conflicting and disparate ideas that exist on nationalism. The study of Welsh nationalism, however, is different. It remains in its infancy. My explicit intention in this paper is to explore and analyse some snapshots of the Welsh nationalist positions of Plaid Cymru.¹ I will focus my attention on key texts and the thoughts of prominent individuals such as Saunders Lewis and Gwynfor Evans who have shaped the party's ideologies.² My main sources are editions of the party's newspapers (*The Welsh Nationalist*, and as it was later called '*The Welsh Nation*', its Welsh-language equivalent, '*Y Ddraig Goch*'³) and party literature in the form of pamphlets, articles and books. By looking at themes such as language/culture and questions of citizenship, I explore the apparent tension between the individual and culture in internal party debates.

This relationship between the individual and culture (that is, liberal and communitarian claims) is by no means self-evident or simplistic – it is marked by internal dialogue between cultural essentialists, political nationalists and others. My own response to this debate, as hitherto mentioned, is to lodge Welsh nationalist claims in a strictly liberal setting by using Seyla Benhabib's most recent text, *The Claims of Culture: Equality and Diversity in the Global Era*.⁴ I take as uncontested givens the facts of diversity and pluralism in contemporary, democratic Wales and see a commitment to the individual as a corollary of that. I wish to avoid, like Benhabib, the language of normative multiculturalism and communitarianism. I describe Plaid Cymru as a liberal party that endorses a thin universalist position. It takes seriously the fact of the encumbered, social self while avoiding the essentialist implications of a thick cultural identity, unlike Kymlicka for example.⁵ The universal

language of public goods is instructive in this regard. It provides Welsh nationalism with a means of identifying certain goods – public goods – that can be articulated in a vocabulary which is universal in its implications. I will use the example of the Welsh language in this instance.

Gwynfor Evans in *Plaid Cymru and Wales* appeals to certain values that resonate universally. Humanity's moral right to freedom is a constant leitmotif in Gwynfor Evans's writing. He invokes the language of justice and freedom with almost religious zeal, commenting that the Welsh nation demands 'the status of a free nation' as a question of ethical priority.⁶ His portrait of the Welsh nation via its history and struggle is organic and essentialist. Evans habitually personifies the nation as a 'she' in order to elevate its status. This use of personification as a rhetorical ploy implies that the nation can exist independently of its constituent parts and people. However, it is difficult to determine what exactly Evans means when he uses the term 'nation', for his views on the subject are complex. It is also hard to decipher whether Gwynfor Evans's apparent personification of Wales is simply a question of semantics, because he does make direct correlations between 'Welshmen' and 'Wales', suggesting that Wales is but a stand-in term for the country's people: 'Plaid Cymru exists because some thousands of Welshmen have the courage of their conviction, that Wales must save herself by her own exertions'.⁷

Indeed, in the second chapter of *Plaid Cymru and Wales*, Evans addresses the relationship between the person and his or her immediate cultural and social context. He comments that 'Welsh nationalism is best understood as a natural development of the view of a man as a person so deeply rooted in society that his well-being is inextricably bound upon the society to which he belongs'.⁸ He further argues that 'Welsh nationalists aver that the fundamental reality in society is the human person'.⁹ The primary purpose of politics for Evans 'is the welfare of the individual person and [for this] one will attach great importance to the richness and stability of social life'.¹⁰ Social life is a means to an end; it can enable or disable individuals in relation to life opportunities. Not surprisingly, Evans distances himself from the language of individualism for he likens it to an abstract atomism of the worst kind. In this, he sees centralisation as the great enemy of democracy and freedom, arguing that 'statists' and centralists display a cut-throat, business-like attitude towards 'society as an aggregate of individuals'.¹¹ He also refrains from using the word 'individual' as a noun, always preferring to use it adjectivally, by adding the word 'person' as a qualifier. But is this unquestioning belief in the 'rootedness' of man simply a means of emphasising the importance of one's immediate socio-cultural context to one's human flourishing, an argument characteristic of Rawls,¹² or does he intend to privilege the community at the expense of the individual?

Evans seems to answer this question when he argues that 'man is a member of many groupings, all of which contribute to the enriching of his personality'¹³ – man simply cannot be understood without reference to his social milieu. Implicit to this idea, however, is the notion of pluralism

and diversity which approximates a vision of Wales as a 'community of communities'. While the notion that man is constituted by these many groupings and societies – the cultural, linguistic, associational – is a plausible liberal position, Evans is loathe to give up on the essentialist vocabulary of nation-building. He argues that it is the nation which provides these disparate communities with a coherent framework, and that it is 'her language, traditions, culture and history [which] safeguard the values of the past'.¹⁴ The nation, via its microcosmic equivalent, the local community, Evans argues, is 'the greatest medium for the transmission of human values from generation to generation'¹⁵ unlike its diametrical antithesis, 'Hollywood'.¹⁶ Clearly, Evans privileges a vision of a natural and organic good life at the level of small communities which rejects North-American norms and values as crass and artificial. This begs the question: can Gwynfor Evans endorse a truly pluralist politics? For Evans, after all, man's teleological end lies in the supra-community, the nation and the relationship between society and culture at a local level cannot be divorced or properly understood without reference to it.

We might expect Evans's ideas on citizenship to focus on exclusive and stringent notions of *jus sanguinis*. In fact, the opposite is true. Evans argues that it is 'common membership of the Welsh community' and not language, culture, ethnicity or descent which 'is the test of nationality in Wales'.¹⁷ Welsh identity is a malleable and protean entity which allows for the highest degree of inclusion. Welsh citizenship is within the reach of those who want to be members of this so-called community of communities. Evans further attests that Welshmen are those who fight for Welsh freedom and not those who happen as a matter of contingency to speak Welsh or to be born in Wales. In this, he points to Jean Jaures, Giuseppe Mazzini and Leopold Kohr¹⁸ as examples of international nationalists – those who do not satisfy any of the traditional criteria usually employed by states to determine who is and who is not considered a citizen. The notion of active, participative citizenship is crucial in understanding the relationship between the individual and the wider community for Evans. As I have already said, Evans sees 'an organic relationship between man and his nation which cannot be severed without violence to both'.¹⁹ His vision of a healthy, efficient polity is 'bottom-up'. In Evans's eyes, human 'responsibility [is] a condition of moral growth' – dependence has a crippling, stifling effect which is contrary to Evans's quasi religious vision of 'the whole man'²⁰ whose needs are both spiritual and material. However, Evans defies any attempt to discuss these issues in a vacuum. He remains tied to the rhetoric of the community and nation. Even instilling a sense of responsibility in men cannot be understood without addressing 'the needs of the *spiritual life* of the community'.²¹ Clearly, as liberals, this use of language is problematic – how can the community or the nation have an alter-ego prior to its members? Are these abstract nouns not the 'metaphysical toys' to which Proudhon refers?²² To Evans however, the issues that he addresses are issues of morality and justice.

This again highlights the constant dichotomy in Gwynfor Evans's work between the individual and community. Evans argues that man cannot be

properly understood without reference to his social framework and local community, and his vision of the good life emanates from this assumption. It is quite clear then that the language of cultural constructivism does not resonate with Gwynfor Evans. The nation has a true identity and a tangible, linear character which, in turn, affects the person's immediate flourishing: 'The community of Wales has been centuries, millennia in the making, though it can be destroyed in a generation'.²³ Evans is not merely referring to the language and culture, unique to Wales. In various books and pamphlets, his emphasis lies in drawing attention to the territorial exploitation of Wales (Tryweryn), the use of its land for British military ends (Penyberth), and the lack of economic prosperity in many of its communities. But neither does Evans wish to sentimentalise or romanticise the nation. He asserts that nationality 'can be a power for evil if its dynamic is misguided'.²⁴ He is aware of the uncomfortable fact that the language of nation-building sometimes commits us to illiberal ends. The only way to ensure that the nation does not wield unnecessary power or influence, Evans argues, is by realising that 'the nation exists for man, not man for the nation'.²⁵ This is reminiscent of Altiero Spinelli's distinction between the nation as a vehicle for good and the nation as a vehicle for evil.²⁶ Evans rejects the power-driven, glory-seeking tendencies of nations but affirms, perhaps naively, that due to Wales's small size, the potential for evil is 'to the highest degree, improbable'.²⁷ The panacea, as he sees it, is radical decentralisation within Wales and the wider world. This ties in with the idea that 'complete self-sufficiency, like complete sovereignty' is fictitious.²⁸ He endorses the principle of subsidiarity, because he is quite clear that radical decentralisation not only means moving the locus of power from London to a new centre in Wales, but also means power-sharing and multi-level governance 'within Wales herself'.²⁹

Evans is emphatic in his claim that nationalism is a call unto freedom: 'Freedom for the nation is a condition of freedom for the individual person'³⁰ – this resonates with the language of anti-colonialism and anti-imperialism, with the emphasis on individual and personal liberties. His vision is indeed multi-faceted and complex. He sees Wales as a diverse and protean community of communities and his wish is to empower men and women, in their own communities and groupings. But can this liberal vision cohere with the language of nationalism, in which Evans reifies and privileges the nation as a coherent and natural entity? Evans sees no necessary problem here. In order, for instance, for the Welsh language to be given the protection it needs and in order for questions of economic and fiscal policy to address the specific needs of Welsh communities (as opposed to South East England), Wales must be free to set its own agenda in the interdependent context of the international order. The historic and linguistic nation gives Evans the framework in which to make these claims. Need he necessarily be tied to the language of nationalism to make these claims? Probably not. In the political context however, giving up on the language of nationalism would perhaps be too costly. Evans, with his unwavering commitment to pacifism and universal

justice, is intent on educating his readership that nationalism can be ‘properly’ realised if pursued by small, peaceful nations – his proviso on an inclusive common membership of the Welsh nation highlights this.

While Gwynfor Evans is perhaps sensitised to some of the problems that go with the language of nationalism, one of his predecessors – Saunders Lewis – has gained, perhaps unfairly, a somewhat infamous reputation as an aggressive cultural nationalist. Saunders Lewis, like Gwynfor Evans, makes use of anti-imperialist language which is universal in intent. He accuses the English Parliament, for instance, of indulging in ‘imperial prestige’³¹ in relation to the Irish question of abolishing the oath. In the early years, like his contemporaries, DJ and Noelle Davies,³² Lewis is vociferous in his claims for Welsh self-government and self-determination noting that ‘English government has meant the unscrupulous freedom of the strong to grind down the weak’.³³ In *The Fight for Freedom (Y Frwydr dros Ryddid)*, Lewis paints a comprehensive portrait of Wales in all its guises – economic, cultural and social. He points to the levels of poverty in Wales, compared to England and emphasises how the lack of economic growth is all the more dangerous in a nation that is not independent or free to run its own affairs. He describes Wales’s contemporary situation in the language of slavery, the slavery of the bureaucratic centralism of both capitalism and socialism. Lewis makes explicit use of the language of individual, human rights: ‘Slavery denies man his natural and spiritual rights, man’s right to liberty, to property, to his family and nation, to his forefathers’ language, to his country’s traditions’.³⁴ He develops these political ideas in more detail when he argues that Welsh nationalism involves ‘defending the individual spirit against centralist, imperial oppression, against the economic materialism which refuses or ignores man’s spiritual nature’.³⁵

Despite using the vocabulary of individualism, there is little doubt that his use of language is more problematic for liberal thinkers than the vocabulary employed by Gwynfor Evans. For one, he essentialises a particular conception of Welshness in which there is no place for the vast industrial communities of both North and South Wales. He reserves most of his wrath for the immigrant communities of South Wales. Indeed, he regards industrialisation as a great evil, as the root of society’s ills, including the demise of the Welsh language. In *The Crisis of Wales* for instance, Lewis paints a picture of a pure and untainted Welsh good life which, he claims, is incompatible with the ‘estranged’ values of the densely populated, industrialised areas of South Wales: ‘those parts of Wales which are the most populous are rapidly separating themselves from Welsh life’.³⁶ Clearly this reference to a ‘Welsh life’ commits him to a particular set of cultural values which cannot be shared by everyone living in Wales, thus privileging a principle of exclusion. The notion of common membership, which underlies Evans’s work, does not resonate with Lewis. He advocates a more Herderian position in relation to culture that is undeniably communitarian in tone. Indeed, Lewis argues that ‘our nation is in peril’³⁷ and that the Welsh language is symbolic of that.

There is an urgency to his writing which betrays its radical, revolutionary leanings. Ultimately, it seems, cultural nationalism must prevail at the expense of political nationalism – a position quite unlike Gwynfor Evans, DJ Davies and Noelle Davies.³⁸ He argues that ‘The effort to save Wales is one with the effort to save the Welsh language’.³⁹ The tendency towards artificiality is described by Lewis as a crisis which is sweeping all European countries. He argues that tradition and language are being distorted and eroded by the ‘storms that threaten to shatter and to drown that civilization’.⁴⁰ His own vision demands that a ‘proper’ culture can only flourish at the level of small (rural) neighbourhoods where individuals and families are ‘rooted’. Is there any room for the individual in his thesis? In many ways, Saunders Lewis is less preoccupied than Gwynfor Evans about the abstract, atomistic connotations of the language of liberalism. That said, the individual in Lewis’s eyes is clearly rooted in family, neighbourhood, community and nation. Lewis’s articles and contributions to *The Welsh Nationalist* are emotive laments for that ‘authentic Welsh life’ which he thinks in jeopardy. Claims to authenticity and purity are, quite obviously, incompatible with the liberal values of individual liberty and freedom. Lewis might make tokenistic usage of the language of individualism, but it is a peculiar kind of individualism that can only uphold his particular and exclusive interpretation of Welshness, a far cry from Gwynfor Evans.

This question of particularism and cultural identity, especially in relation to the universalistic aspirations of liberal thought, has been propelled to the forefront of political debate in recent years. Indeed, such debates also throw up interesting challenges for political theory. Kymlicka and Barry’s contributions frame the debate about the place of identity and culture within liberalism. There are other theorists, as previously mentioned, who are more explicitly sympathetic to the question of cultural identity within a democratic politics. One such theorist is Seyla Benhabib. In *Claims of Culture*, Seyla Benhabib’s response to this newly-emerging discourse is to further a thin universalist politics by establishing certain conditions that safeguard reasonable diversity. She also scrutinises claims made by multiculturalists and communitarians concerning the alleged incommensurability and un-translatability of cultural norms and values by challenging that premise of cultural understanding. In her words, the tendency to view cultures as organic, uncontested wholes highlights ‘a failure to interrogate the meaning of cultural identity’.⁴¹ Benhabib privileges a conception of culture as fluid and protean using the image of a kaleidoscope and rejects the image of culture as a rigid mosaic so described by multiculturalists. But Benhabib’s primary aim is to argue that traditional liberalism, with its commitment to the abstract individual, has not taken sufficient notice of struggles for recognition by those who are marginalised and disenfranchised in the blind-to-difference politics of modern liberal democracies. The mention of ‘marginalisation’ should make it clear why I am drawing parallels between the theoretical substance of Benhabib’s normative arguments and the types of claims made by Welsh nationalists such as

Gwynfor Evans and Saunders Lewis. Strong theoretical positions are implicit in both nationalists' writings. Indeed, there are clear universal implications to their diatribe. Benhabib's work is vociferously universalist but is clearly sensitised to the diverse nature of cultural expression. Gwynfor Evans and Saunders Lewis (to a lesser extent) also argue in favour of cultural diversity (the term 'a community of communities' betrays this position). While Benhabib has broader concerns, Seyla Benhabib, Gwynfor Evans and Saunders Lewis are committed to cultural expression, I argue, in its diverse forms.

As a democratic theorist, Benhabib argues that those movements whose aim it is to maximise the circle of political inclusion, ensure justice and equality deserve the support of liberals. It could be said that this is also one key premise of Gwynfor Evans's work although he might not be explicitly addressing his concerns to a liberal audience.⁴² However, Benhabib is also concerned about those movements which make uncontested, unilateral claims about internal cultural purity and the allegedly prescribed role of the individual within that cultural framework. Rejecting cultural essentialism, her main argument focuses on refashioning the relationship between contemporary liberal democracies and culture. She rejects the notion that liberalism must be blind to difference, but also argues that difference itself must be the subject of theoretical scrutiny as it is the product of contested stories about the internal significance and legitimacy of culture and cultural practices themselves. In this way, we can see how Benhabib's claim for reasonable pluralism and diversity, invoking Rawls's language in *Political Liberalism*, along with her account of the individual, highlights her thin universalist position. Benhabib is not making the claim that culture, given its inherent complexity and contestable nature, cannot be deemed important or relevant to the individual's sense of self. But neither is Benhabib arguing that cultures and cultural communities are above the individual or prior to him/her. Benhabib emphasises the fact that culture is a means to an end and not the *end* in itself.

Liberalism, of course, is fundamentally and categorically committed to the individual. Liberals further a conception of individual human rights which are universal in scope and are unrelated to the contingencies of community and culture, ultimately in order to protect individuals from the vicissitudes of their contingent cultural community. Benhabib argues, as is quite evident, that a commitment to the individual must also entail a commitment to pluralism and diversity. However, Benhabib is also critical of liberalism for supposing that the individual (in very thick terms) is atomistic and abstract with no commitment to any particular community, society or culture. Benhabib seeks to refashion liberal thinking by taking seriously the fact of cultural identity but with the proviso that culture and community are perceived as fluid concepts. She warns against seeing the 'boundaries of cultures [as] always securely guarded, their narratives purified, their rituals carefully monitored'.⁴³ This rejection of cultural essentialism, and the privileging of constructivism, is a constant feature in Benhabib's text. For her, the crux

of the question concerning justice, inclusivity and democracy lies in the following quotation.

It matters a great deal whether we defend culturalist demands because we want to *preserve* minority cultures within the liberal-democratic state or because we want to *expand* the circle of democratic inclusion'.⁴⁴

Indeed, this implies that struggles for recognition and inclusion can only be deemed legitimate if recognition is sought for what is deemed an acceptable end. For this purpose Benhabib identifies three conditions as a meaningful way of determining what such acceptable ends would be like and what necessary criteria would be established to facilitate them. In order to surpass this difficulty with placing the boundary between the liberal and illiberal, the tolerable and the intolerable, these three conditions must be satisfied. She argues, 'as long as [...] pluralist structures do not violate [these] three conditions, they can be quite compatible with an universalist deliberative democracy model'⁴⁵ – these criteria are:

- 1) *Egalitarian Reciprocity*: members of minorities must not be entitled to lesser degrees of rights.
- 2) *Voluntary Self-ascription*: an individual's group membership must permit the most extensive forms of self-identifications i.e. the state should not simply grant the right to define and control membership to the group at the expense of the individual.
- 3) *Freedom of exit and association*: recognises loss of formal and informal privileges.

Of course, some groups' existence will be in peril due to the imposition of these conditions, but such is the price of achieving the goals of 'cultural diversity as well as democratic equality'⁴⁶ – certain values, quite simply, cannot be fudged.

What remains distinctive about Benhabib's thesis on liberalism and thin universalism, as previously suggested, is that 'democratic inclusion and the continuity and conservation of culture need not be mutually exclusive',⁴⁷ a far cry from the blind-to-difference idea of traditional liberalism. This means that certain universalistic values (individual liberty) upheld by liberalism, are compatible with some, although not all, cultural particularities. And therein lies the problem for Benhabib and advocates of thin universalism. When does thin become thick? What constitutes thin and what constitutes thick? Benhabib *does* concede that the relationship between the particular and the universal is by no means simple and that 'there are no easy ways to reconcile either in theory or in practice, the rights of individual liberty with rights of collective cultural self-expression'.⁴⁸

What remains refreshing and novel about Benhabib's exploration of these tensions is that she recognises the challenge in reconciling what are traditionally

depicted as polar opposites and resists the temptation of fudging the issue, a charge which could be levelled at Rawls for insisting on a so-called 'closed' political society in *Political Liberalism*. Benhabib's vision of society, warts and all, is reminiscent of the claims made by the anthropologist Clifford Geertz in the last chapter of *Available Light*. His point of departure, the complexity and diversity of the hybrid global context, is a useful reminder of the exciting challenges facing liberal political theory in the modern world. He too, strives to unravel the complexities of pressing immediate circumstances and argues that theory might be 'universal in intent'⁴⁹ but that it is ultimately constrained by the particularities of the ambiguous present, 'driven and animated by the demands of the moment'.⁵⁰ Geertz's reflections culminate in addressing liberalism with a challenge, 'to engage itself with a differenced world' and to develop our thinking on 'what we have learned about how people with differences can live among one another with some degree of comity'.⁵¹ In similar fashion, Benhabib thinks thin universalism absolutely necessary (and indeed desirable). A new, culturally-sensitive, account of liberalism is possible and stems from the assumption that multiculturalists, communitarians and purists are simply missing the point when they employ the language of ethno-cultural justice, special recognition or group rights. That is, their initial account of culture is fundamentally flawed and reifies cultural practices in a way which is unhelpful, and at times, endangers certain important liberal principles. Therefore, the thin universalism of the kind espoused by Benhabib facilitates a reasonable (not unbridled or radical) liberal pluralism which ensures the political inclusion of certain cultural communities without threatening the liberty of the individual.

The parallels with a thin universalist Welsh nationalist position should be clear. I am arguing for a pluralistic and liberal understanding of Welsh identity whereby culture, community and language are seen as means to ends and not the ends in themselves by endorsing a constructivist account of culture and cultural self-understanding. Seeing Welshness as a myriad of contingencies does not commit us to a set of illiberal values which we cannot maintain in the modern, liberal Wales. Nor does it commit us to a vision of an organic, essentialist, authentic Wales. Rather, it takes as given the complicated, diverse and overlapping experience of Welshness in all its guises. It provides ample space for different interpretations of Wales to those individuals whose particular geographical, socio-economic or cultural experiences have coloured their vision of what it means to be Welsh.

Some might argue that this leaves us in a difficult position when it comes to addressing problems which are said to be unique to Wales in relation to the rest of the world. The language specifically highlights this challenge. The Welsh language is spoken by a significant percentage of the population and both Welsh and English are public languages in Wales. It is taught in Wales's state schools. In this sense, it is a socio-cultural good which is unique to Wales and which perhaps meets difficulty when employing the language of cultural constructivism. The question might be: if Welshness is this fluid and

protean entity with vague and nebulous boundaries in both the spatial, cultural and social sense, how can we possibly make the case for protecting the Welsh language? Can we give any protections to something which is supposedly a result of historical and social contingencies? One possible counterargument would be to endorse the liberal argument that a language is a means to an end, the end being human flourishing. Welsh, as one of the two main languages spoken in Wales, deserves to be protected so that those individuals who live their lives partly, if not wholly, through its medium can lead better lives. But could not the same argument be employed in relation to other languages spoken by individuals in Wales? Some might argue that a constructivist account of culture in this instance commits us to nothing and means that in the public sphere, the Welsh language⁵² must be treated like any other language which happens to be spoken in Wales as a matter of historical contingency: Bengali, Urdu or Somali for example.⁵³ Some might argue that if my understanding of Welshness (and consequently of the Welsh language) is fluid and protean, then all languages must be treated in the same way. Of course, we do know that language is not a matter of preference, not merely a question of preferring to speak one language over another, like choosing what flavour ice-cream to have for pudding. Language is not a matter of private choice. It belongs in the public sphere with ordinary citizens making choices relating to its use. But how can we characterise language as a public good? What types of arguments are available to us?

The politics of language is a complex affair. If we happen to be born into a family that speaks language X, then it is also likely that the language we speak is language X (of course, in school we begin to learn other languages). What makes the linguistic context all the more interesting in Wales is the fact that one of the two languages also happens to be a language that dominates globally. Both languages however are public languages. Indeed, to argue that parents in Wales who choose to speak Welsh to their children are exercising a private choice would be absurd. Welsh and English are both meant to be treated on an equal basis as public languages in Wales. It is a matter of historical contingency that Welsh and English are official languages in the same way that Castilian and Galician are treated as state languages in Galicia. Historically, both languages have been spoken in Wales over the centuries and we know that there is much statistical evidence to show the decline in the percentage of Welsh speakers after the eighteenth Century largely due to economic, social and political factors.⁵⁴ However, it is also the case that the decline in the number of Welsh speakers is not only the result of *laissez-faire*, but rather the deliberate and systematic use of policy which set out to obliterate the Welsh language for a variety of reasons. I refer, for instance, to the 1536–1543 so-called ‘Acts of Union’, the Blue Books and the *Welsh*. Not as historical examples which resonate even today.⁵⁵ While all languages deserve to be respected and language-learning should be promoted, there is a sense in which protecting Welsh in Wales is an altogether different question.⁵⁶ While I want, of course, to avoid making essentialist claims about

the Welsh language and its place in Wales, I think that there is some room for arguing that we all have an interest in sustaining goods, in the public sphere, which we will never personally benefit from – the taxation system comes to mind here. We do not pay taxes to fund the NHS in case one day we might break a leg and need to see a medical doctor (although this is one reason) – there is a whole range of ailments and illnesses from which we will never suffer. Men, for example, do not demand to pay less money towards the NHS because they'll never give birth.

So, in what way may we use the vocabulary of public goods? Remembering that the individual lies at the heart of this equation, I want to make the argument that notions of self-respect are fundamental to self-understanding and to human flourishing. That is, we cannot allow for a situation whereby a significant number of people feel 'less human' because of a matter of contingency i.e. the language structure they were born into. I want to argue that the systematic denigration of the Welsh language in all spheres of public life has led to an abnormal and undesirable situation. Does this mean that we must see some intrinsic value in the Welsh language? If we are to characterise the Welsh language as a public good, then there is a sense in which it cannot be portrayed instrumentally alone. It must have some intrinsic value if we are to expect those who cannot instrumentally make use of the language to support it in the public sphere. Indeed, one idea which has been popular, yet perilous to Welsh language promotion, is the notion that only Welsh speakers themselves have the interest of safeguarding and protecting the language. This pervasive idea, less salient nowadays due to the partial 'normalisation' of the language in media and education, does run the risk of ghettoising Welsh speakers, rendering them a 'people' (with all the romantic connotations of past glory that this term brings – connotations that I wish to avoid) and also characterising them as an elite – a marginal elite whose demands are seen as a burden on the public purse. If, however, the Welsh language can be articulated as a public good whose ownership is not limited to those who speak it, but to all individuals living in Wales, the marginal utility argument is undermined and ultimately discredited. The promotion of the Welsh language is no longer merely dependent upon the good will of the majority, but rather on everyone seeing it as something worthy of protection. It is in everyone's interest and could thus be labelled a public good.

Idil Boran pursues the idea of linguistic diversity and public goods in her article, 'Global Linguistic Diversity, Public Goods and the Principle of Fairness'.⁵⁷ It is morality, Boran argues, and not linguistic kitsch or fetish, which tells us that we are obliged to try to save dying languages. For Boran, the loss of a language 'is the starting point of normative reflection about justice and language'.⁵⁸ While, in the first instance, this objectification of language seems to conceal the very obvious fact that languages are spoken by individuals, Boran's emphasis on the public goods argument hinges on the notion of protection through collective valuing. So, on what premise does Boran believe that linguistic diversity can be seen as a public good? In this,

the author has the environment, biodiversity and protection in the back of her mind – indeed, she makes the obvious connection when she asks, ‘if we accept a public good argument regarding biodiversity, can we accept a similar argument regarding linguistic diversity?’⁵⁹ This, again, begs the question: is the argument for generic linguistic diversity going to be sufficient to secure and ensure the flourishing of a *particular* lesser-used language? Stephen May argues that history is fundamental in this context. In his article, ‘Misconceiving Language Rights: Implications for Liberal Political Theory’,⁶⁰ he is unapologetic and emphatic in his claim that the disavowal of the relevance of history (the *presentist* approach, as he calls it) ‘inevitably entails ignoring ... the specific socio-historical and socio-political processes by which particular languages have come to be created’⁶¹ – the violence, hegemony and power exerted by the state in justifying its very existence cannot, and should not, be ignored. Boran makes use of this argument in order to highlight the burden which minority language users face. They are faced ‘with increasing pressures to shift to more powerful languages’⁶² and not out of voluntary choice, but from a position of coercion. The base line to Boran’s argument is that each and every language ‘adds a positive value to human lives in general’⁶³ and not only to those who speak it – on this assumption, we are to believe that the loss or disuse of a language which we do not even know to exist, is of a personal loss to us. What are Boran’s justificatory arguments for making such a claim?

The argument from *aesthetic value* centres on the belief that the world is a more interesting and beautiful place if immersed, as Boran shows, in diversity and not uniformity. For example, had the Japanese language fallen into disuse, the Western world would not have had the benefit of knowing the haiku, a genre of poetry initially unique to Japan. What of the argument from *scientific value*? Boran argues that a language’s individual vocabulary conceals a wealth of scientific knowledge which helps individuals ‘survive in a local ecosystem’.⁶⁴ As previously mentioned, a language may provide the long-awaited cure for a fatal disease which has been long misunderstood by the world. Boran’s main defence is that instrumental value-arguments based on utility are to be avoided claiming that ‘[they] might be more useful for everyone in the world to learn Chinese, we might have strong reasons to do so, but this doesn’t mean that people will want to’.⁶⁵ Boran’s third argument rests on firm *liberal claims* which, again, have some utility considerations at their foundation. The liberal interpretation of public goods is more convincing in that it takes seriously the enabling and disabling effect of a language on the individual in the same way as race, gender or sexual orientation. What is here at stake is the well-being and self-respect of individuals within cultural and linguistic contexts, contexts which affect the individual’s life chances.

Drawing a parallel with the politics of race and racism is useful in this regard. No-one chooses to be born into a particular racial group. We are sure that no-one should be unfairly treated or be made to feel ‘less human’ because of

the fact of racial contingency – that is, no-one deserves to be treated as inferior or superior because of his or her skin colour. Rawls's heuristic original position is a useful way of thinking about these facts of contingency and how they affect life chances and opportunities. How then does this gel with a constructivist account of culture? Racial self-understanding is also, it could be argued, a question of constructivism. We have already established the fact that essentialist accounts of what it means to be colour X are unhelpful. Certainly, they are incompatible with the universal values of liberalism. However, privileging a constructivist account of culture, race, language etc. does not mean that these different self-understandings cannot be salient or cannot be seen as perhaps fundamental to an individual's way of seeing the world – that is, cultural constructivism does not render us speechless when discussing the politics of identity, or the abuse of individuals on cultural grounds. We take as given the fact that Welshness is complex but this does not legitimise prejudice or discrimination. As Benhabib rightly points out, cultural constructivism does not make the experience of culture, society or language any *less* real. That is, to not take seriously the claims of Welsh speakers who feel persecuted by the state is unjust. The subtle or explicit experience of discrimination faced by Welsh speakers in Wales should not be belittled. This is not to say that speakers of other languages in Wales do not deserve the same respect, but whether they deserve the same *public* recognition is an entirely different question. The language of public goods provides a theoretical framework for putting forward arguments for the protection of the Welsh language. We might want to say that everyone in Wales, if not the whole world, has an interest in protecting the Welsh language and that it cannot be seen as an issue for elites. Again, if we are seriously committed to a diverse and plural Wales, this entails a commitment to the individual.

By bringing three disparate bodies of literature together – Welsh nationalism via Gwynfor Evans and Saunders Lewis, liberal individualism and the language of public goods – as I have attempted to do here, my aim has been to highlight the way in which liberalism can be re-fashioned to take particular self-understandings into account while avoiding essentialist, prescribed ideas of Welshness and Wales. Placing Welsh nationalism in a strict liberal setting and simultaneously allowing for particular cultural expressions by employing Benhabib's model reconciles ideas which have previously been deemed incompatible. Taking complexity and diversity as givens, I have sought to explore and analyse the plethora of positions that make up Welsh nationalism and to illustrate the inescapable problems that face political theory in relation to some of these difficulties. Using Benhabib is one useful means of showing the way in which liberalism can provide Plaid Cymru nationalists with a language and vocabulary which takes seriously the fact of Welsh difference and all of its expressions, while avoiding the language of ethno-cultural justice, special privilege and group rights. The language of public goods, emanating from Rawls's idea of social primary goods, provides Plaid Cymru with a means of making claims relating to questions unique to

Wales. Although the products of cultural and political constructivism, these are issues that are no less real and that need to be addressed in the modern, open Wales while respecting individual liberty.

Notes

- 1 Plaid Cymru The Party of Wales was first established in 1925 although it was then called Y Blaid Genedlaethol (The National Party – my translation). Throughout this chapter Plaid Cymru publications are listed under different names according to the name of the party at the time. In 1925, the party was called Plaid Genedlaethol Cymru (National Party of Wales – my translation) until it later became Plaid Cymru and Plaid Cymru The Party of Wales in the Nineties. *The Welsh Nationalist* journal underwent a similar transformation becoming *The Welsh Nation* which remains its current name. The Welsh equivalent continues to be called *Y Ddraig Goch* (The Red Dragon: i.e. Wales's national flag– my translation). Note how JE Jones's publication is in the name of *The Welsh Party*.
- 2 Saunders Lewis and Gwynfor Evans were party presidents between 1925-1939 and 1945-1981, respectively. Gwynfor Evans was the first MP to represent Plaid Cymru winning the Carmarthen seat in 1966. Others like DJ Davies and Noelle Davies were accredited with developing the party's social and economic policy in the early years.
- 3 *The Welsh Nationalist* (or the *Welsh Nation* as it was later called) was first published in 1932.
- 4 S. Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton: Princeton University Press, 2002.
- 5 See Kymlicka in W. Kymlicka and M. Opalski (eds), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe*, Oxford: Oxford University Press and W. Kymlicka and A. Patten, *Language Rights and Political Theory, Citizenship in Diverse Societies*, Oxford: Oxford University Press, 2003. It might be said that Kymlicka's reasoning is the most readily available to a liberal nationalist. He does adopt, however, a rather essentialist language in his depiction of self-contained cultural societies.
- 6 G. Evans, *Plaid Cymru and Wales*, Llandybie: Llyfrau'r Dryw. P. 5.
- 7 Evans, *Plaid Cymru and Wales*, p. 8.
- 8 Evans, *Plaid Cymru and Wales*, p. 10.
- 9 Evans, *Plaid Cymru and Wales*, p. 11.
- 10 Evans, *Plaid Cymru and Wales*, p. 15.
- 11 Evans, *Plaid Cymru and Wales*, p. 11.
- 12 J. Rawls, *Political Liberalism*, New York, Columbia University Press, 1993 also J. Rawls, *A Theory of Justice*, Revised Edition, Oxford, Oxford University Press, 1999.
- 13 Evans, *Plaid Cymru and Wales*, p. 10.
- 14 Ibid.
- 15 Evans, *Plaid Cymru and Wales*, p. 13.
- 16 Ibid.
- 17 Evans, *Plaid Cymru and Wales*, p. 17.
- 18 Jean Jaures (1859-1914) – French Socialist. Guiseppe Mazzini (1805–1872) – Italian Risorgimento nationalist. Leopold Kohr (1909-1994) – Austrian academic, journalist and writer who coined the phrase 'small is beautiful'.
- 19 Evans, *Plaid Cymru and Wales*, p. 11.
- 20 Evans, *Plaid Cymru and Wales*, p. 55.
- 21 Evans, *Plaid Cymru and Wales*, p. 11. My italics.
- 22 J.P. Proudhon, *Principle of Federation*, ed. Richard Vernon, Toronto: University of Toronto Press, 1979.

- 23 Evans, *Plaid Cymru and Wales*, p. 16.
- 24 Evans, *Plaid Cymru and Wales*, p. 14.
- 25 Ibid.
- 26 A. Spinelli, *The Ventotene Manifesto*, The Altiero Spinelli Institute for Federalist Studies, Italy, 1944, p. 1.
- 27 Evans, *Plaid Cymru and Wales*, p. 15.
- 28 Evans, *Plaid Cymru and Wales*, p. 55.
- 29 Evans, *Plaid Cymru and Wales*, p. 60.
- 30 Evans, *Plaid Cymru and Wales*, p. 16.
- 31 S. Lewis, 'The New Nationalism in Wales: What It Means' *The Welsh Nationalist: Organ of the Welsh Nationalist Party* vol.1 no.1 January 15, 1932, p. 2.
- 32 D.J. Davies, and N. Davies, *Can Wales afford Self-Government?* Cardiff: Priory Press Ltd, 1939.
- 33 Lewis, 'The New Nationalism in Wales', p. 2.
- 34 S. Lewis, *Y Frwydr dros Ryddid Plaid Genedlaethol Cymru*, 1935, p. 4, my translation.
- 35 Lewis, *Y Frwydr dros Ryddid*, p. 5.
- 36 S. Lewis, *The Crisis of Wales* Denbigh: Gee's Press, no date – post 1947, p. 1.
- 37 Ibid.
- 38 D.J. Davies, 'Why cultural nationalism is not enough' *The Welsh Nationalist: Organ of the Welsh Nationalist Party*, 1935.
- 39 Lewis, *The Crisis of Wales*, p. 1.
- 40 Lewis, *The Crisis of Wales*, p. 3.
- 41 Benhabib, *The Claims of Culture*, p. viii.
- 42 Ensuring justice and equality is also one of Saunders Lewis's main aims although his primary concern lies with the Welsh-speaking communities of Wales (see *Tynged yr Iaith*).
- 43 Benhabib, *The Claims of Culture*, p. 7.
- 44 Benhabib, *The Claims of Culture*, p. ix.
- 45 Benhabib, *The Claims of Culture*, p. 19.
- 46 Benhabib, *The Claims of Culture*, p. 20.
- 47 Benhabib, *The Claims of Culture*, p. x.
- 48 Ibid.
- 49 C. Geertz, *Available Light* Princeton: Princeton University Press, 2000, p. 218.
- 50 Ibid.
- 51 C. Geertz, *Available Light*, p. 258, p. 260.
- 52 It is debatable whether such a question would ever be asked in relation to the English language, which is regarded as in some way 'neutral' or value free.
- 53 In some parts of Wales – Cardiff, Newport, Swansea – these languages are spoken by a significant percentage of the local population. It might be argued that we have a duty of care to the speakers of those languages to ensure basic health provisions, for instance, in a particular language. I doubt, however, whether a public good argument could be made in this instance.
- 54 See Dot Jones's 1998 publication, *Statistical evidence relating to the Welsh language: 1801–1911* (Cardiff University Press).
- 55 See John Davies's *Hanes Cymru* for an overview of Welsh history.
- 56 I take as given here, bearing in mind the global strength and hegemony of English, that English in Wales needs no special privilege. That said, it might be necessary to promote Welsh English literature for instance in the same way as Welsh-language literature.
- 57 I. Boran, 'Global Linguistic Diversity, Public Goods and the Principle of Fairness' In Kymlicka & Patten (eds), *Language Rights and Political Theory*, Oxford: Oxford University Press, 2003.
- 58 Boran, 'Global Linguistic Diversity', p. 190.

- 59 Ibid.
- 60 S. May, 'Misconceiving Language Rights: Implications for Liberal Political Theory', in Kymlicka & Patten (eds), *Language Rights and Political Theory*, Oxford: Oxford University Press, 2003.
- 61 May, 'Misconceiving Language Rights', p. 126.
- 62 Boran, 'Global Linguistic Diversity', p. 191.
- 63 Boran, 'Global Linguistic Diversity', p. 195.
- 64 Boran, 'Global Linguistic Diversity', p. 197.
- 65 Ibid.

10 Thin universalism and distributive justice

David Boucher

This chapter will explore the principal themes surrounding questions of social justice among states, and between the peoples of one nation and another. I want to investigate the claim made by Michael Walzer that Distributive Justice is necessarily tied-up with a Maximalist Morality, and that therefore it is not applicable to the thin universalism of international society. Experience, he tells us, is invariably culturally mediated.¹ All discussion of social justice, Walzer claims, 'will be idiomatic in its language, particularist in its cultural reference ... historically dependent and factually detailed'.² Justice can be determined in a particular society by interpreting for its members the shared meanings of the goods distributed among themselves. Once the shared meaning of a good is ascertained criteria for its distribution follow as a matter of course. In *Spheres of Justice* Walzer clearly denies the existence of universal principles of justice.³ Walzer refuses to ground our ordinary notions of justice in such fundamental principles as equal treatment, desert or inalienable rights. We should, he contends, see justice as the product of particular political communities at identifiable times, and our accounts of justice should be constructed within the terms of reference dictated by these communities. Within any society, particularly liberal societies, there will be a variety of social goods whose distribution is governed by different criteria in their respective spheres of activity.

Maximalist morality has embedded in it minimalist meanings that become liberated only during periods of crisis.⁴ It is these minimalist meanings that constitute the thin universalism that enables us vicariously to march in each others' parades, but which does not enable us to reach substantive conclusions about distributive justice. Walzer, in fact, posits the idea of an international society which he grounds, not on a natural or a hypothetical contract in a Rawlsian original position, but on ideals and principles that have become commonly accepted by leaders of states and their citizens. This is because he at once wants to endorse difference while subscribing to a 'thin' universalism. Thin universalism enables us to talk in terms of 'international society' as a 'very weak regime'. There is a society of states tolerant of each others' behaviour as sovereign states, but it is not based upon the shared meanings associated with a thick morality.⁵

In positing a universalism Walzer distinguishes between the covering law type that gives priority to a way of life as uniquely right, and which can be used as the basis for imperialist arguments. And reiterative universalism which accepts that subject to minimal universal constraints there are many different and valuable ways of life that have equal rights to flourish in their respective locations, and deserve equal respect to our own. These universal elements are learnt through diverse experiences, but he denies that there is a common substance. They are overlapping sets of values which have family resemblances, but which are nevertheless products of the particularity of historical moral worlds.⁶ This is the point that Walzer is making when he argues that maximal morality, the type embedded in our societies and social practices, precedes universal minimal morality, which is in fact abstracted from the former.⁷ Elsewhere Walzer has suggested that there is a minimal code of universal morality constituting cross cultural requirements of justice, such as the expectation not to be deceived, treated with gross cruelty or murdered.⁸

The context of exploring the question of distributive justice is the distinction between cosmopolitanism and communitarianism, or universalism versus particularism. It is not my intention to articulate the different claims and oppose them to each other as two species of a genus, but instead to consider them dialectically, that is in dialogue with each other, and representing a variety of positions on a continuum, none of which is absolutely devoid of elements of the other. The first issue to be addressed is on what, if any, grounds the peoples of other states have a claim to justice upon us? The cosmopolitan case for international social justice identifies relevant moral features that extend the moral community beyond state borders. In other words, nothing of special moral significance attaches to the arbitrary boundaries of states. Secondly, if there are morally relevant grounds that constitute a broader ethical community, are questions of justice appropriate? Here I discuss Peter Singer's extreme case modified with reference to Brian Barry's argument that obligations of justice would not exclude special rights and duties to those closer to home. His idea of an international wealth tax will be discussed with particular reference to the contention that such redistribution as a matter of right is not charity and therefore the recipients are free to decide how it should be spent. This view will be contrasted with the Life Boat Ethics of Garret Hardin, and Richard Rorty's equally controversial rejection of universalism in anything but the thinnest terms. In addition, and steering a middle way, is the view of Gordon Graham who makes a great deal of both imperfect obligations and the virtue of charity. In contrast with Charles Beitz and Thomas Pogge who extend Rawls's difference principle to the international sphere, the later Rawls contends that while we may have a duty of assistance to 'burdened' peoples, the duty does not rest upon principles of social justice. Both he and Walzer, in their different ways, posit a thin universalism that sustains the idea of basic human rights, but these basic rights do not extend principles of distributive justice to the international sphere.

The general question of the transfer of resources concerns the site of distributive justice. Is justice intra-national or inter-national? Do richer countries have a duty to help poorer countries, and if so is this duty a matter of charity or justice, or both? Answers to these questions require an answer to the question 'are state boundaries morally arbitrary' and if so do we have a responsibility to help the less well off beyond these borders? The answers are best conceived as occupying a place on a scale, the ends of which are not absolute zero and infinity, but a universalism which necessarily includes elements of particularism and particularism that embraces elements of universalism.

Thick versus thin universalism

The seminal starting point in discussions of distributive justice that transcend state borders and deny the nation as an ethically relevant factor in such considerations is the position of Peter Singer.⁹ Singer's argument implicitly covers both humanitarian aid, typically generated by a sense of solidarity when natural disasters dramatically threaten lives, and what is called development aid which contributes towards programmes of self sustainment, such as establishing irrigation systems, sinking wells, transforming farming practices etc. The programmes are less visible than emergency aid, but of more importance in the long run.

As a utilitarian consequentialist the alleviation of harm and suffering is crucial to his line of reasoning.¹⁰ Suffering and death caused by a lack of food, shelter and medical care, he invites us to agree, are to be deplored, and that if it is in our power to prevent them from happening without sacrificing something of comparable moral significance then we ought to do it. The principle requires us only to prevent what is bad, not to promote that which is good. This seems relatively innocuous, but as we will see, its implications are profound. Even in a modified form, which requires us only to prevent very bad things from happening without having to sacrifice anything of moral significance, the consequences are deceptively far reaching. There are two momentous implications. First, for Singer the thickness of our morality does not get any thinner the further it is extended. Distance and proximity are not morally relevant factors: 'If we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us ...'.¹¹ Second, It makes no significant moral difference whether I alone, or millions of other people, are in the same position to prevent the harm, which in Singer's examples are saving the proverbial drowning child, rescuing a child bought for organ transplantation in Brazil, saving a priceless Bugatti car or a child by diverting a runaway train, and finally, helping Bengali famine victims. Put starkly, neither geography nor numbers lessen our obligation to prevent the harm. This means that giving money to say the Bengali relief fund is a matter of duty rather than charity, and that the act is not supererogatory, that is, something that is good to do, but not wrong if I fail to do it.

If it is our duty, rather than a matter of charity, how much are we obliged to give? On the strong version which prevents something of comparable moral significance being sacrificed we would be reduced to the level of marginal utility, that is the point at which by giving more I would cause a comparable amount of harm to myself or my dependants as I would bring about relief by my donation. Even on the moderate version, Singer argues, a transformation in our society would result because expenditure upon trivia, which the consumer society encourages, would be morally indefensible. Donations to help the poor, in Singer's view, should be as close as possible to 40% of income on the weak version of his thesis.

The standard invoked if saving lives is at issue is that of absolute poverty, that is where the lack of food and resources lead to malnutrition and death, or during extreme famine and natural disasters. If we take a more relaxed standard, not only life itself, but the quality of life, we bring into play the criterion of relative poverty, where, for example, Eastern Europeans are well-off in comparison with Africans, but poor in comparison with Western Europeans. It is a standard that does not signify any particular level of suffering or death.¹² The strong version of Singer's case, the one that he prefers, would in fact commit us to relieving relative poverty to the point where we are almost as poor as the recipients. Even the weaker version, in his opinion, would lead to a significant shift of resources.

The implications of Singer's argument cannot be overestimated. If there is to be no justifiable spending on luxury goods, and one may include opera, fine art, and owning race horses, as well as expensive cuisine, well-tailored clothes, taxis and such like, then a fundamental change will occur not only in the economy, but also in cultural productions. From a constitutive or communitarian perspective, that Amartya Sen thinks has grown as rapidly as global warming or the depletion of the ozone layer, we are being asked not only to deprive ourselves of the exchange value of a proportion of our income and as a result become more virtuous people, but also, if our identity arises in the context of embedded communities, considerably to transform our identities, an aspect of which would entail the radical transformation of values.¹³

This, in fact, is all too much for Richard Rorty, whose bourgeois liberal identity is constituted by such refinements. For him the key question asked today is not the metaphysical one of 'what are we', or 'what is man', but the political one of 'who are we?' It is the primordial question in philosophy and the purpose of which is to forge a moral identity by demarcating a group of human beings who appear to be better suited for some particular purpose than other human beings, and to constitute a self-conscious moral community among the former capable of exhibiting mutual trust, and a willingness to engage in reciprocal assistance. In Rorty's view, 'To ask who we are becomes a way of asking what future we should try, cooperatively, to build'.¹⁴ A moral universalism, Singer's would be included, conflates the metaphysical and political questions by supposing that shared human traits, such as a

common human nature, testify to a common purpose, and suffice to show why humanity should compose itself into a cosmopolis or universal moral community.

Universal distributive justice entails assuming that our moral community should be co-extensive with the human species, the project or purpose of which is to distribute the planet's resources so that no child lacks life chances available to every other child. Even if this project were desirable, Rorty maintains, it is not feasible given the size of the world's population and the comparatively diminishing resources. In Rorty's view, no one has come up with a scheme that would allow the people in the rich part of the world to redistribute their wealth in ways that create optimistic prospects for children in developing countries without seriously diminishing or eradicating the prospects of their own children and communities. A politically feasible project to redistribute wealth depends upon adequate resources being available so that after redistribution 'the rich will still be able to recognize themselves – will still think their lives worth living'.¹⁵

It is useful to distinguish between two types of objection to moral universalism. The first is normative and consists in claiming that it entails morally unacceptable conclusions. The second is conceptual and objects to moral universalism on the grounds that it lacks a key feature or features of a moral theory.¹⁶ Rorty denies that his theory is normative in that he claims not to be recommending anything. By implication, however, he does want to say that helping the world's poor is unacceptable if it is at the expense of damaging the prospects of one's own children, and that the preservation of one's identity is preferable to damaging one's self-recognition by redistribution. The theory is also conceptual in that he assumes that moral universalism entails regarding the whole of humanity included in our moral community, and this entails not only a willingness to help those in need, but also the ability to do so: ought implies can. In Rorty's view it is a naive belief that 'depends on our ability to believe that we can avoid economic triage'.¹⁷

If his normative claim is based on cultural identity, as it appears to be, the claim is that conspicuous consumption is an essential part of our identity, and in order to protect this identity we are morally justified in excluding eighty per cent of humanity from our 'moral community' because we deem them not to be particularly suitable for the purpose we have set ourselves. That the lifestyle we have come to enjoy is part of our culture, as Barry so forcefully contends, 'cannot possibly do duty as a justification for anything...'.¹⁸ It was in fact a point made long ago by Mary Wollstonecraft against Burke's principles of prejudice, presumption and prescription in her *Vindication of the Rights of Man*.

Rorty's argument depends upon the contention that in order to consider the people of underdeveloped countries as part of our moral community it would be inconceivable to have to resort to economic triage. It is an all or nothing alternative based on a feasibility criterion. But in a world of scarce resources economic triage is unavoidable. As Walzer suggests when discussing

triage in its medical context, we tend to rank people in relation to their life chances, with those most ill or severely injured having low priority.¹⁹ Any public system of health care does this all the time. Limited resources mean that while people may have a right to equal consideration, the criteria against which they are judged are ultimately economic. People's pain and lives are traded off against each other according to set priorities constrained by resources. The egalitarian principle of equal consideration does not entail equal outcomes. Now, a non-publicly funded system of health care rests upon the ability to pay, and may entail minimal provision for those who cannot. If this latter model is projected on the international sphere then Rorty's worse case scenario of losing our identity is avoided. Within the constraints of an affordable budget, we are committed to no more than providing a minimum level of resource to prevent extreme suffering. In other words, we operate on the basis of a threshold rather than an egalitarian criterion of international social justice. So, for example, to bring the 2.8 billion people living below the World Bank's \$2 per day poverty line would require \$300 billion dollars annually, or 1.2 per cent of the aggregate annual gross national incomes of the more affluent economies.²⁰

In the absence of a crystal ball predicting future technological advances, Rorty presents us with the extreme case, as he did in discussing human rights and solidarity in his Amnesty lecture.²¹ He believes that large scale redistribution from the rich to the poor would so fundamentally alter the wealthy west, including its democratic and socio-political institutions, that it would become unrecognisable, and would in any case be futile, like a person sharing one loaf of bread with a hundred starving people, ensuring that everyone dies including himself or herself. Rorty envisages a situation where the one billion richest people are no longer able to view the poorer five billion as part of their moral universe, that is, unable to view them as part of the same moral community, and therefore as having no obligations towards them. Rorty makes the strong claim, following Peirce's notion that beliefs must be indicative of future action, that if it is not feasible to extend assistance to those in need, claims that they form part of our moral community are empty. This is an argument against egalitarian projects of international distributive justice. Indeed, it is not even a question of justice unless we count those in need of aid among those included in the answer to the question 'who are we?'

Walzer endorses this view in less dramatic terms when he maintains that there can be no community, nor common good without social justice. Fellow feeling, evocations of citizenly virtue and mutual responsibility are not enough to sustain a political society without a practical commitment to help the weaker members.²² Societies are for Walzer necessarily particular because they comprise members with memories of individual and shared experiences, giving rise to a sense of history and culture. Humanity has members but lacks memory, and consequently has no history or culture, 'no customary practices, no familiar life-ways. No festivals, no shared understanding of

social goods'.²³ If we were to take the globe as our site of justice we would have to invent the shared meanings for this imagined community.²⁴ However, it is by no means evident that meanings are shared among members of particularist societies. Ironically this is the very accusation that Dworkin levels at Walzer in relation to interpreting the meanings of American society. With regard to health care, for example, Walzer is accused of inventing what Americans think. Far from the democratic socialism attributed by Walzer, Americans are in favour of only a basic minimum and emergency treatment as a welfare provision.²⁵ Furthermore, the absence of shared meanings at the global level is just as much a feature of the domestic scene as it is of the international, and if justice were to hinge on such a consensus of meanings, then there is no place for it inside or outside of state borders.

A similar argument against international distributive justice, based on a thick particularism, may go something like this. When viewed in terms of a simple pie chart the percentages that ought to be assigned to overseas aid may over time remain the same, but as a consequence of that aid the pie cannot be guaranteed to remain the same size. Redistributing the benefits has an effect on what is redistributed. Common land, if the number of animals grazing it is limited to the number it can sustain, is a benefit to those with grazing rights, but if you allow additional people to graze their animals, not only do they gain little benefit, but those who previously benefited lose it. Alternatively, if the world is like a lifeboat unable to take all those who want to be saved, with some people inside and others in the water trying to get in, if access is not restricted everyone will sink, and no one will benefit. These are metaphors used by Garrett Hardin, but like all metaphors they are misleading.²⁶

What Hardin is denying is the right of the poor to a share of the resources of the richer countries, and he casts doubt on the moral efficacy of charitable redistribution. What he is assuming is that the benefit is fixed and if it gets spread too thinly it ceases to be a benefit. A time factor needs to be introduced into the equation. The world does not have a fixed capacity, nor can we predict the effect of redistribution on population growth, nor the effect of population growth on economic sustainability. There is in fact much evidence to suggest that once basic development is achieved, adequate food, basic health care and security in old age, increasing population trends level out or decline.²⁷ Indeed, poverty may increase populations on the principle that one extra mouth to feed equals two extra hands.

Gordon Graham takes a more moderate stance but nevertheless believes that the perfect duties of distributive justice can only be generated within the thick morality of a state. The distinction between duty and charity made by Singer is denied by Graham. He contends that the recognition that everyone in the world has basic rights to the necessities of life can generate nothing more than imperfect obligations, that is, claims upon everyone, but upon no one in particular. The right to social justice requires and assumes a government or state as the distributor, capable of enforcing contributions and deterring free-riding. At the international level no such authority is duplicated.

Basic rights are best met out of a sense of charity rather than as a matter of redistributive justice that stops at the borders of the state.²⁸ Rorty, Walzer, Hardin and Graham, in different degrees deny that the international realm is a site for redistributive justice, arguing that the moral ties to sustain social justice must be of the thick kind. All four, succumb to the tendency that Sen identified of splitting the big wide world 'into little islands that are not within normative reach of each other'²⁹ or at least reached through a rarified atmosphere.

Let's start again, then, with a less thin universalism than Singer's. Brian Barry, for different reasons, extends the distinction made by both Singer and Hardin in suggesting that acting from considerations of justice is different from but not incompatible with acting out of a sense of humanity.³⁰ Accepting Singer's argument Barry contends that we have an obligation to give humanitarian aid to the poor, but on the question of how much he suggests that no hard and fast rule can be determined. In his view Singer's strong principle is ineffective because most of us do not accept an obligation to maximise the totality of good in the universe, and on the weak principle, that we should give aid up to the point where we sacrifice nothing of moral importance, a Benthamite utilitarian would regard getting his or her trousers dirty in saving a drowning child an evil, not comparable with the death of the child, but enough of an evil to merit inaction.³¹

Humanitarian obligation is not derived from justice, but this does not mean that it is an act of generosity or that it should be left to the discretion of the individual. The principles relating to humanity are goal based in that they are concerned with the well-being of individuals and have to do with questions of welfare, freedom from poverty and disease, and provision for satisfying basic needs. They are the sorts of aspirations, called rights, to be found in the UN Declaration of Human Rights.

In Barry's view, humanitarian obligation is a matter of doing good. Justice, however, relates to a set of wholly different principles that have to do with the exercise of power. The principles have to do with resources in the broadest sense, including the non-material which incorporate issues of rights to act without interference from others, limiting the actions of others, and regulating changes to the non-human environment. Justice, in Barry's view, has to do with the distribution of control over material sources, and in relation to the non-material world ensuring that control is on the basis of equal liberty.

The fortuitous allocation of natural resources throughout the world is morally arbitrary, and the populations of the various countries can hardly be held responsible for their good or bad fortune, and the benefits or miseries that ensue.³² The principle of the strong powers exploiting the weak by laying claim to their resources has been somewhat weakened by various conventions and UN resolutions to the effect that states have absolute sovereign control over their natural resources. This morality of the lottery is preferable to the morality of control and exploitation but is less so than if the world's natural resources are deemed to be the common possession of the world's

population as a whole. International justice, Barry contends, is not a matter of charity and the redistribution of resources raised through an international resources tax is a matter of entitlement and therefore must be transferred unconditionally to the recipient countries, whereas a second, humanitarian tax may be distributed through international agencies to promote goal orientated projects. Humanitarian redistribution would as now be earmarked for specific use and its receipt is conditional. The control of the resources is in the hands of international bodies such as the IMF or World Bank. On considerations of justice, however, the 'distribution of control of resources would actually be shifted'.³³ In other words the transfer of resources does not depend upon the use made of them. Barry's point is effectively this: it makes little sense to argue about what a state should do with its own resources, for example, how it should distribute various benefits to the poor, until it is determined what those resources are, and on Barry's argument they include a share from the income of the world's natural resources, to which they have a right.³⁴

There are two different criteria at work here. For humanitarian aid Barry implicitly uses a threshold criterion directed at specific projects with expected outcomes. Justice, on the other hand, requires an egalitarian principle, that per capita entitles everyone, through their governments, to an equal share in the world's resources. In other words, the relevance of the arbitrary distribution of the world's resources is taken to be morally significant in that it is denied that any state has the right exclusively to claim those in its territory. It is, in other words, a version of 'and God gave the earth to man in common', a use right, rather than a property right. Barry's earlier position on international justice privileges states in the entitlement to redistributed resources,³⁵ but later rejects this position by adopting a more classically cosmopolitan position based on individuals as recipients.³⁶

Rawls denies the relevance of the arbitrariness of resource distribution to international justice. A country's fortunes, he contends, are due more to its political culture and the virtues of its people than to natural resources. Indeed, the discovery of natural resources may have bad as well as good effects.³⁷

Charles Beitz and Thomas Pogge postulate a form of cosmopolitanism that does not depend upon the idea of a universal political community of humankind. They are concerned to emphasise the interdependence of states, or what is known in international relations theory as complex interdependence, and the effects that each has upon others, many of which have moral significance. Given these effects can be both good and bad, there is a need for some form of co-operation and regulation. They subscribe to the Kantian point that just institutions must be established among all those whose actions can impact upon each other. Beitz's argument for applying the Rawlsian difference principle (the requirement that a society's socio-economic order should maximise the benefit to the lowest socio-economic position) to the international context is essentially that the extensive global system of trade, or complex interdependence, which is part of the conventional wisdom of

international relations, constitutes a world-wide co-operative scheme in which every country is implicated.³⁸ Rawls himself, of course, denied that the world constitutes a common co-operative enterprise sufficient to qualify for considerations of distributive justice in the same way as bounded communities. Because there is no global society there is no co-operative surplus for which principles of distribution must be found. Although more recently Rawls has conceded that there is a case for the just distribution of basic liberties and agrees with the aims of neo-Rawlsian internationalists, such as Beitz and Pogge, of attaining liberal institutions, securing human rights and providing for basic needs in accordance with what he calls a 'duty of assistance', he does not agree with the principles they present for redistributive justice.³⁹

In other words, Rawls believes that his 'difference principle' applies internally to a people, and that between peoples the non-egalitarian principle of mutual aid applies.⁴⁰ How, then, do they differ? The duty of assistance is a value based norm, which requires a publicly recognised criterion of want that translates into specific claims of need. The need may be for certain goods, such as food or shelter, in order to achieve a specific value, like health or protection, which from a moral point of view is of high priority if the person is not able to secure them for herself or himself. Not to respond positively to such claims is a moral wrong because of the high importance they have for the life of the person. The difference principle is unlike the duty to assist in that it is designed to benefit the least well off people within a society, irrespective of claims of need or publicly recognised want. The redistribution is effected purely on the grounds of equality in order to alleviate the consequences of inequalities of income or wealth. The principle presupposes equal claims, and only mutual advantage, where everyone, including those relatively less well off, benefit from the uneven distribution, may justify economic inequalities.⁴¹

Furthermore, the duty to assist is a threshold principle whereas the difference principle is a maximising norm. Publicly recognised need is not, of course, absolute, but relational. To be deprived of something that your society regards as basic, and morally good, is to have a claim of need and imposes duties of assistance. There is no question of maximising equality and it is not an egalitarian principle.

Beitz's extension of Rawls distinguishes between, on the one hand, a resource distribution principle that applies when states are self-sufficient, and in which inequalities arise from uneven resources allocation, and on the other hand, a global distribution principle. The latter arises when there are flows of goods and services from one country to another leading to co-operative surpluses for which an international difference principle may be invoked. Beyond the duty of assistance which responds to gross injustices and inequalities Rawls cannot see the appeal of the global principle because it posits no determinate target and is essentially open-ended. Its consequences, he suggests, would be unwelcome, on the basis that it would be unacceptable to subsidise choice,⁴² given that two liberal or decent peoples of equal resources

choose different paths of development, the one industrialisation and increased real saving, while the other prefers more traditional ways of living, why when vast inequalities of wealth appear should the former subsidise the latter through taxation?

The circumstances in which distribution may legitimately occur are when unfavourable conditions in which the historical, economic and social circumstances of a people make it extremely difficult if not impossible to achieve a liberal or decent well ordered regime. Burdened societies are those 'whose historical, social and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible.'⁴³ Well ordered peoples must have as their long term aim the incorporation of outlaw states and burdened societies into the 'Society of well-ordered peoples'.⁴⁴ Well ordered societies, which need not be wealthy societies, have a duty of assistance to burdened societies which have not been able to develop the necessary institutions conducive to liberal or decent regimes because of unfavourable conditions. Such assistance need not take the form of redistributive justice, and it should not be assumed that giving money, although essential, will redress fundamental political and social injustices. In this respect an emphasis upon human rights, including opposition to the subjection of women, may prove more effective in bringing about change, if assistance is tied to respect for basic human rights, which are not peculiarly liberal but part of the basic structure of all liberal and decent societies. The goal of assistance is rational and reasonable self-determination which because this implies freedom and equality, rules out acting paternalistically. Making a society eligible for inclusion in the Society of well-ordered Peoples is the mark of achieved objectives. On achievement further assistance is not required even though the society may still remain comparatively poor. Rawls' duty to assist does have a target and a cut-off point, the target is 'burdened societies' that are too poor to develop their own just institutions and equality of liberty, and the point of assistance to provide primary goods for basic needs is to raise a people to the level of establishing such institutions and rendering them capable of making their own choices.

The target of assistance, then, is the poor in order to raise them to membership of a liberal society or decent hierarchical society. The cut off point of such assistance is when that target has been met.⁴⁵ It is a threshold and not an egalitarian principle, and it is not in fact a principle of justice or right, but one of aid or charity designed to achieve an instrumental outcome.

Rawls' criticism is equally applicable to Steiner's argument for international distributive justice. Steiner deduces two different types of rights from the fundamental right to equal freedom. The first is the right to self-ownership, and the second to an equal share of natural resource values, the value being calculated by subtracting the value added due to the resource by 'labour embodying improvements'. Steiner is elaborating upon the notoriously ambiguous Lockean proviso to leave as much and as good for everyone in appropriating land. Steiner contends that 'the equality of each person's land-value

entitlement is necessarily *global* in scope'.⁴⁶ In his view we not only have a duty to desist from inflicting bodily harm on foreigners on the principle of everyone's self-ownership, but we also have a duty to pay their land value entitlement. It is an argument for resource rather than opportunity egalitarianism, and like Beitz's global principle, potentially subsidises life choices. Pogge directly responds to Rawls' rejection of the application of the difference principle to the international context. Rawls thinks it unfair for one society to subsidise the choices of another, for example in relation to birth rate or industrialisation, but fails to explain or justify why the same separation should not apply between regions of a country.⁴⁷

Pogge suggests that the World Trade Organisation agreements, constituting the new economic world order, while marginally reducing the number of people in the world below the UN poverty line, should not lead us to believe that by doing so we have improved the plight of the poor and therefore absolved ourselves of responsibility for millions of deaths by starvation. To think that we are not morally responsible assumes that we start from a neutral base line prior to the World Trade Organisation's instituting the new global economic order. To think of less people dying as a result of the new order is to think of the poor as a pool, and not in terms of the death and suffering of individuals. Pogge contends that if we can save lives at appreciably little cost to ourselves then we have a moral duty to do so. This, then, is a much weaker contention than that of Singer, and one that counters Rorty's fear of identity loss.⁴⁸

We can try to absolve ourselves of the responsibility by suggesting that it is not our fault that they are poor, or argue that any aid given gets siphoned-off by corrupt governments and therefore the poor do not benefit anyway. First the world economic system in terms of its trading preferences severely disadvantages poor countries, on average charging four times higher tariffs to poorer countries than to the rich. The current global system with the United States and the EU at its heart actually encourages world instability and corrupt regimes. Under the current rules of international recognition of sovereign status any band of brigands who manage to seize power and oust the previous regime is recognised to have the right to control the resources of a country and to enter international agreements that benefit themselves rather than the poor in their countries. This is the 'International Resource Privilege'.⁴⁹ Similarly, these regimes are endowed with an 'international borrowing privilege' putting the country's full credit at the disposal of even the most corrupt regimes. Indifferent to how power is acquired, the international borrowing privilege provides an incentive for coup attempts and civil war. The consequence is that when peoples liberate themselves from the burden of dictatorship they are nevertheless saddled with huge debts acquired by the corrupt regime, crippling their country and impairing its ability to recover economically.⁵⁰ In other words, Pogge is arguing that we have to take responsibility for the plight of the poor, because we are at fault in causing their predicament and allowing it to persist. Most of us not only let people starve

but actively 'participate in starving them'.⁵¹ Like Barry and Beitz he proposes a redistribution of wealth on the principle of a common stake in scarce resources. He proposes a Global Resource Dividend (GRD). Governments would be required to share a small amount of the value of resources they use or sell. He calls it a dividend because it is equivalent to the dividend paid out on preferred stock. He is not suggesting, then, that the resources are common property. It does not allow stake holders to participate in decisions about how resources are to be used and hence do not interfere with national control over those resources (eminent domain). He maintains that the GDR 'incorporates into our global institutional order the moral claim of the poor to partake in the benefits from the use of planetary resources. It implements a moral right – and one that can be justified in multiple ways: namely also forward – looking by reference to its effects, and backward looking, by reference to the evolution of the present economic distribution'.⁵² We have an argument here, then, that attempts to attach moral blame to the beneficiaries of the uneven distribution of world wealth. Its basis is not merely the recognition of suffering and getting us to admit that we ought to do something about it if we can, but the much stronger principle of accepting responsibility for the suffering of the world's poor, and alleviating it by applying a threshold criterion to redistribution. This attribution of moral blame for the plight of the poor is a familiar tactic, and we find it in the writings of Galtung and Gunder Frank on dependency, but more generally in the polemical writings of John Pilger, Michael Ignatieff and Noam Chomsky. It is also the tactic that Singer and Barry adopt by highlighting the inequities of the current international economic regime and its principal institutions the World Bank, the World Trade Organisation and the International Monetary Fund.⁵³

In order to generate 'thick' perfect obligations, rather than thin imperfect obligations, the question of responsibility needs to be disaggregated. First, of course, there is direct responsibility for harm done, and in such cases reparations may legitimately be claimed. But, we are being asked to accept indirect responsibility, ignorance of which constitutes no defence. There are, of course, degrees of responsibility and culpability, and the extent to which blame may be attributed diminishes if no clear intent can be established. It could be argued, of course, that a lack of awareness of the consequences of our participation in the current international economic regime constitutes negligence, which renders us equally culpable. It seems to me that two issues are at stake here. The first is establishing guilt. If it can be shown that someone is responsible for some evil or regrettable outcomes, that a person or persons have a duty to do something about it. The second issue is the degree of responsibility that one attaches to the 'criminal', and therefore the extent to which he or she has to make reparations. As beneficiaries of an economic system that exploits the less well off in the world we may all be guilty of exploitation, but we not all equally as responsible.

This is a point at which Walzer's argument, despite its emphasis upon the thickness of the morality required for distributive justice, comes much closer to that of those who advocate international economic redistributive justice.

On the question of whether current resource distributions constitute international injustice Walzer wants to rely for the criterion upon culpable harm being perpetrated by past interventions, rather than upon a universal principle of redistributive justice. In other words, external responsibility for internal ills, arising from such actions as political control of trade, imperial wars, and the like, constitute international injustices that may require large scale redistribution of resources. Where serious suffering and inequality exist but which is not the consequence of some form of intervention, similar redistributions may be necessary, but they would not be a matter of justice. Justice does not, in Walzer's view, exhaust morality, and ordinary principles of humane treatment and compassion may impel us to act out of charity rather than justice.⁵⁴ Here, then, Walzer, like Singer, Barry and Graham is distinguishing between Justice and Charity. The criteria for the former are the universal principles of harm and responsibility, and these are the principles, in my view, that are the motivation for distributive justice in Pogge's argument. The implication is that the thin universalism of the principles of harm and responsibility is capable of generating significant redistributions of wealth, and what determines this redistribution is an answer to the empirical question of the degree to which the rich countries of the world are responsible for the sufferings of the people of the impoverished countries?

The essential difference between the various positions is this: Beitz, Pogge and Steiner wish to establish principles for equality of liberties, but in addition to Rawls press for an equality of resources, or at least for the reduction of the inequality of resources on principles of distributive justice. Beitz wants to emphasise, however, that our concern to do something about the world's impoverished need not be based on egalitarian principles.⁵⁵ There are reasons to be concerned about world poverty even if we think that world poverty is not *per se* a bad thing. These are, he suggests, derivative reasons, as opposed to direct reasons that are grounded on the view that inequalities of distribution are bad in themselves.⁵⁶ Equality in this respect is good in itself, apart from the question 'good for what?' This is an example of deontological ethics. It is a fundamental ethical principle which is good in itself. However, one may think social inequality a bad thing and redistribution good, not in itself, but for its consequences. This is a consequentialist ethic, and what Beitz calls a derivative reason. It may be, then, that our concern is with humiliation, the extent to which poverty contributes to it, and the propensity this has for impeding human functioning and degrading human dignity.

The universalist and cosmopolitan argument for the just redistribution of resources is based upon the assumption that the boundaries of our own communities or states are not morally relevant to questions of social justice. Some, like Singer believe that the same principles apply in both spheres, while others, such as Barry and Hinsch think that whereas special ties may justify a difference in obligation to one's neighbours, they do not negate, nor absolve us from our duties to other peoples. Where there seems to be a thin universal principle uniting the different points on the continuum from

universalism to communitarianism is the notion of harm. Whatever the local manifestations, the principle itself is widely accepted as ground to generate the motivation for instauration.

Notes

- 1 M. Walzer, *On Toleration*, New Haven and London: Yale University Press, 1997, p. 7.
- 2 M. Walzer, *Thick and Thin: Moral Arguments at Home and Abroad*, Notre Dame: University of Notre Dame Press, 1994, pp. 21–2.
- 3 M. Walzer, *Spheres of Justice*, Oxford: Blackwell, 1983.
- 4 Walzer, *Thick and Thin*, p. 3 also pp. 21–40.
- 5 Walzer, *On Toleration*, p. 19.
- 6 M. Walzer, 'Nation and Universe', this volume, Chapter 1.
- 7 Walzer, *Thick and Thin*, p. 13.
- 8 M. Walzer, *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century*, New York: Basic Books, 1988, p. 22.
- 9 See P. Singer, 'Famine, Affluence and Morality', *Philosophy and Public Affairs*, 1, 1971, 229–43 and P. Singer, 'The Singer Solution to World Poverty', *The New York Times*, 5th September 1999.
- 10 Simon Caney usefully distinguishes three types of argument used to justify cosmopolitan distributive justice. Contract-based theories such as those of Charles Beitz and Brian Barry; outcome-based theories such as that of Singer's and Martha Nussbaum's different types of consequentialism; and, rights-based theories such as that of Thomas Pogge and Charles Jones. The rationale underlying all three is that there are principles of cosmopolitan distributive justice (Caney, *Justice Beyond Borders: A Global Political Theory*, Oxford: Oxford University Press, 2005, Chapter 4.
- 11 Singer, 'Famine, Affluence and Morality', p. 232.
- 12 See Gordon Graham, *Ethics and International Relations*, Oxford: Blackwell, 1997, p. 136.
- 13 See Amartya Sen, 'Reason before Identity', *The Romanes Lecture for 1998*, Oxford: Oxford University Press, 1996, p. 6.
- 14 R. Rorty, 'Who are we?', *Diogenes*, p. 173, 1996, 8.
- 15 Rorty, 'Who are we?', p. 15.
- 16 Caney, *Justice Beyond Borders*, p. 31.
- 17 Rorty, 'Who are we?', p. 15.
- 18 B. Barry, *Culture and Equality*, Cambridge: Polity Press, 2001, p. 258.
- 19 Walzer, *Thick and Thin*, p. 25.
- 20 See T. Pogge, *World Poverty and Human Rights*, Cambridge: Polity Press, 2002, p. 7.
- 21 R. Rorty, 'Human Rights, Rationality and Sentimentality', in S. Hurley and S. Shute (eds) *On Human Rights*, New York: Basic Books, 1993, pp. 111–134.
- 22 M. Walzer, 'Introduction' in M. Walzer (ed.), *Toward a Global Civil Society*, Oxford: Berghahn Books, 1995, p. 3.
- 23 Walzer, *Thick and Thin*, p. 8.
- 24 Walzer, *Spheres of Justice*, pp. 29–30.
- 25 See M. Walzer and R. Dworkin, 'Spheres of Justice an Exchange' *New York Review of Books*, 21 July 1983, 43–6.
- 26 G. Hardin, 'Lifeboat Ethics: The Case Against Helping the Poor', *Psychology Today*, 8, 1974, 38–43.
- 27 See N. Dower, 'World poverty' in P. Singer (ed.), *A Companion to Ethics*, Oxford: Blackwell, 1993, pp. 273–84, and Pogge, *World Poverty*, p. 7.
- 28 Graham, *Ethics and International Relations*, Oxford: Blackwell, 1997, pp. 152–5.
- 29 Sen, 'Reason before Identity', p. 7.

- 30 Barry offers a contractarian argument for international distributive justice. Those party to the contract, it is contended, could not reasonably reject the principles of justice as impartiality. The purpose of establishing a set of principles for international justice is to provide a basis on which those inside and outside a country can criticise practices and institutions that reflect the parochial or local norms that almost invariably endorse exploitation, discrimination and oppression (B. Barry, *Why Social Justice Matters*, Cambridge: Polity, 2005, p. 26).
- 31 B. Barry, 'Humanity and Justice in Global Perspective', in Brian Barry, *Liberty and Justice: Essays in Political Theory* vol. 2, Oxford, Clarendon Press, 1991, pp. 186–7.
- 32 C. Beitz, *Political Theory and International Relations*, Princeton: Princeton University Press, 1979, pp. 135–43.
- 33 Barry, 'Humanity and Justice in Global Perspective', p. 207.
- 34 Cf Shue, 'Famine, Affluence and Morality', pp. 14–16 and pp. 22–3 also C. Jones, *Global Justice: Defending Cosmopolitanism*, Oxford: Oxford University Press, 1999, p. 13.
- 35 Barry, 'Humanity and Justice in Global Perspective', pp. 203–8 also B. Barry, 'Justice as Reciprocity' in Barry, *Liberty and Justice: Essays in Political Theory* vol. 2, Oxford, Clarendon Press, pp. 239–40.
- 36 B. Barry, 'International Society from a Cosmopolitan Perspective' in D. Mapel and T. Nardin (eds), *International Society: Diverse Ethical Perspectives*. Princeton: Princeton University Press, 1998, pp. 159–60 also B. Barry, 'Statism and Nationalism: A Cosmopolitan Critique' in I. Shapiro and L. Brilmayer (eds), *NOMOS* vol. XLI: *Global Justice*. New York: New York University Press, 1999, 36–40. Cf. Caney, *Justice Beyond Borders*, p. 105.
- 37 J. Rawls, *The Law of Peoples*, London: Harvard University Press, 1999, p. 117.
- 38 Beitz, *Political Theory and International Relations*, p. 149.
- 39 J. Rawls, *The Law of Peoples*, London: Harvard University Press, 1999, p. 116.
- 40 W. Hinsch, 'Global Distributive Justice', *Metaphilosophy*, 32, 1, 2001, p. 62.
- 41 Hinsch, 'Global Distributive Justice', p. 64.
- 42 Rawls, *The Law of Peoples*, p. 117.
- 43 Rawls, *The Law of Peoples*, p. 90.
- 44 Rawls, *The Law of Peoples*, p. 106.
- 45 Rawls, *The Law of Peoples*, p. 119.
- 46 H. Steiner, 'Territorial Justice' in Simon Caney, David George, and Peter Jones, (eds), *National Rights, International Obligations*, Boulder, Colorado: Westview Press, 1996, p. 145.
- 47 Pogge, *World Poverty and Human Rights*, pp. 104–8.
- 48 I want to emphasise that Pogge's argument does not merely rest on establishing guilt. He in fact defends a rights-based approach to international distributive justice with reference to articles 25 and 28 of the UN Declaration of Human Rights. A just world order, for him, ensures the institutional promotion and protection of human rights, including economic rights.
- 49 Pogge, *World Poverty and Human Rights*, p. 114.
- 50 Pogge, *World Poverty and Human Rights*, p. 114–5.
- 51 Pogge, *World Poverty and Human Rights*, p. 114.
- 52 Pogge, *World Poverty and Human Rights*, p. 207.
- 53 P. Singer, *One World: the ethics of globalisation*, Melbourne: Text Publishing, 2002, chapter 3 and Brian Barry, *Why Social Justice Matters*, Cambridge: Polity Press, 2005, Chapter 3.
- 54 M. Walzer, 'Response, in *Pluralism Justice and Equality*, D. Miller and M. Walzer (eds), Oxford: Oxford University Press, pp. 292–3.
- 55 C. Beitz, 'Does Global Inequality Matter' in *Global Justice*, T. Pogge (ed.), Oxford: Blackwell, 2001.
- 56 Beitz, 'Does Global Inequality Matter', p. 108.

11 Rawls on human rights: liberal or universal?

Rex Martin

In his writings John Rawls is concerned both with the justification of fundamental constitutional rights and with the justification of human rights. In this paper I will be concerned just with human rights.

1. The law of peoples: human rights. Rawls argues that many societies in the world today (specifically, liberal societies and what he calls decent non-liberal ones) would be able to agree to the same set of international conventions, as outlined and detailed in the articles of what he calls the law of peoples.¹ This 'law' includes the traditional international relations view of states (that states are equal, autonomous, and have territorial integrity) but adds to it certain conditions or constraints on that traditional view. These constraints derive from the post-World War II settlement and are intended to restrict the sovereignty granted to states on the Westphalian model. The most important of these constraints are the prohibition on waging war except in self-defense (or in collective defense), the idea that human rights are to be respected internally, and the notion of a duty to aid deeply impoverished or 'burdened' societies.

Now let me fill in a bit behind Rawls's claim that certain societies (or, rather, specific sorts of societies) can be expected to endorse and conform to the law of peoples. We can start with liberal societies. Liberal societies have three main features in Rawls's view:

- (1) They subscribe to an extensive list of fundamental constitutional rights and liberties (of the sort that would be found, for example, in the European Convention on Human Rights [1954] or on a list of important rights in current American constitutional law).
- (2) They assign a 'special priority to those rights, liberties, and opportunities' over such matters as the general good or aggregate well being.
- (3) And, finally, they try to assure to all their citizens what Rawls calls 'adequate all-purpose means' (basically things like income and wealth) so that the citizens can make effective use of their liberties and opportunities. Rawls regards these three points as the core of political liberalism, as something that all members of the 'family' of liberal principles have in common.²

To this characterization Rawls adds two things.

- (4) Liberal states are peaceable towards one another and, in general, are not aggressive toward other societies so long as these societies are themselves unaggressive.³
- (5) Last of all, liberal societies are democratic in their fundamental formation.⁴

Accordingly, they subscribe to the principle of universal suffrage on a one person/one vote basis, make their decisions by regular and contested voting (at two distinct levels, the parliamentary and the electoral), and use a principle of majority rule to decide voting contests at both of these main levels.

While accepting that a large number of societies in the world today are neither liberal nor democratic, Rawls argues that many of them are or can be societies in which the values accepted by the majority afford grounds for certain protections and securities for *all* the inhabitants in the country. Such societies can be conceived as subscribing to a 'common good' standard of justice for all inhabitants, based on values (often religious values) shared by most of them.⁵

This is not to say that they conform to anything like democratic norms (on a one person/one vote basis), but Rawls does regard the societies in question as all of them well-ordered. Here the basic decision procedure, though not democratic, is such that the governing person or governing council, nonetheless, makes a genuine effort to consult various *constituencies* or groups, as to their interests and their view of the public interest, and to keep them informed.⁶ And these societies are nonaggressive toward their neighbors. They are decent societies.

Rawls argues, then, that both liberal societies and decent nonliberal societies would be able to agree to the same set of international conventions, as outlined and detailed in the articles of the post-World War II law of peoples. And this would include a shared commitment to human rights.

Rawls makes clear that he regards articles 3–18 in the UN's Universal Declaration (1948) as 'human rights proper.' These rights plus other rights generated from them – as found preeminently in the international conventions against genocide (1948) and apartheid (1973) – are among the human rights that decent societies (be they liberal or nonliberal ones) are committed to upholding.⁷

Rawls, however, is not especially concerned simply to stick with the literal wording of these important UN texts to provide the content for his account of human rights. Instead, he emphasizes a *shared* commitment (on the part of liberal societies and decent nonliberal ones) to the very idea of human rights, as that is understood today.⁸ And to indicate the content of this idea he suggests a short list of human rights which captures the essence of much of what is set forth in the UN texts:

Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom and forced

occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases are to be treated similarly).⁹

Human rights, on this conception, represent not only a standard for how a government is to treat its own inhabitants but also a standard for how it is willing to treat the inhabitants of other societies—in particular, the inhabitants of other societies that belong to the camp of liberal societies and decent nonliberal ones.

It is often noted, especially by critics, that the set of human rights Rawls has emphasized here constitute a rather reduced list of rights (when contrasted, say, with the rather robust array of active rights one finds in the European Convention on Human Rights or among the basic constitutional rights of a typical contemporary liberal democratic society). This is a point we shall return to. Right now, though, I want to turn to Rawls's idea of the justification of human rights.

2. The justification of human rights in LoP. Clearly there ought to be more to the justification of human rights (as part of the law of peoples) than just the point that this law fits in with the *conventional* practice or morality of both liberal and decent nonliberal societies. I think there is. If we take Rawls's brief sketch or list of main or essential human rights (from LoP 1999, p. 65), as our primary example of international human rights today, then we could offer the following two claims as part of the justification for the rights on that list.

First, the rights here are something of a minimum or, better, they constitute a list of the most urgent rights (basic liberties and noninjuries) that we, as individuals, have and should have against great evils. Second, these ways of acting (liberties) and ways of being treated (noninjuries) are *necessary* conditions of social cooperation. These two considerations suggest that Rawls may have certain basic interests in view as the justifying grounds of human rights, interests that would be apparent and acceptable to all human beings (or, if not that, acceptable to a vast number of human beings alive now, and in the foreseeable future). The basic interests here contemplated would include those liberties and noninjuries essential to a minimally decent human life and those necessary to set up and maintain a scheme of cooperative social relations for all, as distinct from a scheme of wholesale coercion (or, in the worst and most extreme case, of slavery).¹⁰

These two justifying considerations go well beyond the merely conventional: they have a normative dimension (one that could be endorsed in a critical moral theory) and they have a universal reach (in that they could apply in *any* society). Rawls's account of justification meets, then, the test that an active human right, understood simply as a moral right, must be morally justified by accredited normative standards.

Admittedly, Rawls also offers, as yet another justifying consideration, that the human rights on the short list are a proper subset of liberal rights. And it could be said, equally truly, that they are a proper subset of established ways of acting and ways of being treated available to all persons, under a 'common good' conception of justice, in a decent well-ordered hierarchical society.¹¹ Now, this looks like a mere conventional argument (and, accordingly, a weak argument for a universal set of human rights).

But there are more than merely conventionalist considerations present even in this case. After all, the basic rights of a liberal society (of which the list of main rights in Rawls, *LoP* 1999, p. 65, is a proper subset) are themselves justified by the background ideas latent in a democratic society (such ideas as that citizens as persons have two fundamental powers or capacities, powers which figure in turn in citizens being free and equal); thus, the rights generated from these powers are rights peculiarly appropriate to a particular *kind* of society (to democratic or liberal society).¹² We also know that Rawls believes that the liberal political conception, of which the basic rights are a part, can be justified from the distinctive perspectives of each of a number of competing comprehensive doctrines, both moral and religious (in what he calls an overlapping consensus¹³). Thus, there is a clear normative argument pattern for these rights.

Similar considerations could be invoked for a decent nonliberal society. The basic rules of social conduct in such a society (of which the short list of main rights in Rawls, *LoP* 1999, p. 65, is a proper subset) are themselves justified as part of the 'common good' conception of justice applicable to all persons in that society (a conception capable of assigning rights and duties to all persons there). And, ultimately, this common good conception can be justified by reference to the comprehensive moral or religious doctrine (for example, a version of Islam) that the vast majority of citizens in that society accept. Thus, there is a normative argument pattern for these rights.¹⁴

Obviously, there is significant overlap between the way essential human rights are justified in both decent liberal societies and decent nonliberal ones. But there are important differences between societies of these two kinds, and this difference will show up in differing conceptions of human rights as well as in differences on matters of social justice.

Most important, perhaps, are characteristic differences in the content of human rights in the two main cases. In a liberal society, human rights will include an important democratic component and there will be a strong commitment to freedom of religious conscience. In a decent nonliberal society there will be no commitment to democratic institutions or values (as these are understood in liberal societies) and no commitment to liberal-style freedom of religious conscience. Rather, even though the rites and professions of faith of various religious groups might be allowed in public, there is a dominant religion; it is established, and its adherents and creed are given preferential public status (perhaps exclusively so).

And differences in content between liberal and decent nonliberal societies will arise at other important points as well. Take for example economic

opportunities. A liberal society will guarantee (or try to guarantee) freedom of movement and free choice of occupation and some degree of equal opportunity for everyone.¹⁵ But we could not expect a decent nonliberal society (of an Islamic persuasion, for instance) to make such guarantees respecting women, for example, or nonbelievers. Again, a liberal society will guarantee a robust social minimum 'providing for the basic needs of all citizens'.¹⁶ Such a minimum might be paired, and Rawls thinks it should be paired, with some version of the difference principle (a principle that combines continual measures designed to achieve mutual benefit and a degree of egalitarianism in matters of income and wealth). While it is not unlikely that a decent hierarchical society with a 'common good' conception of justice will buy into the idea of a social minimum, it is much less likely that it would commit itself, on a continuing basis, to measures designed to achieve *both* mutual benefit and the reduction of inequalities in matters of income and wealth. There are, in short, many important differences, between liberal and decent nonliberal societies, as regards the content of human rights and matters of social justice.

3. The original position idea in LoP. Ultimately, Rawls thinks that the basic rights endorsed in both these normative patterns (the liberal one and the decent nonliberal one) can be deployed and justified in something like an original position context, one in which the 'parties' are the representatives of nations devising principles for an international order, rather than (as in the original original position) individual persons devising principles for the basic structure of a domestic political state.¹⁷

At this point, though, we must become considerably more nuanced in our approach. Rawls envisions distinct *stages* in the international version of the original position.

In the first stage, the liberal societies agree on a set of principles to govern an international order conceived as comprising liberal peoples and liberal states. A parallel first stage could be conceived for decent nonliberal societies. Here they would lay out the terms of an international order conceived as comprising decent *nonliberal* societies.¹⁸

It is important to see that the international original position at this first stage is very different from the original position idea set forth in *Theory of Justice*. One difference we have already noted. Another is that the so-called veil of ignorance is not so thick in the international case. The parties there are much more self-aware; they conceive themselves, for example, as representatives of 'free and equal liberal peoples debating their mutual relations as peoples'.¹⁹ And what they end up with is a 'Law of Peoples' for liberal societies internationally and not with principles of justice and with main embodying institutions for a given domestic society (as in the *Theory of Justice* case).

Would the liberal 'Law of Peoples' be identical to the eight-point 'law' we discussed earlier (in sect. 1 of the present paper)? I doubt it. There would certainly be overlap but not identity. We could not expect liberal peoples

simply to stop with the eight points. After all, as I suggested earlier, liberal societies have a distinctive character and set of commitments, and this would surely affect the content of an international order they were designing for themselves, designing for liberal peoples *exclusively*.

For instance, the list of human rights would be more robust than the list of main or essential rights identified earlier (from LoP 1999, p. 65). Here one might take the European Convention on Human Rights or the principles of the European Union as examples of what one would reasonably expect to find in a typical contemporary liberal international order. Again, one would expect to find a commitment to democracy as holding *within* the member societies, and one would expect to find democratic and parliamentary values playing out to some extent in the 'legislature' and in the courts at the international level (and, again, the EU offers a convenient example of what one would expect to find in a typical contemporary liberal international order). Finally, we could expect a social justice policy there that tries to achieve freedom of movement and free choice of occupation and some degree of equal opportunity for everyone, that guarantees a robust social minimum 'providing for the basic needs of all citizens',²⁰ a minimum of the sort one finds in much of western Europe today, and that aims at preventing or eliminating 'excessive' social and economic inequalities.²¹

A similar thought experiment respecting the expected content of the international order that contemporary decent nonliberal peoples would design for themselves yields results similar to the case of what might happen with liberal peoples. The 'Law of Peoples' decent nonliberal peoples would design for themselves would overlap but not be identical with the eight-point 'law' (summarized in LoP 1999, p. 37).

The human rights decent nonliberal peoples adopted for *themselves* would likely be significantly different from the human rights charter liberal peoples would adopt for an international order made up exclusively of liberal peoples. There might well be, among member societies within an international order made up exclusively of decent nonliberal peoples, a significant establishment of religion (of Islam, if we stayed with our earlier example), with no separation of 'church' and state. For another thing, there'd be no commitment to democracy *within* the member societies. And we'd likely find, staying again with the Muslim example, a distinctive social justice policy which instead of equal opportunity featured a set of ingrained inegalitarian practices regarding the relations of men and women.

So, the *first* stage of Rawls's international version of the original position, given the way Rawls characterized that original position, would most likely (even though there was agreement on the eight 'articles' of the law of peoples) reproduce the differences we've already noted between typical contemporary liberal peoples, on the one hand, and typical contemporary decent but nonliberal peoples, on the other.

There is one problem with my analysis. It does not reflect exactly what Rawls says. In fact, he places an important restriction on what proposals

the parties are allowed to consider as outcomes of their original position deliberations. They are, if you will, simply handed the eight-point law of peoples and are allowed to consider those articles, and *only* those articles, as possible outcomes of their deliberation.²² Now, I don't doubt that both liberal peoples and decent nonliberal peoples would accept the eight points. My complaint rather is that each might choose, probably would choose, to include but go beyond those points. The procedure Rawls describes, in order to disallow this wholly likely event, is arbitrary and poorly argued for; without the 'take it or leave it' proviso the end result of his account is wholly implausible.

In fact, there are *two* features of Rawls's international original position arguments (one for liberal peoples and one for decent nonliberal peoples) that give me pause. The first is that the eight articles are simply required by fiat to become the only possible or allowed outcome of the deliberations behind the veil. So, of course, both kinds of peoples reach the same result. They could do no other! My other reason for pause is that the grounds for acceptance of just the eight points (and no others) are themselves, in the case Rawls makes, wholly conventional; they are grounds merely of 'history and usages'.²³ At a crucial point in his argument, then, Rawls's account lacks normative force.

These two problems, the arbitrary restriction imposed on the choice of the eight points and their grounding in mere convention, need repair. We need to turn to some device or standard that will give a more clear and appealing rationale for the choice of the eight points, a standard that will itself provide a sound normative ground for that choice.

Now, we go to a *second* stage of Rawls's international version of the original position. Such a second stage is not so clear in Rawls's text, but it is there, nonetheless.²⁴

Here we find the sought-for standard and see it deployed. Parties representing both liberal and decent nonliberal societies agree on a set of principles to govern an international order conceived as arising within and between *both* kinds of peoples. It is an international order that embraces *all* liberal and decent nonliberal peoples and brings them together in a single society of peoples. It is not likely such a stage would be called into play unless the peoples of these two diverse sorts set to establish principles and institutions for precisely such an international society.²⁵ But if a concern to establish such a single embracing society of peoples did come into play, as it has increasingly done since World War Two, then we would expect to encounter the only truly *comprehensive* international version of the original position in Rawls's theory.

The project of this *second* stage is vastly different from the project at the *first* stage of Rawls's international version of the original position. In this second stage we cannot expect parties who represent two different kinds of peoples to insist on practices or ideals that are peculiar either to the one camp (the liberal) or to the other (the camp of the decent nonliberal peoples), nor should we expect the stage setter to arbitrarily restrict the outcome to points

already settled as common ground between the groups the parties represent (for this looks uncomfortably like a rather static form of *modus vivendi*).

Thus, the things that set the two kinds of peoples apart in the *first* stage would be allowed for, but they are not made bones of contention. They are not put forward as parts of the charter of the international order that is determined at the *second* stage of Rawls's two-part international original position. Rather, the governing standard at this second stage is a kind of reciprocity. The standard is that 'in proposing a principle to regulate the mutual relations between peoples, a people or their representatives must think not only that it is reasonable for them to propose it, but also that it is reasonable for other peoples to accept it'.²⁶

Matters of deep division (a robust establishment of religion v. a robust free exercise of religion, democratic v. nondemocratic political culture, etc.) do not meet the standard of reciprocity. But Rawls's short list of human rights (LoP 1999, p. 65)—a list that captured the contemporary idea, the essence of human rights—would, as would the other articles in the 'law' of peoples, meet it.²⁷ Thus, we could reasonably expect these matters to be part of the charter of an international order that embraced both liberal and decent nonliberal peoples. Since *all* peoples, or at least all peoples within the set of decent societies (liberal and nonliberal), could reasonably accept these rights and the other principles of the law of peoples, they become the standards of international public reason for these peoples.

To devise such a solution is not a matter of compromise or of log rolling between two competing groups of delegates—each representing, respectively, one or the other of two main international groupings. In the second stage of the international original position there is no such bifurcation; rather, the parties (all of them) represent *both* liberal and decent nonliberal peoples, as Rawls makes clear. The parties try to bring the best views of each of the two kinds of peoples into a single perspective and to reason their way to a solution (a set of articles, including an understanding of human rights) that satisfies the standard of reciprocity. What they aim to achieve is a principled accommodation of settled and accepted differences, an accommodation required by reciprocity and justified by it.

Let me conclude this discussion of the justification of human rights with a brief summary. I have argued that Rawls justifies human rights in the *Law of Peoples* with a complex set of arguments, no one of which is merely conventionalist. (i) He argues that human rights, taken overall and in their main idea, are designed to protect people against great evils and that in the absence of these protections the conditions of social cooperation would be eroded and destroyed; in that respect, then, the maintenance of human rights is necessary to social cooperation. (ii) In each of the two main cases he cites, the decent liberal society and the decent nonliberal one, normative patterns of justification are present and explicitly drawn upon (through democratic justification and overlapping consensus in liberal societies and through a common good ethic and its justification by the dominant comprehensive doctrine

present in a given decent nonliberal society).²⁸ These different modes of justification underwrite the political values and practices (including rights and liberties) in those societies, domestically. (iii) And to this we have added the idea of a two-stage international original position, the second stage of which sets forth and relies on the standard of reciprocity. Thus, the human rights that emerge in this stage (and they are the *only* set of human rights, in Rawls's view, that would be wholly appropriate to an international order comprising *both* liberal and decent nonliberal peoples) is specifically attached to and endorsed by the normative ideal of reciprocity.

4. The enforcement of human rights. Rawls contends that 'self-determination ... is an important good for a people, and the foreign policy of liberal peoples should recognize that good and not take on the appearance of being coercive.'²⁹ It might be thought here that Rawls is so committed to the values of self-determination and noncoercion that he is altogether disinclined to use forceful interventions in international relations at all (other than in the extreme case of military defense against armed invasion).

But this would be a misreading. Rawls's talk about self-determination and toleration is directed exclusively to the relationship of decent peoples (both liberal and nonliberal) toward one another.³⁰ It is not directed to the case of nondecent societies, of outlaw states and 'burdened societies,' which violate human rights, regularly and systematically, within their own borders.

Consider here (as examples of severe or grave violations of human rights) genocide and 'ethnic cleansing', slavery, and warlord-induced famine and starvation, all of them cases from our own day.³¹ Such severe violations merit 'forceful' intervention, in Rawls's view, by which he meant intervention 'by diplomatic and economic sanctions, or in grave cases by military force.'³²

Here we must take care. I would suggest that, although Rawls would endorse 'forceful' diplomatic and economic measures against many serious violations of human rights, he seems to reserve armed intervention solely for such matters as mass murder and slavery, where the offending state has not amended its ways under the pressure of diplomatic and economic measures.³³

The kind of justification we are talking about in cases of armed intervention and other 'forceful' measures would have to rely on standards considerably stronger than basic human interests (a standard advanced by many defenders of human rights) or mutual and general benefit (a basic standard I would advocate myself)³⁴ or, for that matter, the justifying standards Rawls himself invokes (minimal protection against great evils, necessary conditions of social cooperation, etc.). We are talking here not merely about what justifies *any* given human right (or any right on a short list of quintessential human rights) but more especially about when, if ever, a particular human right should be enforced internationally by military action or, minimally, by other forceful interventions.

The point just made is a logical one. If all the rights on a list of normatively justified human rights are justified by one and the same standard (e.g. mutual

and general benefit) or a concurrent set of standards (e.g. by this standard and the two Rawls invokes) and yet *some* rights on that list are not thought to be appropriately enforced by international military action, then a different standard for justifying forcible military intervention *other* than the one(s) already cited must necessarily be invoked.

Rawls clearly does think that some human rights on that list are not appropriately enforced by international military action. Ending apartheid or the debased state of women, for example, would not be appropriately enforced by international military action in his view, nor should ending violations of due process of law (such as are found, for example, in the practice of capital punishment, in at least some societies) be enforced in that way.³⁵

So far as I can see, and contrary to some of his critics, Rawls does not *conceive* human rights as rights that, exclusively, are or can be enforced forcibly (e.g. by armed coercive action) or forcefully (e.g. by strong economic sanctions). Indeed, Rawls's discussion is not limited to rights that can be enforced so strongly but suggests instead a wide variety of kinds and levels of appropriate enforcement for human rights.³⁶

5. Human rights: liberal or universal? Other criticisms have more bite. Let us turn here to two main criticisms that have been lodged against Rawls's account of human rights in the *Law of Peoples* and, more generally, against his idea of an international order comprising both liberal and decent non-liberal peoples, with each component group exhibiting full toleration of the other.

One line of criticism, in effect echoing the views of some third-world delegates to the 1993 Vienna conference, is that human rights are a 'western value'; critics who take this line argue that Rawls's agenda for human rights and for the international order is part of the Enlightenment project and is completely liberal in character; accordingly, it could not be the foundation for a truly international order, except through some sort of imposition.

The other line has it that Rawls's agenda is defectively liberal in character and that the only international order that could be normatively endorsed wholeheartedly would be one that reflected a true liberalism, a full-strength liberalism of the sort found (for example) in Rawls's own *Theory of Justice*. Let us consider each view, in turn.

The first view (as found, for example, in Barry Hindess)³⁷ is decidedly the less compelling one. I myself think there's very little to be said for the claim that Rawls's agenda for human rights and the international order in *Law of Peoples* is an imposition of Enlightenment or western values. That it is nothing but liberalism, pure and simple, and is thereby unsuited to be part of the normative foundation of a truly multilateral, multivalent global society. Or that it simply conforms in all relevant details, in Hindess' words, to 'the globalisation of the European states system.'

Now, Rawls's theory in *Law of Peoples* takes it rise from contemporary Western liberalism, true enough, and it is a form of liberal internationalism.

But the liberalism it espouses for the world order is a much watered-down version when compared with the program (intended for domestic liberal societies) that is put forward in Rawls's other writings or when compared with the ideals, the institutions, and the practices of actual liberal societies (even though these societies, admittedly, are at best imperfect approximations of liberalism). There's no generalized commitment to democracy or democratization in *Law of Peoples*, nor do we find there an agenda for promoting and imposing an extensive list of rights on the order of well-known lists of constitutional rights in contemporary liberal states or of the European Convention on Human Rights. I'm inclined then to set the first view aside rather peremptorily as an account of the relation of liberal to decent nonliberal societies.

The second line of criticism makes a much stronger case against Rawls and requires a more extended response. Here we find a line of critics (Charles Beitz, Thomas Pogge, Brian Barry, Allen Buchanan, Kok-Chor Tan, to name a few) who advocate an international order that reflects a robust liberalism.³⁸ In their view a liberalism that stresses the freedom and equality of all individuals and other democratic values and a genuine morally worthy cosmopolitanism are overlapping notions.

The interesting thing is that all of these thinkers develop their own position on a Rawlsian foundation, as found quintessentially in *Theory of Justice*. Most of them, indeed, draw on Rawls's idea there of an original position.

Their claim, put quite simply, is that if we had an original position in which the 'parties' represented *every* person now alive and conceived these persons, all of them, as free and equal individuals, the resulting principles of fair social cooperation and the institutions implicated therein would be, just as they were in *Theory of Justice*, strongly liberal (with a long list of basic rights), radically democratic, and supportive of a thorough-going egalitarian and redistributionist social policy. For them the only *justifiable* global or international order is one that conforms to this very pattern. Or, to put the point more precisely, the only such order that could be justified by original position reasoning would be an emphatically liberal global order.

How might Rawls or a Rawlsian respond to this use of the original position idea? I think three main points could be made.

First, a Rawlsian could claim that the original position idea is being misused. In the notion of the original position as we find it in *Theory of Justice*, the parties are always representatives of individual persons who are interested in designing fair principles of social cooperation under which they'd be willing to live their entire lives, no matter what position they occupied under those principles. They are designing principles (and ultimately conforming institutions) which they would have in common. This means that they are designing principles and institutions for a common, shared economic system and principles and institutions for a single political system, a single government, under which they all live (for their whole lives).

This view of the original position works well enough for a domestic political society (an individual state), which is precisely what Rawls had in mind in *Theory of Justice*. But, the Rawlsian continues, it won't work, and wasn't intended to work, for all the people in the world taken together as a single 'society.' Indeed, they will not live together as a single *political* society, live together under one and the same government. A single world government or a worldwide Kantian federation for peace (*foedus pacificum*) or even a global analogue of the EU simply would not be a viable and expected outcome today.

Now we go to the second point. A Rawlsian could claim that the critics' use of the initial original position idea (from *Theory of Justice*) ignores important revisions Rawls made in the idea of the original position in his subsequent writings. In *Political Liberalism*, for example, certain normative background ideals are presupposed in the original position. We don't just begin with a 'thin' theory of the good (a short list of so-called primary goods that each individual would want as a means to or a part of their life plans); we don't start, in short, with that and nothing else. Rather, in *Political Liberalism*, the public culture of a contemporary *democratic* society is explicitly presupposed and most of the 'fundamental ideas' from which reasoning starts there are said to be 'implicit' in that culture.³⁹ In *Law of Peoples* the normative background of the various international versions of the original position is even more richly filled in, as I have already indicated. In this second reply I have tried to sketch some changes Rawls made in his later writings from the original position idea he had espoused in *Theory of Justice*.

Now let us go to the third and final point that could be made. The original critics might turn now and say, 'Not so fast here'. The Rawlsian reply, in sum, has been that if we stay with Rawls's intended and express use of the original position idea (as true exegetes should), then there could be no such thing as a global original position. But we, the advocates of a global original position, are not concerned to stick with Rawls's own intentions and disposition regarding the reach of the original position. Rather, our view is that the original position affords an easily understandable and compelling arena for justificatory reasoning. It is both reasonable and justifiable to say that 'the most important interests of [individual] *persons* should be represented in the international original position ...' Assuming this can be done, we don't see what would be wrong with a worldwide consensus (reached in a global original position) that favored the same 'criterion of social justice [that] Rawls proposes for the domestic case.' In short, the critics' view is that the same sort of arena for justificatory reasoning and same set of reasons as were deployed there in the domestic case would yield the *same* 'criterion of social justice' internationally. (Thomas Pogge makes this reply⁴⁰).

But I think the Rawlsian could come up with a decisive retort to this rather plausible line of reasoning. They could contend that Rawls thought the conclusions reached in the original position, the principles of justice that were the principal outcome to the reasoning there, should be subjected to the test of 'reflective equilibrium.'

Here we're not concerned *merely* with what Rawls thought in this matter, the defenders of Rawls would say. The test of reflective equilibrium is a reasonable one to impose on *any* version of original position reasoning. Otherwise, we run the risk of detaching these outcome principles from the settled moral convictions (the guiding general moral and religious principles, the basic maxims, and paradigm cases) normally appealed to by the very people who have to live under those principles. The moral convictions we deploy in the test of reflective equilibrium are, in many cases, time-tested, widely shared (at least within a given political society), and, most important, are convictions that can be supported by basic (or ultimate) principles of critical morality or by accredited forms of moral reasoning.

Let us reflect on reflective equilibrium for a moment here. Often we will find that the outcome principles derived from original position reasoning and the moral convictions we're interested in are in harmony or can be shown, under analysis and upon reflection, to be compatible with one another. This is one way in which the test of reflective equilibrium can be satisfied.

But sometimes they are not in harmony and cannot be brought into harmony. For instance, some people think that utilitarianism could justify the punishment of innocent people. If this proved to be so, we'd have the kind of disharmony I was just referring to. And here the test of reflective equilibrium would not have been satisfied.

When disharmony is the *initial* result of someone's trying to see whether a given conclusion or principle comports with settled moral convictions, something has to give. Either the principle or conclusion has to be revised—in the extreme case, simply thrown out—or the relevant moral conviction has to be revised or thrown out. *Or*, as yet a third option, some sort of revision or substantial modification is required on *both* sides. This procedure of rectification is, obviously, very complicated and may take considerable time to accomplish. Indeed, it is a continuously on-going project and the rectification we're hoping for may never happen; there's no guarantee that what results from trying (through revision and modification) to bring principles and convictions into a newly established harmony or compatibility will actually be accomplished. But if it is accomplished, the harmony brought about through revision and modification would be another, a second way, of satisfying the test of reflective equilibrium.⁴¹

Now, if the same 'criterion of social justice [that] Rawls proposes for the domestic case' is actually reached in the global original position, as the critics say it would be, then defenders of Rawls can reply that there are many, many persons in the world whose settled moral convictions would be in deep disharmony, perhaps irreconcilable disharmony, with what amounts to principles for a *liberal* global order. And the persons who see disharmony would, or at least a very large number of them would, be the very persons who constitute the great bulk of what Rawls calls the nonliberal societies. And among these persons would be a smaller but potentially substantial set, the set of persons who constitute the great bulk of what Rawls calls the *decent* nonliberal peoples.

The Rawlsian claim is that a liberal global order, of the sort advocated by the critics, would fail the test of reflective equilibrium. And the failure of that test, if there is general consensus that it's a very important test to satisfy (or if one has joined in such a consensus), would be a strong consideration (perhaps a decisive one) against the idea of a global original position with an exclusively and thoroughly liberal outcome.

People from decent nonliberal societies would constantly feel the 'strains of commitment' while trying to live, as conscientious members, in a liberal global order. That order would, indeed, be wrong for them. It violates the norm of *reciprocity*, the only norm appropriate to a comprehensive international order or to a global original position designed for disparate peoples. And where that norm is violated, the very objectivity of the principles of a liberal global order would be called into question.⁴⁶

The upshot of the argument of the present section can be summarized in brief compass. Rawls cannot be taken as a proponent of liberal internationalism of the sort that some of his critics advocate and others accuse him of holding. Rawls's does not subscribe to the agenda of original position cosmopolitanism. Not because he fails to be true to his own best instincts (as found in *Theory of Justice*) but because he holds to a decidedly different characterization of the normative foundations and the resultant principles that should have 'universal reach' in the international community. One might conclude, then, that the only universalism appropriate to Rawls's position is a sort of 'thin' universalism (in the sense given that term by Walzer).

6. Human rights: into the thick of it. I think a case could be made for saying that the eight articles which summarize the law of peoples do constitute a thin universalism, especially at the point where a reduced list of human rights is set forth as the charter of rights in this law. It is important, though, in saying even this, that we keep in view the *grounds* of this eight-point law and, in particular, of its human rights charter.

We begin, of course, with the idea that these eight articles represent the conventional understanding of the law of peoples (a convention that has grown up over the several centuries since Westphalia, 1648). But this understanding is a modified one, modified to take account of the post-World War Two settlement.⁴² In this settlement three points are added: no war except in self-defense, respect for (and even sometimes international enforcement of) human rights, the duty to aid deeply burdened and impoverished societies. The thinness of which we spoke earlier arises largely from the fact that, though the convention itself is widely agreed on, there is considerably less overall consensus in the community that supports this convention than we'd expect to find in any long and well established state (or country, as we sometimes call it). Indeed, the international community incorporates widely divergent value schemes and perspectives from which to judge any such convention. What they agree on, as an appropriate practice to be engaged in by all, must (when formulated in a set of articles) necessarily be thin. For

what the members of the community share in common is simply the articles themselves (and, presumably, the practice they summarize and the commitment of the various members to engage in that practice, provided others do so as well). But they don't share the same basic values typically used to evaluate and guide institutions and practices.

One might be tempted to say that the articles of the law of peoples, understood as conventional (in the way just described), are simply a matter of finding a common denominator (perhaps a lowest common denominator) that the divergent and multivalent membership of the international community is willing to profess and adhere to, to some degree, in practice.

This judgment may prove premature. But the underlying idea—that the convention adhered to by a divergent and multivalent set of people (who have relatively little consensus on big organizing perspectives or on basic guiding values) is likely to be given a thin formulation – is probably worth holding on to. Now I want to add two thoughts to this initial claim about thin formulation.

For the first I want to draw on an important distinction Ronald Dworkin makes between the 'preinterpretive' and 'interpretive' stages of principled judicial decision making. Dworkin thinks judges and lawyers and jurists will tend to agree (to a quite considerable extent) at what he called the 'preinterpretive' stage; here they agree on the sources of law, on what counts as law in the jurisdiction they share. But we can expect them to reach different conclusions or to offer differing reasons for their decisions as they bring their varied convictions and historical backgrounds to bear in *interpreting* the law on individual occasions, or in a run of such occasions.⁴³

The idea I want to suggest here is that what we have in mind with human rights (our list of human rights), and what human rights require, will be one thing at the 'preinterpretive' stage and another at the 'interpretive'. Preinterpretive agreement is compatible with interpretive disagreement. Indeed, it allows for a fairly wide and diverse range of interpretive differences and for considerable diversity in the practices and institutions devised to embody what in the first blush (before interpretation) was simply one and the same agreed-upon norm.

To put the point crudely, I want to argue that the short and quite truncated list of human rights which is agreed to in the charter of human rights in Rawls's law of peoples represents the 'preinterpretive' stage of human rights. And it is, as I said, a 'thin' account of human rights that is espoused here.

But this does not exhaust either the list of human rights or the account we can give of human rights. To see this we go to the 'interpretive' stage of human rights, and here we find the second idea I want to add, the idea of a principled interpretation of human rights.⁴⁴ The ground of any such *interpretation* of human rights is Rawls's idea that, beyond the conventional and even beyond the compromises or accommodations people might make in formulating the leading ideas embedded in a conventional practice, are certain shared normative grounds for justifying that convention.

Let us focus here simply on Rawls's own justification of human rights. I argued in sections 2 and 3 that Rawls justifies human rights in the *Law of Peoples* with a complex set of arguments, no one of which is merely conventionalist. There were in fact three distinct but interrelated normative grounds of human rights here: basic human interests, diverse and distinctive values, reciprocity.

These shared normative grounds figure, in particular, in the justification he offers of the admittedly thin list of human rights (found in the charter of the law of peoples). My claim is that these justifying grounds can be used to guide or help guide considerably *thicker* interpretations of the list of human rights, interpretations that will probably differ from one cultural location to the next, given the great diversity of distinctive comprehensive values (not to mention the merely local values) that we are likely to find.

These thicker interpretations serve to elaborate and amplify what a particular human right will require in a given political culture at a given time. In effect, then, the list of human rights grows through interpretation. It grows in number and it grows in the complexity and variety of the courses of action required or permitted under each of the various individual rights.

Thus, in the area of human rights we can move from the thin to the thick. And that's where we find, not a mere thin list of human rights (which is where we start with Rawls) but, rather, the thick of things so far as human rights are concerned.⁴⁵

Notes

1 See Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'*, Cambridge, MA: Harvard University Press, 1999 (hereafter: LoP 1999), pp. 79–80, also pp. 27, 42. Rawls's book is based on an earlier article also entitled 'The Law of Peoples', in Stephen Shute and Susan Hurley, (eds.) *On Human Rights: The Oxford Amnesty Lectures, 1993*, New York, NY: Basic Books, 1993, pp. 41–82 (reprinted in *John Rawls: Collected Papers*, Samuel Freeman, (ed.) Cambridge, MA: Harvard University Press, 1999 [hereafter: Freeman, (ed.) CP], pp. 529–564). The book is a substantially revised and much longer reworking of main lines of the article.

For a quick summary of the law of peoples, see the eight-point list of main articles in LoP 1999, p. 37. See Freeman, (ed.) CP, p. 540 for Rawls's short list of the 'principles' of the law of peoples in his article (comprising in this case only seven short points, not the eight found in the book). There are other changes—changes in the order of the points or in the verbal content—of the seven points that the article (1993) and the book (LoP 1999) have in common, but the addition of the duty to assist burdened societies is the only substantive change that the book makes on the list in the article.

2 For these three points see Rawls, *Political Liberalism*, New York, NY: Columbia University Press, 1996 (hereafter: PL 1996), p. 6. PL was initially published in 1993 and revised in 1996; all references by page to PL will be to the 1996 edition.

For the term 'family', see PL 1996, pp. xxxviii, xlvi, xlviii, liii; Rawls 'The Idea of Public Reason Revisited' (1997) reprinted in Freeman, (ed.) CP, at pp. 581, 584, 592, 594; and LoP 1999, pp. 7, 14, 57, 122, 125.

3 See LoP 1999, pp. 44–54.

4 See PL 1996, pp. 13, 15, 175, 223.

- 5 For Rawls's account of these 'decent' nonliberal societies see LoP 1999, sects. 8 and 9 (esp. p. 77) and p. 88. For the crucial idea of a 'common good' conception of justice see Rawls, LoP 1999, pp. 61, 64–7, 69, 83, and sect. 9.
- 6 See Rawls, LoP 1999, pp. 68, 72, 78, 88, 92.
- 7 See LoP 1999, p. 79 and n. 23 on p. 80, for the points made and for the quoted phrase. Though not found in the pages just cited, Rawls also puts considerable emphasis on the importance of the basic human rights of women (LoP 1999, pp. 110–111) and these could be added to his summary of the main rights generated from the UN's list of 'proper' rights. The UN Declaration has a total of 30 articles. The first two Rawls regards as essentially aspirational and hortatory in nature. Articles 3–18, for the most part, cover the so-called political and civil rights. And many of the remaining ones (in articles 19–30) cover rights usually called 'social and economic'. Rights in these articles, Rawls says, often 'presuppose specific kinds of institutions' (LoP 1999, p. 80n), thereby suggesting that those rights (in content) prescind from the universality expected of human rights. (For Rawls's emphasis on universality, see LoP 1999, p. 80). I should add that I don't regard Rawls's blanket dismissal of articles 19–30 as convincing or sound. My reasons for thinking this will become clearer in the final section of the present paper.
- 8 See LoP 1999, p. 27.
- 9 See Rawls, LoP 1999, p. 65, for this list. For Rawls's discussion of human rights more generally, see LoP 1999, pp. 67, 68, 78–81, 83.
- 10 For the point about a minimum, see LoP 1999, p. 67; see p. 79 for the point about urgency and pp. 65, 68 for the point about social cooperation. Allen Buchanan argues that Rawls's conception of human rights is both unusual and defective in failing to draw on any idea of fundamental human interests or any conception of a minimal human good (see his paper 'Taking the Human Out of Human Rights', in Rex Martin and David A. Reidy, (eds.) *Rawls's Law of peoples: A Realistic Utopia?* Oxford: Blackwell, 2006, pp. 150–168). My argument suggests that this claim cannot be sustained. See also LoP 1999, pp. 7, 33, 67.
- 11 See Rawls, LoP 1999, p. 81, for both these points and for the phrase 'proper subset'.
- 12 Here I refer to part two of Rawls's Dewey Lectures (1980), printed, in revised form, as Lecture 2 of PL. And his Tanner Lectures (1982) reprinted in PL, unrevised, as Lecture 8 (see here Rawls, PL 1996, especially sects. 5 and 6 of lecture 8, and pp. 332–6; also pp. 358–359). In these parts of PL Rawls develops the idea that persons as citizens have two fundamental powers:
- (i) the power or capacity to have, formulate, revise, promulgate, live according to, and advance one's particular determinate conception of the good and
 - (ii) the power or capacity to exercise one's 'sense of justice' and be motivated by it, providing others do so as well.

All basic constitutional rights are traced by Rawls to one or both of 'two fundamental cases'. Thus, those liberties or noninjuries that are part of or a means to fully achieving the *first* power (the capacity to have a conception of the good) constitute the first of these cases and those that are a part of or a means to achieving fully the *second* (the capacity to have a realized sense of justice) constitute the second of the fundamental cases. The fundamental liberties and rights so generated, like the conception of the constitution of which they are a part, are not founded 'on basic (or natural) rights'. Rather, Rawls says, the 'foundation is in the conceptions of the person and of social cooperation most likely to be congenial to the public political culture of a modern democratic society' (PL 1996, p. 339). Thus, his justification of constitutional rights is importantly different in this respect from his justification of human rights by reference to certain basic human interests. The two kinds of justification are brought into common focus by his claim that human rights are a 'proper subset' of liberal political rights.

- 13 PL 1996, ch. 4.
- 14 See LoP 1999, p. 68.
- 15 PL 1996, p. 228.
- 16 *Ibid.*
- 17 For Rawls's initial account of the original position, see ch. 3 of *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1999 (hereafter: TJ 1999), summarized in sect. 25 of that chapter. TJ was initially published in 1971 (in 1972 in the UK) and was thoroughly revised in 1999; all references by page to TJ will be to the 1999 edition. For Rawls's later account see LoP 1999, pp. 32–35, 39–42, 57, 69.
- 18 See LoP 1999, sects. 6 and 8 for the respective cases.
- 19 LoP 1999, p. 55.
- 20 PL 1996, p. 228, LoP 1999, p. 50.
- 21 LoP, pp. 49–51.
- 22 See LoP 1999, pp. 40–41, 57.
- 23 LoP 1999, pp. 41, 57.
- 24 See LoP 1999, p. 17, also sects. 11 and 12, esp. p. 86.
- 25 See LoP, p. 70.
- 26 Rawls, LoP 1999, p. 57; also p. 69. David Reidy, in conversation and in his writings, has emphasized the importance of reciprocity in Rawls's LoP. See e.g. David Reidy, 'Rawls on International Justice: A Defense', *Political Theory* 32.3 (2004), 291–319, esp. pp. 302, 305, 310–312; also Reidy, 'Rawls on Human Rights: A Brief Defense', *Southwest Philosophy Review* 19.1 (2003), 147–159, and 'Peoples, Persons and Human Rights: Defending Rawls's View', *Episteme* n.s. 18 (2002), 33–60.
- 27 LoP 1999, p. 37.
- 28 Rawls conceives a two-stage justification of the liberal political conception, see PL 1996, pp. 64–65, 140–141, 385–388. The first stage of justification (justification from democratic principles in a democratic context) is said by Rawls to be 'free-standing', in the sense that it draws only on the embedded, background democratic ideas, presumably already shared to a large degree by fellow citizens. For the term quoted and for Rawls's discussion of it, see PL 1996, pp. 10, 12, 40, 133, 140, 144, and PL 1996, lecture 9. The second stage is, of course, overlapping consensus. (See also n. 39.) Rawls's conception of justification in decent nonliberal societies is structurally like this, in being similarly a two-stage affair.
- 29 LoP 1999, p. 85; also 59, 84–88.
- 30 See LoP 1999, pp. 84–85.
- 31 Rawls in effect singles out items from his short list of human rights here: 'mass murder and genocide' (LoP 1999, p. 79 and n.23 on p. 80), 'slavery and serfdom' (p. 79).
- 32 See LoP 1999, p. 80; also 90n.
- 33 Though Rawls is quite clear on the point that strong and coercive force can be used to counter serious human rights violations by aggressive 'outlaw' states (see LoP 1999, p. 81), he definitely does not limit the idea of forcible sanctions against such human rights violations to just that one case, of aggressive 'outlaw' states, states that endanger peace between nations (see LoP 1999, pp. 8, 36, 49, 79 and his discussion of the Aztecs in n. 6 on pp. 93–94).
- 34 See my paper 'Human Rights: Constitutional and International', in William Aiken and John Haldane, (eds.) *Philosophy and its Public Role*, Vol. 2, *St. Andrews Studies in Philosophy and Public Affairs*, Exeter: Imprint Academic, 2005, pp. 181–196. A revised and longer version was published under the same title in M.N.S. Sellers and David Reidy, (eds.) *Universal Human Rights: Moral Order in a Divided World*, Lanham, MD: Rowman and Littlefield, 2005, pp. 37–57.
- 35 Some indirect evidence of Rawls's view in such matters is provided by Michael Walzer who says 'The enforcement of a partial embargo against South African apartheid is a useful if unusual example. Collective condemnation, breaks in

cultural exchange, and active propaganda can serve the purposes of humanitarian intolerance, though sanctions of this sort are rarely effective.' In a footnote to this passage, Walzer says 'These examples ... were suggested to me by John Rawls.' (See Michael Walzer, *On Toleration*, New Haven, CT: Yale University Press, 1997, pp. 21–22, 115.) It should be noted that the standard of mutually perceived benefit would probably hold in the three severe and urgent cases mentioned earlier (genocide, slavery, etc.). All persons (including those in the affected country) could reflectively decide that the avoidance of these particular injuries was beneficial to them. It is not so clear that it could be met in the second-tier cases (treatment of women, severe racial intolerance or segregation, serious violations of due process, soul-curdling religious intolerance and invective, etc.) in every single case. It is the latter cases (cases where it is not met) that forcible international intervention becomes especially problematic.

- 36 Some critics see Rawls as tying human rights exclusively to rights that can be enforced by strong coercive measures; they assert a conceptual tie here or claim that Rawls relies on grounds that would tend to support those rights that can justifiably be enforced only by strong coercive measures. See, for example, James Nickel, 'How Tight is the Connection between Human Rights and the Permissible International Use of Coercion and Force?' (in Martin and Reidy, (eds.) *Rawls's Law of Peoples: A Realistic Utopia?* Oxford: Blackwell, 2006, pp. 263–277) and Alistair Macleod, 'Rawls's Narrow Doctrine of Human Rights in *The Law of Peoples*' (in Martin and Reidy, (eds.) *Rawls's Law of Peoples: A Realistic Utopia?* Oxford: Blackwell, 2006, pp. 134–149).
- 37 See Barry Hindess, 'Neo-Liberal Citizenship', *Citizenship Studies* 6.2 (2002), 127–143. The main thesis of this short but insightful paper is that 'to be an independent state ... in the post-independence world [is] to be a member of the states system and subject to the regulatory regimes which operate within that system' (p. 132). That system, as I quoted earlier, is itself a global extension of the European state system (p. 132) and operates under the discipline of worldwide market forces and carries out, in other respects (democratization, human rights), a liberal global agenda (pp. 136, 139). There is much merit to this view if we restrict ourselves simply to what Hindess calls 'the international development regime' as applied, in particular, to formerly 'subject peoples' (p. 140; see also pp. 133, 138, 139). For a critique of Rawls and many others as proponents of a universalistic, egalitarian, and individualistic agenda, both domestic and global—as proponents, that is, of a failed 'Enlightenment project'—see John Gray, *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age*, London: Routledge, 1995.
- 38 Among the earliest advocates of a cosmopolitan version of the original position are Thomas Pogge and Charles Beitz; see Pogge, *Realizing Rawls*, Ithaca, NY: Cornell University Press, 1989: part 3, esp. ch. 6, and Pogge, 'An Egalitarian Law of Peoples,' *Philosophy and Public Affairs* 23.3 (1994), 195–224, and Beitz, *Political Theory and International Relations*, 2nd edn, Princeton, NJ: Princeton University Press, 1999. 1st ed. 1979, part 3, sects. 3–4. Even Brian Barry, who is no friend of Rawls's original position construct, developed his own version of a cosmopolitan ideal of justice, relying on the notion of impartiality, out of a careful critique of Rawls's TJ analysis. (See Barry, *Theories of Justice*, Berkeley, CA: University of California Press, 1989, chs. 5 and 6.). Other relevant defenses of a cosmopolitan ideal of justice conjoined with a uniformitarian liberal view of human rights can be found in the following recent discussions: (a) Charles Beitz, 'Social and Cosmopolitan Liberalism', *International Affairs* 75.3 (1999), 515–529 (see also the 'Afterword', pp. 185–219, in his *Political Theory and International Relations*, 2nd edn), Beitz, 'Rawls's Law of Peoples', *Ethics*, 110.4 (2000), 669–696, 'Human Rights as Common Concerns', *American Political Science Review* 95.2 (2001), 269–282, and (more sympathetically toward Rawls) 'Human rights and the law of Peoples', in Deen Chatterjee, (ed.) *The Ethics of Assistance: Morality and the Distant Needy*,

- Cambridge: Cambridge University Press, 2004, pp. 193–215; (b) Thomas Pogge, ‘Cosmopolitanism and Sovereignty’, *Ethics* 103 (1992), 48–75, ‘How Should Human Rights Be Conceived’, *Jahrbuch fuer Recht und Ethik* 3 (1995), 103–120, and ‘The International Significance of Human Rights’, *Journal of Ethics* 4.1 (2000), 45–69; (c) Brian Barry, ‘International Society from a Cosmopolitan Perspective’, in David R. Mapel and Terry Nardin, (eds.) *International Society: Diverse Ethical Perspectives*, Princeton, NJ: Princeton University Press, 1999, pp. 144–163, and ‘Statism and Nationalism: A Cosmopolitan Critique’, in Ian Shapiro and Lea Brilmayer, (eds.) *Global Justice, Nomos* XLI. New York, NY: New York University Press, 1999, pp. 12–66; (d) Allen Buchanan, ‘Justice, Legitimacy, and Human Rights’, in Victoria Davion and Clark Wolf, (eds.) *The Idea of a Political Liberalism*, Lanham, MD: Rowman and Littlefield, 2000, pp. 73–89, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press, 2004, chs. 2 and 3; Kok-Chor Tan, *Toleration, Diversity and Global Justice*, University Park, PA: The Pennsylvania State University Press, 2000, ch. 4.
- 39 The notion of a short list of social primary goods—basic rights and liberties, opportunities, income and wealth, and the social bases of self-respect—is found throughout Rawls’s writings; see TJ 1999, p. 54, PL 1996, pp. 76, 181, and LoP 1999, p. 13. For Rawls’s emphasis on a democratic public political culture and his claim that the fundamental ideas are ‘implicit’ or ‘latent’ there, see PL 1996, pp. 13, 15, 175, 223. For the fundamental ideas themselves (e.g. the idea of citizens as free and equal, of society as a fair system of cooperation for reciprocal benefit, of society as stable and well-ordered), see PL 1996, pp. 14–40.
- 40 See Thomas Pogge, ‘The Incoherence Between Rawls’s Theories of Justice’, in Symposium: ‘Rawls and the Law’. *Fordham Law Review* 62 (2004), 1381–2285. (Pogge’s essay is found on pp. 1739–1759 of the symposium; see p. 1756 for these quotations.)
- 41 Most discussions of reflective equilibrium stem from Norman Daniels’s distinction of ‘wide’ from ‘narrow’ reflective equilibrium; see the bibliographic citations to Daniels in Samuel Freeman, (ed.) *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, 2003 [hereafter: Freeman, (ed.) CCR], p. 540. I have been influenced in my account of reflective equilibrium not only by Daniels but also by Thomas Scanlon, ‘Rawls on Justification’, in Freeman, (ed.) CCR, pp. 139–167, at pp. 140–157.
- 42 see LoP 1999, p. 27.
- 43 For Dworkin’s main discussion of the interpretive approach he favors, and of his distinction between the preinterpretive and interpretive stages of that approach, see his book *Law’s Empire*, Cambridge, MA: Harvard University Press, 1986, chs. 1–3, esp. pp. 47–55, 65–68, 90–95.
- 44 My analysis here is inspired by Rawls’s remark that we can view the application of the eight ‘principles’ (including the short list of human rights) to well-ordered peoples as in effect ‘selecting from different interpretations of those eight principles’ (LoP 1999, p. 86; see also p. 42).
- 45 Michael Walzer, in his book *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame, IN: University of Notre Dame Press, 1994, tries to capture what he calls ‘a universalist moment’ (p. x). To do so he develops (in ch.1) the idea of moral minimalism and its related idea of ‘thin’ universalism, which he contrasts with moral maximalism and its related idea of ‘thick’ moral discourse (a discourse of ‘qualification, compromise, complexity, and disagreement’ [p. 6]). The moral maximum is always local and particular (p. 61), whereas the moral universal is a thin and radically simplified thing (p. 39), “everyone’s morality because it is no one’s in particular” (p. 7).
- Moral universalism, thin universalism, is achieved he argues by abstraction from given local and particular thick moralities (pp. 11, 13, 18).

If this is so, we have something of a problem for Rawls's account of human rights. Human rights, as abstractions out of existing maximal or thick moralities, would always be tied to their grounding in the local; the 'universalist moment' afforded by such abstractions would at best be an overlap made possible by a somewhat fortuitous conjuncture of otherwise different historical trajectories. This suggests too conventionalist a basis for human rights to count as an acceptable ground for such rights in the Rawlsian account. The theory Rawls puts forward requires the grounding *reasons* (the justifications) for human rights to be universal and trans-historical in principle, by reference to 'our common human reason' (in Reidy's phrase) and not by mere happenstance.

A possible way round this problem is suggested by Walzer's idea of reiteration (see *Thick and Thin*, pp. 10, 46, 52). That idea is developed at much greater length in his earlier lecture, 'Nation and Universe', in G. Peterson, (ed.) *The Tanner Lectures on Human Values XI, 1989*, Salt Lake City, UT: University of Utah Press, 1990, pp. 507–555 and reprinted in this book. But it is a way round only under a certain interpretation. If we take reiterated universals (the term Walzer uses in 'Nation and Universe') to be mere repeated convergent abstractions, each one arising directly out of given local and particular thick moralities, then the notion of such universals probably won't be far enough removed from the conventionalist mold to do Rawls's assigned job. But if the abstraction, once formed, is allowed to remain free standing and to take on a life of its own, in moral discourse, then it will be more like the autonomous reasons that Rawls calls into service as justifying grounds of human rights, reasons that that will be understandable and acceptable, in principle, to all human beings.

It is not clear to me that Walzer always understands thin (moral) universals to be such relatively autonomous authentic reasons. (He does not, for example, in 'Nation and Universe', p. 513; pp. 12–13 in this book) But there is some textual support for reading abstraction and reiterative universalism as allowing for this outcome. (See *Thick and Thin*, p. 15, 'Nation and Universe', p. 515 [pp. 12–13 in this book]; and some passages are simply ambiguous on this point but can be pressed into the service we have in view, e.g. pp. 527–528, 531, 547; pp. 21–22, 23–44, 33–34 in this book). If the favored reading can be sustained, as the best one, then Walzer's notion of thin universalism can be made congruent with Rawls's thin account of human rights as themselves grounded on objectively universal reasons.

For a very helpful overview of Walzer's recent writings on this and related topics, see Peter Sutch, 'Reiterating Rights: International Society in Transition', in B. A. Haddock and P. Sutch, (eds.) *Multiculturalism, Identity and Rights*, London: Routledge, 2003, pp. 213–230.

46 See LoP 1999, p. 121.

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