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Exercising Judgments in the World: A Consideration of Cicero's Theoretical Writings on Politics and their Continuing Relevance to International Political Theory

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Philosophy

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June 2021

Abstract

This project seeks to show International Political Theorists that Cicero's theoretical writings on politics are of continuing relevance to their research. I argue that this field of study would benefit a great deal in holding a conception of politics which is more personal than current frameworks presuppose and that his theoretical writings on politics provide an excellent basis upon which to investigate real-world problems in politics, whether domestic, international, or global. In building a conception of politics which is (partly) personal, the project begins with a review of some literature in International Political Theory and a few neighbouring fields related to exercising judgments in the world, before moving on in the second chapter to address the literature reviewed through Hannah Arendt's theoretical writings on politics. Arendt's writings allow for the development of several terms used in the first chapter which are touchstones of the civic republican tradition, such as tradition, authority, and *persona*, at the same time as preparing the way for a consideration of Cicero's writings. The third chapter, as well as developing numerous arguments from the first two, provides an account of Cicero's framework of civic virtues as he articulates them in the *De Officiis*, and the final chapter carries out the same task in relation to his theoretical framework of *res publica* as articulated in the *De Re Publica*.

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A Note on Texts and Translations

For the Latin texts of Cicero, I have used the Perseus Digital Library, available online at www.perseus.tufts.edu. For the English translations, I have used the editions of the texts listed in the bibliography, and where no editions are listed (for some of Cicero's letters and speeches), the Perseus Digital Library. Any passages where I have departed from the translations to any extent are marked with an asterisk (*). Changes that have been made have been minimal and always with reference either to the Perseus Digital Library, my supervisor, or as was most often the case, both, and I take full responsibility for all these changes. I have frequently included the relevant Latin words either alongside the translations or replacing them, typically quoting them as they appear in the texts, e.g., nouns are often cited in oblique cases. The noun *praeceptum* (and its plural *praecepta*) I have chosen to translate as 'watchword(s)', rather than 'precept(s)' or 'maxim(s)', because the meanings of the latter two carry some connotations from modern philosophy which I think are best bracketed in this project. By 'watchword(s)', I do not mean to connote any degree of sarcasm, frivolity, or irony, as might be picked up from terms such as 'slogan(s)', 'buzzword(s)', or 'mantra(s)'; I mean something along the lines of 'guiding principle(s)' or 'word(s) worth watching'.

Acknowledgements

I thank my parents first, without whose great love and support this project would never have been written; the rest of my family next for the same, but especially our newest member Reggie, whose video calls in the final stretch have kept me sane and happy; and then all my friends, who have been keeping my spirits up during lockdown, whether they realised it or not. I look forward to seeing all my family and friends in person again soon.

This project would also never have been written without the financial support of the Economic and Social Research Council. Such funding is obviously and rightly granted for the public's benefit, but my gratitude to the Council for giving me a scholarship is very personal. I have learned more about the world these past few years than I ever could have done without its generosity, and I hope the result of my learning as I have set it out in this project repays the Council's investment in kind.

I owe a plenty of gratitude to all of the scholars and students with whom I have engaged and from whom I have learned a great deal over the years, but feel especial mention should be made here of Kevin Francis, who provided invaluable guidance of a deeply pedagogical kind from the outset, on the Access programme at Glasgow, as well as through my undergraduate years as I moved to and fro (or willy-nilly) between the study of philosophy and the study of politics; of Jed W. Atkins, Rob Goodman, Margaret Graver, Geert Roskam, Katharina Volk and James E.G. Zetzel for generously imparting to me some of their expertise on Cicero as I began reading him in year 1 of this project; of Linda Knox, whose genuinely outstanding teaching on the 'Basic Latin for Postgraduates' class at Glasgow (which I twice failed to juggle successfully with research and teaching) provided me with the basic Latin that I have and who bears no responsibility whatsoever for any of the errors or mistakes I have made in this project; of Karen Wright, with whom I've shared many an edifying conversation about the history of political thought over the years; and of Luke Armstrong, who in the final stages of this project very kindly took the time to read through drafts of the first two chapters and provided feedback which has led me to make some key improvements to the final product.

By a happy chance, there was already a very distinguished Cicero scholar in the Classics department at Glasgow when I began working on this project and who soon afterwards became one of my supervisors. Catherine Steel's understanding of Cicero and the Roman republic is *sui generis* and astonishing. I give and hold a very deep gratitude for all the good support she has given me in this project, and whatever the future may bring, I know there will not come a time for me when I am not learning from her about this pivotal point in history.

Craig Smith's expertise in the history of political thought has provided the sturdy bridge over which I am carrying Cicero into IPT. Time and again—and I think often without him realising—when I thought I was discovering in Cicero some unrecognised and important problem in politics that we should be considering, he made me see (pace the über-contextualists) that it was one well-recognised and which has been exercising the judgments of scholars for centuries, saving me from overstating my case and reinforcing my belief that the greatest need in IPT is in coming to a deeper understanding of this history. Craig showed me at a

far more practical level than I address in the first chapter that an understanding of the world along the lines of Cicero's has never really went anywhere very far across the ages, and his facility for distilling my often-clouded speech and argument has been of immeasurable benefit (even as clouds, obviously through no fault of his own, remain); I thank him for his good sense and his counsel throughout this project.

My first encounter with Cian O'Driscoll was as a second year undergraduate, when he presented me with a prize for the International Relations class. He introduced me at that point to Thucydides, but at the time, I was much more vexedly interested in the 'wrongness' I could see in various 'scientific' approaches to international politics and thought that some 'rightness' might be found in the philosophy of social science. Our second encounter was when he supervised my undergraduate dissertation in this area, and our third when I investigated it in terms of postgraduate research and felt I was running up against a brick wall (abstract and otherwise) on many fronts. I spoke with Cian at this point about my dual commitments to politics as both 'science' and 'art', he persuaded me to pursue the latter under his wing, and this project is the result. It was initially a conceptual history of honour in the just war tradition, until a great vista appeared before me in the Latin term *honestas* at my first stop in the tradition, Cicero, and here I was granted an extended stay. Throughout my time at Glasgow, Cian has provided me with his constant support, encouragement, intelligence, insight, counsel, respect, and friendship. Many a time throughout my graduate years I have not deserved what he has done for me, and it is to Cian, with my deepest gratitude, that I dedicate this project.

I had occasion to revisit my Master's dissertation a few times in the past few months, which made me realise how much I had learned in the meantime. I imagine that in a few years, in revisiting this project, I shall cringe just as much at what I have written. All errors, mistakes, and infelicities in it are, of course, entirely my own responsibility.

Declaration

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Signature:

Gavin Maxwell Stewart

Printed Name: Gavin Maxwell Stewart

List of Abbreviations

The following abbreviations are used in the footnotes and the editions of the texts used are listed in the bibliography:

Arendt

<i>BPF</i>	Between Past and Future: Eight Exercises in Political Thought.
<i>CR</i>	Crises of the Republic.
<i>EJ</i>	Eichmann in Jerusalem.
<i>EU</i>	Essays in Understanding, 1930-1954. Jerome Kohn (ed.).
<i>HC</i>	The Human Condition.
<i>JW</i>	The Jewish Writings. Jerome Kohn (ed.).
<i>LKPP</i>	Lectures on Kant's Political Philosophy. Ronald Beiner (ed.).
<i>LM1</i>	The Life of the Mind, Vol. I: Thinking.
<i>LM2</i>	The Life of the Mind, Vol. II: Willing.
<i>MDT</i>	Men in Dark Times.
<i>OR</i>	On Revolution.
<i>OT</i>	The Origins of Totalitarianism.
<i>PP</i>	The Promise of Politics. Jerome Kohn (ed.).
<i>RJ</i>	Responsibility and Judgment. Jerome Kohn (ed.).
<i>TWB</i>	Thinking Without a Banister: Essays in Understanding, 1953-1975. Jerome Kohn (ed.).

Cicero

<i>Acad.</i>	<i>Academica Quaestiones</i> (On Academic Scepticism)
<i>Amic.</i>	<i>De Amicitia</i> (On Friendship)
<i>Arc.</i>	<i>Pro Archia</i> (On Behalf of Aulus Archias)
<i>Att.</i>	<i>Epistulae ad Atticum</i> (Letters to Titus Pomponius Atticus)
<i>Caec.</i>	<i>Pro Caecina</i> (On Behalf of Aulus Caecina)
<i>Cael.</i>	<i>Pro Caelio</i> (On Behalf of Marcus Caelius Rufus)
<i>De Or.</i>	<i>De Oratore</i> (On the Ideal Orator)
<i>Div.</i>	<i>De Divinatione</i> (On Divination)
<i>Fam.</i>	<i>Epistulae ad Familiares</i> (Letters to Friends)
<i>Fin.</i>	<i>De Finibus</i> (On Moral Ends)
<i>Har. resp.</i>	<i>De Haruspicum Responsis</i> (On the Responses of the Soothsayers)
<i>Inv.</i>	<i>De Inventione</i> (On Invention)
<i>Leg.</i>	<i>De Legibus</i> (On the Laws)
<i>Man.</i>	<i>Pro Lege Manilia</i> (On Behalf of the Manilian Law)
<i>Mar.</i>	<i>Pro Marcello</i> (On Behalf of Marcus Claudius Marcello)
<i>Mil.</i>	<i>Pro Milone</i> (On Behalf of Tito Annio Milone)
<i>Mur.</i>	<i>Pro Murena</i> (On Behalf of Lucius Licinius Murena)
<i>Nat. D.</i>	<i>De Natura Deorum</i> (On the Nature of the Gods)
<i>Off.</i>	<i>De Officiis</i> (On Duties)
<i>Part. Or.</i>	<i>Partitiones Oratoriae</i> (Divisions of Oratory)
<i>Q.fr.</i>	<i>Epistulae ad Quintum Fratrem</i> (Letters to Brother Quintus)
<i>Rep.</i>	<i>De Re Publica</i> (On the Commonwealth)
<i>Sen.</i>	<i>De Senectute</i> (On Old Age)
<i>Tusc.</i>	<i>Tusculanae Disputationes</i> (Tusculan Disputations)

Whoever undertakes to set himself up as judge in the field of truth and knowledge is shipwrecked by the laughter of the gods.

Albert Einstein¹

*...Thanne is it wysdom, as it thynketh me,
To maken vertu of necessitee...*

Geoffrey Chaucer²

¹ "Wer es unternimmt, auf dem Gebiete der Wahrheit und der Erkenntnis als Autorität aufzutreten, scheitert an dem Gelächter der Götter." Albert Einstein, 1954. 'Neun Aphorismen'. *Essays presented to Leo Baeck on the occasion of his eightieth birthday*. London: East and West.

² Jill Mann (ed.), 2005. *Geoffrey Chaucer: The Canterbury Tales*. London: Penguin. Cf. T. McAlindon, 1986. 'Cosmology, Contrariety and the Knight's Tale'. *Medium Aevum* 55(1). pp.41–57.

Introduction

International Political Theory

From the inception of International Relations (IR) as an academic discipline in the early twentieth century, its scholars have been studying and benefiting from texts in the history of political thought and in political theory or philosophy, but after the onset of the mid-century ‘behaviourist revolution’ in the social sciences, ethical or political analysis of international affairs came to be largely forsaken by IR scholars in favour of more rigoristic, scientific or systematic inquiry, whether of a positivist (or rationalist), constructivist or post-positivist (or reflectivist) persuasion.¹ In the 1970s and 1980s, a sub-field appeared in the discipline which was usually referred to as normative IR theory or international ethics, comprising IR scholars who re-discovered or continued to study and benefit from the history of political thought and political theory or philosophy, and from the 1980s onwards, it came to be referred to more frequently as International Political Theory (IPT).²

This briefest of stories about academic beginnings, developments, fruitions, abscissions, and new beginnings could be told in countless ways—as Chris Brown says, the relationship between the fields of study mentioned here remains “complex and troubled”—and my reason for telling the one I have told is to prefigure for the reader some of the blurring of disciplinary boundaries and mingling of different scholarly idioms in this project.³

The editors of the recently published Oxford Handbook describe IPT as focusing:

¹ ‘Constructivism’ is a term imported to IR from social theory, itself influenced by the ‘behaviourist revolution’ in the social sciences. Broadly speaking, it refers to a meta-theoretical position that reality is socially constructed, and although sometimes taking positivist (or rationalist) and sometimes post-positivist (or reflectivist) forms, is often construed within IR as offering a ‘middle way’ between the two ‘sides’. See for example: John R. Searle, 1995. *The Construction of Social Reality*. London: Penguin; Emanuel Adler, 1997. ‘Seizing the Middle Ground: Constructivism in World Politics’. *European Journal of International Relations* 3(3). pp.319–363. On the nimety of -isms at the meta-theoretical level in IR, see for example: Colin Wight, 2013. ‘Philosophy of Social Science and International Relations’. Carlsnaes et al. (eds.), *Handbook of International Relations*. Ch.2.

² Chris Brown, 2017. ‘Political Thought, International Relations theory and International Political Theory: An Interpretation’. *International Relations* 31(3). pp.227–240.

³ Brown, *Political Thought, IR theory and IPT*. p.227.

“...on the point where two fields of study meet—International Relations and Political Theory. It takes from the former a central concern with the ‘international’ broadly defined; from the latter it takes a broadly normative identity ... A central proposition of IPT is that the ‘domestic’ and the ‘international’ cannot be treated as self-contained spheres, although this does not preclude states and the state system from being regarded by some practitioners of IPT as central points of reference.”⁴

It seems to me that this nicely puts the purview of IPT, although I would wish to add to it that it could involve for its scholars “the interpretation of [not only] historical, canonical, and contemporary texts on international politics and international law”, but also historical, canonical and contemporary texts in the humanities more generally.⁵ Although the Handbook’s blurb calls IPT a discourse, the editors in the Introduction move from calling it a field of study to calling it a discipline, one which has emerged after “the collapse of the notion of a self-contained discipline of International Relations as a result of the challenges of constructivism, critical theory, feminist and gender theory, green political theory and post-structuralism in all its forms.”⁶ While the organisation of the Academy into disciplines seems to be not only necessary but positively beneficial—disciplines are established bodies of specialised knowledge peopled by recognised experts in that knowledge who can judge the quality and reliability of new research, as well as important sites for integrating individual pieces of research into larger frameworks which transcend the achievements of the individual researcher—there is always the risk of a given discipline becoming too narrow, too discrete, too restrictive, turning in on itself and rendering the specialised knowledge it produces insufficient for addressing the complex issues and problems we face in the real world.⁷ The real world, in fact, is a central concern of the editors of the Handbook and it frames one of the questions they ask of all its contributors:

⁴ Chris Brown and Robyn Eckersley (eds.), 2018. *The Oxford Handbook of International Political Theory*. Oxford: Oxford University Press. p.3.

⁵ Brown and Eckersley, *Oxford Handbook of IPT*. p.5

⁶ Brown and Eckersley. *Oxford Handbook of IPT*. pp.3–4. Cf. Clifford Geertz, 1980. ‘Blurred Genres: The Refiguration of Social Thought.’ *The American Scholar* 49(2). pp.165–179.

⁷ On the benefits of disciplinarity, see for example Jerry A. Jacobs, 2014. *In Defense of Disciplines: Interdisciplinarity and Specialization in the Research University*. University of Chicago Press; John Aldrich, 2014. *Interdisciplinarity: its Role in a Discipline-based Academy*. Oxford: Oxford University Press.

“...how does IPT connect with real-world politics? In particular, how does it engage with real-world problems, and position itself in relation to the practices of real-world politics?”⁸

A real-world problem identified by field philosopher Robert Frodeman is that the assumptions upon which the Academy’s disciplinary structure were built in the nineteenth century are breaking down under current social and technological conditions, which in part has led to knowledge-production itself developing in spheres outside of, and thereby presenting a challenge to, the Academy.⁹ “Faced with a super abundance of knowledge in every subfield [“epistemorrhoea”]” within the Academy, he argues, “we divide and divide again, while the problems we face are increasingly integrative in nature”.¹⁰ Frodeman turns to notions of inter-, trans- and de-disciplinarity in approaching this problem, and frames his overall argument in terms of an ecology of knowledge, but behind all of these terms of art is his recognition and understanding that the Academy did once have an integrative approach, one that came to be called from around the nineteenth century onwards ‘the humanities’.¹¹ In our deeply technological age, he argues, “philosophy and the humanities have never been so necessary to our *personal* and *public* lives. But at this very moment the humanities have never been so marginalized.”¹² I regard this project as a contribution towards promoting the humanities within IPT and bringing them in from the margins to our personal and public lives, holding a deep conviction that IP theorists would benefit a great deal in terms of handling real-world politics and real-world problems were they to be reading more widely—and still relevantly—in the humanities.

The general problem it seems to me was understood and raised by Michael Walzer in his postscript to the fifth edition of his *Just and Unjust Wars*, in which

⁸ Brown and Eckersley, *Oxford Handbook of IPT*. p.4.

⁹ Robert Frodeman, 2014. *Sustainable Knowledge: A Theory of Interdisciplinarity*. New York: Palgrave MacMillan.

¹⁰ Frodeman, *Sustainable Knowledge*. pp.2 and 5.

¹¹ Julie Thompson Klein and Robert Frodeman, 2017. ‘Interdisciplining Humanities: A Historical Overview.’ Robert Frodeman (ed.), 2017. *The Oxford Handbook of Interdisciplinarity*. Second Edition. Oxford University Press. See also Frodeman’s excellent introduction to this Handbook, as well as: Harvey J. Graff, 2015. *Undisciplining Knowledge: Interdisciplinarity in the Twentieth Century*. Baltimore: John Hopkins University Press; Joe Moran, 2010. *Interdisciplinarity: The New Critical Idiom*. New York: Routledge.

¹² Frodeman, *Sustainable Knowledge*. p.6. Emphasis added.

he appraises the “minor academic industry” that is just war theory for which he bears “some small responsibility”:

“What was the [just war] theorist reading before she began writing? ... Before I wrote *Just and Unjust Wars*, I read some key texts in Catholic moral theology and early international law—Augustine, Aquinas, and Vitoria; Grotius and Pufendorf, and a few others. I read a handful of nineteenth and twentieth century legal textbooks and a couple of contemporary theorists, like Paul Ramsey ... But the greater part by far of my reading was ... in military history, both academic and popular, and then in the memoir literature produced by soldiers of different ranks ... and then in wartime journalism and commentary ... Finally, I read many of the novels and poems that deal with the experience of fighting and the company of soldiers ... I sense that many [just war theorists] are not reading the way I did. They are preoccupied with the academic literature about moral philosophy and about just war theory ... they are reading each other ... [and] after reading each other, these theorists argue with each other ...”¹³

Walzer recognises that reading each other and arguing with each other is a common academic practice, but he says that it has always seemed to him to be problematic, especially when the subject is politics and war.¹⁴ It involves a turning away from the real world. His own reading in a sense involved such a turning away as well, but in another sense, it did not: Walzer was reading not only what scholars had thought about and wrote upon his subject in the past (and only occasionally in the present); he was also reading of real-world human experiences in it, whether articulated in poetry or prose. As such, I think it is fair to say that Walzer’s studies were humanistic to an extent prior to writing his *Just and Unjust Wars* which has not been reached by many in the ‘minor academic industry’ it touched off. There is no doubt many reasons as to why this has been the case, but I suspect one of the big ones has been the research norms of disciplines. As mentioned above, there seem to be good reasons as to why these norms are in place, but I nevertheless think that there is a strong case for IPT to make sure that it does not become *too* disciplinary, to continue to allow classics like *Just and Unjust Wars* to be written, and to the great credit of the editors of the Handbook, they refer to IPT far more often in their Introduction

¹³ Michael Walzer, 2015. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Fifth Edition. New York: Basic. p.336.

¹⁴ Cf. Michael Walzer, 2007. ‘A Critique of Philosophical Conversation’. David Miller (ed.), 2007. *Thinking Politically: Michael Walzer, Essays in Political Theory*. New Haven: Yale University Press. Ch.2

simply as a field of study. And as evidenced in its publication, IPT has now established itself as a recognised field of study, associated with various outlets in the Academy where its conversations are taking place, such as in *Ethics and International Affairs*, *Review of International Studies*, and the *Journal of International Political Theory*. The editors of the latter I think provide us with an informative account of the field in general when they describe their journal's *raison d'être* as:

“ ... an interdisciplinary, peer-reviewed forum to explore international and global politics from a range of theoretical and philosophical perspectives. The journal welcomes approaches that are historical, analytical, comparative and normative, and it provides a common venue for scholars across the social sciences and humanities seeking to advance a new generation of thinking on the breadth of interests concerning international political theory.”¹⁵

With these summaries as articulated by the editors of both the Oxford Handbook and the journal dedicated to the field, I feel comfortable that my project falls within the purview of IPT and that the reader will understand it as doing so. One of my aims in it is to broaden researchers' interests in the field by bringing into it some themes from the humanities which are already being addressed in neighbouring fields such as the history of political thought, political theory, comparative political theory, political philosophy, and (slightly further afield) the classics—themes relevant to exercising judgments in the world such as rhetoric and 'virtue ethics'—but which I think have yet to be given due consideration by IP theorists.

Civic Republicanism in IPT and Exercising Judgments in the World

With the publication of his *The Republican Legacy in International Thought* in 1998, constructivist IR theorist Nicholas Onuf brought the civic republican tradition to the attention of the field of international studies in general and to the discipline of IR in particular.¹⁶ There appeared, however, to be insufficient engagement with Onuf's text by scholars in the discipline such that Emanuel

¹⁵ Journal of International Political Theory, 2020. Available online: <https://journals-sagepub-com.ezproxy.lib.gla.ac.uk/home/ipt> Accessed 29th October 2020.

¹⁶ Nicholas Onuf, 1998. *The Republican Legacy in International Thought*. Cambridge: Cambridge University Press.

Adler, in his chapter on constructivism in the second edition of the Sage *Handbook of International Relations* in 2013, felt it necessary to remind them that it was still there as a rich resource for developing their research.¹⁷ Onuf argues in his text that many IR scholars concern themselves with several of the tradition's pieces but "rarely see a connection [in their research] to a republican past because they do not look for it, and they rarely see how the pieces might once have fit together."¹⁸ Writers in the civic republican tradition such as Machiavelli, Grotius, Hobbes and Kant are read "in a context that defines international thought as a contest between realism and liberalism", skewed accordingly, and important continuities and discontinuities between this ostensibly disparate bunch missed.¹⁹ Onuf carries out an impressive and wide-ranging job in connecting the civic republican tradition to IR theory. Near the beginning of the text, he writes on the undeniably humanistic theme that we (in this case, scholars of International Law and IR) tell "stories about ourselves", before going on to distinguish between 'Atlantic' and 'Continental' versions of republicanism in the modern age and connecting them to themes in IR such as meta-theory, levels of analysis, construction projects, and "realism and the quest for rigor".²⁰ Although I am unsure as to why Hannah Arendt's writings did not find their way into Onuf's project, his focus is still very much upon the civic republican tradition in the modern age (he touches only very briefly on the tradition's ancient forebears) and connecting it with the research that was going on in the late 1990s in IR. As such, although there are a great many points of

¹⁷ Emanuel Adler, 2013. 'Constructivism in International Relations: Sources, Contributions and Debates'. Walter Carlsnaes, Thomas Risse and Beth A. Simmons (eds.), 2013. *The Handbook of International Relations*. Second Edition. London: Sage. p.134.

¹⁸ Onuf, *The Republican Legacy*. p.3.

¹⁹ There is already a chorus making the call for greater attention to be paid to the history of political thought in IR and IPT, to which I gladly add my voice; there is no need here for me to write the score. See, for example: William Bain and Terry Nardin, 2017. 'International relations and intellectual history'. *International Relations* 31(3). pp. 213–226; Duncan A. Bell, 2001. 'International relations: the dawn of a historiographical turn?' *British Journal of Politics and International Relations* 3(1). pp.115–126; David Boucher, 2018. 'History of International Thought: Text and Context'. Brown and Eckersley (eds.), *Oxford Handbook of IPT*. pp.21–34; Ian Hall, 2017. 'The history of international thought and International Relations theory: from context to interpretation.' *International Relations* 31(3). pp.241–260; Edward Keene, 2017. 'International intellectual history and International Relations: contexts, canons and mediocrities'. *International Relations* 31(3). pp.341–356.

²⁰ Onuf, *The Republican Legacy*.

agreement between my project and *The Republican Legacy in International Thought*, I do not engage with or develop any of Onuf's arguments therein.

In the Oxford Handbook of IPT, Steven Slaughter's chapter, 'Republicanism and International Political Theory', comes under Part VIII of the text, entitled *New Directions in International Political Theory*.²¹ Slaughter provides an overview of contemporary republican political theory, using Philip Pettit's 'neo-Roman' version and its conception of non-domination as a framework for considering republicanism as it has been applied in IR and IPT to date. He identifies from Pettit's account four elements of republican practice: the development of a constitutional state which exercises power and establishes non-domination through the rule of law; practices of (non-direct) democracy as a crucial process which develops a sense of political responsibility; an active conception of citizenship manifest in an enduring culture of patriotism and civic virtue; and a context of international law which protects republican states from being dominated by other states.

Slaughter's account of republican theory in IR/IPT begins with Daniel Deudney who, echoing Onuf's claim about realism and liberalism by calling them 'incomplete fragments', as well as Quentin Skinner's claim that important elements of the civic republican tradition 'slipped from sight' in the nineteenth century, argues that the twin concerns of liberty and security in the international context are handled by states delegating power to international institutions. Slaughter moves on to consider more cosmopolitan strains of republican theory in IR, beginning with the work of Jose Luis Marti, who draws upon the notion of a *civitas maxima* (first propounded in 1749 by Christian Wolff who was writing upon the *ius gentium* using the scientific method) as that which should be developed in our age of globalisation, and he follows this up with a consideration of the work of James Bohman, who argues for a more fluid and global conception of citizenship. From these 'communitarian' and 'cosmopolitan' versions of republican theory, Slaughter goes on to consider the 'Frankfurt-style' or critical republicanism of Cécile Laborde, which seeks to

²¹ As I hope will become clearer to the reader as my project proceeds, all chapters of the Handbook under the heading of New Directions in IPT (in summary, their topics are (i) judgment, (ii) virtues, (iii) emotions, (iv) recognition (a.k.a. honour) and (v) republicanism) are certainly new directions in the field, but not new in the sense of being unprecedented.

identify the dominating or oppressive features of existing institutions and relationships, and having identified them, advocate their transformation.

Although Slaughter acknowledges that “republicanism requires ... significant changes in the way people perceive democracy, authority and political responsibility”, in using the contemporary republican theory of Pettit and his conception of non-domination as a base upon which to consider civic republican IPT scholarship, he also argues that “republicanism’s focus on power and liberty makes a distinctive and important contribution to IPT” which, although I think certainly true as far as it goes, omits the civic republican tradition’s equally strong focus upon authority as that quality which mediates between power and liberty.²² It is one of my aims in this project to enrich IPT’s understanding of this through the writings of Arendt and Cicero. As with Onuf’s text, Arendt is absent from Slaughter’s overview of republicanism and IPT and he touches only very briefly upon the civic republican tradition’s ancient forebears.

Slaughter rightly contends in his chapter, however, that the institutional and constitutional aspects of civic republican theories need to be complemented with a greater focus upon citizens, but he also construes this as “a civic account that sees citizens as being active political actors who work through and beyond the state as activists who seek to realize non-domination”, bringing to bear in the world “types of political activity [which] have a capacity to transcend the republican state”.²³ He draws at this point on James Tully’s conception of ‘diverse citizenship’ and Stuart White’s conception of ‘transnational republican solidarity’ in moving closer to arguments about civil society (whether domestic or global) which many scholars would still probably take to be more ‘liberal’ than ‘republican’, and he also brings Onuf’s republican arguments to bear in support of this move, who argues that republicans call for both “local civic activism and a cosmopolitan view of the human condition”.²⁴

²² Slaughter, *Republicanism and International Political Theory*. pp.626 and 636. I do not mean to say here (quite the contrary) that either Slaughter or Pettit are dismissive of the importance of authority in the civic republican tradition.

²³ Slaughter, *Republicanism and International Political Theory*. p.632–633.

²⁴ Slaughter, *Republicanism and International Political Theory*. pp.632–633.

In this project, I develop all the themes I have highlighted here from Slaughter's Handbook chapter, but I have chosen not to do so through an engagement and development of the arguments made by contemporary republican political theorists or IP theorists—not because I think these arguments are wrong (as with Onuf's text, the reader will find a great many points of agreement between what I write in this project and what has been written by republican political and IP theorists), but in the spirit of Walzer's approach as set out above and also for the following two reasons. First, I find that many of the themes highlighted by Slaughter are being addressed by a wider group of scholars, both in IPT and in neighbouring fields, than just those who are concentrating on the development, and speaking the language, of the neo-Roman republican accounts provided by Pettit, Skinner, et al., or indeed any of the other versions of contemporary republican political theory. Many in this wider group of scholars are looking not only to political theory but to political philosophy and the history of political thought as well, and although some of them would no doubt balk at labelling their own research as 'civic republican', they are nevertheless drawing upon the writings of thinkers who either stand (however strangely) in the civic republican tradition (such as Kant), or who fix their focus only upon what Onuf called one of the tradition's pieces. In the first chapter of my project, I engage with some of the writings of this wider group of scholars in the hope of showing IPT, including its republican political theorists, that what we call 'civic republicanism' is much more than a mere theory battling against theories of 'liberalism'. As Onuf recognised, it is better described as a tradition, and it seems to me that it overlaps with 'liberalism' understood as a tradition in interesting ways.

The second reason I have chosen not to engage with fellow republican political theorists in IPT has to do with the main theme of my project, exercising judgments in the world, which I shall try to explain first. By 'main theme', I mean to say that it is an understanding which recurs throughout and pervades my project. Exercising judgments in the world I am almost tempted to say is a civic republican principle, even as I have never seen it articulated as such; it seems to me to be what citizens are doing in republics, as it is what human beings are simply doing. The issue of judgment has long been handled in IPT,

mainly through the works of Chris Brown.²⁵ In the Oxford Handbook, it is given a conceptual treatment by Friedrich Kratochwil.²⁶ And it is also being considered extensively by political theorists (literature which I think will also be of great benefit to IP theorists who take up this new direction).²⁷ Arendt, of course, famously argued that she could not see a faculty of judgment operating in Adolf Eichmann, nor even a faculty of thought, and this led her to think deeply about our faculties of thinking, willing and judging, or what she called ‘the life of the mind’.²⁸ There has been some very interesting work carried out on her theory of judging, even as she never got to write that planned third volume of *The Life of the Mind: Judging*.²⁹ But my concern in this project is *not* with theorising or conceptualising judgment or judging, so I do not engage here in any kind of depth with this aspect of Arendt’s writings, nor with any other scholarship on judgment or judging understood as concepts. Arendt did recognise, however, that closely related to our faculties of thinking, willing, and judging, howsoever they might be understood or theorised, is our status as *persons*. She was terribly concerned that we maintain personal responsibility in the world for our actions, howsoever our thinking, willing and judging feed into those actions. That we are persons is a fundament of my argument and I regard our status as persons as being very closely connected both to the civic republican tradition and to exercising judgments in the world. That we are persons is of course recognised, appreciated, and understood by contemporary republican political theorists such as Skinner and Pettit, but here I have exercised my own judgment that, although the scholarship of Skinner, Pettit, and other republican theorists is excellent, it would nevertheless be a good use of my time not to take off from or develop their own arguments, but instead to ‘drill down’ on those of Arendt’s and Cicero’s regarding this matter. Whether my judgment in this has been correct,

²⁵ See for example: Chris Brown, 2010. *Practical Judgment in International Political Theory: Selected Essays*. London: Routledge.

²⁶ Kratochwil has theorised not only judgment but also *praxis*: Friedrich Kratochwil, 2018a. ‘Judgment: A Conceptual Sketch’. *Oxford Handbook of IPT*. pp.575–586; Friedrich Kratochwil, 2018b. *Praxis: on Acting and Knowing*. Cambridge: Cambridge University Press.

²⁷ See for example the works of Linda M.G. Zerilli and Alessandro Ferrara. A good account of the limitations of theorising judgment can be found in this book review: Leslie Paul Thiele, 2000. ‘Common Sense, Judgment, and the Limits of Political Theory’. *Political Theory* 28(4). pp.565–588.

²⁸ *BPF; EJ; RJ; LKPP; LM1*.

²⁹ See for instance: Ronald Beiner and Jennifer Nedelsky (eds.), 2001. *Judgment, Imagination and Politics: Themes from Kant and Arendt*. New York: Rowman and Littlefield.

or right, or appropriate, or not, is for others to decide. Cicero has no theory of thinking, willing, or judging to offer us, but he does have much to say about *personae* and politics, and my focus in this project is upon his theoretical writings on politics and their continuing relevance to IPT. I understand exercising judgments in the world to be something that we all simply do, whether we do it as scholars, as citizens, or simply as human beings. And the research question to which I am responding in this project is: *What can Cicero's theoretical writings on politics contribute to arguments in IPT related to exercising judgments in the world?*

Hannah Arendt³⁰

As both its title and my research question indicate, the focus of my project is on Cicero's theoretical writings on politics. Why, then, bring Arendt's writings into it? Briefly stated, Arendt's writings perform a double function in my argument: they help in clearing the ground after the first chapter and in preparing the reader for the next two. In terms of ground-clearing, she helps us side-line many of the arguments in the first chapter that rely in one way or another upon the modern phenomenon that is philosophy of history, and she also helps in clarifying the meanings of some key terms in my project which are used in that chapter but are insufficiently developed therein, such as tradition, authority, and *persona*.³¹ In terms of preparing the reader for a consideration of Cicero's theoretical writings on politics, Arendt—one of quite a few political theorists in the twentieth century who sought in one way or another to inject ancient political thought into modern—provides us with an extensive account of civic republican principles, one which helps fill out what was discussed of them in the first chapter at the same time as it feeds into what is discussed of them in the subsequent two chapters.

It is certainly futile trying to extract any doctrines from Arendt's writings, who said "I have no political philosophy that could sum up with an *ism* ... After all,

³⁰ Trusting that the reader knows both figures well enough, I have forgone providing biographies of both Arendt and Cicero in this project. For an excellent one of Arendt's, see Elisabeth Young-Bruhl, 1982. *Hannah Arendt: For Love of the World*. New Haven: Yale University Press.

³¹ Such terms are, of course, considered and developed elsewhere in political theory and IPT, but I have judged it best for our purposes to address them through Arendt's writings.

moi je me sers où je peux. I take whatever I can and whatever suits me.”³² She takes from the German philosophy in which she was trained whatever she can and whatever suits her, and as we shall see, this is something like Cicero’s general approach to philosophy as well; an approach which is often disparagingly labelled ‘eclectic’ in a certain tradition of German idealism.³³ Like Cicero, Arendt’s fundamental intentions in writing political theory, I believe, were to provide her readers not with doctrines or anything of the sort, but with ‘food for thought’; thoughts that would guide one, first, into a study of the past, a *remembrance*, and consequently, to a deep concern for the world—the only place where human beings may have opportunities not only for acting but for thinking, willing, and judging as well—in the present and future. She is well known for using the image of Penelope’s web in relation to thinking—“it undoes every morning what it has finished the night before”—and she makes a point of relegating Plato to a footnote on this point.³⁴ In the *Phaedo*, he also had mentioned Penelope’s web in relation to thinking, but in the opposite sense: once free of the body’s pleasures and pains, the soul (the ‘mind’) of the philosopher will *not* act like Penelope undoing her own weaving; he or she will have ‘seen the light’, will have finished weaving the burial shroud. Perhaps less well known and not mentioned by Arendt is that Cicero—in philosophy, an Academic sceptic—also used the image of Penelope’s web in his *Academica* against the dogmatic arguments of the Stoics.³⁵ “Every thought is an after-thought”, Arendt says, I think not unlike how every statement of the Academic Sceptics comes after the truth-claims (doctrines) of dogmatists like the Stoics or the Epicureans.³⁶ As we shall see shortly, the sceptics are the ‘Penelopes’ of Hellenistic philosophical discourse, offering no ‘positive’ arguments, no doctrines, themselves. It is beyond the scope of my project to investigate the similarities between Arendt’s arguments about ‘thinking’ and the projects of the Academic sceptics; I point out the connection here merely to underscore for the

³² *TWB*. p.498.

³³ J.M. Dillon and A.A. Long (eds.), 1988. *The Question of ‘Eclecticism’: Studies in Later Greek Philosophy*. London: University of California Press. This is an excellent collection of essays, and I would draw the reader’s attention especially to the first chapter, which provides a conceptual history of ‘eclecticism’, and the last two chapters, which investigate the eclectic range of sources that have went into our conceptions of the will and the imagination.

³⁴ *LM1*. pp.88 and 225.

³⁵ *Acad.* 2.95.

³⁶ *LM1*. p.87.

reader the kind of intellectual approach in which neither she nor Cicero ‘have a political philosophy that could sum up with an -ism’, and to prefigure numerous other similarities we shall see between them in what follows.³⁷

Marcus Tullius Cicero³⁸

Marcus Tullius Cicero (106 BCE–43 BCE), statesman, orator, writer, thinker, and advocate of the Roman republic in its final stages, is perhaps best known in the broad field of international studies for saying ‘*silent enim leges inter arma*’. Often translated as ‘in time of war, the law is silent’, and then misinterpreted by some realists in the field as licence for an ‘anything goes’ approach to warfare, Cicero in fact articulated these words not as a thesis, and not in relation to war (*bellum*), but as part of a speech in a court of law, in defence of a Roman citizen, and in relation to the conduct of persons in a domestic context, upholding the *moral* right of self-defence during a time when mob violence was becoming increasingly common at Rome. Here is some more of the relevant passage:

“...There exists a law [*lex*], judges, not written but born with us—which we have not learnt or received or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught but to which we were made, which we were not trained in, but which is ingrained in us—namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is morally right [*honestā*]. For laws are silent when arms are raised [*silent enim*

³⁷ The ancient Greek term whose meaning is closest to the English phrase ‘school of thought’—a central idea or founding figure of which we often suffix today with an ‘-ism’ to mark it out, such as realism, liberalism, or Marxism—is not *scholē* but *hairesis*, a noun which took on a range of meanings across a thousand years or so of being used in the Greek language, and which was formed originally from the verb *hairéō*: to take, grasp or seize. The Latin equivalents of *hairesis* are usually *secta* or *disciplina*. Cf. David T. Runia, 1999. ‘Philo of Alexandria and the Greek Hairesis-Model’. *Vigilae Christianae* 53(2). pp.117–147. As regards the sceptics, Jacques Brunschwig puts the point well: “... could you speak of a sceptical *school* at all? The very idea of sceptical doctrines, on a par with the other philosophical schools, seemed a contradiction in terms: if a philosophical school is defined by its ‘dogmas’—by the characteristic theses which it maintains and in favour of which it argues—then how could there be a school without dogmas, an antidogmatic (or rather a-dogmatic) school?” Despite Charles Brittain’s excellent editorial work on Cicero’s *Academica*, I think this is worth noting, even as he translates the title, *Academica Quaestiones*, as ‘On Academic Scepticism’. The Pyrrhonian sceptic Sextus Empiricus has a subtle response to the question as to whether sceptics belong to a *hairesis* or not, drawing upon earlier senses of the term than ‘school of thought’. Cf. Jacques Brunschwig, 1999. ‘Introduction: The Beginnings of Hellenistic Epistemology’. Algra et al. (eds.), *Cambridge History of Hellenistic Philosophy*. pp.227–259.

³⁸ For Cicero’s biography, see for example Elizabeth Rawson, 1975. *Cicero: A Portrait*. London: Penguin.

leges inter arma], and do not expect themselves to be waited for, when he who waits will have to suffer an undeserved penalty before he can exact a rightful punishment [*iniusta poena luenda sit quam iusta repetenda*].”³⁹

In defence of his client, Cicero is drawing here upon Stoic philosophical arguments about natural law to *enlarge upon the facts of a particular situation*, in which a person who waited for the civil law to deservedly punish another for attacking he or she would themselves suffer an undeserved penalty—injury or death—by waiting for the civil law to ‘speak’, to operate, to mete out justice to the assailant.⁴⁰ The philosophical argument in the background is that *justice* is something that exists by nature—which we shall consider in chapter four of this project—but Cicero here is making neither a philosophical nor a political argument; he is making a legal argument focused upon the particulars of a case, his entire purpose being to have his client acquitted of the charge which has been brought against him.

Several things might be said, of course, about the *Pro Milone* and the facts of the case, but my purpose in providing the context I have has been threefold.⁴¹ The first has been to underscore for the reader that, although all writings are steeped in their historical contexts, some are steeped more deeply than others. The second has been to draw down (for now) the reader’s thoughts from lofty philosophical questions as to whether justice exists by nature or not to consider and appreciate the moral, political, and legal significance of the conduct of persons in particular situations, quite apart from any possible answers to these philosophical questions. And the third has been to signal some of Cicero’s remarkable knowledge, understanding, and versatility in areas of human endeavour such as philosophy, law, and rhetoric.

In *Reading Cicero*, Catherine Steel begins by noting the enduring relevance of the tribute Seneca (4 BCE–65 CE) paid to Cicero’s versatility when he said of him that “when a commentator, a literary scholar, and a student of philosophy

³⁹ *Mil.* 10–11.

⁴⁰ Cf. *Inv.* 2.67 and section 4.3 of this project.

⁴¹ See for example: Lynn S. Fotheringham, 2013. ‘Persuasive language in Cicero’s *Pro Milone*: a close reading and commentary.’ *Bulletin of the Institute of Classical Studies Supplement*. Vol. 121.

pick up [his *De Re Publica*], they each pay attention to different things”.⁴² In an important sense, Cicero’s writings are non-disciplinary; multifaceted in a way not fully captured by any discipline. Steel goes on to distinguish between four genres in which he writes—speeches, letters, poetry, and treatises—but also discusses the limits of generic distinctions in his case, given his innovations in all four of these.⁴³ Although our projects are different, it is relevant for our purposes here to set out what Steel’s is in *Reading Cicero*:

“This book puts Cicero the writer and Cicero the politician together through an exploration of how he uses written texts to exist and operate within the public sphere. In turn the public dimension is always present when reading Cicero. The point is not simply that Cicero’s writings must be sited in their historical contexts in order fully to be understood; it is only by dealing with all of his works as a single oeuvre that we can understand the extent of Cicero’s achievement in turning writing into a tool which the politician at Rome could use to advance his career. I argue that he uses a multiplicity of genres in order to multiply the opportunities to tell his story; and innovates within the generic possibilities initially available precisely in order to tailor what he could write to who he was. A fundamental error is to assume that his philosophy and poetry are not ‘political’; Cicero’s writings could not escape from the public figure, and the issue is rather to consider the nature of the interaction between his various personas [consul, senator, intellectual, advocate, husband, friend etc.] and writings.”⁴⁴

Several things are worthy of note here. First, greater understanding of Cicero’s writings *is* achieved by siting them in their historical contexts, but there the matter cannot rest, at least insofar as our interests are more than antiquarian. Some historical contexts are given in this project, but I move on from these to consider the content of Cicero’s writings and their continuing relevance to IPT, although it is beyond my project’s scope (and my own competence) to deal with all his works as a single oeuvre. Second, whether in Cicero’s time, our own, or any other, it seems to me important to keep in mind that politicians may not be seeking to advance their career—through writing or any other means—purely for their own advantage, but precisely because it is only through career advancement that they can serve the public’s (which of course is not to say that ends always justify means). Third, like the scholars of International Law and IR

⁴² Catherine Steel, 2005. *Reading Cicero*. London: Duckworth. p.7.

⁴³ Steel, *Reading Cicero*. pp.47–48.

⁴⁴ Steel, *Reading Cicero*. p.7.

of whom Onuf wrote, like Arendt, and like the rest of us, Cicero is in the business of ‘telling stories’ to others, including his own. And fourth, there is an irreducibly public dimension to all his writings, in whatever genre. I refer in this project to his speeches, letters, and treatises, and focus especially on his treatises—his theoretical writings—on politics, but it is appropriate here to say something about his intellectual approach.

As already mentioned, in the field of truth and knowledge Cicero is an Academic sceptic. Philosophy might be said to have taken an ‘epistemological turn’ in the Hellenistic period; before this time, Greek thinkers “took the possibility and the actuality of knowledge for granted and concerned themselves primarily with the nature of knowledge, its origins, and its structure”, until new technical terms introduced by Epicurus (341 BCE-270 BCE) and Zeno of Citium (c.334-262, founder of the Stoic school) signalled a shift in interest from questions like ‘what is knowledge?’ to questions like ‘is there any knowledge?’.⁴⁵ Epistemologically speaking, it is in Zeno we should perhaps see the beginnings of a systematized dogmatism in philosophy, with the head of the Academy at the time, Arcesilaus (c.316-241), inspired by the Socrates of Plato’s early dialogues, initiating a ‘sceptical turn’ in the Academy and roundly criticising Zeno’s dogmatic arguments.⁴⁶ In passing over various perplexities in these epistemological debates, we can manage sufficiently well in this project with a brief statement of Cicero’s position, given in his own voice in the *Academica*:

“The only difference between us and philosophers who think that they have knowledge is that they have no doubt that the views they defend are true, whereas we hold many views to be persuasive, i.e., ones that we can readily follow but scarcely affirm. But we are freer and less constrained because our power of judgment is intact and we aren’t compelled by any obligation to defend a set of views prescribed and practically imposed on us by someone else.”⁴⁷

⁴⁵ Brunschwig, ‘Introduction: the beginnings of Hellenistic epistemology.’ Algra et al. (eds.), *Cambridge History of Hellenistic Philosophy*. p.230.

⁴⁶ Charles Brittain provides a good summary of these epistemological developments: *Acad.* pp.viii–xxxix.

⁴⁷ *Acad.* 2.8. Even the scholars of ancient philosophy who specialise in this material find it “baffling” at times. Jonathan Barnes, 1997. ‘Logic in *Academica I* and *Lucullus*’. Brad Inwood and Jaap Mansfeld (eds.), 1997. *Assent and Argument: Studies in Cicero’s Academic Books*. Leiden: Brill.

What this leads to in Cicero's treatises is a "balancing, on any given topic, [of] the arguments in favor of a view held by one of the chief philosophical schools with [sceptical] arguments against; to the same end [i.e., truth-seeking], he also sets against each other the competing teachings of the dogmatists".⁴⁸ The Academic sceptics in philosophical discourse do not "have any purpose other than to draw out or 'formulate' the truth or its closest approximation [i.e., verisimilitude] by means of arguing on either side".⁴⁹ This arguing *pro et con* on any given topic is also a key feature in certain traditions of training in rhetoric, such as Aristotle's, and therefore dovetails nicely with Cicero's own avid interests in both philosophy and rhetoric. Whether contemporary scholars construe him as a 'radical' sceptic along the lines of Arcesilaus or Carneades (c.214-129, also Head of the Academy), or a 'mitigated' or 'moderate' sceptic along the lines of his teacher Philo of Larissa (c.159-84, also head of the Academy), that Cicero is not dogmatic matters a great deal.⁵⁰ Philosophically, it allows him freely to explore the Hellenistic schools' doctrines, as well as the arguments of the schools of an earlier time, suspending his judgment as to the truth of them all whilst, practically, 'taking whatever he can and whatever suits him' in his own life and work, i.e., exercising his own judgments in the world. From various philosophical perspectives ('school' perspectives) across the centuries such an approach has been thought unsatisfactory, a 'pale eclecticism', or even amateurish, but it seems to me not only to be a highly sophisticated approach in philosophy, but also one that has an eminently practical purpose. In Pierluigi Donini's words, it shows an attitude, an intellectual persuasion, "which chooses among doctrines with [a] deliberate program but whose spirit is strongly anti-dogmatic and anti-sectarian", conscious and wary of what dogmas and sects risk creating in the world.⁵¹

⁴⁸ Robert Gorman, 2005. *The Socratic Method in the Dialogues of Cicero*. Stuttgart: Franz Steiner Verlag.

⁴⁹ *Acad.* 2.7.

⁵⁰ Cf. Harald Thorsrud, 1995. 'Radical and Mitigated Scepticism in Cicero's *Academica*.' Nicgorski (ed.), *Cicero's Practical Philosophy*. Ch.6.

⁵¹ Pierluigi Donini, 1988. 'The history of the concept of eclecticism.' Dillon and Long (eds.). *The Question of 'Eclecticism'*. Ch.1. The quote comes from one of the senses of 'eclecticism' that Donini identifies, and he says that the usual example of an eclectic in this sense comes from the field of medicine (Galen).

Yet they seem always to emerge, providing ‘eclectics’ with a variety of doctrines to consider carefully.⁵² Cicero was very well-versed in Plato’s writings.⁵³ Aristotle’s library, including his ethical writings, had disappeared during the time that ardent physical theorist Strato of Lampsacus (c.335 BCE–269 BCE) was head of the Lyceum, and had only just begun circulating again towards the end of Cicero’s life, but Cicero was certainly well-versed in the works of Aristotle’s students, Theophrastus (c.371-287) and Dicaearchus (c.350-285), as well as in the works of the Hellenistic schools (mainly the Stoics, Epicureans and Sceptics).⁵⁴ I have already mentioned Arcesilaus, who spearheaded a ‘sceptical turn’ in the Academy with the onset of epistemology in the new technical terms of the Epicureans and Stoics, as well as Carneades, who gave two famous speeches to the Romans in 155, for and against justice, which sit behind one of the sub-sections in the final chapter of this project. And as already mentioned, in Cicero’s own time, he was taught by the head of the Academy, Philo of Larissa. He was also taught by another Academic, Antiochus of Ascalon (c.125-68), who broke away from the Academy’s sceptical outlook, endorsed Stoic epistemology, and formed his own school which he called ‘the Old Academy’, meaning the sceptics belonged to ‘the New Academy’ (labels which stuck). Antiochus’s philosophical system was syncretic: he believed virtually all of the differences between the Academics, Peripatetics and the Stoics were merely terminological, disagreements over words rather than substance, and he saw himself as bringing philosophy back to its proper roots in Plato (duly ‘corrected’ by the Stoics in the field of knowledge).⁵⁵ Cicero was deeply impressed by Antiochus’s work, and we shall be considering some of this impression in chapter

⁵² Cf. *LKPP*. p.23: “... withdrawal into a sect is the second-best cure for being alive at all and having to live among men.”

⁵³ He gives in his own voice his opinion about Plato’s ‘epistemology’ at *Acad.* 1.46: “In his books nothing is affirmed, there are many arguments on either side, everything is under investigation, and nothing is claimed to be certain.” Cf. Julia Annas, 1992. ‘Plato the Sceptic’. James C. Klagge and Nicholas D. Smith (eds.), 1992. *Oxford Studies in Ancient Philosophy, Supplementary Volume: Methods of Interpreting Plato and his Dialogues*. Oxford: Oxford University Press. pp.43–72.

⁵⁴ Peripatetic philosophy properly kicked in again at the very end of the 1st Century BCE, when Andronicus of Rhodes published an edition of Aristotle’s works in Latin. For the curious story of Aristotle’s library after his death and for Cicero’s knowledge of Peripatetic philosophy more generally, see Jonathan Barnes, 1997. ‘Roman Aristotle’. Barnes and Griffin (eds.), *Philosophia Togata II: Plato and Aristotle at Rome*. Ch.1; William W. Fortenbaugh and Peter Steinmetz (eds.), 1989. *Cicero’s Knowledge of the Peripatos*. London: Routledge.

⁵⁵ Antiochus’s system inaugurated the period in the history of philosophy we call Middle Platonism, between c.90 BCE and Plotinus’s writings in the third century CE (Neoplatonism).

three, but here, it suffices to reiterate Cicero's intellectual approach: he is a sceptic in the Academic tradition, suspending his judgment as to the truth of X (or using the Stoics' terms, withholding his assent to the truth of X), and he acts upon that which seems to him the most persuasive—the most probable, or nearest approximation to the truth—after careful consideration. A.A. Long provides us with a good example of the kind of sophisticated flexibility this gives Cicero in philosophical discourse:

“This dual allegiance to Philo [a moderate sceptic] and, with qualification, to Antiochus [a dogmatist], is a highly intelligent interpretation of the Academic tradition. It allows Cicero to draw heavily on Plato and Stoicism, in advocating positions he strongly supports, while preserving an exploratory rather than dogmatic style, and reserving the right to criticise Stoics and even Plato on occasion.”⁵⁶

It bears repeating, however, that philosophy was not Cicero's only interest. He was also interested and educated in rhetoric by some of the greatest orators in Rome at the time, and he studied it (along with philosophy) in Greece and Asia Minor between 79 and 77, before coming back to Rome to embark upon his political career. But right along with his studies and his politics, Cicero was a Roman; he had a deep connection to the past, the *mos maiorum* (the 'ways of the ancestors'), which can be seen very clearly in his writings, theoretical and otherwise. One of the distinctive features of his writings is precisely this interweaving of philosophy and history without collapsing them into each other. We consider this briefly in chapter four as one of the many features of his writings which are of continuing relevance to IPT, but for now, let us move on to a consideration of his reception.

On the Rekindled Tradition of Cicero Studies

Like any major figure in the history of political thought, Cicero has always had his supporters and detractors, but the sense across both sides that his theoretical writings evince a towering intellect began fading in the nineteenth century, when his voice became increasingly smothered by several movements in the Academy and beyond, such as Romanticism (with its “cult of originality and

⁵⁶ A.A. Long, 2003. 'Roman Philosophy'. David Sedley (ed.), 2003. *The Cambridge Companion to Greek and Roman Philosophy*. Cambridge: Cambridge University Press. pp.184–210.

reduced emphasis on style”), the historicism coming out of German idealist philosophy (of particular note here is the character assassination upon Cicero carried out by Theodore Mommsen in his seminal *History of Rome*), and the source-criticism (*Quellenforschung*) developed by German philologists, who regarded Cicero as a mere rhetor and compiler, a dilettante in philosophy political and otherwise who did not really know what he was talking about and who posed a frustrating obstacle to the understanding of the Hellenistic ‘professional thinkers’, virtually all of whose works otherwise survive only in fragments.⁵⁷ Whilst source-criticism (e.g., ‘who is Cicero’s source in this passage? Is it Panaetius? Carneades? Philo?’ etc.) in an effort to increase our understanding of Hellenistic philosophy is of course a legitimate pursuit in reading Cicero, by far our most bountiful source for the period, the effect of what now seems to have been a passing fad was that scholars generally ceased listening to what he actually had to say for himself and forgot questions about his own intentions and approaches in writing philosophy (questions and hearings which had been more or less constant and widespread, it is worth repeating, from the moment his works had been published until the nineteenth century).

This general attitude towards Cicero as a political thinker (and more generally as an intellectual, a statesman and a person) continued into the twentieth century, but over the last few decades there has been a propitious revival of scholarly interest in his treatises.⁵⁸ As the reader will see referenced in this project, an excellent body of secondary literature has been produced from roughly the 1980s onwards which goes a long way towards restoring Cicero’s reputation as an intellectual of the highest calibre. It is the classicists who have spearheaded this revival, but numerous scholars from other fields have made important

⁵⁷ Andrew Dyck, quoted in Elisabeth Begemann, 2015. ‘Damaged Go(o)ds’. William H.F. Altman (ed.), 2015. *Brill’s Companion to the Reception of Cicero*. London: Brill. Ch.10. For a more general account of Cicero’s reception in the nineteenth century, see for example: Nicholas P. Cole, 2013. ‘Nineteenth-century Ciceros’. Catherine Steel (ed.), 2013. *The Cambridge Companion to Cicero*. Cambridge: Cambridge University Press. Ch.18.

⁵⁸ For some of the twentieth century fallout of the nineteenth century reception of Cicero, see for example: Walter Nicgorski, 1995. ‘Cicero and the Rebirth of Political Philosophy’. Walter Nicgorski (ed.), 1995. *Cicero’s Practical Philosophy*. Notre Dame: University of Notre Dame Press. pp.242–282; William H.F. Altman, 2015. ‘Cicero and the Fourth Triumvirate’. Altman (ed.), *Brill’s Companion to the Reception of Cicero*. Ch.9.

contributions as well, including in the history of political thought and political theory.⁵⁹

With the volume and richness of Cicero's theoretical output as well as the fragmentary condition of some of the treatises, it is much to be expected that some points of contention or differences of interpretation have appeared amongst scholars of his work. For example, classicists James E.G. Zetzel and Jonathan G.F. Powell have both published an edition of the *De Re Publica*—Zetzel for the Cambridge Texts in the History of Political Thought and Powell for the Oxford Classical Texts—each arranging the fragments differently to reflect their own understanding of the text's overall argument.⁶⁰ Jed W. Atkins, who emphasises the influence of Plato's *Republic* and *Laws* on Cicero's *De Re Publica* and *De Legibus*, disagrees with Elizabeth Asmis that the laws discussed in Book II of the latter are a guide which enjoins ordinary people (non-sages) towards virtuous actions, regarding them instead as the 'right reason' of the sage.⁶¹ And in the history of political and legal thought, Benjamin Straumann provides what might loosely be termed a 'modernist' or 'rationalist' reading of Cicero's treatises on politics, adhering closely to Stoic philosophy and grounding constitutional law in natural law, and this at times places him at some odds with scholars more inclined to pay heed to Cicero's academic scepticism and strong emphasis upon the development of morals in political society.⁶²

⁵⁹ Notable works here include Daniel J. Kapust, 2011. *Republicanism, Rhetoric, and Roman Political Thought*. Cambridge: Cambridge University Press; Daniel J. Kapust and Gary Remer (eds.), 2021. *The Ciceronian Tradition in Political Theory*. Wisconsin: University of Wisconsin Press; Jed W. Atkins, 2013. *Cicero on Politics and the Limits of Reason*. Cambridge: Cambridge University Press; Benjamin Straumann, 2016. *Crisis and Constitutionalism*. Oxford: Oxford University Press; Dean Hammer, 2014. *Roman Political Thought: From Cicero to Augustine*. Cambridge: Cambridge University Press; Gary Remer, 2017. *Ethics and the Orator: The Ciceronian Tradition of Political Morality*. Chicago: University of Chicago Press; Walter Nicgorski, 2016. *Cicero's Scepticism and his Recovery of Political Philosophy*. Notre Dame: Palgrave MacMillan.

⁶⁰ For some of the consequences of the arrangements of the fragments for each of their arguments, see Jonathan G.F. Powell, 1995. 'Cicero's *De Re Publica* and the Virtues of the Statesman'. Nicgorski (ed.), *Cicero's Practical Philosophy*. Ch.1; James E.G. Zetzel. 2017. 'Cicero on the Origins of Civilization and Society: The Preface to *De re publica* Book 3'. *American Journal of Philology* 138(3). pp.461–487.

⁶¹ Atkins, *Cicero on Politics*. p.198n31; Elizabeth Asmis, 2008. 'Cicero on Natural Law and the Laws of the State'. *Classical Antiquity* 27(1). pp.1–33. See also section 4.3 of this project.

⁶² Straumann, *Crisis and Constitutionalism*; James E.G. Zetzel, 2016. 'Crisis and Constitutionalism: Roman Political Thought from the Fall of the Roman Republic to the Age of Revolution by Benjamin Straumann (review)'. *Classical World* 110(1). pp.147–148; Malcolm Schofield, 2017.

There are many other (often fine and theoretical) points of contention and differences of interpretation in the secondary literature, some of which the reader will encounter in this project, but all these scholars are joined in firm consensus that Cicero's treatises on politics are well worth reading. Atkins speaks of the *De Re Publica* and *De Legibus* as "critical for understanding the history of the concept of rights, the mixed constitution, and natural law"; Straumann construes them as breathing the spirit of constitutionalism; and Asmis argues, as I do also, that Cicero does indeed develop an original point of view in these works, based upon the Roman conception of *societas*.⁶³ As Kapust and Remer note, there has been somewhat less reliance on the Greeks and an accompanying 'Roman turn' in political theory from around the end of the last century onwards, as well as a renewed interest in rhetoric amongst historians of political thought, and Cicero's works hold a central place in this movement.⁶⁴ An indication of his increasing influence in the Academy more generally may be seen in the fact that Cambridge University Press published its Companion to Cicero in 2013 and they will soon be accompanying it with the Cambridge Companion to Cicero's Philosophy (including political philosophy).⁶⁵ The centuries-long tradition of Cicero Studies has been rekindled and it is one of my aims in this project to bring these studies to the attention of IPT for the benefit of researchers in the field who may otherwise miss it. In the words of Ryan K. Balot, there is great worth in bringing "ancient political texts into contact with broader currents of political theory", not the least of which is "an enlarged understanding of political life" in the present.⁶⁶

'Benjamin Straumann. Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution (review)'. *The American Historical Review* 122(1). pp.225–226. See also Sections 4.2 and 4.3 of this project.

⁶³ Atkins, *Cicero on Politics*; Straumann, *Crisis and Constitutionalism*, p.2; Elizabeth Asmis. 2004. 'The State as a Partnership: Cicero's Definition of *Res Publica* in his Work *On The State*'. *History of Political Thought* 25(4). pp.569–599.

⁶⁴ Kapust and Remer (eds.), *The Ciceronian Tradition in Political Theory*. p.vii. See also Hammer, *Roman Political Thought*; Jed W. Atkins, 2018. *Roman Political Thought*. Cambridge University Press.

⁶⁵ Jed W. Atkins and Thomas Bénatouïl (eds.), forthcoming. See also Raphael Woolf, 2015. *Cicero: The Philosophy of a Roman Sceptic*. London: Routledge.

⁶⁶ Ryan K. Balot (ed.), 2009. *A Companion to Greek and Roman Political Thought*. London: Wiley-Blackwell. p.4.

Structure of the Argument

In responding to my research question—*What can Cicero’s theoretical writings on politics contribute to arguments in IPT related to exercising judgments in the world?*—I begin in the first chapter with a review of some relevant literature from the wider group of scholars mentioned above (p.20), asking: *of some arguments in IPT related to exercising judgments in the world, where is there room for improvement?* Having brought in some relevant literature to review from some neighbouring fields to support my case, I conclude the chapter by distinguishing broadly between conceptions of politics which are ‘personal’ and conceptions of politics which are ‘impersonal’, listing several qualities under each of these headings, and I argue that the room for improvement in the literature reviewed involves moving from the latter conception to the former, without excluding the latter or specifying for the reader how far that movement should go.

The theme of the first section of the chapter is Critical Theory and IPT, tackling the ‘complex and troubled relations’ between philosophy and history as they have appeared in this area of research. It begins with a review of some of the work of cosmopolitan theorists Richard Beardsworth and Seyla Benhabib and their engagements with critical philosophy, before going on to consider Richard Devetak’s recently published *Critical International Theory: An Intellectual History*, which provides a contextualist account of (some of) the critical philosophers upon which Beardsworth and Benhabib (and other critical international theorists) draw, as well as a different, more historical mode of critique which Devetak traces back to the Renaissance humanists.

The second section’s theme is Persons, beginning with a review of relevant literature on ‘virtue ethics’, the ‘person-centred’ approach to ethics as contrasted with ‘rules-based’ approaches (deontology and consequentialism). Even after Brown’s introduction to the field of Martha Nussbaum’s work on virtues and capabilities back in 2000, there is still a dearth of research in this area in IPT, so I supplement a review of Harry Gould and Steven Torrente’s chapter on virtues and capabilities from the Oxford Handbook with a review of the approach as found in some neighbouring fields, such as political theory (Aletta Norval), political philosophy (Martha Nussbaum) and comparative

political theory (Fred Dallmayr).⁶⁷ The section concludes with a review of some scholarly literature on statespersons, with a particular focus upon the virtue of *phronesis* (or in Latin, *prudentia*), ‘practical wisdom’, beginning with a consideration of the work of Dallmayr and Devetak, in which I place the virtue in a broader context within the humanities, and moving on to consider some of Brown’s writings on this virtue and how he sees it handled in the work of ‘classical realist’ figures in IR, Hans Morgenthau and George Kennan.

The final section’s theme is that to and for which persons, but especially statespersons, are responsible: political societies. The first sub-section considers domestic political society, beginning with Brown’s contrasting of civil society and the state, along with liberalism and republicanism, and moving on to Norval’s projects in overcoming these contrasts with an account of civic virtues in civil society. From here, the writings of political theorist Bryan Garsten are reviewed, who identifies a key problem in liberal accounts of civil society in the notion of ‘public reason’ invented by philosophers such as Hobbes and Kant—what he calls the rhetoric of public reason—which obscures the alienation of citizens’ practical judgments about public affairs and prevents a ‘politics of persuasion’ in political society, something properly understood as going on in the civic republican tradition. This leads into an account of the civic republican tradition as provided by Dallmayr, as well as the conception within this tradition of political society (*res publica*) as mixed government, a mixing of the three basic types of government (by the one, the few, or the many)—a conception which is also considered through some of Walzer’s writings.

The final section concludes with a consideration of international political society, building on the tensions already set out between philosophy (or universalism) and history (or contextualism), and beginning with Dallmayr’s review of John Rawls’s *The Law of Peoples* in which he provides a history of the term *ius gentium* (‘law of peoples’). This leads into a review of some just war scholarship from ‘universalist’ and ‘contextualist’ perspectives, in which my distinction between ‘impersonal’ and ‘personal’ is further developed, concluding

⁶⁷ Chris Brown, 2010. ‘Towards a neo-Aristotelian resolution of the cosmopolitan–communitarian debate’. Chris Brown, 2010. *Practical Judgment in International Political Theory*. London: Routledge. Ch.6.

with a consideration of just war thinking and international political society through the lens of the (personal) virtue of *prudentia*.

In the second chapter, I ask: *What can some of Hannah Arendt's theoretical writings on politics contribute to the arguments addressed in the previous chapter, and how are these writings of Arendt's related to Cicero's theoretical writings on politics?* The themes of the chapter's three sections are broadly the same as the first. One of the issues identified through a consideration of critical theory and IPT in the first chapter is a seeming contradiction in terms between the notions of tradition and philosophy, even as a broad tradition of philosophy and several narrower traditions of philosophy within it can clearly be seen in the academic literature. The first section of this chapter is entitled Traditions, Politics and Philosophies, with its first sub-section investigating the notion of tradition as such in Arendt's writings. Here, whilst calling into question Arendt's assertion that tradition as such has been undeniably lost in the modern world, I draw out her very rich understanding of it which, I argue, contributes to the arguments addressed in the previous chapter a greater understanding of what philosophers mean when they speak about standing in this or that philosophical tradition, and I also argue that we need the help of tradition as such in exercising judgments in the world. The second sub-section builds upon this argument and questions Arendt's claim that a particular tradition, 'the great tradition of political and/or philosophic thought', has come to an end in the modern world, through an investigation as to how Cicero appears (or not) in Arendt's stories about this 'end'. I argue here that 'the tradition' has not, in fact, ended, and that Arendt's writings stand comfortably within it, whilst drawing out some convergences and perplexities as regards the precise relation between Arendt's writings and Cicero's.

The second section considers Arendt's writings on persons. In the first chapter, we see Devetak using the Latin term *persona* several times in his own argument, and in the first sub-section here, I draw out through Arendt's writings some of what she calls "the profound meaningfulness" of this term, firstly through how she explains it to her audience in her acceptance speech for Denmark's Sonning Prize in 1975. From here, we move on to a consideration of the matter of personal responsibility as it appears in Arendt's writings after the Eichmann trial, and to an investigation of the virtues as they appear in the two sets of

lectures on moral philosophy which she gave following the Eichmann controversy. This leads into a consideration of Arendt's writings in which she draws upon Cicero's to discuss the Latin term *humanitas*, as well as her use of this term in her essays on Karl Jaspers. We move on from here to a review of Arendt's story about the terror of the French revolution as it 'relates' to virtues, *mores*, and *personae*, before concluding the sub-section with how we had begun it: back with Arendt's acceptance speech for the Sonning Prize. The section concludes with some of Arendt's writings on statespersons, considering what she has to say about the virtues she saw in Winston Churchill and John F. Kennedy, and a consideration of her understanding of the virtue of *phronesis*.

The final section of the chapter considers Arendt's writings on political societies, with the first sub-section questioning the extent to which we can say that Arendt offers us what Margaret Canovan calls a 'new' republicanism. In this sub-section, Arendt's writings are linked back to Cicero's and the Romans more generally, at the same time as they help develop the account of civic republican principles as set out in the first chapter. The second sub-section considers numerous problems with Arendt's distinction between 'the social' and 'the political' through a consideration of her understanding of the term 'society', concluding that it remains a problematic distinction and that, as evidenced in some of her posthumously published work, she did in fact write of political societies. The final sub-section considers Arendt's writings on international political society as well as her argument that we are now aware of 'a right to have rights'. I argue here that the latter was a political rather than a philosophical argument, and that, despite some 'realist' strains in her writings, we can in fact see (and in large part due to her engagement with Cicero and the Romans more generally) a notion of international political society in her work.

Having considered some arguments in IPT related to exercising judgments in the world in the first chapter, and having carried out some groundwork and preparation for the reader through Arendt's writings in the second, the stage at this point has been set for the third chapter, in which I ask: *what can Cicero's theoretical writings concerning the conduct of persons contribute to arguments in IPT related to exercising judgments in the world?* Briefly stated, I argue that his writings on the conduct of persons contribute towards a *deeper understanding* of the arguments considered in both the first and second

chapters. Although I build in this chapter upon numerous specific arguments addressed in the first two, my purpose in it is also to provide, in broad outline, Cicero's framework of civic virtues as an excellent one within which scholars in IPT can think and work insofar as they are holding a conception of politics as (partly) personal.

The theme of the first section is 'Springs of Initiative', a term borrowed from Michael Oakeshott, mentioned in the second chapter, which he uses in giving his own account of what authority is, and which also ties together three starting points useful for the reader in considering Cicero's writings on the conduct of persons. The first sub-section considers some of his writings in the *De Finibus* regarding our natural sociability, upon which both Arendt and Kant (in part) rely in their own work. We move on in the second sub-section to consider what Cicero means by *officium*, 'duty' or 'appropriate action', with the aim of distinguishing between modern conceptions of 'duty' and his own, as well as between what he is doing in the *De Officiis* (practical ethics, written in the form of a letter to his son rather than a philosophical dialogue) and what he is doing in the *De Finibus* (a philosophical dialogue with different ethical theories being set out). The first section concludes with a consideration of one of Cicero's speeches, the *Pro Archia*, which shows the great esteem in which he held education, and more specifically education in the literary arts, the *studia humanitatis* (including both philosophy and history), providing the reader with some context in which to understand his (and Arendt's) use of the term *humanitas*.

The *De Officiis* is structured around the four 'cardinal' or primary virtues—or what he also calls the four 'parts' of the morally right/good/honourable (*honestas*)—and the second section of this chapter, 'Civic Virtues', is sub-divided according to each 'part'. We begin here with a consideration of the virtue of justice, the supreme social virtue for Cicero which plays a limiting or controlling role as regards the other virtues in the *De Officiis*, and which itself he divides into 'justice simply' (*iustitia*) and beneficence (*beneficentia*). After this, we consider some of what he has to say, in the *De Officiis* and elsewhere, regarding the virtues of wisdom (*sapientia*) and prudence (*prudentia*), before going on to consider his writings on courage (*fortitudo*) and greatness of spirit (*magnitudo animi*). The section concludes with a consideration of the fourth part of the

honestas, called temperance and moderation in the first two chapters, which Cicero articulates in the *De Officiis* as the virtue of *decorum*, and which includes what is called in the literature ‘the four-*personae* theory’.

Having set out in broad outline Cicero’s framework of civic virtues, we move on in the final section of the chapter to consider his writings on how they are manifest in political societies. The first sub-section considers virtuous conduct in the political society that is *res publica*, beginning with an account of the juridical background of the term *societas*, which denotes a partnership, and going on to consider each of the virtues in turn as manifest in the conduct of persons. The second sub-section considers the virtuous conduct of persons in international political society, beginning with an account of the different degrees of *societas* that Cicero sets out in the *De Officiis*, and concluding with his account of the *ius* of warfare, the virtuous conduct of (states)persons in the initiation and prosecution of war.

In the final chapter of this project, we turn from Cicero’s focus upon the conduct of persons to his focus upon *res publica*, and I ask: *what can Cicero’s theoretical writings on res publica contribute to arguments in IPT related to exercising judgments in the world?* As with the third chapter, my purpose here is twofold, developing numerous arguments from previous chapters as well as providing in broad outline Cicero’s theoretical writings on *res publica* as an excellent framework within which scholars in IPT holding a conception of politics as (partly) personal can think and work. We begin in the first section with what I regard as four important themes for IP theorists to consider in relation to the central treatise for our purposes, Cicero’s *De Re Publica*. The first sub-section considers Cicero’s arguments in favour of living the practical life of the citizen vis-à-vis the theoretical life of the philosopher, building upon some arguments from previous chapters, as well as highlighting some very intriguing arguments given in his own voice in this text regarding the virtue of *sapientia* which shows that his understanding of this dichotomous split between ways of life which developed in the tradition of philosophy is not as simple as it might seem. The second sub-section provides in broad outline some of the ways in which Cicero inter-weaves philosophy and history together in the *De Re Publica* without collapsing them into each other à la Hegel. The third and fourth sub-sections turn to the political theory of the text, with the former providing an analysis of

the character Scipio's definition of *res publica*, and the latter providing an analysis of the different types of organisation (or 'constitution') a people might take on for maintaining *res publica*; it is here we consider the basic types of government (by the one, the few, or the many) together with a non-basic, mixed type, as discussed in previous chapters.

The theme of the second section is Laws and Institutions, beginning with a consideration of the Carneadean debate between the characters Laelius and Philus in Book III of the *De Re Publica* about whether a *res publica* can possibly function without justice. Laelius here puts forward a case deriving from Stoic philosophy that a *res publica* cannot possibly function without justice and that justice exists by nature, whereas Philus argues (as devil's advocate) the 'conventionalist' case that a *res publica* cannot possibly function without injustice and justice does not exist by nature, it exists by convention. We move on from this discussion, and the *De Re Publica* itself, in the second sub-section to consider Cicero's writings on the *ius gentium*, where I argue that it is not equivalent to the Stoic account of natural law, even as they sometimes appear to overlap. In the third sub-section, we turn to Cicero's *De Legibus*, a dialogue in which Cicero writes himself in as a character (Marcus), where I provide an analysis of the law-code that Marcus writes for Rome, which he derives from Stoic (or Stoicising) arguments about natural law, and which later scholars have regarded as the beginnings of a tradition of constitutional law. In the final sub-section, we consider Cicero's writings on institutions. *Instituta* are customary standards of social behaviour, the topic of Book IV of the *De Re Publica* (which regrettably has come down to us only in fragments), and although frequently spoken of together with laws by Cicero in several places in his oeuvre, are importantly distinct from each other, and we consider this here in some detail, along with the importance of maintaining *instituta* and *mores* (customary practices of social behaviour) to ensure the ongoingness of *res publica*.

The final section of the final chapter considers Cicero's writings on the 'best citizen' (*optimis civis*), which he also calls the 'ideal statesperson' (*rector rei publicae*). This section is sub-divided in three, beginning with his explicit writings on this figure as are to be found in the *De Oratore* and the *De Re Publica*, in which it becomes clear, I argue, that what he is providing his readers with is an 'ideal-type', and some of the qualities and virtues he associates with

it are set out. The second sub-section moves on to consider some relevant passages from two of Cicero's speeches, a letter he wrote to Pompey, and the *De Officiis*. I argue here that we may be justified in adding some more qualities and virtues to this 'ideal-type' which we do not find named explicitly in the treatises in connection with the *rector rei publicae*, and that we can gain from these other sources a deeper understanding of the *sapientia* which Cicero *does* name explicitly in connection with this figure. The final sub-section returns to the *De Re Publica* for a consideration of Scipio's dream, which concludes the dialogue in Book VI.

Briefly put, I argue that Cicero's theoretical writings on politics contribute to arguments in IPT related to exercising judgments in the world an outstanding framework within which theorists can connect, engage, and position themselves in relation to real-world politics and real-world problems.

Chapter 1 Exercising Judgments in the World and International Political Theory: A Literature Review

1.1 Introduction

As Brown says, the relations between the different fields of study under the broad umbrella of international studies is “complex and troubled”, and this to the extent that one is probably overstepping boundaries even by speaking of the matter in terms of ‘disciplinary boundaries’.¹ In practice, however, it might be safe enough to say that IR scholars read literature in IPT and IPT scholars read literature in IR, and we shall be encountering some of this ‘crossover’ in the present chapter. The complex and troubled relations are, to a significant extent, I think informed by very similar complexities and troubles as exist between ‘the arts’ and ‘the sciences’, as well as between ‘philosophy’ and ‘history’, and I should warn the reader here at the outset that there will be significant ‘crossover’ in these fields as well in this project.

The first section of this chapter considers some of the complex and troubled relations between philosophy and history as they relate to IPT. The section is sub-divided in two, with the first sub-section forming a review of two cosmopolitan IP theorists’ engagements with critical philosophy. This sub-section begins with a consideration of Richard Beardsworth’s programmatic article, *The Future of Critical Philosophy and World Politics*, in which he sets out a broad conception of critical philosophy as a field of study with an ethical or normative orientation, and in which he provides an ideational framework for critical philosophers to engage with “social science within the horizon of world politics”, before going on to consider his defence of Habermasian cosmopolitanism against the Arendtian arguments of Patricia Owens. The sub-section continues with a review of Seyla Benhabib’s work in *Another Cosmopolitanism* and *The Rights of Others*, considering her interpretation of Kant’s philosophy and the ‘republican’ elements of his ‘liberalism’—as we have seen, this is a common distinction in politics and political theory, and we shall be bumping up against some of its limitations quite a few times in this project—together with a critique of her

¹ Brown, *Political Thought, IR theory and IPT*. p.227.

reading of Kant from legal and political philosopher Jeremy Waldron, and a review of her theory of democratic iterations. The second sub-section provides a review of Richard Devetak's *Critical International Theory: An Intellectual History*, which criticises universalist standpoints derived from philosophy such as those taken by Beardsworth and Benhabib through a contextualist reading of the philosophical sources upon which critical international theorists normally draw. Also reviewed here is Devetak's recovery in his project of a different, more historical mode of critique which he traces back to the Renaissance humanists.

Despite some differences between the works of Beardsworth, Benhabib and Devetak, these critical international theorists might be said, in contradistinction to many poststructuralists or postmodernists, to share an *ethical* concern to promote better human relations either domestically, internationally, globally, or some combination of any or all of these, and the theme of the second section of the chapter concerns those whose better relations they share a concern to promote: persons. Again, the section is sub-divided in two. The first sub-section is a consideration of a person-centred ethical approach, virtue ethics, which is currently marginalised in IPT in favour of rules-based approaches such as deontology or consequentialism. Following an account of virtue ethics as set out by Steven Torrente and Harry Gould in the Oxford Handbook, it goes on to consider some of the writings of comparative political theorist Fred Dallmayr on this approach, which he also calls the Aristotelian tradition of virtuous praxis, through his reviews of it as manifest in the works of Alasdair MacIntyre, Paul Ricoeur and Hans-Georg Gadamer, and the sub-section concludes with a review of political theorist Aletta Norval's appraisal of Habermas's liberal account of civil society in his *The Structural Transformation of the Public Sphere*, where although broadly supportive of the text, she identifies a lack of engagement in Habermas with the virtues and recommends the development of democratic subjectivities much in the way recommended by 'virtue ethicists': participation in public affairs, embodied practices of habituation and the operation of exemplars. The second sub-section considers some scholarship in IPT related to statespersons, with a specific focus on the virtue of *phronesis* (or in Latin, *prudentia*), how it differs fundamentally from *episteme*, and how it has been handled in some of the classical realist literature in IR.

The theme of the final section of the chapter is that to and for which persons, but especially statespersons, are responsible: political societies. Although it can be very useful indeed to distinguish between ‘civic republican’ and ‘liberal’ conceptions of political societies, there are nevertheless some limits to the utility of this distinction, as already noted, and we encounter some of these limits in this section. The first sub-section considers domestic political societies, picking up Norval’s argument again about the formation of democratic subjectivities and reviewing her support for Habermas’s modern liberal conception of ‘aversion’ to society, before going on to review an appraisal from political theorist Bryan Garsten of some of the Kantian arguments underlying Habermas’s theory. Garsten argues that Kant presents to us a rhetoric of public reason that aims to silence the controversies which are the very stuff of politics and obscure the alienation of citizens’ practical judgments about public affairs to a sovereign source of authority (for Kant, this source is the critique of pure reason). The sub-section continues with a review of Dallmayr’s turn to the civic republican tradition as evidenced in his *In Search of the Good Life: A Pedagogy for Troubled Times*, together with reviews of it from political liberal David M. Rasmussen and civic republican Bernard Flynn. The second sub-section concerns international political society, beginning with a review of a history of the *ius gentium* (‘law of peoples’) that Dallmayr provides in his own review of Rawls’s *The Law of Peoples*, before going on to consider some of the work of just war scholars James Turner Johnson and John Kelsay, who share with Dallmayr a similar sensitivity to the historical features of international political society. It concludes with a consideration of the virtue of prudence in international political society as it is set out or understood from what is often referred to in IPT as ‘communitarian’ and ‘cosmopolitan’ perspectives.

The question to which I am responding in this chapter is: *of some arguments in IPT related to exercising judgments in the world, where is there room for improvement?* My response, in a nutshell, is that behind much of the literature reviewed in this chapter, I believe there are some presuppositions about or conceptions of politics which are excessively impersonal, and what is thereby obscured in this literature is a more balanced or rounded appreciation of human beings exercising judgments in the world, of politics being (partly) personal. While this is much less a critique of ‘philosophy’ and endorsement of ‘history’

than it is a call for a greater awareness and more judicious handling of both in IPT—both, after all, form part of the humanities, and I am arguing for a more humanistic conception of politics—the room for improvement I find in the literature reviewed lies not in the direction of theorising or conceptualising ‘judgment’ (a legitimate exercise in itself, on the more impersonal end of the spectrum) but in the direction of supposing or conceiving of politics to be more personal. I do review some literature in this chapter from scholars whom I believe to hold a conception of politics which is more personal, and such a conception perfuses the theoretical writings of both Arendt and Cicero as well, to whom we turn in subsequent chapters to develop the arguments related to exercising judgments in the world which are addressed in this one.

1.2 Critical Theory and IPT

1.2.1 *Critical Philosophy and International Theory*

In 2005, Richard Beardsworth published an article in which he called for “a specific engagement between critical philosophy and social science within the horizon of world politics”.² He distinguished in his argument, despite many similarities between them, two basic gestures in contemporary critical philosophy: French thought over the preceding four decades had been engaged in a radicalising of the phenomenological tradition of Husserl and Heidegger, coming up with a “general metaphysics of temporalisation” as exemplified in Derrida’s work, whereas German thought had pursued a Kantian (or post-Kantian) tradition of critique, as exemplified in the work of Habermas.³ Noting Habermas’s critique of Derrida for abandoning the normative orientation of philosophy, Beardsworth goes on to identify one of the traits of French thought in general as being a stress on “the ethics of radical passivity” and insists that more is needed from critical philosophy today, that “it is a question of apprehending our actuality”, “assum[ing] again the Enlightenment problematic and continu[ing] its project of universalisation”.⁴ Beardsworth’s overall concern in the article is to develop an ideational framework for future critical

² Richard Beardsworth, 2005. ‘The Future of Critical Philosophy and World Politics’. *Millennium* 34(1). pp.201–235.

³ Beardsworth, *Future of Critical Philosophy*. p.204.

⁴ Beardsworth. *Future of Critical Philosophy*. pp.205, 212 and 234.

philosophers who engage with social science within the horizon of world politics, and in doing so he puts forward a neo-Marxist account of society in which history is understood as a process of the capitalisation of economic and social relations. He also draws upon Habermas to argue that “the philosophical problematic of modernity with regard to this history can be understood as a *reflective* response, at the level of ethics, politics and institutionality in general, to this historical process”, arguing that the account he provides is preferable to strains of postmodern thought which have “short-circuited history ... and withdrawn the force of constructive thought from the public domain”.⁵ That said, he gives a particular reading of Derrida’s deconstruction which is excepted from this charge for being “formative regarding the challenge of the [limited] political appropriation of world capitalisation”, even as it risks closing down the alterity it promotes by failing to engage with certain determinations of history.⁶ But whether or not with his provision of a neo-Marxist account of society there are any tendencies towards a kind of historical determinism in Beardsworth’s framework, I wish to emphasise from his article the broad conception of critical philosophy he provides:

“Critical philosophy ... is ethical (it is disposed to society as a whole) and, in some way or other, it is related to politics. Critical philosophising means reflecting upon actuality in such a way that furthers, directly and/or indirectly, the betterment of society. It is the force of thought pitched against other more determined forces (economic, political, military, etc.) to promote, in one way or another, better human relations.”⁷

Such a worldly understanding of critical philosophy would certainly be controversial amongst many of its professionals (and non-professionals), but Beardsworth nevertheless insists upon it at this historical juncture and we find him defending a normative orientation in philosophy in the idiom of IR theory through his engagement with Patricia Owens’ *Between War and Politics: International Relations and the Thought of Hannah Arendt*. Beardsworth writes that Owens in her argument “uses Arendtian categories to forge a political realism that, while critical of idealism, is reducible to neither classical nor

⁵ Beardsworth, *Future of Critical Philosophy*. p.211 and 214. Emphasis in original.

⁶ Beardsworth, *Future of Critical Philosophy*. p.216.

⁷ Beardsworth, *Future of Critical Philosophy*. p.202.

modern realism given her concerns with the agency of people and empowerment” and argues that, through her use of Arendtian categories, she conflates neoconservative foreign policy with progressive liberalism.⁸ He goes on to defend progressive liberalism, or more specifically, projects underpinned by Habermas’s cosmopolitanism, in terms of their mediations between norm, legality and power. Beardsworth acknowledges that Owens is correct in her critique that Habermas’s transcendental approach “denies history” and states that it is therefore important to place Habermas’s normativism within history. He also states that once a norm emerges within history, it can act as a norm beyond history, which is the case with “liberal individualism and progressive universalism”.⁹ Beardsworth argues that Habermas is certainly not unaware of the realities that Owens accuses him of neglecting in the formation of the bourgeois public sphere in the eighteenth century, but chooses instead to “target ... the efficacy of a norm”, that is to say, he is concerned “with the norms within this formation [of the bourgeois public sphere] that foster and propel progressive thought and practice”, and in terms of global civil society, he focuses on “the normative dimension of the dignity of the person and on the latter’s freeing and empowering potential for individuals *contra* states *if* institutionalized and codified at the global level”.¹⁰ He goes on to say that in Owens’ argument “there is no systematic engagement with the limits of the ‘rights’ conception of the political at national and post-national levels” and suggests that this lack of engagement with rights discourse is an inheritance of the same in Arendt:

“...without greater engagement with the liberal discourse of rights, with the codification of international law, and with the necessary relations between the institution of human rights and state action, [Owens’] critique limits the contemporary terms of liberal politics. I am ... not persuaded that such engagement is possible through Arendt given her own normative distinctions.”¹¹

A critical international theorist who believes an engagement with the liberal discourse of rights is possible through Arendt’s writings is Seyla Benhabib, who

⁸ Richard Beardsworth, 2008. ‘Arendt and the Critique of Moralism’. *International Politics* 45. pp.506–513.

⁹ Beardsworth, *Arendt and the Critique of Moralism*. p.510.

¹⁰ Beardsworth, *Arendt and the Critique of Moralism*. p.510.

¹¹ Beardsworth, *Arendt and the Critique of Moralism*. p. 513. Emphasis in original.

reads her as standing in a tradition of Kantian cosmopolitanism, or what might be called a rigorist interpretation of his metaphysics of morals, arguing that “Arendt must consider the human being ... as having a legal status that ought to be protected by international law.”¹² We shall consider Benhabib’s reading of Arendt in the next chapter, but here, it is appropriate to consider her reading of Kant. Benhabib describes her own work as standing in a “Kantian morally constructivist tradition”, in which:

“...rights claims are not about what ‘exists;’ rather, we [in the Kantian morally constructivist tradition] ask whether our [human beings’] lives together within, outside and betwixt polities ought not to be guided by mutually and reciprocally guaranteed immunities, constraints upon actions, and by legitimate access to certain goods and resources. Rights are not about what there *is* but about the kind of world we reasonably *ought* to want to live in.”¹³

Separately from actual rights claims and rights, Benhabib goes on in the next paragraph to discuss Kant’s *Metaphysics of Morals*, where the “one basic right” he proposes is described also as “the principle of right” which “establishes how a juridico-civil order can come into existence that would be in compliance with the moral law”.¹⁴ She then explains how a discourse-theoretic justification of Kant’s principle of right works:

“The emphasis now shifts *from* what each can will to be valid for all *via* a thought experiment, *to* those justificatory processes through which you and I in dialogue, must convince each other of the validity of certain norms—by which I mean ‘general rules of action.’”¹⁵

Benhabib is standing here in a Habermasian tradition in which Kant’s principle of right arrived at *via* a thought-experiment is assented to, retained, and fed into dialogue with another in which the other must be convinced of the validity of certain norms, ‘general rules of action’, through rational argument. We shall consider Habermas in some more detail below; for now, let us keep in mind Benhabib’s assent to and retention of what she reads Kant as saying in his

¹² Seyla Benhabib and Robert Post, 2006. *Another Cosmopolitanism*. Oxford University Press. p.14.

¹³ Seyla Benhabib, 2013. ‘Reason-Giving and Rights-Bearing: Constructing the Subject of Rights’. *Constellations* 20(1). pp.38–50.

¹⁴ Benhabib, *Reason-Giving and Rights-Bearing*. p.39.

¹⁵ Benhabib, *Reason-Giving and Rights-Bearing*. p.39.

Metaphysics of Morals and consider how this relates to politics. In *The Rights of Others* and *Another Cosmopolitanism*, Benhabib addresses what she sees as a fundamental contradiction between democratic self-determination and cosmopolitan norms of justice through a consideration of Kant's 'three definitive articles' in his *Perpetual Peace: A Philosophical Sketch*—'The Civil Constitution of Every State Should be Republican'; 'The Law of Nations Shall be Founded on a Federation of Free States'; and 'The Law of World Citizenship Shall be Limited to Conditions of Universal Hospitality'—with a particular focus upon universal hospitality. From her reading of the *Metaphysics of Morals*, Benhabib argues that hospitality is not to be understood here as a virtue of sociability but as a right inhering in human beings as such, insofar as citizens in republics are all potential participants in a "republican cosmopolitical order".¹⁶ She sees an ambivalence in what Kant is saying as to whether hospitality is a moral right of human beings in the deontological sense of a duty that we owe to one another, or a juridical right in the sense of being an enforceable norm of behaviour. Understanding it today to be a voluntarily incurred obligation on the part of states, Benhabib argues that the challenge is "how to create quasi-legally binding obligations through voluntary commitments and in the absence of an overwhelming sovereign power with the ultimate right of enforcement."¹⁷ Distinguishing between two conceptions of sovereignty, 'Westphalian' and 'liberal international' (more or less corresponding to what, in terms of international society, the English School call pluralism and solidarism), and interpreting Kant's *Perpetual Peace* as both paving the way for a transition from the former to the latter and as laying the foundations for a "post-Westphalian legal order", Benhabib is still careful to acknowledge Kant's "extremely important move" in arguing that any such international or global order would necessarily consist of republics with their own discrete legal orders in which persons could be citizens in the first place.¹⁸ A world government, for Kant, as distinct from a federative union of republics, would be a "soulless despotism", thus he limits his conception of world citizenship to conditions of universal hospitality.¹⁹ But

¹⁶ Benhabib and Post, *Another Cosmopolitanism*. p.23.

¹⁷ Benhabib and Post, *Another Cosmopolitanism*. p.23; Cf. Seyla Benhabib, 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge University Press. p.28.

¹⁸ Benhabib and Post, *Another Cosmopolitanism*. pp.23–24.

¹⁹ Benhabib and Post, *Another Cosmopolitanism*. p.24.

despite acknowledging the extreme importance for Kant of a world consisting of discrete republics in terms of securing perpetual peace, Benhabib indicates at various places her own ambivalence about his position on this. One example may be seen when she seems to imply a lack of civic republican vision in Kant and emphasises Arendt's vision with seeming disapproval instead: "Arendt, though a Kantian in moral theory, remains committed to a civic republican vision of political self-determination."²⁰ Not unaware of the philosophical perplexities involved here, Benhabib insists "on the necessary disjunction as well as the necessary mediation between the moral and the ethical, the moral and the political", and asks "How can one mediate moral universalism with ethical particularism? How can one mediate legal and political norms with moral ones? Such a strategy of mediation is crucial to reclaiming dialogical universalism."²¹ We shall consider Benhabib's political theory of mediations and dialogical universalism below, but here it is appropriate to mention that she also gives a Kantian morally constructivist argument in *Another Cosmopolitanism* as to the provenance of cosmopolitan norms:

"Briefly, such norms and principles are morally constructive: they create a universe of meaning, values, and social relations that had not existed before by changing the normative constituents and evaluative principles of the world of 'objective spirit', to use Hegelian language ... Cosmopolitan norms, of which 'crimes against humanity' is the most significant, create such new moral facts by opening novel spaces for signification, meaning, and rearticulation in human relations."²²

Engaged with the world as it is, this would certainly come under Beardsworth's conception of critical philosophy, but given that Benhabib admits that cosmopolitan norms and principles are independent of actual political societies, a question remains as to how citizens could ever understand them as quasi-legally binding obligations to others. As Jeremy Waldron argues, citizens of political societies "are able to identify law as a concrete artifact of their politics", and although cosmopolitan norms and principles apply to the people of the world, they "[do] not seem to be 'ownable' by them in the same sort of

²⁰ Benhabib and Post, *Another Cosmopolitanism*. p.15. Arendt's position vis-à-vis Kant's moral theory we shall consider in the next chapter.

²¹ Benhabib and Post, *Another Cosmopolitanism*. p.19.

²² Benhabib and Post, *Another Cosmopolitanism*. pp.72–73.

way.”²³ Unlike Benhabib, who reads Kant’s writings on hospitality as being about relations between individuals and states, Waldron understands them to be about relations between people and peoples. Although he does not say so explicitly here, it seems to me (and Benhabib) that Waldron is reading hospitality in Kant’s third article as a virtue of sociability in human beings.²⁴ Noting the historical context in which *Perpetual Peace* was written—a time of European colonial exploitation in which Kant criticised Europeans in America, Africa and the Indies for “drinking wrongfulness like water”—Waldron argues that Kant’s general point in the third article is that “in spite of the manifest potential for injustice and in spite of the actual experience of injustice, there is nothing inherently unjust or inappropriate about individually initiated contacts among peoples.”²⁵ Waldron would seek to expand on Kant’s understanding of hospitality so that it covered contemporary modes of travel, contact and commerce, “the myriad [and mundane] processes by which humans, at all levels of *social* organisation, all over the world, come into direct or indirect contact with one another.”²⁶ Law, argues Waldron, involves not only commands or sanctions but also customs and practices, and this includes more recently evolving customs “growing out of but also constituting a social order and a shared and mutually expressible sense that our interactions with others are governed by norms, even when there is no one to enforce them”, and he is wary of attempts by philosophers at “the thunderous imposition of positive law from on high”.²⁷

Benhabib notes that much of the disagreement between she and Waldron centres upon interpreting Kant’s doctrine of *ius cosmopolitanum*, “which can be rendered into English as ‘cosmopolitan right’ or ‘cosmopolitan law’.”²⁸ On Benhabib’s reading, Kant articulates in the first article a set of universal standards by which all civil constitutions are to be deemed legitimate, “thereby piercing the shield of state sovereignty”, and in the second article, she regards

²³ Jeremy Waldron, 2016. ‘Cosmopolitan Norms’. Benhabib and Post, *Another Cosmopolitanism*. pp.86–87.

²⁴ Martha Nussbaum recounts a moving story about this virtue of sociability in Kant himself, who called it his ‘sense of humanity’. Martha C. Nussbaum, 1997. ‘Kant and Stoic Cosmopolitanism’. *The Journal of Political Philosophy* 5(1). p.13n39.

²⁵ Waldron, *Cosmopolitan Norms*. p.90.

²⁶ Waldron, *Cosmopolitan Norms*. p.90. Emphasis in original.

²⁷ Waldron, *Cosmopolitan Norms*. pp.93 and 96.

²⁸ Benhabib and Post. *Another Cosmopolitanism*. p.148.

him as pushing the law of nations toward a model of constitutionalization, “that is, toward the subjection of all sovereigns to a common source of law”.²⁹ Against this background, she argues, the third article “ascribes to the individual the status of being a right-bearing person in a world civil society or a *weltbuergerliche Gesellschaft*”, that “the discourse of hospitality moves from the language of morals to that of juridical right” and that Waldron is surely wrong to be reading hospitality in Kant’s *Perpetual Peace* in a non-state centred way as a virtue of sociability in human beings *qua* people and peoples.³⁰

Whereas Waldron would have us understand hospitality in terms of our everyday social activities in the world, Benhabib seeks to extend its meaning beyond Kant’s so that it refers to all human rights claims which are cross-border in scope, and using the republican theories of both Rousseau and Kant as a heuristic devices, she points to some tensions within contemporary liberal democracies which could affect such claims: whereas ‘strong liberals’ would argue for political society to have pre-commitments to a list of human rights, ‘strong democrats’ would argue that such a pre-political understanding of rights must be open to debate between democratic citizens, although “admittedly within certain limits”.³¹ Whilst accepting that these tensions between ‘strong liberals’ and ‘strong democrats’ cannot be fully resolved, Benhabib offers “normative and institutional solutions to the paradoxes of democratic legitimacy”, arguing that the impact of tensions between ‘strong liberals’ and ‘strong democrats’ may nevertheless be mitigated through negotiations, renegotiations, iterations, and reiterations of these dual commitments and, in a move away from the more formalistic accounts of democratic legitimacy in discourse theory, uses Derrida’s work in the philosophy of language to develop her theory of democratic iterations:

“In the process of repeating a term or concept, we never simply produce a replica of the original usage and its intended meaning: rather, every repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways ... every act of iteration might be assumed to refer to an antecedent that is taken to be authoritative. The iteration and interpretation of

²⁹ Benhabib and Post. *Another Cosmopolitanism*. p.149.

³⁰ Benhabib and Post. *Another Cosmopolitanism*. pp.148–149.

³¹ Benhabib and Post. *Another Cosmopolitanism*. p.33.

norms, and of every aspect of the universe of value, however, is never merely an act of repetition. Every iteration involves making sense of an authoritative original in a new and different context. The antecedent thereby is repositied and resignified via subsequent usages and references. Meaning is enhanced and transformed; conversely, when the creative appropriation of that authoritative original ceases or stops making sense, then the original loses its authority on us as well. Iteration is the reappropriation of the “origin”; it is at the same time its dissolution as the original and its preservation through its continuous deployment ... Democratic iterations are linguistic, legal, cultural, and political repetitions-in-transformation, invocations that also are revocations. They not only change established understandings but also transform what passes as valid or established view of an authoritative precedent.”³²

In terms of political/legal ‘repetitions-in-transformation’, Benhabib introduces her conception of “jurisgenerative processes”, drawing upon the following argument from legal scholar Robert Cover:

*“The uncontrolled character of meaning [in a liberal society] exercises a destabilising influence upon power. Precepts must ‘have meaning’, but they necessarily borrow it from materials created by social activity that is not subject to the strictures of provenance that characterize what we call formal law-making.”*³³

This “disjunction between law as power and law as meaning can be rendered fruitful and creative in politics through jurisgenerative processes”, which occur when “a democratic people ... engages in iterative acts” by reappropriating and reinterpreting its guiding norms and principles, “thereby showing itself to be not only the *subject* but also the *author of the laws*”.³⁴ This works using Rousseau’s and Kant’s republican theories as heuristic devices because, unlike republican theories which derive from natural law or right, they are not impervious to “transformative acts of popular collective will”.³⁵ “Jurisgenerative politics” thus “permits us to think of creative interventions that mediate between universal norms and the will of democratic majorities” and, if these iterations of a democratic people, or democratic majorities, or democratic citizens, or ‘ours’, are productive or creative, result in “*the augmentation of the meaning of rights claims*” and “*the growth of the political authorship by ordinary individuals, who*

³² Benhabib and Post. *Another Cosmopolitanism*. pp.45 and 48.

³³ Quoted in Benhabib and Post, *Another Cosmopolitanism*. pp.48–49. Emphasis in original.

³⁴ Benhabib and Post, *Another Cosmopolitanism*. p.49. Emphasis in original.

³⁵ Benhabib and Post, *Another Cosmopolitanism*. p.49.

thereby make these rights their own by democratically deploying them”.³⁶ As noted earlier, the validity of universal, cosmopolitan norms depend upon conclusions reached by philosophers. This means that for Benhabib— notwithstanding the fact that they fall within “every aspect of the universe of value”—they are entirely independent of, and so not subjected to, the contingent processes of citizens’ democratic iterations, which she acknowledges may themselves give rise to “sterile, legalistic or populist jurisgenerative processes” where no normative learning takes place, and she suggests that we may refer to such processes as “jurispathic”.³⁷ Nevertheless, Benhabib argues that her theory still allows for successful mediations between universal norms and self-determination within liberal democracies.

The theory of democratic iterations is further explained by way of two examples, one of which is *l’affaire du foulard*: the ongoing controversies around the wearing of Muslim headscarves in France. On 27th November 1989, the *Conseil D’Etat* sought to protect both the citizens’ freedom of religion and conscience as well as the French constitutional principle of *laïcité* (a strong commitment to state neutrality towards all kinds of religious practices, institutionalised through the removal of sectarian religious symbols from the public sphere) by ruling that the judgment as to whether or not specific instances of the wearing of religious symbols in schools was confrontational or remonstrative lay with the school authorities rather than the students themselves. Benhabib regards some of the actions of the three girls who touched off the controversy as democratic iterations, resignifications of the meaning of wearing the headscarf. Through a sociological study of the affair, she notes that the girls’ voices themselves were hardly listened to in the ensuing debates and argues that to assume that their actions were instances of religious defiance or provocation constrains their capacities to write the meaning of their own actions in public. Moreover, in exercising these capacities, the girls would be involved in

³⁶ Benhabib and Post. *Another Cosmopolitanism*. pp.48–49. Emphasis in original. As I touch upon again in the conclusion to this chapter, precisely who or what is the subject(s) or author(s) of the laws in Benhabib’s theory is unclear to me. For example, sometimes it is “us” (academics? strong liberals?) who “think” of creative interventions that mediate the will of “democratic majorities” (them?); sometimes it is “democratic majorities” who reiterate norms and principles and incorporate them into “democratic will formation-processes”, and in the examples Benhabib provides to illustrate her theory, it is ordinary individuals who are iterating.

³⁷ Benhabib and Post, *Another Cosmopolitanism*. p.50.

learning processes where they would “have to learn to give a justification for their actions with ‘good reasons in the public sphere’.”³⁸ At stake here for Benhabib is not the legitimacy of the law, but the democratic legitimacy of the judge’s decision:

“I am not suggesting that legal norms should originate through collective discursive processes and outside the framework of legal institutions: the legitimacy of the law is not at stake in this example; rather, it is the *democratic legitimacy* of a lawful, but in my view, unwise and unfair decision that is at stake. It would have been both more democratic and fairer if the meaning of their actions were not simply dictated to these girls by their school authorities, and if they were given more of a public say in the interpretation of their own actions.”³⁹

We have already seen Benhabib acknowledge that democratic debates go on within certain limits, which, from this passage, I interpret her as meaning to include a “framework of legal institutions”, but it is unclear to me why this momentous point—had she not raised it, unwary readers might indeed have interpreted her theory as suggesting that legal norms should originate through collective discursive processes outside the framework of legal institutions—is dealt with so briefly, and nested in one of her examples rather than discussed in the first section, where she sets out her theory of democratic iterations.⁴⁰ However it may be, in the case of *l’affaire du foulard*, Benhabib is arguing that it is the democratic legitimacy of the ruling which is at stake, i.e. the ruling that the school authorities rather than the students should be judging whether any particular instance of religious-symbol wearing by students was provocative and disturbing of others’ education. This of course is a highly contentious example, and while the jurisgenerative politics and democratic iterations which Benhabib construes as being involved in *l’affaire du foulard* may not have produced outcomes that all French citizens would want to endorse, she argues that it still attests to a “dialectic between constitutional essentials and the actual politics of political liberalism”, or between rights and identities, in which both the meaning of rights claims and identities themselves are transformed in a

³⁸ Benhabib and Post, *Another Cosmopolitanism*. p.57.

³⁹ Benhabib and Post, *Another Cosmopolitanism*. pp.56–57. Emphasis in original.

⁴⁰ Benhabib and Post, *Another Cosmopolitanism*. pp.33 and 57.

discursive process that mediates between cosmopolitan norms and principles on the one hand and the self-understanding of democratic republics on the other.⁴¹

1.2.2 An Intellectual History of Critical International Theory

Richard Devetak is another critical international theorist who is very much interested in promoting better human relations, but he is sceptical about universalist impositions made by philosophers. In his *Critical International Theory: An Intellectual History*, Devetak provides a contextualist account of the emergence of critical theory in the study of international relations and recovers a different mode of critique which is more attuned to history and less to philosophical abstraction, but before we discuss this historical mode of critique, let us consider his account of the philosophical sources upon which critical international theorists often draw.

Kant is an important founding figure for critical theory as it is practised today, who intended to overcome the empiricist and metaphysical philosophies of his day in such a way as to elevate (his account of) morality vis-à-vis politics, and key to this task for him was the establishment of secure epistemological foundations for the reasoning or inquiring subject. Rejecting empiricist arguments that all knowledge derives from experience, as well as metaphysical arguments that knowledge can be attained of things which are outside of experience, Kant developed his transcendental philosophy, arguing that the conditions of possibility for all knowledge reside in the conceptual structures or categories of the mind. His transcendental philosophy, as Devetak says, can be understood as “a form of critique concerned with the epistemic conditions under which the reasoning human subject attains a pure intelligence, detached from experience”, and it is on the basis of his transcendental philosophy that he developed his moral theory:

“...for Kant, only a philosophy grounded *a priori* in pure reason could develop pure moral concepts and unconditional moral rules that would ‘hold for all rational beings’ ... His task was to produce subjects capable of intellectually comporting themselves in such a way that they could achieve access to knowledge through pure reason, unhindered by historical or empirical circumstances. Once achieved,

⁴¹ Benhabib and Post, *Another Cosmopolitanism*. pp.60 and 67.

the comportment would enable the subject to pay ‘tribute to morality’ as a requirement of ‘a true system of politics’.”⁴²

For Kant, civil philosophers such as Thomas Hobbes and Samuel Pufendorf remained ‘pre-critical’ since their theories were tied to the real world rather than rational wills or universal reason, whereas his own metaphysics of morals was meant to be understood as an *a priori* condition of all politics. Enlightenment, on Kant’s telling, was ‘man’s’ emergence from his unwillingness to use this reason. In his essay responding to the question ‘What is Enlightenment?’, he adopted a phrase from the Roman poet Horace, *sapere aude*, to use as a slogan for Enlightenment, which as Devetak (and indeed Kant) points out, reads in translation ‘dare to be wise’, although it is sometimes rendered as ‘dare to know’ or ‘have the courage to use your own understanding’, and Kant also saw the philosopher as having an important social role to play in the Enlightenment in terms of making universal reason, as he understood it, public.⁴³ In his own words, he recognised “the right of every people to give itself a civil constitution of the kind that it sees fit, without interference from other powers”, but regarded it as part of the philosopher’s role to have citizens grasp, on the basis of the demands set out in his metaphysics of morals, that it is in the very nature of civil constitutions to be peaceable and that “there is the aim, which is also a duty, of submitting to those conditions by which war, the source of all evils and moral corruption, can be prevented.”⁴⁴ Preventing war is, of course, a highly commendable aim and duty, but not only does ‘duty’ take on a special, metaphysical meaning in Kant’s philosophy which it seems not all citizens can grasp; it is also the case that this meaning is not in touch with history or experience such that this ‘duty’ can be straightforwardly or indeed peacefully met. Kant of course recognised this, and it is why we see his name appear sometimes in the just war tradition.⁴⁵ His *Perpetual Peace* is understood by Devetak in this metaphysical context:

⁴² Richard Devetak, 2018. *Critical International Theory: An Intellectual History*. Oxford: Oxford University Press. pp.57–59.

⁴³ Devetak, *Critical International Theory*. p.77 with note 49.

⁴⁴ Devetak, *Critical International Theory*. p.79.

⁴⁵ See for example Brian Orend, 2018. ‘Immanuel Kant’. Daniel R. Brunstetter and Cian O’Driscoll (eds.), 2018. *Just War Thinkers: From Cicero to the 21st Century*. London: Routledge. Ch.13.

“[the third article] is a call for a radical rethinking of the normative principles upon which all politics are organized ... what is clear is that Kant employed university metaphysics to cultivate an enlightened persona capable of governing themselves according to the principles of reason and cosmopolitan morality arrived at through transcendental philosophy ... By reshaping the subject’s ethical comportment so as to produce an intellectual persona induced to obey the demands of the metaphysics of morals, Kant could posit an imagined future, unconstrained by empirical or historical realities, in which politics and international relations would be an extension of his metaphysics of morals.”⁴⁶

G.W.F. Hegel is another important source for critical theory as it is practiced today and who also had a philosophical focus upon the reasoning subject, but he rejected Kant’s transcendental conception because it emptied reason and ethics of substantive content and treated them in abstraction from actual political societies. For Hegel, both the subject and object of knowledge are products of history and “he saw his task as bringing Kant’s critical philosophy to completion by reconfiguring reason and human subjectivity as necessarily conditioned by historical actuality.”⁴⁷ For Hegel, reason itself has a history and he thought he could see it unfolding in the course of events through a series of oppositions resolving themselves into higher syntheses in a dialectical movement; he believed, as he put it, that “what is rational is actual and what is actual is rational” and regarded events in his own time, including the French Revolution and the Napoleonic wars, as representing the transition to a new era in which reason and history could be reconciled.⁴⁸ Unlike Kant, he argued that the object of knowledge, the ‘thing-in-itself’, could be known, and it was the philosopher’s task to get beyond appearances and attain this knowledge of reality. But like Kant, he also believed the philosopher had an important social role to play in the world. Devetak argues that, in Hegel’s work:

“... the philosopher’s task is conceived as the dialectical mediation of a range of oppositions reflecting the basic opposition between the rational and philosophical on the one hand, and the actual and sociological on the other ... the historical consciousness Hegel wished to cultivate is not focused on grasping the past by the marshalling of empirical evidence, but on the adoption of a particular intellectual

⁴⁶ Devetak, *Critical International Theory*. pp.80–81.

⁴⁷ Devetak, *Critical International Theory*. p.59.

⁴⁸ Devetak, *Critical International Theory*. p.63. For an account of how the term ‘dialectic’ was used and understood prior to Hegel, see for example: Jakob Fink (ed.), 2012. *The Development of Dialectic from Plato to Aristotle*. Cambridge: Cambridge University Press.

comportment laying claim to powerful normative and hermeneutic forms of reasoning that, according to critical philosophy, can discern the meaning and direction of history.”⁴⁹

The philosopher on Hegel’s account is indispensable to the modern state, being the one who can decipher the dialectical process through which the reason embedded in history is actualised and freedom stimulated. He provided a philosophical account of the state as “a quasi-divine expression of reason and freedom” which endeared him to the Prussian authorities, and following his death in 1831, his legacy was carried forward on both the left and the right by a group known as the Young Hegelians.⁵⁰

Karl Marx was a Young Hegelian and although later in life he would often criticise the ‘idealism’ of Hegelian philosophy, he seems never to have entirely abandoned it in his own writings. His famous architectural metaphor may suggest a purely ‘materialist’ history and an economic determinism, but Marx also referred often to the *totality* of our *social* existence, which included a dialectical relation between ‘base’ and ‘superstructure’.⁵¹ With his dialectical philosophy of the social totality, Devetak argues, “history becomes a story of reified abstractions in which classes, relations of production, or social structures replace real people as the bearers of freedom or necessity.”⁵² Although he saw his task as one of recovering a conception of ‘man’ undistorted by philosophical abstractions, Marx never relinquished some of Hegel’s ideas concerning the development of human consciousness or the attainment of knowledge of the ‘thing-in-itself’, but unlike Hegel, he emphasised in his language of materialism the importance of the economic ‘base’. His efforts at removing ‘distorted’ conceptions of ‘man’ relied, as Michael Freeden says, on his theory of ideology, which itself relied:

“...on the crucial distinction between true consciousness and distorted or false beliefs. In order to claim that our understanding of the (political) world is based on an illusion, we must be confident that

⁴⁹ Devetak, *Critical International Theory*. pp.63–64.

⁵⁰ Devetak, *Critical International Theory*. p.65; Andrew Bowie, 2003. *Introduction to German Philosophy: From Kant to Habermas*. Cambridge: Polity. pp.79–132.

⁵¹ Scholars who examine his work from this perspective often point to Marx’s metaphor of organic unity instead of his architectural metaphor. See for example György Lukács, 1978. *The Ontology of Social Being: Marx*. Trans: D. Fernbach, London: Merlin Press.

⁵² Devetak, *Critical International Theory*. p.73.

non-illusory knowledge [of it] is attainable. Marx believed that truth would emerge once distortion was removed ... That truth could be conclusively excavated ... was a non-negotiable assumption.”⁵³

Freeden finds value in Marx’s (Hegelian) dialectical method of excavation and he also notes that it has become of importance even to non-Marxists: “the enterprise of decoding ... structures, contexts and motives”; ideologies “that ... contain levels of meaning that are hidden from their consumers and, frequently, from their producers as well.”⁵⁴ This enterprise appears to fall to the philosopher or critical theorist who has discerned the meaning or direction of history over and above the mere thoughts, words and deeds of actual human beings, and moreover, it is the material or economic aspect of this (philosophy of) history which Marx thought was the only one worth studying. As Devetak says:

“... to the extent that history was used by Marx, it was largely instrumental and always subservient to the theoretical needs of a [thoroughly dialectical] narrative in which man discovers, with the guidance of [dialectical] philosophy, the path from alienation and human suffering to communism.”⁵⁵

Events of the twentieth century, including the enormities of communism as it was practised, led to a collapse of confidence in Enlightenment projects in some circles, including amongst a group of scholars known collectively as The Frankfurt School. These scholars widened the scope of critique beyond Marx’s materialist concerns, analysing various elements of the ‘superstructure’ with the intention of transforming the social conditions of advanced industrial societies in an emancipatory direction. Enlightenment thought was still regarded as a crucial source by many of these scholars in terms of redeeming critical philosophy and its analysis of society, seen for example in Horkheimer’s claim that “the battle cries of the Enlightenment ... are valid now more than ever”, but it is perhaps in the work of Habermas that we find the best example of its deployment in the Frankfurt School.⁵⁶ Habermas has remained close to a Young Hegelian historicized perspective on philosophy throughout most of his career and, as

⁵³ Michael Freeden, 2003. *Ideology: A Very Short Introduction*. Oxford: Oxford University Press. pp.7–8.

⁵⁴ Freeden, *Ideology*. p.11.

⁵⁵ Devetak, *Critical International Theory*. p.73.

⁵⁶ Devetak, *Critical International Theory*. pp.164–165.

Devetak notes, his “reconstructed historical materialism” also involved the addition of a normative, Kantian element which amongst other things shaped his critique of positivism in the social sciences in his *Knowledge and Human Interests*.⁵⁷ Quoting from this text, Devetak gives an account of Habermas’ critique of positivism:

“What started out in Kant as a philosophy of critical reflection had been progressively ‘abandoned’, said Habermas, as the theory of knowledge gave way to ‘a methodology emptied of philosophical thought’ ... As epistemology is ‘flattened out to methodology’, the normative and practical concerns evident in the classical conception of politics, in which politics is viewed as the continuation of ethics, are rendered ‘unscientific’. Since Aristotle, as Habermas points out, the classical conception of politics has developed on the basis that its knowledge claims ‘cannot be compared ... with rigorous science or apodictic *episteme*’. But with the rise of positivism, according to Habermas’ philosophical history, the scientific episteme colonised the social sciences as well. Here Habermas’s history of philosophy accords key features of the stories told by Kant and the Frankfurt School.”⁵⁸

Regardless of whether his history of philosophy or philosophical history is right or wrong, in opposing positivism in the social sciences, Habermas set out what he called a “transcendental pragmatism”, in which pragmatic conditions of possibility are seen as structures of experience and action rather than structures of the mind (as in Kant), with arguments in social and political life being carried on within these structures.⁵⁹ Crucial to the validity-claims of a speaker on this account is the process of argumentation itself within shared structures of meaning, which Habermas was to develop further in his *Theory of Communicative Action*, where he sets out a dialogical approach to normative issues, commonly known as discourse ethics (which I think Benhabib referred to above as dialogical universalism). As Devetak describes it, discourse ethics is “essentially a deliberative, consent-oriented approach to resolving political issues within a moral framework”, built upon the need for justifying one’s actions to another in terms that they can accept or contest on a rational basis.⁶⁰ It is committed to Kant’s cognitivism as well as to his arguments about the

⁵⁷ Devetak, *Critical International Theory*. p.75; Bowie, *Introduction to German Philosophy*. pp.255–263.

⁵⁸ Devetak, *Critical International Theory*. pp. 97–98.

⁵⁹ Bowie, *Introduction to German Philosophy*. p.256.

⁶⁰ Devetak, *Critical International Theory*. p.151.

public use of reason in terms of securing the legitimacy of one's claims, with any new norms, principles or institutional arrangements only securing validity if they meet with the approval of all who would be affected by them. As Devetak notes, discourse ethics is built upon a model of liberal civil society Habermas had originally set out in *The Structural Transformation of the Public Sphere*, rejecting notions of morality that rested upon conceptions of 'the good life' and being guided instead by a notion of 'procedural fairness': "it is thus more concerned with the method of justifying moral principles than with the substantive content of those principles."⁶¹ Although Habermas has described his work from *The Theory of Communicative Action* onwards as being part of what he calls "post-metaphysical thinking", Devetak argues that his theory of discourse ethics remains a dialectical philosophy, with Kant's rational beings having been replaced with purportedly concrete actors in dialogue with one another achieving higher agreement over universal norms, and with little reference to concrete actors in the real world, whether private citizens or those holding public office.⁶² Regarding the latter, Devetak notes that:

"The presumption inherent to discourse ethics is that the specific offices of the statesman, the legislator, or the diplomat reflect one-sided ethical or problem-solving perspectives in need of sublation by critical or universal moral reason."⁶³

Through his contextual account of some of its most eminent philosophical sources, Devetak sees a mode of critique in critical international theory as it is practised today which privileges metaphysics (or post-metaphysics) in one form or another over civic responsibilities, presupposing what the purpose and method of theory should be and recasting the intellectual persona of the critical international theorist. Political structures, whether domestic, international, or global, are taken in this mode of critique to be either reflections or realisations of universal principles rather than the contingent historical products of those actually holding public office, and "to the extent that the words and deeds of such actors are taken into account, they are considered empirical domains of

⁶¹ Devetak, *Critical International Theory*. p.152.

⁶² Bowie, *Introduction to German Philosophy*. p.257; Devetak, *Critical International Theory*. p.154.

⁶³ Devetak, *Critical International Theory*. p.154.

knowledge in need of philosophical treatment through acts of theoretical abstraction.”⁶⁴

Devetak is concerned about an impression in IPT that theory is the provenance of philosophy and that philosophy alone is to decide what counts as ‘theory’ and what qualifies as ‘critical’, drawing upon Nietzsche to criticise philosophers’ lack of historical sense and calling upon critical international theory to “pluralise its theoretical strategies by taking history and historiography more seriously”.⁶⁵ In taking them seriously, he looks at receptions of the Enlightenment, distinguishing between conventionalist and revisionist historiographies, and through the latter, traces a line of intellectual descent feeding into it from the Renaissance humanists who had developed new historical methods of study so as to enhance conditions of political society, with his overall aim being to recover this neglected historical mode of critique for critical international theorists. The recovery itself is carried out in the final chapter, through a consideration of Robert Cox’s article, ‘Social Forces, States and World Orders’.⁶⁶ Cox holds a somewhat anomalous position within critical international theory for disavowing the work of the Frankfurt School in his writings, even as his ‘critical vs. problem-solving’ distinction bore an accidental resemblance to Horkheimer’s ‘critical vs. traditional’ one.⁶⁷ Devetak observes that Cox drew upon a variety of intellectual sources and in some of these we can see a mode of critique distinct from the philosophical strains informing critical international theory today.

The recovery of this mode begins with a consideration of some conventionalist historiographies of the Enlightenment—those of Habermas, Jonathan Israel and Reinhart Koselleck—which in their different ways according to Devetak construe the movement as a unitary phenomenon, “a normative-philosophical project to develop critical, moral, and democratic forms of reason oriented to the

⁶⁴ Devetak, *Critical International Theory*. p.155.

⁶⁵ Devetak, *Critical International Theory*. p.159.

⁶⁶ Robert W. Cox, 1981. ‘Social Forces, States and World Orders’. *Millennium* 10(2). pp.126–155.

⁶⁷ It is worth noting here that Horkheimer’s conception of ‘traditional’ theory referred to a tradition inaugurated in modernity whereby subject and object are held to be different in kind and social theory is understood by analogy with the natural sciences. Devetak, *Critical International Theory*. pp.49–50.

subjugation of state reason and the liberation of humankind.”⁶⁸ Devetak argues that the historiographies he considers here, despite their obvious differences, are underpinned by a dialectical philosophy of history in one form or another, with Kant often featuring as the exemplary representative of enlightenment, and he emphasises that there are alternative historical accounts of this period for critical international theorists to consider. Of these alternative historiographies, Devetak turns first of all to Ian Hunter’s, who argues that the Kantian account of enlightenment was “the outgrowth of Protestant university metaphysics” and was fundamentally opposed to the civil and jurisprudential enlightenment as expressed in thinkers such as Pufendorf and Christian Thomasius, which was an enlightenment “predicated on the need ... to disavow the rationalist ambition (from Leibniz to Wolff) of unifying morality and politics in a single philosophy capable of restoring the world and its thought to unity.”⁶⁹ He then considers the work of J.G.A Pocock, who argued that a civil enlightenment may be traced back to Hobbes, which was “predicated on encouraging ‘certain self-limitations of the human mind’, a moderating effect intended to combat claims to higher moral truths”.⁷⁰ Finally, drawing on the work of Jonathan Green, Devetak also gives account of the work of Friedrich Gentz, a student of Kant’s.⁷¹ Having spent some time in the civil service and reading the literature of the Scottish Enlightenment, Gentz advocated an Enlightenment project grounded in a deeper understanding of the maintenance and development of political societies.⁷² But Kantian philosophers were so successful in “writing the history of philosophy in their own critical image” that

⁶⁸ Devetak, *Critical International Theory*. p.168; Jürgen Habermas, 1989. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Berger with the assistance of Frederick Lawrence. Cambridge: Polity Press; Jonathan Israel, 2010. *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy*. Princeton NJ: Princeton University Press; Reinhart Koselleck, 1988. *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*. Cambridge, MA: MIT Press.

⁶⁹ Devetak, *Critical International Theory*. p.169; Ian Hunter, 2001. *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany*. Cambridge: Cambridge University Press; Ian Hunter, 2007. *The Secularisation of the Confessional State: The Political Thought of Christian Thomasius*. Cambridge: Cambridge University Press.

⁷⁰ Devetak, *Critical International Theory*. p.171; J. G. A. Pocock, 1989. ‘Conservative Enlightenment and Democratic Revolutions: The American and French Cases in British Perspective’, *Government and Opposition* 24(1): pp.81–105; J.G.A. Pocock. 1997. ‘Enthusiasm: The Antiself of Enlightenment’, *Huntington Library Quarterly* 60(1/2): pp.7–28.

⁷¹ Jonathan Green, 2017. ‘*Fiat Iustitia, Pereat Mundus*: Immanuel Kant, Friedrich Gentz, and the Possibility of Prudential Enlightenment’. *Modern Intellectual History* 14(1). pp.35–65.

⁷² Cf. *EU*. pp.50–56.

the civil and jurisprudential enlightenment “was conveniently marginalized, discarded, or dialectically sublated”, and through giving account of these revisionist historiographies, Devetak recovers this understanding of the enlightenment—or as Pocock argues, multiple enlightenments—in which its key figures are far less interested in metaphysical abstractions than in “mundane practices and institutions of government that can clarify civil rights and duties, protect freedoms, and secure social peace.”⁷³

Having recovered this neglected enlightenment for critical international theorists, Devetak reaches further back in history to consider some of their intellectual sources in the Renaissance. Noting first of all the revival at this time of the Ciceronian curriculum of the *studia humanitatis* which “were intended to cultivate the civilizing practices through which peace, liberty and free government were to be achieved”, he goes on to give account of the work of several Renaissance humanists in terms of the development of new reading techniques and contextualist methods which served a variety of public ends and were in sharp contrast to the excessive logicising and theologising of the scholastics.⁷⁴ He then traces the work of the humanists he considers, and the more historical and secular understanding of the world to which it gave rise, into the late sixteenth and seventeenth centuries, where it found further development in natural law thinkers such as Pufendorf and political theorists such as Jean Bodin, before going on to provide a more detailed example of this historical mode of critique in the work of Giambattista Vico, a major intellectual influence on Cox.

What Devetak recovers in his text is a theory programme “in which being critical is not predicated on the mastery of dialectical-philosophical methods capable of problematizing the self, but on the mastery of the *studia humanitatis*, including the liberal arts curriculum and the *ars historica*, as a practical engagement with public affairs guided by the ethical imperative of civility.”⁷⁵ He points out in his text that he is not dismissing philosophy *tout court*, but is engaged in recovering

⁷³ Devetak, *Critical International Theory*. pp.170 and 172.

⁷⁴ Devetak, *Critical International Theory*. p.173.

⁷⁵ Devetak, *Critical International Theory*. p.191. For an interesting account of some early modern and modern conceptions of civility, see Teresa M. Bejan, 2019. *Mere Civility: Disagreement and the Limits of Toleration*. London: Harvard University Press.

and defending this historical mode of critique which is all too easily overlooked by theorists who assume that philosophy, especially of the dialectical sort coming out of the Enlightenment, is the final arbiter when it comes to what counts as theory and what qualifies as critical. The theory programme that Devetak recovers implies “a pedagogical role to help practitioners as much as university students understand the complex historical and normative conditions of political action” and it proceeds by way of careful investigation of texts in history, not to discern or excavate the truth or otherwise of what was written, but to understand the uses to which texts have been put in particular contexts and with particular purposes.⁷⁶ Such a programme, as Devetak says, uncovers neglected riches in our intellectual heritage:

“By bringing ‘buried intellectual treasure’ back to the surface ... the alternative critical international theory proposed here allows a more historically accurate sense of the present and what makes it distinctive or strange. Critical theory in historical mode is critical here not because it rejects philosophically or normatively grounded theory *in toto*, which it does not, but because it problematizes the assumption that dialectical, normative or social philosophies should govern our conception of theory.”⁷⁷

1.3 Persons

1.3.1 *Virtue Ethics in (and around) IPT*

In the previous section, we saw in Beardsworth’s work a concern around some postmodernists’ ‘ethics of radical passivity’ and their withdrawal of ‘the force of constructive thought from the public domain’, as well as his normative-philosophical engagement within the horizon of world politics through a neo-Marxist account of history and a defence of Habermasian cosmopolitanism. We also saw, in Benhabib’s work, a cosmopolitan project informed by her interpretations of Kant, Habermas and Derrida which seeks to mediate between cosmopolitan norms and the self-determination of republics through a discourse theory of democratic iterations, in which citizens of liberal democracies use their capacities to write the meaning of their own actions through learning processes in public settings with a view to augmenting the meaning of rights

⁷⁶ Devetak, *Critical International Theory*. p.193.

⁷⁷ Devetak, *Critical International Theory*. p.202.

claims, even as the possibility remains that these democratic iterations may involve what she calls jurispathic processes in which no normative learning takes place. Finally, we saw in Devetak's work a contextualist account of the philosophers who have inspired the work of Beardsworth, Benhabib and many other critical international theorists, in which he argued that these philosophers understood the enlightened subject to have grasped pure moral concepts and/or the direction and meaning of history, and that philosophers had an important role to play in transforming society in an emancipatory direction. Sceptical of these philosophers' claims about 'the enlightened subject', and the universalist impositions of philosophers more generally, Devetak recovered a historical mode of critique deriving from the *studia humanitatis* in which 'the words and deeds of actors are taken into account' without the need for 'philosophical treatment through acts of theoretical abstraction' and with the cultivation of a civic persona much more attentive to the real world and real human relations than it is to metaphysics (or post-metaphysics).

Despite differences between the work of these critical international theorists, at least one of the things holding them together seems to me to be a shared concern, in Beardsworth's words, to promote, in one way or another, better human relations, and such a concern I think is commonly understood to be an ethical one. But do these critical international theorists share an ethical approach? What is behind the 'force of constructive thought' which Beardsworth's ideational framework is set up to enable in critical philosophers? What, in Benhabib's theory, are the capacities being used by citizens to write the meaning of their own actions through learning processes in public settings that, on the one hand, may augment the meaning of rights claims, but on the other, founder in processes which are jurispathic? What is involved, for Devetak, in the cultivation of a civic persona?

In their chapter on virtue ethics in the Oxford Handbook, Steven Torrente and Harry Gould rightly note that IPT is currently dominated by two general approaches to ethics: a Kantian or deontological approach and a utilitarian or consequentialist one.⁷⁸ Citing an article of Martha Nussbaum's which argues that

⁷⁸ Steven Torrente and Harry D. Gould, 2018. 'Virtues and Capabilities', in Brown and Eckersley (eds.). *Oxford Handbook of IPT*. pp.587–599.

virtue ethics is a misleading (or confused and confusing) category since the Kantians and utilitarians also had a lot to say about the virtues and we would be much better off characterising the substantive views of each thinker and then deciding what we want to say for ourselves instead, Torrente and Gould go on to give an account of deontology and consequentialism broadly conceived, i.e. as rules-based forms of ethical reasoning, and also virtue ethics as it is commonly understood, i.e. an approach which is not rules-based but person-centred and promotes the ethical development of persons and so better human relations.⁷⁹ Virtues are dispositions or qualities of character, such as wisdom, justice, courage and moderation (sometimes known as the ‘cardinal’ or ‘primary’ virtues: those from which it is said all other virtues derive), and proponents of virtue ethics, as Torrente and Gould say:

“[insist] that the focus of moral evaluation and guidance should not be *primarily* discrete acts taken in isolation, nor moral quandaries (hard cases), but should be instead the *character* of agents ... Rather than act evaluations, Virtue Ethics encourages us to engage in ‘aretaic person-appraisals’.”⁸⁰

The extent to which Kant’s concern for finding secure epistemological foundations for the reasoning subject remains a preoccupation of academics when it comes to ethics is suggested by Torrente and Gould in their discussion of an alleged antinomianism amongst early proponents of virtue ethics, as well as in their observation that this issue remains a question upon which many academics in the field focus their attention.⁸¹ The allegation from some ethical theorists was that virtue ethics suffered from a certain vagueness or an ‘applicability problem’: “*it could neither evaluate acts taken by agents nor guide agents in making morally appropriate decisions*”.⁸² Deontology and utilitarianism, as Torrente and Gould say, also fail by their own terms in this regard, and as Julia Annas argues in relation to rules-based ethical approaches in

⁷⁹ Martha C. Nussbaum, 1999. ‘Virtue Ethics: A Misleading Category?’ *The Journal of Ethics* Issue 3. pp.163–201.

⁸⁰ Torrente and Gould, *Virtues and Capabilities*. p.589. Emphasis in original.

⁸¹ The editors of the Handbook describe this as meta-normative reflection, covering “inquiry into the foundations of morality and ethics, and how we know when something is right, valid, good, or bad, and the sources of normative legitimacy.” Brown and Eckersley (eds.). *The Oxford Handbook of IPT*. p.6.

⁸² Torrente and Gould, *Virtues and Capabilities*. p.591. Emphasis added. Cf. Julia Annas, 2004. ‘Being Virtuous and Doing the Right Thing’. *Proceedings and Addresses of the American Philosophical Association* 78(2). pp.61–75.

general, we neither have nor should want an ethical theory that “tells us what to do”, as though responsibility for our actions lay outside of ourselves in some theory, with no moral effort required on our part.⁸³

Deontology, as we know, is usually depicted as being primarily concerned with what is right and with right actions. In the first section of this chapter, we considered a dispute between Benhabib and Waldron over the interpretation of Kant’s *ius cosmopolitanum*, with the former reading it as a right inhering in human beings as such and the latter (seemingly) reading it as a virtue of sociability in human beings *qua* people or peoples. It seems to me that the dispute between Benhabib and Waldron is informed by Kant’s *Metaphysics of Morals*, which is divided into two sections: the ‘Doctrine of Right’ and the ‘Doctrine of Virtue’, and as Nussbaum has argued:

“The Doctrine of Virtue ... is now widely discussed and widely regarded as central. Nobody can any longer think of Kant’s view as obsessed with duty and principle to the exclusion of character-formation and the training of the passions ... his account of virtue covers most of the same topics as do classical Greek accounts ... the rediscovery of Kant’s theory of virtue has ... led to ... scholars depict[ing] a Kant who is less rigorist and more flexible, less concerned with abstract principle and more concerned with the exercise of moral judgment...”⁸⁴

This is part of Nussbaum’s argument that we would be much better off characterising the substantive views of each thinker and deciding what we want to say for ourselves, rather than referring to generic approaches like deontology, consequentialism or ‘virtue ethics.’ But since we still often talk about them as generic approaches, let us return to the latter. In what Torrente and Gould have rightly called “an ineluctably and admirably aspirational aspect”, a very important feature of virtue ethics is that “it is built upon moral *striving*.”⁸⁵ As Annas puts it:

⁸³ Annas, *Being Virtuous and Doing the Right Thing*. p.68. It is worth pointing out here that Kant in his *Lectures on Ethics* said that “if we do more or less than is required of us [by the moral law] we can be held responsible for the consequences [of our actions], but not otherwise—not if we do only what is required, neither more nor less...”. Quoted in Bryan Garsten, 2007. ‘The Elusiveness of Arendtian Judgment’. *Social Research* 74(4). pp.1071–1108.

⁸⁴ Nussbaum, *Virtue Ethics: A Misleading Category?* p.165.

⁸⁵ Torrente and Gould, *Virtues and Capabilities*. p.591. Emphasis in original.

“... [virtue ethics] has a built-in recognition of the point that the moral life is not static; it is always developing. When it comes to working out the right thing to do, we cannot shift the work to a theory, however excellent, because we, unlike the theories, are always learning, and so we are always aspiring to do better.”⁸⁶

Brown picks up on this developmental aspect of virtue ethics through a consideration of Aristotle’s work, and in doing so, he contrasts Greek ethical thought with what he (not unjustifiably) calls ‘Christian/Kantian thought’:

“The Aristotelian virtues ... certainly involve dispositions to act in certain ways, but these dispositions are consciously learned through the exercise of the human capacity to reason. In a given situation, it might seem that the virtuous man or woman will know instinctively what is the right thing to do, but this ‘instinct’ ... is the product of an education in the virtues, something that only the trained mind can achieve. This, incidentally, is one of the big differences between Christian/Kantian and Greek ethical thought; in the former, simplicity is at the root of virtue, for the latter, virtue must be self-aware. To illustrate the point from modern cinema, the good-natured simpleton Forrest Gump always does the right thing and is a good person in the Christian/Kantian sense of the term even though unable to articulate clearly why he does what he does; for the Aristotelian, on the other hand, this inability would disqualify Forrest from being able to claim to be a virtuous person.”⁸⁷

As we have already seen from Nussbaum’s work, Brown’s claim here about ‘Christian/Kantian thought’ is not as straightforward as it might seem, since Kant was (and many Christians are) indeed concerned with building character through education. We shall have occasion to consider Brown’s argument here in chapter three in some more detail, but for now, in returning to a discussion of virtue ethics in (and around) IPT, the developmental aspect of this approach is also brought out in the work of Fred Dallmayr. In his *Post-Liberalism: Recovering a Shared World*, we find an account of virtue ethics, or—in line with Nussbaum’s argument—what he also calls the Aristotelian tradition of virtuous praxis, as

⁸⁶ Annas, *Being Virtuous and Doing the Right Thing*. p.74.

⁸⁷ Chris Brown, 2012. ‘The ‘Practice Turn’, *Phronesis* and Classical Realism: Towards a Phronetic International Political Theory?’. *Millennium* 40(3). pp.439–456. As Arendt puts it in terms of Kant’s moral theory, his categorical imperative “could be stripped of its Judaeo-Christian ingredients, which account for its formulation as an imperative instead of a simple proposition” like Socrates’ in Plato’s *Gorgias* was (‘It is better to suffer wrong than to do wrong’). *BPF*. pp.239–240.

manifest in the writings of Alasdair MacIntyre, Paul Ricoeur and Hans-Georg Gadamer. As Dallmayr says:

“What is particularly important in Aristotle’s teaching is that virtuous life cannot be the life of a hermit or recluse, but requires a certain level of participation in public or political affairs. A further aspect (not always sufficiently appreciated) is the role of education or pedagogy, the fact that virtuous conduct has to be nurtured and cultivated in order to become steady and reliable ... Human life, in this account, is seen as a movement or journey of ethical learning ... that is stabilized by the ongoing practice of virtues.”⁸⁸

Elsewhere, Dallmayr extends his discussion of the virtues in a more cosmopolitan direction, but still emphasises the role that education or pedagogy must have in their development:

“...what is urgently needed in our time is a strengthening of the dispositions conducive to cosmopolitan coexistence and collaboration, chiefly the dispositions of generosity, hospitality, mutuality, and striving for justice. This strengthening involves a large-scale pedagogical effort aiming at the steady transformation of narrow (national, ethnic, or religious) self-interest into a willingness to care for the common interest or ‘common good’ of humankind.”⁸⁹

Howsoever we might understand a transformation that is steady, let us return here to Dallmayr’s *Post-Liberalism*. In his review of MacIntyre’s *After Virtue*, he seems to agree with MacIntyre that there are numerous ways in which human beings may flourish, that even flourishing itself may be expressed in very different ways, and points out that humans also have the capacity for speech and deliberation, which can facilitate mutual understanding.⁹⁰ He has some reservations, however, about the “metaphysical realism” informing the argument, seen in MacIntyre’s acceptance of Aristotle’s account of the human being as rational, “thereby completely sidelining the Heideggerian view of the ‘ek-static’ quality of *Dasein*”.⁹¹ One of the corollaries of this acceptance that Dallmayr sees “is a certain centered (or anthropocentric) quality of

⁸⁸ Fred Dallmayr, 2019. *Post-Liberalism: Recovering a Shared World*. Oxford: Oxford University Press. p.52.

⁸⁹ Fred Dallmayr, 2013. *Being in the World: Dialogue and Cosmopolis*. Lexington: The University Press of Kentucky. p.44.

⁹⁰ Dallmayr, *Post-Liberalism*. p.53. Flourishing [gerund], or *eudaemonia*, is usually the ‘end’ or *telos* in accounts of the virtues inspired by Aristotle’s work.

⁹¹ Dallmayr, *Post-Liberalism*. p.53.

‘directedness’: human life is basically a self-directed, intentional pursuit—irrespective of the interventions, interruptions or adventures happening along the way”.⁹² While it might be unclear precisely what Dallmayr’s critique of MacIntyre’s argument is here, in a footnote to his observation, he mentions that MacIntyre makes passing reference to Paul Ricoeur, though without drawing any significant conclusions from what Ricoeur says, and then goes on himself to review Ricoeur’s *Oneself as Another* which, although also standing within the Aristotelian tradition of virtuous praxis, i.e. with an understanding of human life as being ‘self-directed’, pays close attention to self-other relations as well. Dallmayr construes Ricoeur’s argument as “a balancing act” which is “quasi-dialectical” and “basically a reconciliation of modern Kantian-style deontology [i.e. focusing on the subject] with the trans-subjective and trans-modern *polis*-perspective associated with Aristotle”.⁹³ For Ricoeur, ethics in the comprehensive sense means “aiming at the ‘good life’ with and for others, in just institutions”, but his (more or less) Aristotelian account must also “pass through the sieve of the norm”, i.e. deontology, and due to the dilemmas or quandaries Ricoeur finds in deontology, he argues that it must finally cede place to “moral judgment in situation” or “practical wisdom”.⁹⁴ After paying tribute to Ricoeur’s work for standing at the forefront of contemporary philosophical debates about ethics, Dallmayr questions why he resorted to deontology in his argument, regarding his combination of Kant and Aristotle—or what he also calls universalism and contextualism—as suggesting perhaps a misreading of the latter as a kind of shallow pragmatist or empiricist “neglectful of his ‘ontological’ depth dimension”.⁹⁵ This leads into a discussion of Gadamer, who Dallmayr says “finds the meaning of Kantian moral formalism in the effort to preserve the purity of the moral will against all the empirical messiness deriving from contingent interests and inclinations”, and pays closer attention than Kant (or rigorist interpretations of his work) to our empirical messiness, or what Dallmayr also calls here “the motivating force of human inclination”.⁹⁶ Gadamer recognises the worth of Aristotle’s ethics in this respect as involving “a steady

⁹² Dallmayr, *Post-Liberalism*. p.54.

⁹³ Dallmayr, *Post-Liberalism*. p.56.

⁹⁴ Dallmayr, *Post-Liberalism*. p.58.

⁹⁵ Dallmayr, *Post-Liberalism*. p.59.

⁹⁶ Dallmayr, *Post-Liberalism*. p.62.

learning process where praxis is always oriented towards the *telos* of some good”, and Dallmayr describes this, “in more recent philosophical language”, as hermeneutical in the sense that the *telos* one pursues is intrinsic rather than extrinsic to action itself, “thus transforming and uplifting the learner or agent in turn.”⁹⁷ In Gadamer’s account, ethical learning is always socially and historically conditioned; it always begins from within a given tradition or set of customs and practices where conduct is continually shaped through renewed hermeneutical reflections. Dallmayr further articulates Gadamer’s account by connecting it again with Aristotle’s language of virtue:

“It is the ‘reflective’ agent, relying on practical wisdom (*phronesis*), who ponders the consequences of actions soberly and reforms them in light of the horizon of ‘goodness’ and wellness (*eudaemonia*). Here again, Aristotle emerges as the proper guide because he does not talk of moral doctrines but of ‘virtues’ and ‘goods’ which are the attributes of praxis. Instead of relying on abstract principles or maxims, Aristotelian ethics concentrates on the virtuous character and moral ‘being’ of agents...”.⁹⁸

Accounts of ethics such as Aristotle’s seem to avoid what Dallmayr calls elsewhere the “troubling remoteness of theoretical construction from lived practice”, yet later in his *Post-Liberalism* he “venture[s] into philosophical (and theological) terrain in an effort to discern the meaning of human situatedness in a place, a space or a ‘world’”, and uses Heidegger’s “metaphysical register” in speaking about ‘place’ and ‘no-place’.⁹⁹ Still, he returns wisely, skilfully and safely from his venture back to lived practice in the final section of the concluding comments to *Post-Liberalism*, entitled ‘Learning to be Human’, a theme chosen by the 2018 World Congress of Philosophy, where he tells us that the theme:

“ ... invites us to think philosophically, but it also invites us to a practice or ‘doing’, namely, learning to be human ... it asks for philosophers as human beings to inquire and learn what it means to be human ... searching for the human involves a paradoxical balance of knowing and not-knowing, of tentative fore-knowledge and the need for further inquiry. The balance can easily be disrupted in two ways. Some searchers, frustrated by the difficulty, may decide to abandon

⁹⁷ Dallmayr, *Post-Liberalism*. p.63.

⁹⁸ Dallmayr, *Post-Liberalism*. p.63.

⁹⁹ Dallmayr, *Dialogue and Cosmopolis*. p.41; Dallmayr, *Post-Liberalism*. pp.111–112.

further inquiry as a hopeless and purely mystical exercise. On the other hand, over-confident thinkers—well versed in logic and epistemology—may settle for a robust definition or handy formula.”¹⁰⁰

Not unlike what we see in Beardsworth’s conception, this seems to me to be a worldly understanding of philosophy, i.e. one with an ethical orientation; but perhaps unlike Beardsworth’s conception, it is one that (often) focuses on the character of human beings. And such a focus is what Dallmayr suggests is the shift that is required if one wants to understand or develop Benhabib’s theory of democratic iterations, observing that, as it stands, it does not quite fit into the parameters set by a Kantian formalism or the sort of discourse theory inspired by Habermas.¹⁰¹ Political theorist Aletta Norval has such a focus in her engagement with Habermas’ *The Structural Transformation of the Public Sphere*, agreeing with much of his assessment of the decline of the bourgeois public sphere in late modernity but arguing for the development of civic virtues in contemporary liberal democracies. Norval recalls Kant’s and Habermas’s account of this public sphere and points out the latter’s aversion to what has come to be called virtue ethics:

“We may do well to remind ourselves of the critical work that the public sphere is supposed to fulfil. The critical use of public reason creates ‘a forum in which private people, come together to form a public’ and ready themselves ‘to compel public authority to legitimate itself before public opinion.’ What are the virtues associated with these functions? As many commentators have noted, Habermas does not seek to provide an account of such virtues, nor does he find it necessary. Indeed, he could be argued to be positively hostile to the need to provide such an account. Nevertheless, there are clues as to what is presumed in Habermas’s historical reconstruction of the very idea of a public and the emergence of the bourgeois public sphere. A public critically reflecting on its culture depends upon the presence of citizens *educated* in the art of critical-rational public debate.”¹⁰²

¹⁰⁰ Dallmayr, *Post-Liberalism*. p.188.

¹⁰¹ Dallmayr, *Being in the World: Dialogue and Cosmopolis*. p.42. Dallmayr in fact provides three options here in terms of shifting one’s focus: “American pragmatism, hermeneutics and neo-Aristotelian virtue ethics”, but while there are interesting similarities and differences between these options, it is beyond the scope of my project to investigate them. On Dewey’s pragmatism, Cf. *EU*. pp.194–196.

¹⁰² Aletta Norval, 2012. “Don’t Talk Back!’—The Subjective Conditions of Critical Public Debate’. *Political Theory* 40(6). pp.802–810. Emphasis in original.

Emphasising here what Dallmayr says is not always sufficiently appreciated, Norval goes on to question Habermas' distinction between public and mass (the former organised so that it can 'answer back', the latter cannot 'answer back' and is manipulated), arguing that publics are *both* capable of being critical and of being manipulated, and that "it is not the case that the virtue of the critical use of reason belongs to a particular sociological group or form of society."¹⁰³ Stating that "the fundamentally dichotomous thinking that inspires both Habermas's text and deliberative accounts of democracy more generally, must be abandoned, for it is part of the problem", Norval argues for the formation of democratic subjectivities through "participation in practices of 'talking back'" which, if including the education in critical reason to which Habermas refers, "also depends upon embodied practices of habituation, upon political imagination and upon the operation of exemplars, and upon actions that manifest for us other possibilities of being and acting."¹⁰⁴ As with all the other accounts of virtue ethics addressed in this sub-section, there is an understanding in Norval's that the fostering of virtues, the fostering of "fundamental abilities and capacities of [*each* and] *all*", requires education as well as "continuous work on the self".¹⁰⁵

1.3.2 Statespersons

We saw in the previous sub-section that Dallmayr described *phronesis* in terms of one who "ponders the consequences of actions soberly and reforms them in light of the horizon of 'goodness' and wellness (*eudaemonia*)." In his *Being in the World: Dialogue and Cosmopolis*, he also describes *phronesis* as prudential judgment, which involves "the search for the right middle path (*mesotes*) and the cultivation of the ethical ability to weigh carefully the pros and cons of a given situation", noting that it is fundamentally different to Kant's account of judgment in *The Critique of Judgment*, where judging is always subordinated to the categorical imperative which is based upon his transcendental philosophy and metaphysics of morals.¹⁰⁶ Dallmayr emphasises here—in what originally was a

¹⁰³ Norval, *Don't Talk Back!* p.805.

¹⁰⁴ Norval, *Don't Talk Back!* p.807.

¹⁰⁵ Norval, *Don't Talk Back!* p.808. Emphases in original.

¹⁰⁶ Dallmayr, *Dialogue and Cosmopolis*. p.66.

speech he gave at the World Humanities Forum, organized by UNESCO—that this subordination is incompatible with humanism and the humanities “because it involves the surrender of *praxis* and practical engagement in favor of abstract knowledge”, and making sure to highlight the important connection between prudential judgment and the notion of common sense (*sensus communis*), which “in many ways [is] the pivot of humanism”, he goes on to quote Gadamer’s support of Vico:

“For Vico, the wisdom of the ancients, their cultivation of prudence and eloquence, remains indispensable precisely in the face of modern science and its quantitative methodology. For, even now, the most important aspect of education is something else: namely, the cultivation of the ‘*sensus communis*’ which is nurtured not by apodictic truth but by weighing the likely or probable.’ Seen from this angle, the *sensus communis* is not merely individual aptitude, but ‘a sense that founds community or communality (*Gemeinsamkeit*) ... According to Vico, what gives to human striving its direction is ... the concrete universality represented by the community of a group, a people, a nation, and ultimately of humanity at large. Hence, developing this communal sense is of decisive importance for human life”.¹⁰⁷

Dallmayr himself refers to *sensus communis* as “an ethical quest for public virtue (in both the Aristotelian and Stoic sense)”, and elsewhere, he provides an understanding of the relation between ethics and politics which it seems to me accords with Aristotle’s in particular, touched upon by Devetak above (p.61):

“For me, ethics and politics are neither simply identical, nor are they opposed. If confined to the personal level, ethics functions in a more private context, while politics operates on a broader public level; ethics nurtures the personal good life, politics the good life of the larger community.”¹⁰⁸

Although he does not say so explicitly here, it seems to me that Dallmayr understands it to be a key responsibility of statespersons to nurture the good life of the larger community (to and for which they are responsible), an important part of which involves “an ethical quest for public virtue”, and to weigh carefully the (possible) consequences of their actions before acting. But to return to his speech at the World Humanities Forum, Dallmayr also connects his

¹⁰⁷ Dallmayr, *Dialogue and Cosmopolis*. pp.66–67.

¹⁰⁸ Fred Dallmayr, 2011. ‘Ethics and International Politics: A Response’. *Journal of International Political Theory* 7(2). pp.252–263.

understanding of *sensus communis* to the writings of Scottish moralists such as Francis Hutcheson, Thomas Reid and Adam Ferguson, who, along with Vico and a “host of [other] voices”, were steadfast, in the face of the abstractions of certain philosophers during the enlightenment, in maintaining “practical, ethically nurtured experience[s] in a social context”.¹⁰⁹ He ends this section of his speech by referring to the host of voices as “the good-sense tradition”, which, in Gadamer’s words, “not only offers a cure for the ‘moonsickness’ of metaphysics, but provides the basis for a moral philosophy that *really does* justice to social life.”¹¹⁰

Whereas Dallmayr describes Vico as being part of a “counter-current” that had existed all along against the domination of theory over praxis which sprouted in early modernity, we saw Devetak, through his consideration of some alternative historiographies of the period, understand him as being part of an enlightenment that is civil and jurisprudential, an enlightenment that insists “on non-transcendental civil history as the most appropriate context for understanding human society”.¹¹¹ Devetak construes Vico’s writings as a continuation and adaptation of the historical arts as these were developed through the Renaissance; arts which provide a variety of public services:

“Humanist histories from Bruni and Valla to Machiavelli and Guicciardini were decidedly political, insofar as they were ‘not written for the delectation of other scholars and humanists but as a guide for literate statesmen’. Occupying the office of ‘advisor to the prince’, humanist historians made politics, government, statecraft, and the *res publica* the ‘font of value’ and the point of enquiry ... they cultivated a civic persona concerned with the objectives of statecraft and good government, as opposed to the moral persona of the scholastic intellectual whose objectives were more closely tied to ecclesiastical or theological purposes”.¹¹²

Devetak notes that such humanists regarded it as “dangerous, futile and inappropriate in politics to generalise from good intentions or moral principles originating in theology”, and that they understood politics to be “an enterprise concerned more with securing good political outcomes for the *res publica* than

¹⁰⁹ Dallmayr, *Dialogue and Cosmopolis*. pp.62 and 67.

¹¹⁰ Dallmayr, *Dialogue and Cosmopolis*. p.68. Emphasis added.

¹¹¹ Dallmayr, *Dialogue and Cosmopolis*. p.62; Devetak, *Critical International Theory*. p.182.

¹¹² Devetak, *Critical International Theory*. pp.175–176.

adhering unswervingly to moral foundations.”¹¹³ The humanists he considers saw a deeper understanding of history as being necessary in terms of securing good outcomes in the present, since it provides a fount of practical wisdom and exemplary figures in a world where politics is never *not* subject to the contingencies of time and place. In bringing this historical mode of critique into the present, Devetak draws upon Richard Bourke’s conception of historical prudence:

“Political judgment is not an exercise of applying rules or doctrines proffered by theory ... Judgment must ... be considered historical and contextual since good or prudent political decision in one context may not be prudent or good in another ... It should be emphasized that this is not to advocate an amoral approach to politics, but to maintain the legitimacy of political morality and judgment understood as ‘a form of historical prudence’. Distinct from forms of *phronesis* that remain subject to moral reasoning, Bourke’s conception of historical prudence is a form of practical reasoning concerned with legitimizing political action in particular contexts.”¹¹⁴

There appears to be some consensus between Devetak and Dallmayr when it comes to ethics and politics in favour of praxis, practical reasoning and prudential judgment over theory, theoretical reasoning, and apodictic *episteme*, and for cultivating these through education in the humanities (although there is perhaps more emphasis placed on history by the former and on philosophy by the latter), and we find some very similar concerns in Brown’s work:

“It seems to me that Stephen Toulmin got it right when, in *Cosmopolis*, he identified the early seventeenth century as the point at which things went off the rails, when formal logic came to displace rhetoric, general principles and abstract axioms were privileged over particular cases and concrete diversity, and the establishment of ‘rules’ (or ‘laws’) that were deemed of permanent as opposed to transitory applicability came to be seen as the task of the theorist.”¹¹⁵

¹¹³ Devetak, *Critical International Theory*. pp.175–176.

¹¹⁴ Devetak, *Critical International Theory*. p.192. Although I certainly agree with the general tenor of this passage, I struggle to understand what Devetak means by ‘forms of *phronesis* that remain subject to moral reasoning’. The only instance I can think of here is Kant’s notion of judgment (*urteilskraft*), and as Arendt put it in marking one of her student’s papers (Albrecht Wellmer’s), “*Urteilskraft* is not *phronesis*!”—although it might well be appropriate, after all, to describe Kant’s *urteilskraft* as a ‘form’ of *phronesis*. (Regrettably, I cannot recall where I read or saw this, and I have not been able to find the source again. But I do recall it was imparted by Jerome Kohn, whether by text or in some documentary or other).

¹¹⁵ Chris Brown, 2010. *Practical Judgement in International Political Theory: Selected Essays*. London: Routledge. p.9.

Brown has also fixed his focus upon Aristotle and the virtue of *phronesis* in challenging this domination of theory over praxis. We have already seen him contrast Aristotelian virtues with Kantian thought, and in the same article, he provides account of the three chief intellectual virtues, or ‘virtues of thought’, as set out in the former’s *Nicomachean Ethics*:

“*Episteme* ... concerns ‘knowledge about things that cannot be otherwise’ (1140a35) ... the objects of this kind of knowledge are not self-aware and cannot react to what is known of them. Aristotle does not see this as a virtue of thought that is relevant to human action ... *Techne* ... is essentially about manipulating material things, the work of an artisan, a technician or a craftsman ... *Phronesis* is the virtue of thought that is most important in considering human action and on which Aristotle focuses. *Phronesis* is about deliberation on ‘the truth, involving reason, concerned with action about things that are good or bad for a human being’ (1140b5); it is about ‘knowledge of particulars, since it is concerned with action and action is about particulars’ (1141b15).”¹¹⁶

Brown rightly points out that it is difficult to map Aristotle’s *Nicomachean Ethics* on to social science as it is understood today, since the philosopher’s concern in this text is with “the living of a good life rather than with a desire to understand social practices”, although it might map well on to the lives of any social scientists for whom, like Aristotle, “*contemplation* ... [is] perhaps the most important of all ‘activities’.”¹¹⁷ That said, Brown notes that *phronesis* “is always about the exercise of the faculty of reason”, although “practical wisdom is based on a reason which in turn is shaped by experience”, and this presents a problem for IP theorists who may well have much experience of the world in general but no experience of the practices of international politics in particular; practices, that is to say, which involve high-level decision-making, the practices of statespersons.¹¹⁸ In considering this problem, Brown turns to some work in IR that normally comes under the heading of ‘classical realism’, contending that:

“... at its best, [classical realism] is based precisely on the classical Greek virtue of *phronesis* or, when drawing on the republican tradition of Machiavelli, its Latin near-equivalent, *prudentia*. It is its claim to be able to provide the kind of guidance that practical wisdom offers that is distinctive about realism ... [which is] pre-eminently an

¹¹⁶ Brown, *Towards a Phronetic International Political Theory?* p.445.

¹¹⁷ Brown, *Towards a Phronetic International Political Theory?* p.446. Emphasis in original.

¹¹⁸ Brown, *Towards a Phronetic International Political Theory?* p.447.

approach to international relations that bases its legitimacy on the study of what people actually do and why they do it.”¹¹⁹

We might see some similarities in Brown’s description here of classical realism in IR and Devetak’s account of some of the humanist historians of the Renaissance who made the *res publica* ‘the point of inquiry’. The two classical realists Brown selects as exemplary figures in IR are George Kennan, an American diplomat and historian who had extensive practical experience in international politics; and Hans Morgenthau, IR theorist and German émigré to the US who had no practical experience in international politics but had studied jurisprudence and history in international affairs in some depth. Although acknowledging current scholarly interest in the philosophical or theoretical roots of Morgenthau’s work (and also touching upon Kennan’s education, who graduated from St John’s Military Academy and went on to read history with an emphasis on European diplomacy at Princeton before embarking on his diplomatic career), Brown fixes his focus upon the lived experiences of both in the immediate post-war years: a time when the US was clearly—and clearly seen to be—one of the world’s superpowers, and both Kennan and Morgenthau shared a concern about the inadequacy of US foreign policy responses to the challenges posed by the USSR:

“Both Morgenthau and Kennan, coming at the matter from different angles, are clear that the problem is not simply that the leaders of the US do not know *what* to do in this difficult situation - more fundamental is the fact that they do not know *how* to do whatever they decide they ought to do. It is knowledge of the common-sense realities of diplomacy, the kind of unarticulated knowledge that experienced practitioners develop, that is missing as much as, if not more than, detailed empirical knowledge of the issues or a theoretical understanding of international relations ... The balance of power is given great emphasis in [Kennan’s *American Diplomacy*], but ... as a *practice* rather than as a *theory*. American failures are not the result of an inability to grasp the theory of international politics, but stem from a more basic lack of understanding of how the game is played—Wilsonians lack the common-sense understanding of the unspoken elements of diplomatic practice that Kennan had spent a lifetime developing.”¹²⁰

Although Kennan had developed the requisite practical experience throughout his career in terms of *understanding* how the game is played as distinct from

¹¹⁹ Brown, *Towards a Phronetic International Political Theory?* p.448.

¹²⁰ Brown, *Towards a Phronetic International Political Theory?* p.450.

grasping any theory about the game (Brown's use of the language of games at this point I believe is a line of influence that he is seeking to draw in the article leading from 'the practice turn' in IR inspired by Bourdieu [through Wittgenstein] back to Aristotle), it was Morgenthau more than anyone else, he argues, who brought to the Americans an understanding of the unspoken elements of diplomatic practice. Doubtless with the subtitle of his famous textbook, *Politics Among Nations*, in mind—*The Struggle for Power and Peace*—Brown points out that Morgenthau's work shows that peace can only be brought about "from an understanding of the architecture of power and not from an act of will on the part of well-intentioned idealists", and it does so through the humanistic techniques highlighted above by Devetak: careful attention to history and the provision of exemplary figures and precedents that exercise readers' judgments in the world. As is well-known amongst IR theorists, the states of affairs which bring about peace according to classical realism are balances of power, and as Brown points out:

"...in [Morgenthau's] discussion of the balance of power he describes balances emerging 'of necessity', and yet the main thrust of the discussion, here as elsewhere in the text, is prescriptive; he is concerned to show how states ought to behave in order to create balances of power, a concern that would be meaningless if balances of power actually created themselves through some 'necessary' process."¹²¹

This speaks both to Morgenthau's recognition, as well as the humanists' as set out in Devetak's work, that the judgments and decisions of actual human beings—statespersons in this context—matter, and the similarities between his work and Aristotle's in terms of unsettling the modern distinction between what Brown calls, in the language of modern social science, 'normative' and 'positive' theory. In a further unsettling of this distinction (and this language), Brown goes on in his article to consider Morgenthau's essay, 'The Intellectual and Political Functions of Theory', in which an understanding of IR theory's "perhaps ... most noble" task that it "can and must perform" in the modern age was set out: "to prepare the ground for a new international order radically different from that which preceded it", one that is more appropriate to the existence of nuclear power as an instrument of foreign policy, which in itself "is the only real

¹²¹ Brown, *Towards a Phronetic International Political Theory?* p.451.

revolution that has occurred in the structure of international relations since the beginning of history”.¹²² For Morgenthau, the international order which has developed from the French Revolution to the present is highly inadequate to our current circumstances and analysis by theorists can show this. The task of the IR theorist on this account is to support efforts at overcoming the quandary in which we find ourselves by carrying out some groundwork for statespersons, i.e. those persons making high-level decisions which affect us all. Brown describes Morgenthau’s claim about the task of IR theorists as “breath-taking”, and noting that “nearly 50 years on, there is little sign of the emergence of the new principle of political organisation that he describes as a necessary consequence of the development of nuclear power”, sees his thinking on this matter as an exercise in practical reasoning:

“In his willingness to think outside the box, Morgenthau displayed the virtue of *phronesis*, but here the common translation of the latter as ‘prudence’ is a little misleading; in modern English, prudence has connotations of circumspection, cautiousness and a degree of passivity—indeed some contemporary realists seem to think of prudence exclusively in these terms, as providing reasons why one should not act. Actually, practical reasoning is better understood as the ability to weigh the consequences of one’s actions [before one acts] rather than as providing reasons for inaction.”¹²³

This seems right to me, both about Morgenthau and about some contemporary realists’ understanding of prudence, but I think we could take it a step further by first of all noting Ronald Beiner’s understanding of Aristotle’s account of *phronesis*:

“... judgment alone is not enough in order to qualify as a *phronimos* [a man of *phronesis*] ... In short, *phronesis* minus *praxis* equals judgment. *Phronesis* is the union of good judgment and the action which is the fitting embodiment of that judgment.”¹²⁴

If Brown is right that Morgenthau displayed the virtue of *phronesis*, then his action was the writing of his paper, including his articulation of this important task of IR theorists (he lists others in the paper as well). Compared with

¹²² All words quoted in this sentence are Morgenthau’s, quoted in Brown, *Towards a Phronetic International Political Theory?* p.453.

¹²³ Brown, *Towards a Phronetic International Political Theory?* p.453.

¹²⁴ Ronald Beiner, 1983. *Political Judgment*. London: Methuen. p.75. Emphasis added.

statespersons, the consequences of his actions were always going to be far less weighty, whereas compared with most other IR theorists, they were going to be more so. But why would—or should—the consequences of Morgenthau’s actions (i.e. his publications) carry more weight than most other IR theorists? The intuitive response to this question seems to me to be that Morgenthau has more authority in speaking about these matters than most other IR theorists. But Brown in his article regards as an instance of ‘pulling rank’ Morgenthau’s request in the second edition of his *Politics Among Nations* that its argument be judged not only in its entirety instead of merely upon this or that part of it, but also as the product of twenty years of relevant study. Such instances of “pulling rank” Brown argues are “not happy or conducive to genuine intellectual progress” (even if Morgenthau’s text may well be so to genuine political progress), that “wisdom is not something that can be claimed for oneself—it has to be recognised by others”, that the old charge of the ‘scientists’ that classical realism is “‘wisdom literature’, reliant on authority rather than argument, has some substance”, and he concludes by warning—rightly—against “the ever-present danger of hubris”.¹²⁵

Yet it seems to me that this ever-present danger should not and anyway cannot prevent *praxis* altogether, and it may well be the case that Morgenthau’s own *praxis* (the writing and publication of his article) involved (like Devetak’s humanist historians) ‘advising the prince’ whilst simultaneously contributing towards genuine intellectual progress inside the academy. But in returning to a consideration of statespersons, let us consider another of Brown’s articles, *On morality, self-interest and the ethical dimension of foreign policy*. In this paper, Brown dispels numerous caricatures of realism in IR as amoral and probes the reader’s understanding of ethical theories such that we come to recognise virtually none of these theories as offering “a *totally* other-regarding approach to moral issues”, and he ponders why some continue to think, speak and act as if they do:

“...why is it that people ... find themselves drawn to moral *absolutism*, a black-and-white account of the world, when it comes to international affairs? This is genuinely puzzling, but the best

¹²⁵ Brown, *Towards a Phronetic International Political Theory?* pp.455 and 456. Cf. Michael Walzer, 2013. ‘The Political Theory License’. *Annual Review of Political Science* 16(1). pp.2–9.

explanation may be simply that international relations are sufficiently far away from most people's personal experiences that they do not make the kind of connections with their own lives that would reveal how silly it is [in international relations] to ask for purity of motives and an *absolute* disregard for self-interest."¹²⁶

Although it is only an analogy Brown is drawing here between the self-interest of individuals and the self-interest of states, it still helps in trying to imagine what is going on in a statesperson's head in coming up with a foreign policy; they cannot but be responsible for the 'self-interest' of the state, even as they are also responsible for upholding peace and security in the international sphere, just like a citizen is responsible, as we shall see in subsequent chapters, for looking out for their own interests as well as the interests of others. In thinking through these responsibilities of statespersons which not infrequently come into conflict, Brown argues that:

"...foreign policy cannot be self-abnegatory, nor is there any sound ethical reason why states should be required to neglect their own interests in the interests of the [international] common good—rather the task must be to find ways in which states can be good international citizens, pursuing their national interests, while trying *at the same time* to act in the [international] common interest."¹²⁷

It seems to me that achieving such simultaneity in one's actions is no easy task, and the ways found in this chapter by the likes of Devetak and Dallmayr for both citizens and statespersons in working towards it have included an education in the humanities, such as what Morgenthau had. As Dallmayr says, the humanist tradition and the humanities have always had a strong accent upon prudential judgment, and he regards as decisive in this respect "the Aristotelian legacy of *phronesis*", which itself Brown has been promoting in IPT for some time now.¹²⁸ He is correct that the Latin *prudentia* is not an exact equivalent of the Greek *phronesis*, and one might note here that the former is a term that extends far further back in time than Machiavelli, but I think it is important to underscore that neither *phronesis* nor *prudentia* exhaust what the ancient Greeks and Romans had to say about the virtues. While Morgenthau says that "Realism

¹²⁶ Chris Brown, 2010. 'On morality, self-interest and the ethical dimension of foreign policy'. Brown, *Practical Judgement in International Political Theory*. p.215. Emphases added.

¹²⁷ Brown, *On morality, self-interest and the ethical dimension of foreign policy*. p.219. Emphasis in original.

¹²⁸ Dallmayr, *Dialogue and Cosmopolis*. p.66.

considers prudence—the weighing of the consequences of alternative political actions—to be the supreme virtue in politics”, it is certainly not the only one, and while I think Brown is right that at its best this school of thought is based on this virtue, ‘Realism’ in IR has no monopoly in its understanding of it (Morgenthau was in fact pushed by his publisher to write this and other ‘principles of Realism’ in *Politics Among Nations* so that it could be read as a textbook in the discipline). We shall be considering prudence in its broader context of the other primary virtues in the next section and in subsequent chapters.

1.4 Political Societies

1.4.1 Political Society

In previous sub-sections, we have touched upon the notion of civil society in connection with Habermas’s *The Structural Transformation of the Public Sphere*, a text in which he gave an account of its formation in the Enlightenment and its decay in the nineteenth and twentieth centuries through processes of capitalism and the development of mass politics and media. Civil society has been a key concept for several modern social and political philosophers as a public space in which reasoned discussion and deliberation takes place amongst private citizens. In IPT, Brown has provided us with a good account of it in relation to the civic republican tradition:

“The most minimal and negative definition of civil society involves the idea of society organising itself separately from and against the state ... [but this] misses the complexity of the relationship between civil society and the state ... although civil society sets bounds upon, and limits the activities of, the state, it nonetheless requires that there be an effective state for it to limit and set bounds upon. In the absence of peace, and without some mechanism outside of itself for arbitration between major interests, civil society cannot exist. Civil society ... stands against ancient republican societies which were ‘free’ ... but which possessed, as it were, the wrong kind of freedom ... [I]n principle, the two ideals [i.e. republican civic virtue and civil society] are opposed to one another. The notion of civic virtue implies a degree of moral unity, a positive role for law and, *in extremis*, can lead to Rousseau’s notion of forcing people to be ‘free’ ... For the proponents of civil society, on the other hand, freedom involves a

minimalist approach to law, and the abandonment of the idea of managed consensus ... by the standard-bearers of republican virtue.”¹²⁹

As we have seen, Norval has sought to overcome the opposition Brown sees here in seeking the development of civic virtues in relation to civil society as it was set out by Habermas in *The Structural Transformation of the Public Sphere*, in which he said that the work of such a society is ‘to compel public authority to legitimate itself before public opinion.’¹³⁰ Norval asked in this regard what the virtues associated with these functions (or this compulsion) were and noted Habermas’s aversion to providing account of them, but drawing upon the work of Simone Chambers, she makes a suggestion as to how they could be promoted:

“As in Habermas, Chambers touches upon the importance of the question of *how* ‘citizens form their opinions’, arguing that it is ‘an integral part of a theory of deliberative democracy.’ To think about the *how* is ... a matter of ... fostering the promotion and proliferation of a multiplicity of citizen-citizen encounters. Such ‘face-to-face encounters of everyday talk’ could promote ‘the skills needed to be a critical yet receptive audience.’”¹³¹

Whilst not addressing in her article what the virtues associated with civil society are or might be (since it was written as part of a symposium on Habermas’s text, this was not her aim), Norval I think is certainly on the right lines in arguing for citizen-citizen encounters in developing them. We have already begun considering what some of these virtues might be and we shall continue doing so in the rest of my argument, but to return to Norval’s, would the citizen-citizen encounters promoted count as civil society? Drawing upon the work of both Habermas and Ralph Waldo Emerson, Norval holds a conception of society in which its members are required to conform to the extent that they become a ‘herd’ or ‘mass’. In line with Habermas in particular, she also has a corollary conception of self-reliance understood as aversion to society (which, again, is conceived as ‘massifying’), with aversion holding the key to the development of the required civic virtues:

¹²⁹ Chris Brown, 2010. ‘Cosmopolitanism, world citizenship and global civil society’. *Practical Judgement in International Political Theory: Selected Essays*. pp.196–197.

¹³⁰ Norval, *Don’t Talk Back!* p.805.

¹³¹ Norval, *Don’t Talk Back!* p.806. Emphasis in original.

“Aversion opens the way to activities through which we can foster the virtues associated with a critical engagement and development of a better self and society. The perfectionism invoked here is non-elitist and non-teleological: it is a possibility open to each and all. It does not predetermine and prefigure what is possible, and along which road we must all travel ... We should not mourn the loss of the bourgeois public sphere, but work on the possibilities opened up by the world coming into being.”¹³²

Norval’s argument is for civil society in a radical democracy, but it seems to me that the language of aversion she takes on from Habermas is tied to a certain modern *liberal* ambivalence towards society as such, and that this is an ambivalence which radical democrats do not normally have. The language of perfectionism seems to come from modern liberal discourse as well, constraining Norval to speak it; she must defend her argument about civic virtues from charges of ‘elitism’ and ‘teleology’, which it seems exclude ‘perfectionism’—what Torrente and Gould called moral striving or what Annas called learning—somehow from being a possibility open to each and all. It seems to me that there are unnecessary difficulties in using some of the language of modern liberalism when discussing civic virtues and the civic republican tradition (and not only because of all the -ism talk), but whatever the case may be, Norval’s prescription here for us to work on the possibilities opened up by the world coming into being I think is a commendable one, and in this sub-section, we are considering some of the work that has been done by political philosophers and theorists in this regard, with a view to the further development of the notion of political society in subsequent chapters.

As Devetak says, Habermas’s work incorporates certain Kantian elements, including arguments about the public use of reason in terms of securing the legitimacy of one’s claims. Political theorist Bryan Garsten has identified such arguments as ‘the rhetoric of public reason’, a ‘rhetoric against rhetoric’, the aim of which is to silence the controversies that are the very stuff of politics and “obscure the alienation of judgment involved in this silencing ... produc[ing] resentment and frustration among citizens who are subject to them.”¹³³

¹³² Norval, *Don’t Talk Back!* p.808.

¹³³ Bryan Garsten, 2006. *Saving Persuasion: A Defense of Rhetoric and Judgment*. Harvard University Press. p.175. The issue of silence as it relates to power is already a matter of investigation in IPT, and it seems to me this area of research could benefit a great deal from

Following a very long tradition that understands rhetoric as speech that aims to persuade, and understanding persuasion as “a way of influencing that is neither manipulation or pandering”, Garsten argues that it is persuasion rather than force that is “the presumption of democratic politics” and that:

“Speech that aims to persuade can engage our capacity for practical judgment ... Citizens who can use speech to draw one another into exercising this capacity for judgment will find themselves more attentive to one another’s points of view, more engaged in the process of deliberation, and more attached to its outcome ... efforts to leave the politics of persuasion behind often ask citizens to alienate their judgment in a way that leaves them stranded from both the activity of public discourse and its outcomes. Efforts to avoid rhetorical controversy tend to produce new and potentially more dogmatic forms of rhetoric.”¹³⁴

Citizens engaging one another’s practical judgments through speech that aims to persuade, it seems to me, well describes the encounters Norval suggests may promote the skills required of democratic citizens, but unlike Norval, Garsten seems sceptical of Habermas’s account of the rise and decline of the bourgeois public sphere, and like Devetak, he provides an alternative history of the Enlightenment. Garsten construes it as one which shows public reason not as a ‘bottom-up’ development from eighteenth-century coffee-houses that broadens into a bourgeois public sphere or civil society of private citizens, but a ‘top-down’ one in which ‘public reason’ is invented by philosophers in efforts to alienate to a sovereign source of authority citizens’ practical judgments about public affairs. This sovereign source, for Kant, was the critique of reason: “...to criticism everything must submit”.¹³⁵ Quoting an extended passage from *The Critique of Pure Reason* in which its sovereignty is explained by analogy with some of Hobbes’s arguments in *Leviathan*, Garsten goes on to point out in Kant:

“...the need for a sovereign judge whose authority ‘no one can question’ and whose judgments offer ‘relief’ from ‘endless disputes’ ... Once in possession of that standard of critical reason, one ‘begins to feel his own capacity to secure himself against ... injurious

studies in both rhetoric and republican politics. See for example: Sophia Dingli, 2015. ‘We need to talk about silence: Re-examining silence in International Relations Theory’. *European Journal of International Relations* 21(4). pp.721–742; Sophia Dingli and T.N. Cooke (eds.), 2018. *Political Silence: Meanings, Functions and Ambiguity*. Abingdon: Routledge.

¹³⁴ Garsten, *Saving Persuasion*. pp.5–7 and 175.

¹³⁵ Quoted in Garsten, *Saving Persuasion*. p.84.

deceptions, which must finally lose for him all their illusory power.’”¹³⁶

One might wonder, then, about the extent to which citizens could be *receptive* to others insofar as they are in possession of Kant’s standard of critical reason. But the verdict of critical reason according to Kant is not dictatorial; he says that it is “simply the agreement of free citizens” (freedom understood as self-legislation and citizens understood, it seems to me, as in possession of Kant’s standard of critical reason), a claim supported and developed by Onora O’Neill who, it seems standing in the same Kantian constructivist tradition as Benhabib, argues that the authority of critical reason is one that we construct ourselves, thereby securing its legitimacy.¹³⁷ Garsten notes here that O’Neill is drawing upon “the legitimising power of consent, the device by which authority and freedom can be made to coexist”, and he points out that the analogy drawn by Kant, to which O’Neill also refers, is not necessarily an argument for accepting critical reason’s legitimate sovereign authority, whether in philosophy or politics: “after all, we do not accept Hobbes’s claim that virtually absolute monarchical rule would be legitimate if it were constructed.”¹³⁸ Still, in Kant’s philosophy the agreement of free citizens that legitimises the sovereignty of critique is not identical to that which brings about Hobbes’s sovereign; it is a hypothetical agreement to which we are already party, whether we realise it or not. O’Neill argues that if we reflect on what we are doing in debating and arguing, we will understand that we are implicitly invoking a standard of reasonability which is meant to be understood by all reasonable speakers; the standard of critique “cannot be questioned because intelligible questioning presumes the very authority it seeks to question”, i.e. it requires no persuasion because we are all already committed to it, consciously or unconsciously.¹³⁹ No doubt still mindful of Ronald Dworkin’s claim about John Rawls’ Kant-inspired original position that “a hypothetical contract is not simply a pale form of an actual contract; it is no contract at all”, O’Neill links this idea of a hypothetical agreement to Kant’s notion of ‘universal communicability’ as set out in his *Critique of Judgment*, expanding the scope of his arguments there about

¹³⁶ Garsten, *Saving Persuasion*. pp.90–91.

¹³⁷ Quoted in Garsten, *Saving Persuasion*. p.92.

¹³⁸ Garsten, *Saving Persuasion*. p.92.

¹³⁹ Quoted in Garsten, *Saving Persuasion*. p.92.

aesthetic judgments to all reasonable appeals and the notion of a *possible*, rather than actual, community.¹⁴⁰

Key to Kant's notion of universal communicability is his conception of common sense, or *sensus communis*, a ubiquitous term already mentioned and also used by a group in his time known as the popular philosophers, including Christian Garve, Johann Georg Heinrich Feder and Moses Mendelssohn; a group whose writings—along with those of Petrarch, Erasmus and Montaigne—Hegel was later to characterise as 'Ciceronian philosophy' because such figures joined contemporary philosophical debates from a more humanistic perspective. Garsten gives an account of the disputes between Kant and the popular philosophers who, in line with some of the figures considered by Devetak in the first section of this chapter, endorsed a program of enlightenment that incorporated modern advances in knowledge but sought to reverse the backsliding into scholastic ways of thinking and writing as evidenced in Kant's critical philosophy. As Garsten puts it:

“[The popular philosophers] adopted Cicero's eclectic approach to philosophical controversies, taking plausible elements from competing schools; they were more concerned with piecing together a pragmatic and prudent form of enlightenment than with establishing the absolute authority of any one system.”¹⁴¹

Kant referred to the popular philosophers as 'indifferentists', arguing that they were feigning indifference to the object of philosophers' inquiries “which can never be indifferent to our human nature” and accused them of dispensing with the knowledge—if attainable—of the flourishing sciences that he regarded as requiring the institution of a sovereign tribunal of critical reason.¹⁴² Peopling this tribunal for Kant were philosophers schooled in his critical philosophy; a tribunal which he said “...can never become popular, and indeed there is no need that it should.”¹⁴³ Like thinkers of the Scottish enlightenment such as Thomas Reid, who argued that the principles used in ordinary life by ordinary people in society “are older, and of more authority, than Philosophy”, the popular philosophers

¹⁴⁰ Ronald Dworkin, 1977. *Taking Rights Seriously*. Cambridge: Harvard University Press. p.151.

¹⁴¹ Garsten, *Saving Persuasion*. p.94.

¹⁴² Garsten, *Saving Persuasion*. p.95.

¹⁴³ Quoted in Garsten, *Saving Persuasion*. p.97.

rejected Kant's efforts to subject such principles to the sovereignty of critique (or as Garsten also puts it, the sovereignty of scholars).¹⁴⁴ Garve, in his review of *The Critique of Pure Reason*, admitted to shedding tears over those passages where Kant talked about moral goodness, where "the stronger interest of virtue calls him back to the cleared road of common sense", but such passages jarred with the rest of Kant's theory, and Garve along with the rest of the popular philosophers continued their project of "restrain[ing] overzealous theoreticians from undermining natural ways of thinking that people [theoreticians and non-theoreticians] simply could not live without".¹⁴⁵ Indeed, as Garsten argues, it is an undermining which can imprudently engender frustration and resentment amongst actual citizens who have not been persuaded of the legitimate authority of critical reason. Such persuasion would require an appeal to the practical judgments of actual citizens which it seems Kant and his followers were unwilling to provide, and as mentioned above, through what Devetak has described as an 'act of theoretical abstraction', Kant would provide a philosophical treatment of *sensus communis*, what Gadamer called 'a sense that founds community or communality', in his *Critique of Judgment*. As Garsten argues:

"[Kant] offered to save the notion from the 'vulgar' connotations of the word 'common' and the experiential connotations of the word 'sense'. He aimed to portray criticism as an investigation into the grounds of common sense rather than a rejection of it. From this perspective, common sense was closely related to the activity of reasoning, and so was in need of the same discipline and authority that gave reason its autonomy [i.e. critique]. Kant proposed that we understand the *sensus communis* as a faculty of judgment that operated independently of experience and sensation."¹⁴⁶

Kant's insistence that *sensus communis* floated free not only of experience and sensation but also of any actual political society was in sharp opposition to how the term was used by both the popular philosophers and to common sense as understood by people in society more generally. Whereas Kant's notion required the enlightened subject to abstract from the characteristics that he or she shares with fellow citizens, the humanistic tradition throughout the

¹⁴⁴ Quoted in Garsten, *Saving Persuasion*. p.98.

¹⁴⁵ Garsten, *Saving Persuasion*. p.99.

¹⁴⁶ Garsten, *Saving Persuasion*. p.101.

enlightenment taught citizens to occupy themselves precisely with (but not only with) these characteristics, both in themselves and in others.

We have seen Dallmayr refer to this occupation or participation in actual political society as deriving from an Aristotelian tradition of virtuous praxis. In drawing out some more of the differences between Kantian and Aristotelian understandings of citizen and society, it is useful for us to consider Dallmayr's *In Search of the Good Life: A Pedagogy for Troubled Times*, together with two reviews of it, one from a political liberal and the other from a civic republican. Dallmayr asks in this text "to whom should we look for moral guidance during times of global violence, scarcity and corruption?" and he goes about answering this question by revitalising the notion of 'the good life' found in various western and non-western traditions around the world as the mainspring of personal conduct, civic virtue and political engagement, and as exemplified in a number of different figures from different cultures in history.¹⁴⁷ Dallmayr attributes much of the troubles of our times in his argument to certain laissez-faire understandings of liberalism. In his introduction, he acknowledges the wish of early liberals rebelling against absolutism and mercantilism "to open a space for free initiatives (a space variously called 'civil society' or 'the market'), but surely not a space outside civil and legal bonds".¹⁴⁸ In a move away from the liberal notion of civil society such as was set out by Habermas, he quotes the following passage from Michael Sandel's *Public Philosophy: Essays on Morality in Politics*:

"To deliberate well about the common good requires more than the capacity to choose one's ends and to respect others' rights to do the same. It requires a knowledge of public affairs and also a sense of belonging, a concern for the whole, a moral bond with the community whose fate is at stake. To share in self-rule therefore requires that citizens possess, or come to acquire, certain civic virtues ... The republican conception of freedom, unlike the [laissez-faire] liberal conception, requires a formative politics."¹⁴⁹

¹⁴⁷ Fred Dallmayr, 2007. *In Search of the Good Life: A Pedagogy for Troubled Times*. University Press of Kentucky.

¹⁴⁸ Dallmayr, *In Search of the Good Life*. p.6.

¹⁴⁹ Dallmayr, *In Search of the Good Life*. pp.11–12.

David M. Rasmussen disagrees with Dallmayr that we have been brought to our troubled times by “liberalism, that is, liberalism in its best form as political liberalism...”, whose principle of justice is toleration. From Rasmussen’s perspective, an informed political liberalism has an overarching theory of modernity which is deontological, yet tolerant of various theories of the good life “out of respect for their various claims to validity and their various ways of promoting justice.”¹⁵⁰ In response, Dallmayr grants that tolerance is liberal “in the sense of the classical virtue of ‘liberality’ or generosity”, but questions modern liberals who see it predicated on ethical indifference when it comes to the actions of others in political society.¹⁵¹ Whereas Rasmussen had sought to overcome the ethical indifference of liberalism by turning to Hegel’s concept of recognition, Dallmayr argues that we may wish to go even beyond this concept insofar as it is a form of ‘cognition’ or ‘knowledge’ which harks back to the Cartesian *cogito*, and suggests the Heideggerian notion of ‘being-with’ is an improvement upon conceptions of ‘knowing-with’. Without getting into philosophical disputes about the primacy of ‘the right’ or ‘the good’, Dallmayr notes that while Rasmussen remains critical of any notion of ‘the good’, he himself regards goodness “not [as] a doctrine or proposition but a frame or horizon of significance—a frame without which Kantian morality and also David’s ‘deontology’ would not get off the ground.”¹⁵²

In his response to Bernard Flynn, who applauds the civic republicanism in his text but questions the notions of ‘self-abnegation’ or ‘self-surrender’ that he finds in it, Dallmayr speaks instead of “self-deflation”, “self-overcoming” and “self-transformation”, registers his preference for civic republicanism over political liberalism, and notes the much older pedigree the former has. He also provides a brief history of civic republicanism which is worth quoting at some length:

“Cicero—a learned civic republican—celebrated citizenship in a good or virtuous republic ... He drew his inspiration mainly from the Greeks, particularly Plato and Aristotle ... From Greece and Rome, civic

¹⁵⁰ David M. Rasmussen, 2009. ‘Political Liberalism and the Good Life’. *Philosophy and Social Criticism* 35(9). pp.1119–1125.

¹⁵¹ Fred Dallmayr, 2009. “Sehnsucht Dorthin’: a response to Rasmussen and Flynn.’ *Philosophy and Social Criticism* 35(9). pp.1133–1142.

¹⁵² Dallmayr, ‘Sehnsucht Dorthin’. p.1138.

republicanism has travelled a long distance. Basically, its history can be read as a progressive streamlining or flattening-out of the Platonic *agon* [between the city of pigs and the city of justice and goodness in Plato's *Republic*] ... Significantly, Machiavelli relied for republican inspiration on the historian Livy, rather than on Cicero; as a corollary, the latter's emphasis on civic virtues was replaced by the stress on *virtu*, a kind of manly virility and self-assertiveness animated by a love of glory ... In more recent times, a fresh strong impulse to civic republicanism was provided by Hannah Arendt ... [who sidelined] Aristotelian ethics and Ciceronian civic virtues in favour of a celebration of *virtu*: the display of individual virtuosity in the public realm."¹⁵³

We shall consider this account of the civic republican tradition in subsequent chapters as it relates to both Arendt and Cicero, but to return to Dallmayr, his worry is that civic republicanism (and, for that matter, political liberalism) has become merely a theory or doctrine, which is “not quite adequate in ‘troubled times’”.¹⁵⁴ That said, in his more recently published *Post-liberalism: Recovering a Shared World*, he seeks to understand “a paradigm shift occurring under our very eyes”, a shift away from the privatised ethics of laissez-faire forms of liberalism toward “the practice of shared ‘public freedom’ in a relational democracy and commonwealth”, and he draws favourably again upon the civic republican tradition:

“Since ancient times, it is customary to distinguish between at least three types of legitimate regimes: monarchy, aristocracy and democracy (or republic). Of these, the first two are hierarchically or vertically ordered, invoking a metaphysical warrant for public authority. By contrast, democracy is horizontally structured, invoking ‘only’ a human warrant. With his deep and correct insight, Montesquieu perceived democracy as a new public paradigm anchored in equality and even the ‘love of equality’ among citizens. To be sure, democracy also exhibits authority, but the latter cannot be permanent or absolute and must always be based on the consent or covenant of citizens. In order to avoid domination or bullying, citizens must respect each other as equals (as well as different) ...”¹⁵⁵

Quite apart from any troublesome claims about metaphysical or human warrants, the reader might wonder here, concerning the three basic forms of government, whether Dallmayr regards not only monarchy and aristocracy but

¹⁵³ Bernard Flynn, 2009. ‘Review of *In Search of the Good Life*’. *Philosophy and Social Criticism* 35(9) pp.1127–1132; Dallmayr, ‘*Sehnsucht Dorthin*’. pp.1139–1140.

¹⁵⁴ Dallmayr, ‘*Sehnsucht Dorthin*’. p.1141.

¹⁵⁵ Dallmayr, *Post-Liberalism*. p.1.

also democracy as ‘hierarchically’ ordered or structured. He goes on in his introduction, I think rightly, to criticise certain excesses of laissez-faire liberalism, and it seems to me that he would criticise certain excesses of democracy as well, but could constraints on such excesses be ‘non-hierarchical’? While Montesquieu certainly did perceive a ‘love of equality’ among citizens in a democracy, he also warned democratic citizens against the corrupting “spirit of extreme equality”, in which they desire all to be equal in every respect, “want[ing] to manage everything themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges”.¹⁵⁶ Michael Walzer, an overt and thoroughgoing democrat, is nevertheless prepared to countenance such constitutional constraints on democratic decision-making. In his *Philosophy and Democracy*, he considers the role of philosophers in this, beginning from, but not ending with, Rousseau’s republican theory:

“The claim of the philosopher ... is that ... he knows what ought to be done. He cannot just do it himself, however, and so he must look for a political instrument ... clearly, the people raise the greatest difficulties. If they are not a many-headed monster, they are at least many-headed, difficult to educate and likely to disagree among themselves ... majorities in any genuine democracy are temporary, shifting, unstable. Truth is one, but the people have many opinions; truth is eternal, but the people continually change their minds ... They may not know the right thing to do, but they claim a right to do what they think is right (literally, what pleases them). Rousseau himself pulled back from this claim, and most contemporary democrats would want to do so too. I can imagine three ways of pulling back and constraining democratic decisions ... First, one might impose a formal constraint on popular willing: the people must will generally ... Second, one might insist on the inalienability of the popular will and then on the indestructibility of those institutions and practices that guarantee the democratic character of the popular will: assembly, debate, elections and so on ... [And] third ... the people must will what is right ... Often enough, they get it wrong, and then they require the guidance of a legislator or the restraint of a judge ... this third constraint surely raises the most serious questions about Rousseau’s fundamental argument, that political legitimacy rests on will (consent) and not on reason (rightness) ...”¹⁵⁷

We have already seen Benhabib use Rousseau’s republican theory as a heuristic device in setting out her own cosmopolitan theory of democratic iterations. Her

¹⁵⁶ Quoted in Hilary Bok, 2014. ‘Montesquieu’. *Stanford Encyclopedia of Philosophy*. Available at: <https://plato.stanford.edu/entries/montesquieu/> Accessed 29th August 2020.

¹⁵⁷ Michael Walzer, 1981. ‘Philosophy and Democracy’. *Political Theory* 9(3). pp.379–399.

theory is one that “permits us to think of creative interventions that mediate between universal norms and the will of democratic majorities”. It seems to me that this formulation turns ‘democratic majorities’ into ‘them’, and so perhaps a philosopher’s instrument as Walzer says here, although sometimes in Benhabib’s theory it is (temporary, shifting, and unstable) democratic majorities who are iterating. Whatever the case may be, Benhabib’s theory appears to rely upon republican theories (Rousseau’s and Kant’s) which rest upon a theory of the will in one form or another, and it seems to me that Walzer is right here to suggest that political legitimacy rests not on will but on reason, and often enough, the people ‘get it wrong’ in willing, and so require the guidance of law or the restraint of a judge; institutional or constitutional, rather than philosophical, guidance or restraint, even if some judges sometimes find themselves “in the grip of a philosophical doctrine”.¹⁵⁸ It is beyond the scope of my project to examine or criticise ‘will-based’ republican theories such as Rousseau’s or Kant’s, as well as their theories of the will; suffice it to say in this regard that a prior theory of the will is not a prerequisite for engaging with the civic republican tradition, whether in theory or practice. But to return to Walzer’s argument, he goes on to consider what the institutional or constitutional features of such constraints on democratic decision-making might look like:

“Popular legislation might be reviewed democratically [by a specific group of citizens] ... More often, however, groups of this sort are constituted on aristocratic rather than democratic grounds. The appeal is from popular consciousness, particular interests, selfish or shortsighted policies to the superior understanding of the few ... Ideally, the group to which the appeal is made must be involved in the community of ideas, oriented to action within it, but attuned at the same time to philosophers outside. In but not wholly in, so as to provide a match for the philosopher’s withdrawal and return ... In the United States today, it is apparent that the nine judges of the Supreme Court have been assigned something like this role.”¹⁵⁹

We can see from this passage that Walzer acknowledges an aristocratic element in the democratic constitution of the US, and indeed that such a mixture of aristocracy and democracy is something that happens most often in the constitutions of political societies to check any possible excesses in democratic

¹⁵⁸ Walzer, *Philosophy and Democracy*. p.388.

¹⁵⁹ Walzer, *Philosophy and Democracy*. p.387.

decision-making. It is sometimes called constitutional democracy. This notion of a mixed form of government is a hallmark of the civic republican tradition, and in fact Dallmayr, not unlike Walzer, would also countenance constraints on any excesses of (pure) democracy as Montesquieu warns against, in Interlude B of his *Post-Liberalism*, where he wishes John Milbank and Adrian Pabst's *The Politics of Virtue*—a text in which the authors argue for a mixed form of government—the largest possible readership.¹⁶⁰

1.4.2 International Political Society

In the first section of this chapter, we considered Beardsworth's defence of Habermasian cosmopolitanism against the Arendtian arguments of Owens, in which he claimed that "once a norm emerges within history, it can act as a norm beyond history" and that "this is the case for liberal individualism and progressive universalism."¹⁶¹ We also considered Benhabib's cosmopolitan project in which she interpreted Kant's second definitive article for perpetual peace as pushing the law of nations toward a model of constitutionalization, "that is, toward the subjection of all sovereigns to a common source of law", and in which she argued that cosmopolitan norms were morally constructed, as distinguished (I think) from acting as norms beyond history.¹⁶² We also noted Waldron's wariness of philosophers' attempts at "the thunderous imposition of positive law from on high" and considered Devetak's contextualist investigation of critical international theory and his recovery of a historical mode of critique which was well-suited for challenging the universalist conclusions reached, or constructions made, by philosophers which might lead to such attempted impositions.¹⁶³ In this sub-section, we continue reviewing this tension between 'universalism' and 'contextualism' as both relate to international political society.

In *Peace Review*, Dallmayr reviewed Rawls' *The Law of Peoples* by way of investigating the history of the term *ius gentium* ('the law of peoples') in Roman

¹⁶⁰ I should note here that Dallmayr is not entirely un-critical of this text, and nor would I be, although probably for some different reasons to Dallmayr's.

¹⁶¹ Beardsworth, *Arendt and the Critique of Moralism*. p.510.

¹⁶² Benhabib and Post, *Another Cosmopolitanism*. p.149.

¹⁶³ Waldron, *Cosmopolitan Norms*. p.96.

law, arguing that “the phrase from the very beginning harbored a mixture of contextually ‘ethical’, abstractly ‘moral’, and practical-political considerations, as well as a blending of ‘positive’ law and philosophy”, which, along with *ius civile* (‘city law’), was later “augmented or supplemented” by a strand of law called *ius naturale* (‘natural law’) derived from Stoic philosophy.¹⁶⁴ By the time his narrative reaches Justinian’s *Digest* in the sixth century CE, Dallmayr adds that *ius naturale* is “seen as rational or philosopher’s law” and correctly points out that:

“On both ethical and legal grounds, philosophers’ reflections clearly cannot simply substitute themselves for the agency and competence of concrete populations. Moreover, even if they were to substitute themselves, their precepts would lack the traction or leverage needed to mold and transform actual human conduct. It is for this reason that, especially in times of historical change or upheaval, the law of peoples (*ius gentium*) has tended to serve as a go-between or mediating agent between local or city law and rational philosophers’ law, an agent able to stretch the former’s parochialism while harnessing the latter’s aloofness.”¹⁶⁵

Dallmayr notes that the *ius gentium* did not provide such a service following the rise of Christianity, retreating into the background in legal discourse as *ius naturale* was foregrounded and closely conjoined with (or subordinated to) eternal or divine law in the writings of figures such as Gratian and Thomas Aquinas. But with the great social, economic, cultural, and political changes bringing humanity into the modern age, the *ius gentium* re-asserted itself, sometimes in the writings of jurists as *ius inter gentes* (‘law between peoples’) to reflect the emergence from the overlapping systems of public authority in the Middle Ages of relatively autonomous political units (‘states’). Dallmayr regards Francisco de Vitoria as the leading figure in terms of rediscovering and reformulating the *ius gentium* in early modernity, who defined it as “what natural reason *has* established among all peoples (or nations)”, but it was Hugo Grotius shortly afterwards, when the scientific revolution had begun, who was to provide what Lassa Oppenheim called “the science of the modern law of nations.”¹⁶⁶ As Dallmayr rightly says, the extent of Grotius’s innovations should

¹⁶⁴ Fred Dallmayr, 2004. ‘The law of peoples and the laws of war’. *Peace Review* 16(3). pp.269–277.

¹⁶⁵ Dallmayr, *The Law of Peoples*. pp.270–271.

¹⁶⁶ Dallmayr, *The Law of Peoples*. pp.271–272. Emphasis added.

not be exaggerated, but what he did bring to bear upon the *ius gentium* that was new was the application of scientific methods—*a priori* (‘naturalist’) and *a posteriori* (‘positivist’) demonstrations—in terms of proving or validating the principles of natural reason. The naturalists, Dallmayr says:

“...reduced *ius gentium* almost entirely to philosophers’ law, or the rationalist law of nature..., a tendency that earned them the by-name of ‘deniers of the (actual) *ius gentium*’ ... [From Grotius onwards, *ius gentium*] was increasingly strapped into the dilemmas of Cartesian and post-Cartesian thought ... *a priori* norms and *a posteriori* ‘facts’. To some extent, while reformulating the very nature and competence of human reason, Immanuel Kant still paid tribute to these dilemmas, especially in his distinction between ‘noumenal’ and ‘phenomenal’ domains and between rational norms and ‘mere’ customs or conventions.”¹⁶⁷

By way of conclusion, Dallmayr identifies Rawls’ *The Law of Peoples* as standing clearly in the rationalist camp, proceeding in much the same way—*a priori* demonstration—as Descartes or Kant did. He goes on to observe that the binary divisions set up by early modern philosophy have been problematised in the twentieth century, that globalisation has brought about “embryonic forms of a global community” whose rules and practices cannot be identified with the “edicts of a select group of philosophers”, and that pre-Westphalian notions of *ius gentium* are re-surfacing which have “passed through the straining filter of modernity and its emphasis on human rights and freedoms”.¹⁶⁸ In these circumstances, Dallmayr still finds much of worth in Rawls’ text, but argues that it “... now needs to be ... integrated and ‘sublated’ (*aufgehoben*) in a more densely textured, cross-cultural *ius gentium*.”¹⁶⁹

Quite apart from any philosophical or scientific methods which might be applied to them, both the *ius gentium* and *ius naturale*, as James Turner Johnson notes, have been important influences upon the just war tradition, “the predominant moral language through which we address questions pertaining to the rights and wrongs of the use of force in international society.”¹⁷⁰ Dallmayr does provide in

¹⁶⁷ Dallmayr, *The Law of Peoples*. p.274.

¹⁶⁸ Dallmayr, *The Law of Peoples*. pp.274–275.

¹⁶⁹ Dallmayr, *The Law of Peoples*. pp.274–275.

¹⁷⁰ James Turner Johnson, 2017. ‘A Practically Informed Morality of War: Just War, International Law, and a Changing World Order.’ *Ethics and International Affairs* 31(4). pp.453–465; Anthony

his account some discussion of Vitoria's arguments about justice and injustice in warfare, accentuating their similarities with the peaceable arguments of Erasmus "against warmongering and military savagery".¹⁷¹ Although Erasmus can well be construed as an ethicist of warfare, he does not usually appear in accounts of the just war tradition along with Vitoria and others, and indeed despite his praise of Vitoria, it seems to me that Dallmayr generally disapproves of the moral language of just and unjust wars as with Erasmus, even as he approves of pre-Westphalian (or pre-scientific) notions of the *ius gentium* which he sees re-surfacing, and from which (but not only from which) this moral language developed.¹⁷²

In a development of the binary divisions described by Dallmayr in his historical account of the *ius gentium*, contemporary just war scholarship is also marked by a division between universalist or philosophical approaches on the one hand and contextualist or historical approaches on the other.¹⁷³ Jeff McMahan is perhaps the pre-eminent scholar of just war today who employs a universalist or philosophical approach. Not unlike Rawls, McMahan's philosophical reasoning is largely *a priori*, and he has recently proposed the institution of a global court fit to judge the justice or injustice of any resort to war taken by states.¹⁷⁴ Behind McMahan's proposal is the conviction held by many philosophers who study the

F. Lang Jr. and Cian O'Driscoll, 2013. *Just War: Authority, Tradition and Practice*. Georgetown University Press. p.1.

¹⁷¹ Dallmayr, *The Law of Peoples*. p.272.

¹⁷² For a history of different influences feeding into the just war idea, see for example James Turner Johnson, 1975. *Ideology, Reason and the Limitation of War*. Princeton: Princeton University Press. For Erasmus as ethicist of warfare, see for example Gregory M. Reichberg, Henrik Syse and Endre Begby (eds.), 2011. *The Ethics of War: Classic and Contemporary Readings*. Oxford: Wiley Blackwell. Ch.21. Dallmayr indicates his disapproval of the language of just and unjust wars when he says that "war is almost by definition 'unjust' (unless it is waged for narrowly defensive purposes in accordance with the United Nations Charter)", and instead uses with more approval Beardsworth's language of a "politics of the lesser violence", and speaks also of "a counsel of prudence". Richard Beardsworth, 2011. 'Culture and the Specificity of Politics'. *Journal of International Political Theory* 7(2). pp.239–251; Fred Dallmayr, 2011. 'Ethics and International Politics: A Response'. *Journal of International Political Theory* 7(2). pp.252–263.

¹⁷³ The 'philosophical' approach is sometimes referred to within just war scholarship as 'analytical' or 'revisionist', and the 'historical' approach is sometimes referred to as 'practical'. For a balanced account of the two approaches, see the qualified defence of the practical approach given in Cian O'Driscoll, 2013. 'Divisions within the Ranks? The Just War Tradition and the Use and Abuse of History'. *Ethics and International Affairs* 27(1). pp.47–65. For an illustration of the differences between the two approaches in action, see the exchanges between Michael Walzer and Jeff McMahan as well as other papers in the January 2006 issue of *Philosophia* 34(1).

¹⁷⁴ Jeff McMahan, 2014. 'The Prevention of Unjust Wars'. Yitzhak Benbaji and Naomi Sussmann (eds.), 2014. *Reading Walzer*. London: Routledge. Ch.11.

morality of war that, much like a bank security guard confronted with a bank robber, soldiers on the battlefield are moral unequals: those fighting a just war have a right to fight and those fighting an unjust war do not, making it morally permissible for ‘just combatants’ to do things that would be morally impermissible for ‘unjust combatants’ to do.¹⁷⁵ But again, not unlike Rawls, McMahan is very conscious of the practical limitations with which his philosophical reflections are confronted. Soldiers may often not be in a position to judge well enough the justice or injustice of the decisions of their political leaders concerning the waging of actual wars, since they may not often have all of the relevant information to make an informed judgment, and McMahan identifies other “excusing or mitigating conditions” which mean that, in practice, soldiers on both sides are treated as moral equals, but it is moral uncertainty about political leaders’ decisions to wage war that is the condition he seeks to remove through the institution of a global court that would judge the justice or injustice of particular wars in a disinterested way, providing moral guidance to soldiers on either side as to when or how they should be fighting. As well as moral uncertainty, another practical limitation with which McMahan is confronted is the fact that, in a world where the international law of armed conflict and international criminal law rest upon the consent of states, the prospects for a global court of the kind he proposes are very bleak, its institution certainly “impossible in the near future”, although he does suggest that it may still be instituted unofficially (“a court-like institution”) to provide, if not the authority of law since it would lack the consent of those to whom it applies, *epistemic* authority based upon the provenance of the moral code by which it operates, that is:

“...the work of people with recognized expertise in moral reasoning and experience in the formulation of principles for the regulation of conduct, such as just war theorists, moral philosophers, and distinguished legal and political theorists.”¹⁷⁶

The court-like institution in McMahan’s project seems to have, at the level of philosophy, certain similarities with Benhabib’s project of creating “quasi-legally

¹⁷⁵ For a summary of McMahan’s just war thinking, see Heather M. Roff, 2018. ‘Jeff McMahan’. Daniel R. Brunstetter and Cian O’Driscoll (eds.), 2018. *Just War Thinkers: From Cicero to the 21st Century*. London: Routledge. Ch.19.

¹⁷⁶ McMahan, *The Prevention of Unjust Wars*. pp.246–247.

binding obligations ... in the absence of an overwhelming sovereign power with the ultimate right of enforcement”, but as Walzer suggests, it does not go quite as far as what Benhabib says Kant was pushing the *ius gentium* towards in his second article for perpetual peace (“the subjection of all sovereigns to a common source of law”):

“McMahan’s suggestion here is that we act to change the reality of war by eliminating moral uncertainty and ignorance. If there were a court that could tell soldiers that their war was unjust, then they would have no excuses—or, at least, they would have one fewer excuse ... it is hard to see how McMahan’s court, which isn’t really a court, would interfere with the self-determination of existing states. It appeals only to the conscience of individuals, which is ... what we all do when we argue about just and unjust wars ... The doctrine of ‘excusing conditions’ is, in my view, a pale reflection of the reality of war, but it serves a useful purpose: it allows McMahan and the growing number of philosophers who agree with him to recognize, in their own way, the moral equality of soldiers on the battlefield.”¹⁷⁷

It seems to me that the more conscious moral philosophers or cosmopolitan theorists are of the practical limitations with which they are confronted, the more the substance of their position converges with that of their philosophical or theoretical opponents; McMahan’s philosophical precepts seem insufficient to establish the moral inequality of soldiers on the battlefield and Benhabib’s must be fed into the self-determination of democratic peoples through iterations or re-iterations.¹⁷⁸ On their own, as Dallmayr says, such philosophical precepts lack the traction or leverage needed to change actual human conduct, and in the case of McMahan, it is unclear to me that such change could come about purely on the basis of the ‘epistemic authority’ of specialists (assuming the specialists themselves would agree on the justice or injustice of each and every particular war), no matter how eminent.¹⁷⁹ Johnson, in agreement with Walzer as regards the moral equality of soldiers on the battlefield, notes that, contrary to present circumstances where it seems various moral experts assume a primary role in

¹⁷⁷ Walzer, 2014. ‘Response’. Benbaji and Sussmann (eds.). *Reading Walzer*. pp.330–332.

¹⁷⁸ It is interesting to note here that in a conference dedicated to discussion of Walzer’s scholarship, McMahan says that “ ... my views about particular wars and particular acts of war ... tend to converge with Michael’s; I think he is always illuminating on actual wars.” Jeff McMahan, 2008. ‘Justice, Culture and Tradition—Session 5: The Just War Theory—Moral and Legal Perspectives.’ Available online at <https://www.youtube.com/watch?v=s7zsEy7hql4&t=1558s> Accessed 25th October 2020.

¹⁷⁹ Walzer, ‘Response’. *Reading Walzer*. p.330–332.

judging whether a particular use of force is justified or not, in the traditional understanding of just war (or what he also calls the classical understanding, which he takes to be rooted in the thought of Aquinas), it is the sovereign ruler who holds the final repository of responsibility for this judgment on behalf of citizens, as well as responsibility for ensuring the conditions that uphold the common good of international society.¹⁸⁰ As he says:

“Within this [classical] frame specialists in moral thinking, along with specialists working from other perspectives, may (and should) offer advice, but final judgment rests with the sovereign, because the responsibility for the good of the community rests on him (or her, or in rare cases, them). The conception of just war here ... is that of a ‘praxis of judgment’, not a list of criteria to be employed as a kind of checklist, whether by those with the responsibility of government or by others who may wish to advise or criticize them.”¹⁸¹

Again, it seems that McMahan would not disagree with Johnson as to where final judgments rest in practice; their disagreement, rather, would (probably) be at the level of moral philosophy. Described in terms of what Devetak said in relation to Bourke’s conception of historical prudence, Johnson is not arguing for an amoral politics but for the legitimacy of political morality, and in line with various scholars already discussed in this chapter, John Kelsay has articulated this political morality in terms of the virtues.¹⁸² Contrary to some of the caricatures of realism and just war thinking that he sees in the contemporary scholarship, Kelsay argues for scholars to see the connections that exist between the two perspectives:

“...the link between just war thinking and a realist perspective on political practice has to do with what an older form of reasoning would have termed political prudence—a kind of practical wisdom by which one ties the realities of particular situations to virtues of justice, temperance and courage.”¹⁸³

Although Devetak and Brown in their work do touch upon the relation of *phronesis* or *prudentia* to the other primary virtues, their focus it seems to me is

¹⁸⁰ Johnson, *Ideology, Reason and the Limitation of War*; James Turner Johnson, 2006. ‘The Just War Idea: The State of the Question’. *Social Philosophy and Policy* 23(1). pp.167–195.

¹⁸¹ Ibid. p.24.

¹⁸² Cf. Dallmayr, *Ethics and International Politics: A Response*. p.261.

¹⁸³ John Kelsay, 2015. ‘Political Practice: The Nexus Between Realisms and Just War Thinking’. *Soundings: An Interdisciplinary Journal* 98(1). pp.38–58.

perhaps too tightly fixed upon it to the detriment of the other virtues, whereas Kelsay's formulation here highlights for us the intimacy of the relation all the primary virtues have together. He rightly notes later in his article that "in relation to justice, temperance and fortitude, prudence involves a habitual focus on the assessment of facts, so as to determine the form these other 'cardinal' virtues should take in a given circumstance", and in turning to the words of Aquinas, also connects it to the importance of both "taking counsel" and actions "concerning the means by which one may obtain a due end ... not only the private good of an individual but also the public good of the multitude."¹⁸⁴ In the previous section, we saw Morgenthau providing counsel to the Americans as regards what Brown called "the kind of unarticulated knowledge that experienced practitioners develop" in international politics, and Walzer has spoken about the various counsels given by scholars to statespersons at this time in a way which I think also seeks to draw some of the connections between 'realist' and 'just war' perspectives on political practice that Kelsay is drawing in his article:

"There were many political scientists in [the 1950s and 60s] who preened themselves as modern Machiavellis and dreamed of whispering in the ear of the prince; and a certain number of them, enough to stimulate the ambition of others, actually got to whisper. They practised being cool and tough-minded; they taught the princes, who did not always need to be taught, how to get results through the calculated application of force ... only a few writers argued for the acceptance of prudential limits; moral limits were, as I remember those years, never discussed."¹⁸⁵

One of the issues here it seems to me is that 'realism' and 'just war' are often understood by scholars as sects or competing 'isms'—constraining Walzer in this article to speak as though they were—and this is what Kelsay is seeking to overcome by speaking the language of virtues instead. What is required it seems to me is not a facile equation like prudential limits (prudence) = 'realism' and moral limits (justice) = 'just war', but rather a greater understanding of what the virtues of prudence and justice (and the other virtues) actually mean. This is

¹⁸⁴ Kelsay, *Political Practice*. p.56.

¹⁸⁵ Michael Walzer, 2002. 'The Triumph of Just War Theory (and the Dangers of Success)'. *Social Research* 69(4). pp.925–944.

one of the things I hope to be providing in my project through a consideration of Cicero's writings.

But let us return here to Kelsay's article and his turn to Aquinas in explicating the virtue of prudence. As mentioned above (p.103), the sovereign ruler for Aquinas has responsibility for the public good of the citizens they are sworn to protect, and also that of international society. In drawing this connection between prudence and justice both nationally and internationally, Kelsay argues that:

“A realistic analysis [of actual conflicts] will not move too quickly in directions that sacrifice order in the name of justice, even as it will not give approval to forms of order that entrench injustice. It will urge that policymakers sworn to protect the interests of particular states are not likely (and indeed, ought not) to move too quickly to sacrifice their national interest in the name of an as yet unachieved international order. Rather, such realism will point to areas where national and international interests overlap, and will look for ways to increase those.”¹⁸⁶

Kelsay's counsel of prudence here seems very similar to that of Brown's as set out in the previous section, where he argued that the task—by no means a theoretical or an easy one, entailing a level of personal responsibility the shouldering of which many must find very difficult to imagine themselves shouldering (including myself)—is (for statespersons) to “find ways in which states can be good international citizens, pursuing their national interests, while trying *at the same time* to act in the [international] common interest.”¹⁸⁷

Beardsworth, also cognisant of the importance of exercising prudence in the international sphere, expresses a similar point, but in more dichotomous or cosmopolitan terms:

“... to transcend the system of states towards supranational organization undermines political responsibility towards the cultural identities of states and sub-states. Inversely ... to reduce contemporary life to the requirements of various forms of localism

¹⁸⁶ Kelsay, *Political Practice*. p.43.

¹⁸⁷ Chris Brown, 2010. 'On morality, self-interest and the ethical dimension of foreign policy'. *Practical Judgement in International Political Theory: Selected Essays*. London: Routledge. p.219. Emphasis in original.

ignores political responsibility towards the effective and legitimate management of global problems.”¹⁸⁸

Around the same time as he was crossing swords with Beardsworth on this matter of ‘transcending the system of states towards supranational organization’, Brown was breath-taken when he saw Morgenthau using the same language as Beardsworth; this ‘founding father’ of realism in IR had argued in *The Intellectual and Political Functions of Theory* that the fact of nuclear power requires a principle of political organisation “transcending the nation-state”.¹⁸⁹ A closer look, however, at the difference in language between Beardsworth and Morgenthau here I think is appropriate. Beardsworth, writing from what is often called a ‘universal standpoint’, argues for *actually* transcending the system of states towards something ‘supranational’—his personal preference is for ‘transcendence’ towards it rather than ‘reduction’ to various forms of localism—whereas Morgenthau is merely calling for *theorists* to *prepare the ground* for *statespersons*, the persons making such decisions, by coming up with a *principle of political organisation*—and with no mention of the term ‘supranational’ it seems to me because he is not writing from a ‘universal standpoint’. I think he has articulated this task of the IR theorist as he understands it very carefully indeed, and this is a point we will return to in the conclusion of this chapter.

Although she says that she is engaged in a mediative rather than a reductive project, Benhabib in developing her theory of democratic iterations also speaks the language of transcendence: she asks whether “democratic representation [can] be organized so as to transcend the nation-state configuration”, tells us rights claims within democratic republics “must be viewed as transcending the specific enactments of democratic majorities under specific circumstances”, and that “the fundamental limitedness of every rights claim within a constitutional tradition” lies in its “context-transcending validity”.¹⁹⁰ But as we have seen, it is a hallmark of the virtue of prudence to pay attention precisely (but not only) to

¹⁸⁸ Richard Beardsworth, 2017. ‘Towards a Critical Concept of the Statesperson’. *Journal of International Political Theory* 13(1). p.110.

¹⁸⁹ Brown, *Towards a Phronetic International Political Theory?* p.453. See the reviews of each other’s books that Brown and Beardsworth gave in *The Journal of International Political Theory* 8(1–2), 2012.

¹⁹⁰ Benhabib, *The Rights of Others*. p.217; Benhabib and Post, *Another Cosmopolitanism*. pp.49 and 60.

contexts, the very circumstances and places where cultures, identities, and rights claims occur and can only occur, with a view to improving human conditions both domestic and international. In his most recently published text, Walzer, in setting out what he emphasises is *a* foreign policy for the left, I think has shown well an appreciation of the simultaneity to which Brown referred above—although as he correctly points out in this text, “global justice begins as a human, not a leftist, project; the particular work of the left comes later”—and again it is worth quoting him here at some length:

“The people who talk about transcending the state system are mostly those living in securely established states with recognized borders ... People without states (Palestinians, Kurds, and Tibetans, for example), and those living in predatory states or in failed states that cannot defend their borders or populations against sectarian militias and mercenary adventurers—none of these people are interested in political transcendence or world government. They have a different dream. They want a state of their own ... There is too much loose talk about transcending the state system, when the greatest need of the world’s poorest and most oppressed people is full participation in that system ... [Here, then, is a provisional program of foreign policy for the left:] first, gradual completion of the state system to provide security for citizens; second, a slow process of political alliance among states to create wider and wider zones of peace; third, the improvement of existing international institutions; and fourth, the creation of a space for the political engagement of individual men and women, without regard to their citizenship. I won’t pretend that this is a revolutionary program. Each of its parts can only be approached incrementally. Indeed, a historian friend told me that it sounded like a very old-fashioned program—something like the vision of global order that inspired liberals and leftists in the aftermath of World War II. Those were years of optimism, and in this darker time, it may help to recall what we once hoped to achieve.”¹⁹¹

1.5 Conclusions

1.5.1 *Philosophy Within History*

In a forum dedicated to discussion of his *Just and Unjust Wars* on its thirtieth anniversary, Walzer said in response to the contributors:

“There are a few cases where I am genuinely uncertain whether I should acknowledge deep philosophical differences or deny that anything at all is at stake—we are simply speaking in different

¹⁹¹ Michael Walzer, 2018. *A Foreign Policy for the Left*. New Haven: Yale University Press. pp.101, 117 and 134–135.

philosophical idioms. If the latter is the case, then what we might have, but can't quite hear in our own words, is deep philosophical agreement."¹⁹²

As we saw in the introduction to this project, Antiochus of Ascalon regarded virtually all the philosophical disagreements between the Academics, Peripatetics, and Stoics as being merely a matter of terminology rather than substance, and in building his own syncretic system of philosophy from what he took to be these three schools' 'deep philosophical agreement', touched off what we now call a period in the history of philosophy known as 'Middle Platonism.' And then, of course, there were philosophical disagreements as to whether Antiochus's syncretic system of philosophy contained 'the truth' or not. I have cited and spoken in a few different philosophical (and non-philosophical) idioms in this chapter, but I want to suggest to the reader that all the philosophers mentioned nevertheless stand with Antiochus and his critics in a broad *tradition* of philosophy, and this regardless of whether there is 'deep philosophical agreement' behind their words or not. Furthermore, there appear to be traditions within this tradition. For example, Beardsworth spoke of a phenomenological tradition of Husserl and Heidegger, as well as a Kantian or post-Kantian tradition of critique, and both Benhabib and O'Neill stand in a Kantian morally constructivist tradition. But if enlightenment, on Kant's telling, was 'man's' emergence from 'his' unwillingness to use 'his' own reason, it is unclear to me why enlightened subjects today would understand themselves as needing recourse to a tradition, philosophical or otherwise.¹⁹³ And if reason, on Hegel's telling, itself has a history, and only the philosopher can discern the direction and meaning of history for the betterment of society, does the

¹⁹² Michael Walzer, 2007. 'Response'. *Journal of Military Ethics* 6(2). pp.168–171.

¹⁹³ One possible clarification may be found in Kant's 'philosophy of history'. O'Neill says that Kant's "account depicts reasoning capacities as emerging gradually ... the process of emergence from 'self-incurred immaturity' is incomplete even at late stages of human history. Kant speaks of his own age as an age of *enlightenment*, but not yet *enlightened*. It is, in two senses, a critical stage in a long historical process." Enlightenment on this account appears to be placed in history (or ages) rather than subjects, but still, I suppose, it might go towards explaining why there are not yet any 'enlightened subjects' and therefore why philosophers still rely on what O'Neill calls in her argument here "alien authorities" or what I have called traditions, philosophical or otherwise. We shall encounter in the next chapter some problems with 'philosophies of history' and in chapter three some similarities between Kant's 'enlightened subject' and the Stoic sage, 'the wise man', who in O'Neill's terms can be said to have 'fully emerged or developed reasoning capacities', i.e. wisdom, *sapientia* (of which Kant, borrowing a phrase from Horace, dared us to be). Onora O'Neill, 2001. 'The Public Use of Reason'. Ronald Beiner and Jennifer Nedelsky (eds.), 2001. *Judgment, Imagination and Politics: Themes from Kant and Arendt*. London: Rowman and Littlefield. p.76.

philosopher—or do the rest of us—actually need tradition, philosophical or otherwise? The next chapter will address this question, and the notion of tradition as such, through Arendt’s writings.

Philosophy seems to have stepped into the public sphere in a very particular way in Kant’s writings, significantly developing in the process Hobbes’s notion of ‘publique reason’.¹⁹⁴ We saw Garsten refer to this as ‘the rhetoric of public reason’ and a ‘rhetoric against rhetoric’ which aims to silence the controversies that always seem to arise in public life. Such silencing required for Kant, Garsten argued (using Kant’s words), “a sovereign judge whose authority ‘no one can question’ and whose judgments offer ‘relief’ from ‘endless disputes’”, and we saw O’Neill argue that this authority, the authority of critical reason, is something constructed amongst ourselves through our agreement, thereby securing its legitimacy, rather than being an authority which is imposed on us. While a question might remain as to whether any actual public has constructed such an authority and thereby secured its legitimacy, O’Neill also argues that it is a hypothetical agreement to which we are already committed, insofar as we invoke standards of reasonability whenever we debate and argue in public life. This may or may not assume prematurely the existence of enlightened subjects in any actual political community, and we might note here as Rawls does that reason and reasonability are not the same thing, but O’Neill also refers to Kant’s ‘philosophy of history’ (see p.105n192) and his *Critique of Judgment* and focuses also upon *possible* political communities, which still seems to leave the question of the authority of critical reason in actual political communities open, especially amongst those citizens who have not been persuaded of Kant’s philosophy.¹⁹⁵

But howsoever this matter of the authority of critical reason might be or turn out to be, it seems to me that Beardsworth’s broad conception of critical philosophy does a very good job indeed in terms of bringing it down to earth. In contrast to many poststructuralists or postmodernists who, in Habermas’s words, have abandoned—or who at least might seem to have abandoned—the normative or ethical orientation of philosophy in an ‘ethics of radical passivity’, he insists

¹⁹⁴ Garsten, *Saving Persuasion*. pp.44–45.

¹⁹⁵ See p.105n191; O’Neill, *The Public Use of Reason*. pp.65–90.

that critical philosophy is indeed ethical, that it is disposed to society as a whole, that it reflects upon actuality in such a way as to further the betterment of society, and that it promotes, in one way or another, better human relations.¹⁹⁶ But Beardsworth also argues that it is a question of critical philosophers not only reflecting upon but also *apprehending* our actuality and his own apprehension is along the lines of Hegel's philosophy of history through Marx. Devetak argues that history in Marx becomes a story about reified abstractions such as economic and social relations, and it is these abstractions, rather than actual persons, which are taken to be the bearers of freedom and necessity. Although his account of history focuses on economic and social relations, it may seem that Beardsworth avoids Devetak's critique here by turning to Habermas, who he describes as focusing on "the normative dimension of the dignity of the person and on the latter's freeing and empowering potential for individuals *contra* states *if* institutionalized and codified at the global level", but it seems to me that we are still in the realm of abstraction here; rather than actual persons, Beardsworth refers to 'the person', and it is unclear to me who 'the person' is holding the freeing and empowering potential for us all, if it is not a critical philosopher who has apprehended our actuality, and who would still remain thereby vulnerable to Devetak's critique.

This matter I think also speaks to the tensions that Benhabib seeks to mediate. We saw in her work a cosmopolitan project derived from the philosophies of Kant, Habermas and Derrida which seems to fit very well within Beardsworth's conception of critical philosophy. But although her project is certainly a moral one in Kantian terms, there is perhaps a question as to how far it is an ethical one. In the words of the editors of the Oxford Handbook of IPT, it seems to me to be more of a 'meta-normative' project that posits a radical disjunction between 'the moral' and 'the ethical' (or 'universalism' and 'contextualism') and seeks to mediate between them from a Kantian 'universal standpoint'. This

¹⁹⁶ For example, poststructuralist Maja Zehfuss says that ethics is "a great idea", talks of "thinking ethics", references (without endorsing) poststructuralist R.B.J. Walker's claim that ethics is an ongoing historical practice, says that poststructuralists conceive of ethics as relational, and argues that "the poststructural critique of ethics is not so much a rejection as a re-articulation." Maja Zehfuss, 2013. 'Critical Theory, Poststructuralism, and Postcolonialism'. Walter Carsnaes, Thomas Risse and Beth A. Simmons (eds.). *Handbook of International Relations*. Second Edition. London: Sage. p.163; Maja Zehfuss, 2016. 'Poststructuralism', in Patrick Hayden (ed.), 2016. *The Ashgate Research Companion to Ethics and International Relations*. London: Routledge. Ch.6.

standpoint, moreover, seems to be informed by other philosophers: as well as providing a discourse-theoretic (i.e. a Habermasian) justification of it, Benhabib also uses the Hegelian language of ‘objective spirit’ in explaining the provenance of cosmopolitan norms, and in explaining her Derridean theory of democratic iterations, argues that the actuality of *l’affaire du foulard* attests to a dialectic of rights and identities. As with Beardsworth, it seems to me that there remains a question of the extent to which Benhabib is privileging philosophical apprehension, and/or a philosophy of history, in her mode of critique.

Is it necessary to subscribe or assent to a dialectical philosophy or philosophy of history to engage in critique? Devetak’s work I think is an important contribution to the literature which argues that it is not. His contextualist account of the philosophical sources upon which critical international theorists often draw I think well reveals the construction over time of an intellectual persona that has mastered the self-reflective and dialectical social philosophies from the enlightenment onwards; a persona, Devetak argues, which sometimes presents as holding privileged access to higher moral truths and norms, enabling critical theorists’ superintendent activities in shaping society for the better, or in an emancipatory direction. In his investigations, Devetak recovers a rival mode of critique developed in the Renaissance which fed into a civil and jurisprudential enlightenment; a mode of critique less attached to metaphysical or post-metaphysical abstractions and more historically sensitive and politically attuned through mastery of the *studia humanitatis* and *ars historica*. I think this is an important recovery, an ‘intellectual treasure’ as Devetak says, but it seems to me that more can be said about it. First, he makes significant use of the Latin term *persona* in his argument but there is no discussion in his text of what he means by this term. We shall consider its meaning through the writings of Arendt and Cicero across the next two chapters. Second, Devetak is certainly right that the Ciceronian curriculum of the *studia humanitatis* was “intended to cultivate the civilizing practices through which peace, liberty and free government were to be achieved”, but in his text he mentions only in passing that one of the subjects in the curriculum was moral philosophy—a subject that remained very much on it in what Dallmayr called ‘the good-sense tradition’ throughout the

Enlightenment.¹⁹⁷ Cicero's *De Officiis* has always been a key text in this regard and it is one that we shall consider in some detail in chapter three.

It seems to me that Devetak and Dallmayr hold at least three things in common; both recommend a turn to the *studia humanitatis* in terms of promoting, in one way or another, better human relations, both recognise some of the innately pedagogical aspects of these studies, and both are sceptical of those philosophers who present or understand themselves as having privileged access to higher moral truths. Yet we have seen Dallmayr call for a 'sublation' of Rawls's *The Law of Peoples*, his critique of (i) Ricoeur's ethical theory for its 'metaphysical realism' and (ii) Rasmussen's turn to the Hegelian concept of recognition, with a suggested improvement of both through Heidegger's metaphysical or post-metaphysical philosophy of *Dasein*, and all of this it seems to me may be vulnerable to Devetak's historical mode of critique. That said, Dallmayr does seem to me to have an excellent sense of the limitations of philosophy. Despite his various Heideggerian emphases on 'being' throughout his *Post-Liberalism*, he leaves 'be' uncapitalized in the title of the text's final section in the final chapter, choosing to emphasise instead simply 'Learning [to be] Human'. I think this is marvellous. He speaks rightly in this section of "philosophers as human beings" which, although common sense to most, might occasionally be overlooked in academia. But not unlike Beardsworth, if Dallmayr enjoins in his concluding comments a search for *the* human, then it seems his work may still be vulnerable to Devetak's historical mode of critique. Searching for 'the human' appears to involve the perils of 'venturing into philosophical (and theological) terrain' and becoming—I think often imperceptibly to those who so venture—troublingly remote from lived practice. As political theorist Stephen K. White put it, quite aptly in relation to Heidegger, and quite beautifully, it risks presenting to everybody else "a reverential tarrying in the neighbourhood of thinking", and although Dallmayr's work so often manages to steer clear of the perils of philosophising and finds its way back really well and with extraordinary skill to the lived practices of human beings, I argue in this project that it is Cicero, due in large part to his practical experience, who is

¹⁹⁷ See, for example, Craig Smith, 2019. *Adam Ferguson and the Idea of Civil Society: Moral Science in the Scottish Enlightenment*. Edinburgh University Press.

especially outstanding in our history, as far as his theoretical writings on politics go, at doing this.¹⁹⁸

1.5.2 Virtuous Conduct

In the second section of this chapter, I sought to foreground an approach to ethics which has hitherto been marginalised in IPT, virtue ethics, as it is an approach which is fundamental to Cicero's theoretical writings on politics. As a person-centred rather than rules-based approach to ethics, it is rarely associated with Kant, who is generally understood to offer us the rules-based approach known as deontology. But I also pointed out through Nussbaum's argument that Kant himself had much to say about the virtues, even though he is often portrayed as being more 'rigorist' when it comes to morals or ethics. As regards Benhabib's project, it seems to me that she holds Kant to be more rigorist in these matters, more concerned with abstract (or meta-normative) principles than with exercising moral judgments in the world, such that in his *Perpetual Peace*, for example, she says that he "moves from the language of morals to that of juridical right". Whatever the correct interpretation of Kant's philosophy (and philosophical sketches) might be, as Dallmayr indicated, the question of morals seems to be outstanding in Benhabib's own theory of democratic iterations: with the incorporation into her project of Derrida's work in the philosophy of language, it no longer quite fits within (rigorist) Kantian or Habermasian parameters. Norval in her review of Habermas's *The Structural Transformation of the Public Sphere* I think is correct to suggest that this is a question of virtue; a question that neither rigorist interpretations of Kant nor Habermasian discourse theory, the latter of which is concerned with the methods by which moral principles are justified rather than with the substantive content of those principles (with the 'how' rather than the 'what'), addresses, and it is one I address in the third chapter of my project through a consideration of Cicero's writings about the four primary virtues in the *De Officiis*.

In Dallmayr's work, we saw an account of virtue ethics, or what he more helpfully called the Aristotelian tradition of virtuous praxis, in which he rightly

¹⁹⁸ Stephen K. White, 1991. *Political Theory and Postmodernism*. Cambridge: Cambridge University Press. p.34.

noted two key aspects of ethical development: participation in public or political affairs and the nurturing of virtuous conduct through education or pedagogy so that it becomes more stabilised. In contrasting the philosophies of Aristotle and Kant, Dallmayr says that the former “emerges as the proper guide because he does not talk of moral doctrines but of ‘virtues’ and ‘goods’ which are the attributes of praxis”, and while it is beyond the scope of my project to compare Aristotle’s with Cicero’s writings on virtue—or indeed Cicero’s with Kant’s, who we have seen did talk of moral doctrines but also talked of virtues and goods—I do hope to show in subsequent chapters that it is Cicero, again due in large part to his own practical experience in public life, who is a yet more proper guide; a more proper guide, that is, to virtuous conduct in political societies as distinguished from ethical or moral philosophising, even as he produced texts appropriate to the latter as well.¹⁹⁹

Norval, like Dallmayr, is concerned with the ethical development of citizens in public settings, but unlike Dallmayr and following Habermas, she seems to retain a modern liberal understanding of society such that aversion to it is taken to be a ‘good’ (or ‘the right’) thing. As we shall see in subsequent chapters, what Cicero most emphatically does not have is an aversion to society. Aversion might well be a good conception to hold if one takes society to have ‘massifying’ effects on its members, but this seems to me to be a faulty conception of society in the first place, rooted in certain strands of modern liberal thinking. In the next chapter, we shall see that Arendt holds some similar concerns to Emerson, Habermas and Norval as regards society, but it seems to me that there is a better conception of it available, one which I introduce in the next chapter through a consideration of Arendt’s writings on this matter and develop through Cicero’s in chapters three and four. It is a conception of society which allows us not only to retain a conception of self-reliance—which has always been, and still is, a hallmark of virtue ethics—but also to understand that aversion to society is an unnecessary and undesirable trait, as Dallmayr I think suggests (p.71). With a better conception of society, I hope to show that aversion to it is, in fact, to recall Norval’s words, part of the problem.

¹⁹⁹ Dallmayr, *Post-Liberalism*. p.63. An indication of this might be seen in the extent to which Kant himself used Cicero as a moral guide in his own writings. Nussbaum, *Kant and Stoic Cosmopolitanism*.

Regarding the conduct of statespersons, we saw Dallmayr, Devetak and Brown all draw attention to the virtue of *phronesis* as it is set out by Aristotle, or in Latin, the virtue of *prudentia*. Part of this virtue, as Kelsay says, involves ‘taking counsel’, and we saw Devetak discussing the role of some historians in the Renaissance in providing it based on their study of the past (and often their own experiences in public office as well). Brown rightly warned against the ever-present danger of hubris, whether in statespersons or scholars, and Walzer also pointed with seeming disapproval to some realists in IR in the 1950s and 60s who seemed a bit too eager to be “whispering into the ear of the prince”.

Nevertheless, I think Kelsay is right that taking counsel is an important aspect of the virtue of prudence on the part of the statesperson, that counsel may legitimately come from historians, moral theorists or indeed scholars specialising in both, and that it is an education in the virtues, or the humanities more generally, which might help in tempering anybody’s over-eagerness.

We saw that Brown raised a concern about Morgenthau’s ‘pulling rank’ when the latter asked readers in the preface to the second edition of his *Politics Among Nations* to appreciate the ‘twenty years of labour’ that had went into its production and judge the whole argument, rather than the whole argument based on a judgment of only this or that part of it. Brown argued that such pleas are not conducive to genuine intellectual progress, that wisdom cannot be claimed for oneself but can only be recognised by others, and that there is some substance to the claim that ‘classical realism’ is ‘wisdom literature’, reliant upon authority rather than argument. I think Brown is entirely correct that wisdom cannot be claimed for oneself and can only be recognised by others, but did Morgenthau claim wisdom for himself? It seems to me that he was appealing to his own *authority* in speaking about these matters, that is, to his character (*ethos*), rather than to his (putative) wisdom. And he also appealed to the argument (*logos*) of the text itself in the same preface, which I think means he was not relying *only* upon his own authority, and was still making a contribution towards ‘genuine intellectual progress’, insofar as that is understood in terms of scholars engaging as equals in (non-Hegelian) dialectic. And it seems to me he was also appealing to the emotions of his readers (*pathos*) in saying that he was ‘begging their favour’, and so drawing in his preface upon all three of the parts of rhetoric as set out by Aristotle (although evidently without success, at least in

Brown's case). Whether or not Morgenthau's appeal to his *ethos* within the walls of the academy was appropriate or effective, it does seem to me that in his doing so, he was engaging in the sort of argumentation that had been going on within these walls far more frequently prior to the early seventeenth century, that is, before formal logic (including non-Hegelian dialectic) had come to displace rhetoric in the field of humanistic studies and the tasks of scholars in the fields we now call social or political theory had come to be understood as more rigoristic and less practical—and indeed it is still a sort of argumentation undertaken by many (though I think still too few) scholars today in these broad fields of study. While it is beyond the scope of my project to consider either Aristotle's or Cicero's writings on rhetoric, I hope to show the reader in subsequent chapters that it holds a legitimate place in the civic republican tradition, and not only because speech and persuasion are unavoidable aspects of the human condition.

1.5.3 The Civic Republican Tradition

Although I certainly do not agree with everything that Morgenthau says in his work, it seems to me that he is very articulate, and that this is a direct consequence of his humanistic education. In the passage that Brown quotes from *The Intellectual and Political Functions of Theory*, he is very careful to say that the theorist's task is limited only to "preparing the ground" for statespersons, and he is careful *not* to specify what "the principle of political organisation that has dominated the modern world from the French Revolution to the present day" is such that it is no longer valid alongside the existence of nuclear power. It is true that he talks of a principle of political organisation that 'transcends the nation-state', but it seems to me that his is not the kind of loose talk of which Walzer is critical. If Brown is right that Morgenthau displayed the virtue of *phronesis* (or *prudentia*) in his writing of this article, then, as Kelsay puts it, it was done in such a way as to determine what form the other primary virtues take on that occasion. Although Morgenthau's transcendence-talk may on the surface sound intemperate or extreme, it was spoken not only in the extreme situation that is the existence of nuclear power, but also specifically to IR theorists, and only as a theoretical task; he made no call for *statespersons* to 'transcend the nation-state' and thus I think he showed a certain level of moderation in his reasoning and speech.

Brown argues that Morgenthau calls for “a new principle of political organisation”. From the passage quoted (current restrictions prevent me from accessing the book in which Morgenthau’s chapter appears), I cannot see that he is calling for a new principle. Implicit in this passage, I believe, is Morgenthau’s own belief that an investigation by IR theorists of principles of political organisation in history, prior to those which have developed from the French Revolution to the present, may be of some help in addressing our quandary. The civic republican principle of political organisation is of course not new and Daniel Deudney, for example, has picked up on it in terms of meeting Morgenthau’s challenge to IR theorists.²⁰⁰ While I do not follow Deudney in investigating how the principle might help in the control of nuclear arms, I do hope in this project to be providing some more clarity as to what the principle itself looks like through a consideration of Arendt’s writings and then of Cicero’s.

In this chapter, we first encountered the civic republican tradition in Kant’s writings through the work of Benhabib. Kant’s version of civic republicanism was tied to his metaphysics of morals and involved the public use of reason in terms of securing the legitimacy of one’s claims. We saw Garsten refer to this as the rhetoric of public reason, which aims to silence the controversies that are the very stuff of politics and obscure the alienation of citizens’ own judgments about public affairs to the sovereignty of critique. Again, the standard of critical reason allows one, as Kant says, “to secure himself against ... injurious deceptions, which must finally lose for him all their illusory power”, which sounds to me like this standard-bearer is harbouring a dogma of one sort or another that reduces their receptivity to fellow-citizens, but for Kant the verdict of critical reason is not dictatorial, “being simply the agreement of free citizens”, that is to say, the agreement of self-legislating citizens who are in possession of the standard of critical reason. We saw O’Neill support this claim by arguing that the authority of critical reason is something we construct amongst ourselves, thereby securing its legitimacy, and we saw Garsten disagree, arguing that the rhetoric of public reason engenders frustration and resentment in those citizens who have not been persuaded of Kant’s critical

²⁰⁰ Daniel Deudney, 2007. *Bounding Power: Republican Security Theory from the Polis to the Global Village*. Princeton: Princeton University Press.

philosophy. Such persuasion we have seen requires engaging citizens' practical judgments, which in turn, as both Devetak and Dallmayr argue, is best cultivated through the *studia humanitatis*.

Benhabib seems to stand in the same Kantian constructivist tradition as O'Neill and provides a theory of democratic iterations which she argues can allow for successful mediations between cosmopolitan norms and the self-determination of democratic republics. Although she acknowledges that democratic debates about citizens' rights are carried on within certain limits, Benhabib's theory does not address the institutional or constitutional nature of these limits, something we saw Dallmayr and Walzer approach, and something we shall consider in subsequent chapters through Arendt's and Cicero's writings. Benhabib's theory, rather, addresses how one might mediate between cosmopolitan norms and the will of democratic majorities through iterations or re-iterations of that democracy's existing norms and principles. She used the 'will-based' republican theories of both Kant and Rousseau as heuristic devices, the latter of which we have seen Walzer question as a ground for political legitimacy, and as already mentioned, Benhabib's theory in any case appears no longer to sit strictly within Kantian or even Habermasian discourse-theoretic parameters, since it also incorporates Derrida's work on iterations in the philosophy of language. Drawing upon Derrida's work, Benhabib says that every iteration "transforms" meaning, but she also describes iterations as varying, repositing, resignifying, enhancing, appropriating, reappropriating, dissolving, and preserving meaning, with all of these leading into her account of democratic iterations as "political repetitions-in-transformation, invocations that also are revocations". We recall Beardsworth's description of Derrida's work as setting up a 'general metaphysics of temporalisation', and Benhabib does say that it is in the *process* of human beings iterating that the various and seemingly contradictory events she describes takes place. But quite apart from whether they occur as a result of the process itself or the judgments of any one or other of us human beings who are involved in that process (and this may well mark out the difference between 'jurisgenerative processes' and 'jurisgenerative politics' in Benhabib's theory), iterating a term/concept/norm, according to Benhabib, involves both invoking and revoking it, and it seems only when this is done creatively or productively (perhaps suggesting the judgments, and politics, of

actual human beings after all), the meaning of the term/concept/norm either transforms on the one hand or stops making sense on the other, and either way, it “loses its authority on us”. Benhabib is careful and, if not entirely consistent, I think nevertheless correct to protect cosmopolitan norms from such Derridean cracks, and we shall consider some of the ancient sources of these norms in subsequent chapters, where I also provide, through a consideration of Arendt’s and Cicero’s writings, some more shape to the civic republican tradition in which Benhabib’s heuristic models stand, including more shape to two touchstone terms within it: tradition and authority. In doing so, I not only seek to move scholarly focus from the ‘how’ (processes) to the ‘who’ (human beings) as regards these matters, but also hope to stay the reader’s assent or subscription to any Derridean generalisations in the philosophy of language that might lead to unwary attempts at the transformation, dissolution or revocation of the meanings of certain guiding norms and principles of the political societies in which citizens *continue* living, speaking, acting, thinking, and exercising judgments in the world.

The political or normative (or jurisgenerative) aspect of Benhabib’s argument is that only productive or creative iterations result in “the augmentation of the meaning of rights claims” and “the growth of the political authorship by ordinary individuals, who thereby make these rights their own by democratically deploying them.” But it seems to me that ordinary individuals are not usually schooled in Derrida’s philosophy of language such that in their democratic iterations their political authorship is grown in the way Benhabib is perhaps suggesting her theory is built to enable, and again, even if they were, it is unclear that they, or indeed anybody *au fait* with Derrida’s philosophy of language, would be giving in their iterations ‘good reasons in the public sphere’ along the lines Habermas enjoins. That said, Benhabib’s theory does seem to retain Habermas’s (and indeed Derrida’s) aversion to any ethical approach which takes into consideration the virtues—or put differently, the characteristics or the content of the capacities (creative, productive, or otherwise)—of those iterating, and it seems to me that it is just such an approach that would be required in avoiding what Benhabib calls jurispathic processes.

What Benhabib has called democratic iterations or jurisgenerative politics that go on through processes of argument, contestation and revision in democratic

republics, Garsten has called the politics of persuasion, and it seems to me that both are describing what may properly be understood as that which is carried on within the tradition of politics we call civic republican (even as Benhabib's project, in spite of its Derridean influences, might also be said to sit within a tradition of political liberalism). And as Dallmayr said, the civic republican tradition has a history that is much older than the Enlightenment, so we need not be beholden only to the republican theories of this time such as Kant's or Rousseau's. The civic republican tradition is one in which citizens deliberate amongst themselves and arrive at their own judgments about public affairs in what Sandel has called a formative politics (or, perhaps, what Benhabib has called normative learning processes). These politics, this sharing in self-government, require the learning and acquisition of civic virtues, education in which, as Devetak says, is intended to "cultivate the civilizing practices through which peace, liberty and free government" are achieved, and which both Devetak and Dallmayr emphasise have traditionally been acquired through the *studia humanitatis*. We saw Dallmayr begin his own brief history of the civic republican tradition with Cicero, "a learned civic republican" who "celebrated citizenship in a good or virtuous republic", but then he doubled back to Plato and Aristotle and framed the rest of his account of the civic republican tradition as one of a flattening out of the Platonic *agon*. While it is certainly correct that Cicero drew inspiration from Greek philosophy (and not only Plato's and Aristotle's), he also drew inspiration from the *mos maiorum*, the ways of his ancestors, and as we shall see in subsequent chapters, the latter contributes to his political thought in a way which I think makes it very distinctive from that of Greek philosophers. As touched upon above, Benhabib acknowledges that there are certain limits to democratic decision-making in democratic republics, and one of the distinguishing features of Cicero's theoretical writings on politics is how he sets out such limits in his account of a mixed constitution, again different from that of Greek philosophers or political theorists, which is regarded by the character Scipio in his *De Re Publica* as the best practicable form of government in terms of maintaining the sharing in self-government, the public space, free politics, the commonwealth, the *res publica*, in existence. Mixed government, as we shall see in the next chapter, is also that of which Arendt seems to approve as the best practicable in terms of guaranteeing the

plurality of persons, and we saw both Walzer and Dallmayr approving of a mixed constitution in one form or another as well.

We saw in the final section of this chapter that it was in the tradition of civic republican politics at Rome that a strand of law was developed by jurists called the *ius gentium*, ‘the law of peoples’, giving legal expression to an already existing international political society. Since it developed from customs or agreements between nations or peoples reaching back into the mists of time, it seems to me that Dallmayr’s claim about what “the phrase” mixed or blended “from the very beginning”, although excellently put, unduly de-emphasises the historical or customary features of this strand of law. But whatever its ‘origins’, we shall consider in the final chapter of this project Cicero’s own treatment of the *ius gentium*. As Dallmayr says, natural law was a later addition to Roman law derived from the writings of Stoic philosophers, and again, Cicero also has recourse to natural law in his writings which we shall consider in the final chapter, but important for us to underscore here is Dallmayr’s claim that, then as now, “philosophers’ reflections clearly cannot simply substitute themselves for the agency and competence of concrete populations”, and even if they could, they would still lack the “traction or leverage needed” to influence actual human conduct. The traction or leverage of which Dallmayr is speaking we have seen Garsten call rhetoric, the art of speech and persuasion which engages practical judgments, and which historically has always been part of the civic republican tradition and a key subject in the *studia humanitatis*. We shall consider the importance of speech and persuasion for politics in Arendt’s writings in the next chapter and see some of the ways it fits into Cicero’s political thought in the final chapter, but returning to the literature reviewed in this one, we also considered some of the work carried out in contemporary just war scholarship, which emerges *inter alia* from the *ius gentium*. Once again, the just war tradition has a long history; as Jed W. Atkins says, “just war theory owes a great debt to the Roman republican tradition. In fact, many of the individual specifications of just war theory can be found in the works of Cicero”, and we shall be considering some of these specifications in chapter three.²⁰¹ Finally, this sub-section concluded with a consideration of the virtue of prudence as it was set out or understood from some ‘communitarian’ and

²⁰¹ Jed W. Atkins, 2018. *Roman Political Thought*. Cambridge: Cambridge University Press. p.177.

‘cosmopolitan’, or else ‘particularist’ and ‘universalist’, positions and it was seen that some ‘communitarians/particularists’ have ‘cosmopolitan/universalist’ concerns and vice versa. Subsequent chapters I hope will further illustrate the limited usefulness of these distinctions, which I do not use in this project. As Walzer put it (some while ago now):

“A particularism that excludes wider loyalties invites immoral conduct, but so does a cosmopolitanism that overrides narrower loyalties. Both are dangerous; the argument needs to be cast in different terms.”²⁰²

1.5.4 Concluding Remarks

Given the breadth and variety of the literature reviewed in this chapter, it will probably help the reader’s understanding and certainly help the rest of my project if I express in tabular form a series of distinctions which make it easier to summarise the room for improvement I find. Some of the distinctions will probably be familiar to the reader (some of them are traditional), but I wish to emphasise that they are distinctions made for analytical purposes only. They are more or less *useful* for organising our *experiences*, neither ‘true’ nor ‘false’, and I make no claims as to their truth or falsity. In the words of Patrick Thaddeus Jackson, the following table is made up of “deliberate caricatures”; it “simplifies and misrepresents, and does so for pragmatic reasons”:²⁰³

PERSONAL	IMPERSONAL
Traditions	Ideologies
Virtues	Rules
Republican institutions	Liberal institutions

²⁰² Michael Walzer, 1996. ‘Spheres of Affection’. Martha C. Nussbaum and Joshua Cohen (eds.), 1996. *For Love of Country: Debating the Limits of Patriotism*. Boston: Beacon Press. p.127.

²⁰³ Patrick Thaddeus Jackson, 2011. *The Conduct of Inquiry in International Relations: Philosophy of science and its implications for the study of world politics*. London: Routledge. pp.143 and 145.

Persuasion (rhetoric)	Demonstration (non-Hegelian dialectic)
Exercising judgments (including about persons) in the world	Deducing decisions (including about persons) from ideologies, philosophical systems, or theories in the world
Discretion in exercising judgments in the world	No discretion in exercising judgments in the world (obeying rules without exception)
Trust in the authority of persons in political societies	Distrust in the authority of persons in political societies

Of some arguments in IPT related to exercising judgments in the world, where is there room for improvement? Behind many of the arguments in IPT related to exercising judgments in the world, it seems to me, are some presuppositions about or conceptions of politics which place too much emphasis on the qualities listed in the ‘impersonal’ column in this table, and the room for improvement I find in the literature reviewed in this chapter is in the direction of supposing or conceiving of politics as placing some more emphasis on the qualities listed in the ‘personal’ column. Expressed impersonally, ‘the political is (partly) personal’.²⁰⁴ Needless to say, this is not to exclude or disallow any of the qualities listed in the impersonal column, and nor is to suggest that philosophy cannot help us in understanding politics. Rather, it is to include and allow a greater appreciation of persons as persons in the study of politics—touchstones of the writings of both Arendt and Cicero, as we shall see—and to suggest that there are *limits* as to how far philosophy can help us in understanding politics.

²⁰⁴ I thank the second wave of feminism for the expression and Cian O’Driscoll for its variation.

Chapter 2 Exercising Judgments in the World and Hannah Arendt's Theoretical Writings on Politics

2.1 Introduction

In the previous chapter, I concluded with a series of distinctions intended to highlight the qualities I think would go into a better conception of politics, one that is more attuned to persons as persons and to exercising judgments in the world, and which might usefully be articulated in a variation of a famous phrase: 'the political is (partly) personal'. As we shall see in this chapter, Arendt's theoretical writings on politics are situated more on the left- than on the right-hand side of the table, and we begin with a consideration of her writings on tradition. In the previous chapter, I drew the reader's attention to a broad tradition of philosophy in which stood the numerous philosophers discussed therein, as well as a certain incongruence between the very notion of tradition and the very notion of philosophy, especially of the enlightenment variety, since enlightenment is so often understood in terms of the subject casting off traditions of all kinds and relying only upon his or her own reason instead. I also asked the reader whether we in fact need tradition if we accept Hegel's philosophy which says that reason itself has a history and only the philosopher can discern its direction and meaning for the betterment of society. In the first section of this chapter, I approach this question through a consideration of Arendt's writings on tradition. As we shall see, her writings on this topic can be very obscure; in (hopefully) bringing some clarity to them, I have sub-divided this section in two. The first sub-section questions an assertion which Arendt makes in passing: "the undeniable loss of tradition in the modern world...".¹ This assertion is one of very many instances in Arendt's writings where the definite article and any object are missing from the term, which it seems to me indicates that what she means to say on these occasions is tradition *as such*. I consider a selection of (what I take to be) her claims about tradition as such in this sub-section and argue not only that we do in fact need it but also that it has not been lost in the modern world.

¹ *BPF*. pp.93–94.

Whereas the first sub-section considers what Arendt has to say about tradition as such, the second sub-section retains and develops the arguments I have made therein to question Arendt's own arguments that a 'definite' tradition—what, following Jerome Kohn, we may provisionally call 'the great Western philosophic-political tradition' or 'the great tradition of political and philosophic thought', or following convention in the secondary literature on Arendt, simply 'the tradition'—has come to a "...definite end" in the modern age.² Even as she does not actually define 'the' tradition herself, through a consideration of Arendt's writings about its 'end', with particular attention paid to Cicero as he appears (or not) in different versions of her story over time, I argue that 'the tradition' not only endures, but also that Arendt's writings themselves stand comfortably in it. Indeed, I hope that this last point will become even clearer to the reader by the end of my project.

The second section considers Arendt's focus on persons in her writings, beginning with her account of the continuing relevance of the Latin term *persona* in contemporary discourse both inside and outside the academy, before going on to consider the matter of personal responsibility in relation both to the controversy touched off by her *Eichmann in Jerusalem* and the consequent sets of lectures she gave on moral philosophy. In the previous chapter, Dallmayr observed that Arendt side-lined the civic virtues as found in Aristotle and Cicero in favour of a celebration of Machiavellian *virtù* in her writings, but I highlight here some evidence from her lectures on moral philosophy that she did indeed support classical accounts of the virtues, and in particular, she turns to Cicero in intimating to her students what it was that led a few persons living under the Nazi regime to resist the new 'values' which had been imposed on them, and despite the seemingly easy 'exchange of values' of so many others all around them: *humanitas*. Following an account of Arendt's treatment of this term through her essays on Karl Jaspers, I consider the connections she makes between *humanitas* and culture and the threats she sees to both in what she calls 'society' which, although a main subject in the next section, is introduced here in relation to the Latin term *persona* through her story about the French revolution. The second sub-section continues from the first by looking at Arendt's writings around statespersons, beginning with an account of the virtues

² *BPF*. pp.viii and 18; *PP*. p.vii.

that she saw in the conduct of Winston Churchill and John F. Kennedy, and concluding with a consideration of her own understanding of the virtue of *phronesis*.

The final section of the chapter considers Arendt's writings on political societies and is sub-divided in three. The first sub-section looks at the extent to which we can say, with Margaret Canovan, that Arendt offers us a 'new' republicanism. I draw out several similarities between Arendt's writings and Cicero's on civic republican institutions, before going on to illustrate the relation of authority and freedom that she sees in the various councils that sprung up during the different revolutions of the nineteenth and twentieth centuries—what she categorised as 'the council system'—as well as in the American founding, both cases recalling the same relation of authority and freedom in the Roman republic. The second sub-section picks up the discussion of Arendt's understanding of 'society' as introduced in the first section by investigating her distinction between 'the social' and 'the political', where I highlight numerous problems with her distinction and show that, through a consideration of the Latin term *societas* in her writings, we can see that she did in fact write of political societies. The final sub-section considers Arendt's argument that we have become aware of 'a right to have rights', as well as the extent to which we can see, despite her 'realism' in the international sphere as emphasised by Owens in *Between War and Politics*, a conception of international political society in Arendt's writings.

In this chapter, the questions to which I am responding are: *What can some of Hannah Arendt's theoretical writings on politics contribute to the arguments addressed in the previous chapter, and how are these writings of Arendt's related to Cicero's theoretical writings on politics?* As mentioned in my Introduction, Arendt provides a double function in my argument, and this is reflected in these two questions: a ground-clearing function in relation to the first chapter, and a preparatory function in relation to the next two. My response to the first question, in a nutshell, is that Arendt contributes a rich understanding of the notion of tradition as such which brings (despite the difficulty of her style) some clarity to what philosophers or political theorists mean when they speak of this or that tradition of philosophy. She also contributes to the arguments addressed in the previous chapter by providing an important—a humanistic—critique of the philosophies of history upon which many

of those arguments are based, as well as an account of the deleterious effects such philosophies have had on *political* thinking. Yet another contribution she makes to the arguments addressed in the previous chapter is her own understanding of some of the virtues discussed therein, such as *phronesis* and moderation. And yet another is her understanding of the civic republican tradition, which fills out some of the discussion about this tradition in the previous chapter and leads us into the second question to which I am responding in this one. Like Cicero, Arendt distinguishes carefully between power, authority, and freedom, a threefold distinction which is a hallmark of the civic republican tradition, recognising the need for authority in maintaining public freedom, the *res publica*. And like Cicero, she believes that human beings are naturally sociable, that virtues are necessary in public life, that speech and persuasion are fundamental and indeed unavoidable aspects of it, and that republican institutions are necessary for nurturing all of these. Beyond that, however, as we shall see, the relation of Arendt's writings to Cicero's can be perplexing; it is very often obscured by her obscure language. As such, I think it is impossible for us to arrive finally at a secure judgment about this relation. And the reason for this impossibility seems to be given by Arendt herself in response to Albrecht Wellmer, when he inquired as to why she is not more Hegelian in her writings:

“At least you see one thing which I also see as questionable: namely, if I don't believe in this or that theory, why don't I write a refutation of it? I will do that only under duress. That is my lack of communication.”³

If there are aspects of Cicero's theoretical writings on politics that Arendt does not believe in, we remain very much in the dark as to what they are, but I do hope to show in this chapter that there certainly are a great many aspects of his writings that she *does* believe in.

³ *TWB*. p.464.

2.2 Traditions, Politics and Philosophies

2.2.1 'The undeniable loss of tradition in the modern world'?

Working out what Arendt means to say about tradition is by no means an easy task. Without the definite article and any object, she tells us many times of its break or loss, usually in terms of its break being irreparable or its loss being undeniable, or other words to similar effects. It seems to me that Arendt does mean to claim, at least sometimes, that tradition *as such* in the modern world has been lost undeniably or broken irreparably. Sometimes she seems to attribute tradition's break or loss to the modern age in general, sometimes to this or that thinker who has lived during it, and sometimes to the totalitarian enormities of the 1930s and 40s. But a problem, as I understand it, is that Arendt provides very little by way of *argument* that tradition as such has been broken or lost in the modern world, even if the notion itself often seems to shape much of what she has to say. Such claims about tradition's break or loss have a strong tendency to appear in Arendt's writings as assertions or allusions—or put differently, poetry—rather than arguments. In this sub-section, I consider a selection of Arendt's writings around tradition as such and argue both that we *need* the *help* of tradition as such in exercising judgments in the world and, thankfully, it has not been lost in it.

According to Arendt in *Tradition and the Modern Age*:

“Before the Romans such a thing as tradition was unknown; with them it became and after them it remained the guiding thread through the past and the chain to which each new generation knowingly or unknowingly was bound in its understanding of the world and its own experience.”⁴

It is not that tradition as such did not exist before the Romans; it is merely, according to Arendt, that it was 'unknown' before them. And if it exists in the world before, during and after the Romans, it may well do so 'unknowingly' to generations bound to it in their *understanding* of the world and their own *experiences*. We are not told in this passage what Arendt herself believes about

⁴ BPF. p.25.

the worth of tradition as such, just as we are not told when, in *What is Authority?*, she says:

“...the undeniable loss of tradition in the modern world does not at all entail a loss of the past, for tradition and past are not the same, as the believers in tradition on one side and the believers in progress on the other would have us believe...”.⁵

Insofar as tradition and progress are not mutually exclusive, it is probably believers on ‘the far side’ of each to whom Arendt is referring here (it must be very few indeed, I think, who equate tradition and past and believe we have lost them together, and fewer still that would have the rest of us believe it). As well as describing it as a guiding thread in *Tradition and the Modern Age*, Arendt provides another description of tradition as such and its relation to the past in her discussion of the Romans in *What is Authority?*, where I think we can see this time an indication that she finds worth in it:

“... precedents, the deeds of the ancestors and the usage that grew out of them, were always binding. Anything that happened was transformed into an example, and the *auctoritas maiorum* [the authority of the ancestors] became identical with authoritative models for actual behavior, with the moral political standard as such ... Tradition preserved the past by handing down from one generation to the next the testimony of the ancestors, who first had witnessed and created the sacred founding and then augmented it by their authority throughout the centuries. As long as this tradition was uninterrupted, authority was inviolate; and to act without authority and tradition, without accepted, time-honored standards and models, without the help of the wisdom of the founding fathers, was inconceivable.”⁶

Arendt refers here to ‘the deeds of the ancestors’ and *auctoritas maiorum*, but the Romans also spoke often of *mos maiorum*, the *mores* or ways of the ancestors, which they upheld as authoritative, and this also helps to explain why they held great respect for old age as such. Arendt acknowledges in this essay that this respect for the *auctoritas* of the elders was due to their accumulated wisdom and experience of the world but says also that it was “because [they] had grown closer to the ancestors and the past”.⁷ In any event, we can see from

⁵ *BPF*. pp.93–94.

⁶ *BPF*. pp.123–124.

⁷ *BPF*. p.123.

this passage that tradition, authority, and the past are all closely intertwined in Roman thought. We shall consider Arendt's writings on authority in more detail below, but here, it seems to me that she is praising authority and so tradition, or at least 'this' tradition, in her choice of the term 'inviolable'. But she also seems to be implying that 'this' tradition was interrupted. In its context, she is speaking of a tradition of politics, with notions of tradition and authority in matters of thought and ideas—such as the tradition of philosophy and authority of philosophers I highlighted in the previous chapter—being essentially derivative from this tradition, or what she also calls here “the political realm”.⁸ And as we shall see below, she says in the same essay that the Americans were successful in resuming this tradition of politics, the political realm. But we also have in the passage quoted above what I think is an excellent description of tradition as such, which I would nevertheless like to vary slightly: *tradition preserves the past by handing down from one generation to the next the testimonies of the ancestors*. This is what I understand tradition as such to mean and I wonder how the past may be preserved if not by tradition. In my own understanding, what is transmitted in tradition is the testimonies of, not 'the Truth' told by, those who have lived before us.⁹ Arendt says in her preface to *Between Past and Future*—speaking, we should note, in the present tense—that tradition is a thing “...which selects and names, which hands down and preserves, which indicates where the treasures are and what their worth is...”, and it is part of my argument that this is whether or not *some* in the modern world have 'lost' or 'forgotten' (if they had ever 'found' or 'remembered') that which has been handed down and preserved.¹⁰ I understand tradition to be something that *helps* us in exercising judgments in the world (it does not, like 'the Truth', coerce) and as we shall see below, for Arendt—and as I argue in this project, for the rest of us—it is also help that we *need*.

⁸ *BPF*. p.124. Cf. *HC*. p.7, where Arendt describes the Romans as “perhaps the most political people we have known”.

⁹ Cf. a line of Lessing's which Arendt says is “the most profound thing that has been said about the relationship between truth and humanity”: “Let each man say what he deems truth, and let truth itself be commended unto God.” *MDT*. p.31. Cf. also *BPF*. p.259, where Arendt says a profound thing about this herself: “Conceptually, we may call truth what we cannot change; metaphorically, it is the ground on which we stand and the sky that stretches above us.”

¹⁰ *BPF*. p.5. After several readings of this Preface, I remain convinced it is simply a defence—however elaborately expressed—of 'this tradition of politics', the civic republican tradition.

I have found Arendt *explicitly* saying ‘tradition as such’ only once, talking about Hegel in *Tradition and the Modern Age*:

“He it was who for the first time saw the whole of world history as one continuous development ... and this implied that he himself stood outside all authority-claiming systems and beliefs of the past, that he was held only by the thread of continuity in history itself. The thread of historical continuity was the first substitute for tradition; by means of it, the overwhelming mass of the most divergent values, the most contradictory thoughts and conflicting authorities, all of which had somehow been able to function together, were reduced to a unilinear, dialectically consistent development actually designed to repudiate not tradition as such, but the authority of all traditions.”¹¹

It seems to me that Arendt, quite apart from the worth she herself finds in it, does mean to imply here that tradition as such *has* been ‘repudiated’ in the modern world (whoever the ‘repudiators’ might be). This may not have been Hegel’s design, which she says was to repudiate the authority of all traditions, but elsewhere she describes “the Hegelian system of historical revelation” as “perhaps the most terrible and, humanly speaking, least bearable paradox in the whole body of modern thought”, in which the two ‘worlds’ of Plato (‘the rational’ and ‘the actual’) are thrown together into a single moving whole and Absolute Truth is taken to be immanent in history itself, working itself out in a process of dialectical necessity, regardless of the judgments of actual human beings.¹² At various places in her work, Arendt indicates her disapproval of the Hegelian system in which dialectical movement is seen as a universal law, i.e. a law of nature and history.¹³ In *The Concept of History*, for example, she identifies history as the central concept of Hegel’s metaphysics, describes metaphysics under his pen as a “transformation” into ‘the philosophy of history’, his philosophy of history’s “sharp opposition” to all previous metaphysics which

¹¹ *BPF*. pp.27–28.

¹² *MDT*. p.92; *OR*. p.48.

¹³ She of course attributes to neither Hegel nor Marx any later interpretations (or perversions) of their work, but still questions Hegelian dialectics as a methodology. For example: “What is of importance ... is that this thinking can take off, so to speak, from one single point, that a process that can essentially no longer be halted begins with that first proposition, that first thesis. This thinking, in which all reality is reduced to stages of a single gigantic developmental process—something still quite unknown to Hegel—opens a path onto truly ideological thinking, which in turn, was also something still unknown to Marx. This step from dialectic as method to dialectic as ideology is completed once the first proposition of the dialectical process becomes a premise in logic from which everything else can be deduced with a consequentiality totally independent of all experience.” *PP*. pp.74–75.

“had looked for truth and the revelation of eternal Being everywhere except in the realm of human affairs”, and concludes by suggesting that his philosophy of history—and “the concomitant decrease in interest in purely *political* thinking”—has been refuted by our own experience of the twentieth century.¹⁴

Arendt is sceptical of Hegel and the German idealists in general, all of whom she says “believed in all earnest that the results of their speculations possessed the same kind of validity as the results of cognitive processes”.¹⁵ As with the humanist traditions described by Devetak and Dallmayr in the previous chapter, she looks rather to the words and deeds of concrete actors, of ‘men of action’, in understanding both past and present. In *What is Authority?*, for example, Arendt looks to the American founders and identifies the American founding as being the only one in the modern age to successfully “repair” the “Roman foundations of the political realm”, “renew the broken thread of tradition” and “restore, through founding [a] new political [body], what for so many centuries had endowed the affairs of men with some measure of dignity and greatness.”¹⁶ Published a few years later, however, we find some obscure passages in *On Revolution* which might seem on the face of it to contradict this understanding. Noting the American founders’ variation of Virgil’s *magnus ordo saeculorum* to *novus ordo saeculorum*, Arendt claims that, in their variation, they:

“...had admitted that it was no longer a matter of founding ‘Rome anew’ but of founding a ‘new Rome’, that the thread of continuity which bound Occidental politics back to the foundation of the eternal city and which tied this foundation once more back to the

¹⁴ *BPF*. pp.68, 77 and 86. Emphasis added. Around the same time as writing *The Concept of History* (the early 1950s), Arendt delivered a lecture to the American Political Science Association in which she also made this last point, but in more forthright and controversial language: “Who would dare to reconcile himself with the reality of extermination camps or play the game of thesis-antithesis-synthesis until his dialectics have discovered ‘meaning’ in slave labor? Wherever we find similar arguments in present-day philosophy, we remain either unconvinced because of the inherent lack of a sense of reality or begin to suspect bad faith.” *EU*. p.444. In a conference held in 1972, Albrecht Wellmer questioned whether there was a Hegelian element missing in Arendt’s distinctions, to which she responded: “I would say that by such fancy methods you have *eliminated* distinctions and have already done this Hegelian trick in which one concept, all of its own, begins to develop into its own *negative*. No it doesn’t! ... this would be precisely the trap—in my opinion—into which I refuse to go.” *TWB*. pp.464–465. Emphases in original.

¹⁵ *LM1*. p.16.

¹⁶ *BPF*. p.140. Cf. *OR*. p. 197: “Historically speaking [with regard to the American revolution], it was as though the Renaissance’s revival of antiquity that had come to an abrupt end with the rise of the modern age should suddenly be granted another lease on life...”.

prehistorical memories of Greece and Troy was broken and could not be renewed. And this admission was inescapable.”¹⁷

Virgil’s line here from the fourth Eclogue, *magnus ab integro saeculorum nascitur ordo*—and it is this full line Arendt uses as her epigraph for the chapter entitled ‘Foundation II: *Novus Ordo Saeculorum*’ in *On Revolution*—is commonly translated as ‘the great order of the ages is born anew’. *Novus ordo saeculorum* (which appears on the Great Seal of the US) is commonly translated as the ‘new order of the ages.’ In this context, the reader might wonder from what Arendt is saying in the above passage, in this newer version of her story about the American founders, whether the thread of tradition had *not* been renewed (or if it was lost rather than broken, whether it had *not* been retrieved) in their founding of a ‘new Rome’, which would make it consistent with her claim in *What is Authority?*. We may note here the fact that the American founders retained the Latin in their variation of Virgil’s great line, and further support that Arendt herself viewed them as renewing (or retrieving) the thread of tradition is to be found in many places in *On Revolution*, for example, when she says that they were “nourished by the classics” and had “gone to school in Roman antiquity”.¹⁸ But she also says in it that:

“...the reason why [the American founders] turned to antiquity for inspiration and guidance was most emphatically not a romantic yearning for past and tradition ... they prided themselves on their ‘enlightenment’, on their intellectual freedom from tradition ... When they turned to the ancients, it was because they discovered in them a dimension which had not been handed down by tradition—neither by the traditions of customs or institutions nor by the great tradition of Western thought and concept. Hence, it was not tradition that bound them back to the beginnings of Western history but, on the contrary, their own experiences, for which they needed models and precedents.

¹⁷ *OR*. p.213. Has Arendt in the last sentence here fallen into Hegel’s trap, nine years before she told Wellmer that she refused (any longer) to fall into it (note 14 above)? Cf. *TWB*. p.36: “The greatness of Hegel’s system, and the reason why it was so extremely difficult to escape its influence if one wanted to remain within the scope of traditional philosophy at all, lies in his incorporation of the two ‘worlds’ of Plato into one moving whole. The traditional turning from the world of appearance to the world of ideas or, conversely, the turning from the world of ideas back to the world of appearance, takes place in the historical motion itself and becomes the form—although not the content, which is the realization of the Absolute—of the dialectical movement.” In any event, notice that she chose *not* to say ‘the thread of *tradition*’ in this passage.

¹⁸ *OR*. p.203.

And the great model and precedent ... was for them ... the Roman republic and the grandeur of its history.”¹⁹

It is perhaps unsurprising that Arendt, trained in phenomenology, accounts for the American founders' recourse to antiquity primarily in terms of their own experiences. But let us note her presuppositions here: (i) they *were* bound back to the beginnings of Western history; and (ii) they had recourse to antiquity for its *authority*, for its inspiration and guidance. Arendt at this point is presupposing two enduring parts of what she calls 'the Roman trinity': tradition, authority (ii), and religion (i).²⁰ But what of tradition in this passage? The reader will recall from the quotations on pages 125 and 126 that Arendt understands tradition both to be tied to our experiences and to consist of models, and here in *On Revolution* she tells us that the American founders turned to Roman antiquity because they *needed* models for their experiences. Meeting that need, could it be that the American founders had recourse to Roman antiquity because the model and precedent of the Roman republic had been transmitted to them by tradition? I think it very plausible indeed, and despite the obscurity of Arendt's language in the above passage, it seems to me that she does not deny the possibility; all that she (emphatically) denies is that they had a romantic yearning, a sentimentality or nostalgia, for past and tradition.

In looking more into Arendt's obscure language around tradition (and authority), let us move forward a few years in her writings again, to *Men in Dark Times*, where in an essay on the work of Walter Benjamin, we can see this matter of 'the undeniable loss of tradition in the modern world' still very much on her mind:

“Insofar as the past has been transmitted as tradition, it possesses authority; insofar as authority presents itself historically, it becomes tradition. Walter Benjamin knew that the break in tradition and the loss of authority which occurred in his lifetime were irreparable, and

¹⁹ *OR*. p.198. Again, notice that Arendt chose *not* to say the great tradition of 'politics' or even 'political thought' (on the latter of which, see the next sub-section).

²⁰ Here as elsewhere, Arendt derives *religio* (which means reverence or obligation) from *religare* (which means to bind together). Some ancient sources do support this derivation, but others support a different one, including one of Cicero's dialogues (*Nat. D.* 2.57), in which the Stoic character Balbus associates the word 'religious' with scrupulousness and choosing, and derives *religio* from *relegere*, which means to review; to go through or over again in reading, speech or thought. For a brief account of this matter (eloquently concluded), see Sarah F. Hoyt, 1912. 'The Etymology of Religion'. *Journal of the American Oriental Society*. 32(2). pp.126–129.

he concluded that he had to discover new ways of dealing with the past. In this he became a master when he discovered that the transmissibility of the past had been replaced by its citability and that in place of its authority there had arisen a strange power to settle down, piecemeal, in the present and to deprive it of 'peace of mind', the mindless peace of complacency ... This discovery of the modern function of quotations, according to Benjamin ... was born out of ... the despair of the present and the desire to destroy it ... Still, the discoverers and lovers of this destructive power originally were inspired by an entirely different intention, the intention to preserve; and only because they did not let themselves be fooled by the professional 'preservers' all around them did they finally discover that the destructive power of quotations was 'the only one which still contains the hope that something from this period will survive ...'"²¹

How far, or in *whom*, Arendt believes the past has been transmitted as tradition we are not told here. Although speaking again of tradition in the present tense, she still seems to presuppose its irreparable break in the modern world (that is, to the best of her own and Benjamin's knowledge), and the 'strange power' to deprive a complacent present of 'peace of mind' with citations or quotations from the past she can see only in those, like Benjamin, who think poetically; an aptitude that she describes in this essay as a "gift", and moreover, a gift that is "extremely rare".²² Arendt in this passage shares some of Benjamin's despair of the present, but steers away from his desire to destroy it and chooses to emphasise instead the importance of preserving the past *for the sake of* the present (and future), a task of tradition as such, even if she thinks here with Benjamin that, in the present, the only hope of such preservation is in the gift of those who think poetically.²³ Walzer has provided us with some helpful comments regarding the worldly products of these extremely rare persons who have been gifted with the ability to think poetically:

"Poetry leaves in the minds of its readers some intimation of the poet's truth. Nothing so coherent as a philosophical statement; nothing so explicit as a legal injunction; a poem is never more than a partial and unsystematic truth, surprising us by its excess, teasing us by its ellipsis, never arguing a case."²⁴

²¹ MDT. p.193.

²² MDT. p.205.

²³ Cf. Pierre Pachet and Catherine Temerson, 2007. 'The Authority of Poets in a World without Authority'. *Social Research* 74(3). Hannah Arendt's Centenary, Political and Philosophical Perspectives, Part I. pp.931–940.

²⁴ Walzer, *Philosophy and Democracy*. p.382.

Magnus ab integro saeculorum nascitur ordo. While of course the poetry of others may be used in arguing one's case, one is not thereby *thinking* poetically, which, it seems to me, can only be carried out by the exceedingly few poets among us, and I believe Arendt is one of these exceedingly few. Still, how might one cite or quote something without thereby transmitting it? In a brief essay which implicitly touches upon some of the similarities and differences between Arendt and Benjamin, Elisabeth Young-Bruehl says that Arendt:

“...knew that she lived in ‘dark times’, times in which a long tradition had unraveled and scattered in a vast mental diaspora to the ends of memories of men. But she viewed the rupture as a sign that the threads, the thought fragments, were to be gathered, freely and in such a way as to protect freedom, and made into something new, dynamic, and illuminating. She was heiress to an aphoristic technique; the *capita mortua* of the broken tradition were assembled with this technique, reincarnated, full-bodied and vital ... when the past is not transmitted as tradition, it can be freely appropriated; and when such free appropriation presents itself historically, it becomes the occasion for dialogue ... It was Hannah Arendt’s peculiar gift to be able to open up our words and find in them the surviving threads of our tradition.”²⁵

I am unable to expound Arendt’s aphoristic technique, to which I think she alludes beautifully in the final section of her essay on Benjamin, entitled ‘The Pearl Diver’. But I do want to suggest that if Young-Bruehl is right here about Arendt—and despite the irony in her use of the phrase ‘*capita mortua*’, ‘the heads of the dead’, which without irony can be said to be ‘pearls of wisdom’, I believe she is—then it makes ‘the undeniable loss of tradition in the modern world’ a questionable assertion. If we do not presuppose tradition as such to be lost or broken in the modern world, then I think it is very difficult to understand the testimonies of the ancestors, the pearls of wisdom, quoted by Benjamin and others, including Arendt, as *not* being handed down from one generation to the next. It seems to me that quotations and citations, and not only citations and quotations, are eminently transmissible.

²⁵ Elisabeth Young-Bruehl, 1977. ‘Hannah Arendt’s Storytelling’. *Social Research* 44(1). pp.183–190. It is useful to note Young-Bruehl’s choice of the term ‘heiress’ here; one who inherits and continues that which has been handed down to them by a predecessor. In other words, Young-Bruehl is saying that Arendt stands in a tradition of aphoristic technique.

Young-Bruehl is also speaking here of Arendt's authority: she gathers the threads of tradition 'freely and in such a way as to protect freedom' (see pp. 169-172), and she presents them historically, occasioning dialogue—which itself, since at least Socrates, is steeped precisely in our traditions. Indeed, Arendt's handling of Socrates in *The Life of the Mind* provides us with some more evidence that tradition has not been lost in the modern world. She turns to him as the best model of a thinker, saying that “the best, in fact the only, way I can think of to get hold of the question [what makes us think?] is to look for a model...” and that “I hope the reader will not believe that I chose Socrates at random.”²⁶

Regrettably, we are not told of the way in which Arendt's choice of Socrates was not random. Instead, she talks about whether her choice is “historically justifiable” to others, saying nothing about what influenced it.²⁷ While she is certainly exercising her own judgment when it comes to her choice of Socrates as the best model of a thinker, it looks very much to me like she has arrived at it non-randomly, she has been guided to it, by tradition. And unlike in her essay on Benjamin a few years earlier, it seems to me that Arendt has now found some hope that her audience, virtually all of whom think non-poetically, are either able or willing to believe in tradition as well.

In concluding this sub-section, let us consider how Arendt concludes that first volume of *The Life of the Mind*:

“Let me now at the end of these long reflections draw attention ... to what in my opinion is the basic assumption of this investigation ... the assumption that the thread of tradition is broken and that we shall not be able to renew it. Historically speaking, what actually has broken down is the Roman trinity that for thousands of years united religion, authority and tradition. The loss of this trinity does not destroy the past, and [the process of dismantling metaphysics and philosophy with all its categories] is not destructive; it only draws conclusions from a loss which is a fact ... of our political history, the history of our world.”²⁸

Arendt does not say here that *her* opinion is that the thread of tradition is broken and that we shall not be able to renew it; her opinion is that it is ‘the’

²⁶ *LM1*. pp.167–168.

²⁷ *LM1*. pp.167–168.

²⁸ *LM1*. pp.211–212.

basic *assumption* (of ‘this’ investigation). But whose basic assumption?²⁹ She goes on to speak historically—and switching metaphors—of the Roman trinity having ‘broken down’ and—switching metaphors again—describes this as a ‘loss’ which is a ‘fact’ of *our* political history. But given the rest of my argument in this subsection, and the fact that she is again concerned to ‘not destroy’, i.e. preserve, the past, I argue that, *for Arendt* here, tradition has not been lost in the modern world. But what about for the rest of us? Is Arendt’s hope that we are able or willing to believe in tradition not unreasonable? Is she right about ‘the’ basic assumption? If she is, can what has ‘broken down’—by Hegel’s design or not—be fixed, or what has been ‘lost’ retrieved? She goes on immediately after the above passage to say that:

“What has been lost is the continuity of the past as it seemed to be handed down from generation to generation, developing in the process its own consistency. The dismantling process has its own technique, and I did not go into that here except peripherally. What you then are left with is still the past, but a *fragmented* past, which has lost its certainty of evaluation ... If some of my listeners or readers should be tempted to try their luck at the technique of dismantling, let them be careful not to destroy the ‘rich and strange’, the ‘coral’ and the ‘pearls’, which can probably be saved only as fragments.”³⁰

The issue of ‘seeming’ in the first sentence speaks to the ‘value of the surface’, the ‘reversal of the metaphysical hierarchy’ which Arendt promotes near the beginning of the text; this is the ‘worldly’ aspect she believes has been lost in modernity.³¹ But what of tradition itself? Insofar as we understand ‘process’ to mean a natural ‘series’ which includes variations or changes, and insofar as we understand ‘consistency’ to mean a state of being ‘held together’ as distinct from a state of being ‘without logical contradiction’, then I think Arendt has described in this first sentence—although not without some irony—tradition as such, even as I question whether it has been lost in the modern world.³² Earlier

²⁹ Cf. *LM1*. p.11: “these modern ‘deaths’—of God, metaphysics, philosophy...” according to Arendt are “the common unexamined assumption of nearly everybody.”

³⁰ *LM1*. pp.211–212. Emphasis in original.

³¹ *LM1*. pp.26–30. As discussed here and in more detail below (pp.33–34), Arendt seems suspicious about use of the term ‘value’. The phrase ‘value of the surface’, as she says at this point in the text, is biologist Adolf Portmann’s rather than her own.

³² Cf. *BPF*. pp.57–63. Arendt says here that with the rise of modern science, there has been a shift in emphasis in our investigations from ‘the what’ to ‘the how’, from “interest in things to interest in processes, of which things were soon to become almost accidental by-products.” This

in this chapter, I varied slightly another of Arendt's descriptions of tradition as such, one that was written without irony: tradition preserves the past by handing down from one generation to the next the *testimonies* of the ancestors.³³ I also pointed out that dialogue is something steeped in our traditions. It seems to me that traditions never speak with one voice; there is always a plurality built into each tradition, which is to say that they are made up of more than just this or that person's testimony. Such testimonies become (if they were not already) part of a dialogue or conversation and it is in *this* sense that the continuity of the past develops its own consistency over time; the testimonies are 'held together' through the social activities of human beings, through what Arendt calls elsewhere simply 'talk', either amongst ourselves or across generations.³⁴ The key aspect here, what should be the key focus, is persons rather than historical 'processes' or metaphysics (or post-metaphysics). In the passage quoted on p.136, Arendt spoke of 'the most contradictory thoughts and conflicting authorities, all of which had somehow been able to function together' before they were reduced to a single, world-historical, dialectical process in a philosopher's system. This 'somehow', I argue, is a tradition of politics, a civic republican tradition, highlighted by Dallmayr and Devetak in the previous chapter, and it is one we shall consider in the final section of this chapter and the final chapter of this project.

Arendt goes on in this passage to mention her technique for dismantling metaphysics and philosophy with all its categories. We have already seen Young-Bruehl's comments on this technique. I think it correct to understand it as 'thinking poetically' (or at least, thinking poetically is ancillary to the technique), and we have already seen that such an ability is an extremely rare gift, so Arendt's warning to her readers here is understandable. But notice also that she uses the second person: what *you* then are left with after *Arendt's*

includes both in the historical and social sciences, the latter of which she says "prescribe conditions, conditions to human behaviour" in the language of processes which "sounds frightening ... because they have decided to treat man as an entirely natural being whose life process can be handled the same way as all other processes" without regard to "single entities [like individual human beings] or [our] individual occurrences and their special separate causes".

³³ It seems to me that one might complete poet René Char's aphorism, which Arendt quotes on many occasions, including at the very beginning of her preface to *Between Past and Future*, accordingly: "...our inheritance was left to us by no testament...", *but with many testimonies*. *BPF*. p.3.

³⁴ *TWB*. p.439.

dismantling in *The Life of the Mind* is still the past, but a fragmented past, which has lost its ‘certainty of evaluation’. But for whom? Again, with the phrase ‘certainty of evaluation’, I think Arendt is writing in an ironical vein. As mentioned already and as discussed in more detail below, she makes it clear elsewhere in her writings—and not the least in the previous paragraph at this point in them—that she has not much truck with finding ‘value’ in things, and I cannot recall finding her ‘evaluating’ anything herself. We should also note that certainty need not be epistemic; it denotes merely a firmness of conviction. We do not know how Arendt might have described ‘certainty of evaluation’ without irony here, nor how far she felt secure in *her own* ‘certainty of evaluation’ of the past (although I hope to have shown in this sub-section and to show in the next as well that she did have some), but in any event, she is pointing here to *her reader’s* lost certainty of evaluation. And interestingly, observe the doubt that comes in at the end of the passage. Arendt acknowledges that ‘saving’ the past without its having been fragmented beforehand—*preserving* it—is at least possible in others, no matter how improbable it might seem to Arendt herself. Again, there is hope here in Arendt’s *The Life of the Mind* that the past may also be preserved by those *not* able to think poetically. Admittedly, it is only a glimmer—she seems firmly convinced that ‘the’ basic assumption holds fast in the modern world—but it seems to me to be there nevertheless, and I think it good to draw the reader’s attention to it.

I have argued in this sub-section that tradition as such has not been lost in the modern world. Testimonies of those who have lived before us, it seems to me, *have* been handed down from one generation to the next; they have been *transmitted* through history to the American founders, to the poets, *and to us*, and I think an important question is: what are we doing with them? After all, insofar as we are keeping such testimonies alive, handing them down from one generation to the next, according to Arendt, they “could save all things and bring them into harmony.”³⁵

³⁵ BPF, p.18.

2.2.2 The ‘...definite end’ of ‘the tradition’?

If tradition as such has not been lost or broken in the modern world, Arendt does argue that “our” ‘definite’ tradition came to a “no less definite end” in the modern age (than its beginning; as mentioned in the introduction to this chapter, she does not herself define ‘the’ tradition).³⁶ Due not least to the various formulations Arendt uses to talk about this tradition across her writings, we are left quite in the dark as to what she takes it to be. I “grapple” with her writings on this matter, as Jerome Kohn did also in his introduction to the 2006 edition of *Between Past and Future*.³⁷ Kohn has helpfully spoken of “the great Western philosophic-political tradition” and “the great tradition of political and philosophic thought” in terms of trying to pin down what Arendt means to say.³⁸ But her own vagueness on the matter I think is understandable, given her (and our) perplexities around what remains the differences between politics and philosophy.³⁹ Still, I think it useful to grapple with Arendt’s writings on this matter. For the sake of brevity, I shall follow convention in the secondary scholarship and refer mostly and simply in this sub-section to ‘the tradition’, and trust that the reader is aware without my using scare quotes every time that there are problems in calling it ‘the’ tradition. Through a consideration of Arendt’s writings about its ‘definite end’ in relation to Cicero as he appears (or not) in different versions of her story over time, I argue, contrary to what she might seem to say, that ‘the tradition’ in fact endures.

In one of the earliest versions of her story about its end, we find Arendt telling us that Cicero was an “exception” to the tradition, since, as we shall consider in more detail in the subsequent chapters, he stoutly defended the practical life of the citizen vis-à-vis the theoretical life of the philosopher:

“... since Socrates no man of action, that is, no one whose original experience was political, as for instance Cicero’s was, could ever hope to be taken seriously by the philosophers ... Neither the radical

³⁶ *BPF*. p.17.

³⁷ *BPF*. p.viii.

³⁸ *BPF*. p.viii; *PP*. p.vii.

³⁹ Cf. Margaret Canovan, 1992. ‘Philosophy and Politics’. *Hannah Arendt: A Reinterpretation of Her Political Thought*. Cambridge: Cambridge University Press. pp.253–274; Frederick M. Dolan, 2000. ‘Arendt on philosophy and politics.’ Dana Villa (ed.). *The Cambridge Companion to Hannah Arendt*. pp.261–276.

separation between politics and contemplation, between living together and living in solitude as two distinct modes of life, nor their hierarchical structure, was ever doubted after Plato had established both. Here ... the only exception is Cicero, who, out of his great Roman political experience, doubted the validity of the superiority of the *bios theoretikos* over the *bios politikos* ... Rightly but futilely Cicero objected that he who was devoted to ‘knowledge and science’ would flee his ‘solitude and ask for a companion in his study, be it in order to teach or to learn, to listen or to speak’. Here as elsewhere the Romans paid a steep price for their contempt of philosophy, which they held to be ‘impractical’. The end result was the undisputed victory of Greek philosophy and the loss of Roman experience for occidental political thought. Cicero, because he was not a philosopher, was unable to challenge philosophy.”⁴⁰

There is clear agreement here between Arendt and Cicero. She regards him as saying *rightly* that human beings, including philosophers (or at least those devoted to knowledge and science), are naturally sociable. In the passage from Cicero Arendt approvingly quotes here—and I also agree with it—he is drawing upon and opposing arguments being made in his own time by philosophers such as the Epicureans that human beings are naturally solitary creatures, whilst supporting the claim that we are naturally sociable, an argument being made (in different ways) in his own time by philosophers such as the Peripatetics and the Stoics, as we shall see in the next chapter.⁴¹ ‘Greek philosophy’, or at least certain schools thereof, provide important support for both Arendt’s and Cicero’s views of our being naturally sociable, and this is an awkward fact for the story Arendt wishes to tell here about the pernicious effects of ‘Greek philosophy’ in the tradition. Still, she clearly regards Cicero as saying the right thing here. But we should also consider what Arendt takes to be the *futility* of his efforts to, as she puts it, reverse the hierarchical structure of the *bios theoretikos* and the *bios politikos*, the validity of this structure first appearing in (Arendt says it was established by) the writings of Plato. Again, we shall consider across the next two chapters of this project some of the detail of Cicero’s response to this question, not about the validity or otherwise of a hierarchical structure of the different kinds of lives one may lead, but about the different kinds of lives one may lead; for now, I merely invite the reader to reflect upon the extent to which we can feasibly say his arguments in support of the active

⁴⁰ *PP.* pp.83 and 85–86.

⁴¹ *Off.* 1.158.

life of the citizen have been futile *and in which field(s) of activity*: philosophy, politics, and/or the tradition.

Arendt here regards the Romans, including Cicero, as having paid a ‘steep price’ for their ‘contempt’ of philosophy, which they held to be ‘impractical’, although we are not told what she thinks the steep price actually was. In grappling with this matter, let us consider some of the other versions of her story about the tradition. The above passage comes from an early version that was only posthumously published (this century); Arendt wrote it in the early 1950s as part of an intended book, which was later abandoned.⁴² We find the ‘official’ versions of her story about the end of the tradition in *Between Past and Future*, published in 1954, where, in *What is Authority?*, she touches again upon the relation of Romans to Greek philosophy:

“It was more than patriotism and more than the current revival of interest in antiquity that sent Machiavelli to search for the central political experiences of the Romans as they had originally been presented, equally removed from Christian piety and Greek philosophy. The greatness of his rediscovery lies in that he could not simply revive or resort to an articulate conceptual tradition, but had himself to articulate those experiences which the Romans had not conceptualized but rather expressed in terms of Greek philosophy vulgarized for this purpose.”⁴³

As far as I am aware, from the sources available to us, ‘the Romans’ in the last sentence here could only have been Cicero and Lucretius, and of these two, it is only Cicero Arendt names in her endnote to this passage.⁴⁴ She seems here to be somewhat displeased with ‘the Romans’ either for not conceptualising their political experiences originally (was this the steep price?), or for failing to handle Greek philosophy with sufficient subtlety or refinement in doing so (or

⁴² *PP*. p.vii.

⁴³ *BPF*. p.138. For more current scholarship on the relation of Romans to Greek philosophy, see for example: Miriam Griffin and Jonathan Barnes (eds.), 1989 and 1997. *Philosophia Togata I: Essays on Philosophy and Roman Society*; and *Philosophia Togata II: Plato and Aristotle at Rome*. Oxford: Clarendon Press; J.G.F. Powell (ed.), 1995. *Cicero the Philosopher: Twelve Papers*. Oxford: Clarendon Press; Raphael Woolf, 2015. *Cicero: The Philosophy of a Roman Sceptic*. London: Routledge; Jed W. Atkins, 2013. *Cicero on Politics and the Limits of Reason: The Republic and Laws*. Cambridge: Cambridge University Press; Walter Nicgorski (ed.), 2012. *Cicero’s Practical Philosophy*. Notre Dame, Indiana: Notre Dame University Press; Gareth D. Williams and Katharina Volk (eds.), 2015. *Roman Reflections: Studies in Latin Philosophy*. Oxford: Oxford University Press.

⁴⁴ *BPF*. p.287: “It is curious to see how seldom Cicero’s name occurs in Machiavelli’s writings and how carefully he avoided him in his interpretations of Roman history.”

was this the steep price?). But I find it all but impossible to imagine an articulate *conceptual* tradition *not* deriving from Greek philosophy (in which Aristotle tells us that it was Socrates who discovered ‘the concept’), so the latter option seems to me the more likely, and I hope to have indicated in my introduction to this project that Cicero’s handling of Greek philosophy was indeed both subtle and refined (and as we shall touch upon again in the next two chapters).⁴⁵ In *The Life of the Mind*, Arendt chooses to speak more directly of Cicero on this matter and expresses his articulation of Greek philosophy in Latin in different terms: he (with Lucretius on the Epicurean side) was the first in “conceptual language” to have “transformed Greek philosophy into something essentially Roman—which meant, among other things, something essentially practical.”⁴⁶ Cicero, then, at least on Arendt’s telling, appears to have inaugurated an ‘articulate conceptual tradition’ which Machiavelli could and I think did draw upon (and she does not deny this in the passage from *What is Authority?* quoted above), as could and did Augustine, who she claims elsewhere in the text “was the only great philosopher the Romans ever had”.⁴⁷ Even if she is right on this, which I doubt, it was thanks to Cicero, who, very far indeed from being contemptuous of philosophy, wrote a protreptic to it, *Hortensius* (now lost), which Augustine tells us deeply moved him and directly inspired his own philosophical pursuits. Prior to Cicero, philosophising and conceptualising were simply impossible in Latin; it appears that in his writings he imbued an ‘articulate conceptual tradition’ in the very language Romans spoke, and so in the very thoughts *possible* for those Romans like Augustine, or those Florentines like Machiavelli, who had no Greek themselves.

⁴⁵ *LM1*. p.170.

⁴⁶ *LM1*. pp.153–154. The awkward fact of Cicero’s sharp opposition to the Epicureans in philosophy is ignored in this text, with both Cicero and Lucretius speaking as one in providing ‘The Roman Answer’ to Arendt’s question (what makes us think?). She is relying at this point on sweeping statements made in Hegel’s *Philosophy of History* lectures that collapse the schools of Hellenistic philosophy (“Stoicism, Epicureanism and Scepticism”) into each other as having the same “general purport” of “rendering the soul absolutely indifferent to everything which the real world had to offer” (Hegel’s words, quoted by Arendt). Whilst *ataraxia*—tranquillity or ‘peace of mind’—might have been the ‘general purport’ of the Epicureans, Stoics and Pyrrhonian sceptics (and this is a debatable claim in itself), it was certainly not that of the Academic sceptics, the school to which Cicero was affiliated, and nor was it that of the Peripatetics, whose writings leading into the Hellenistic period—although admittedly sparse until after the rediscovery and publication of Aristotle’s library at the end of the first century BC—Cicero also drew upon intelligently and selectively in his own work. Gisela Striker, 1996. *Essays on Hellenistic Epistemology and Ethics*. Cambridge: Cambridge University Press. Chs.6 and 9.

⁴⁷ *BPF*. p.126.

Whereas Cicero—albeit approvingly excepted from it—was clearly on Arendt’s mind regarding the ‘definite end’ of ‘the tradition’ in an earlier but only posthumously published version of her story, in *Tradition and the Modern Age*, the main ‘official’ version (although as Kohn correctly says, every chapter in *Between Past and Future* is informed by this notion of the definite end of the tradition), his name does not appear at all.⁴⁸ In this essay, the focus is mainly upon Marx, Kierkegaard and Nietzsche, who are portrayed as figures trying to think standing at ‘the end’ of the tradition, and all of whom are “Hegelians insofar as they saw the history of past philosophy as one dialectically developed whole”.⁴⁹ We saw in the previous sub-section that Arendt described Hegel’s philosophy of history as, ‘humanly speaking, the least bearable paradox in the whole body of modern thought’, and she portrays Marx, Kierkegaard and Nietzsche in this essay, despite their reliance upon ‘the Hegelian system of historical revelation’, as ‘humanists’ of a sort. Marx “desired to assert again the dignity of human action”; Kierkegaard “wanted to assert the dignity of faith against modern reason and reasoning”; Nietzsche “wanted to assert the dignity of human life”; and the three of them “... all question the traditional hierarchy of human capabilities, or, to put it another way, they ask again what the specifically human quality of man is; they do not intend to build systems or *Weltanschauungen* on this or that premise.”⁵⁰ My concern here is not with these nineteenth century figures, nor with the validity or otherwise of Arendt’s interpretations of them; rather, it is to emphasise the similarity of her aims—or, to put it differently, to emphasise what she is *doing* with her interpretations in this “exercise in political thought”—as compared with those standing in the humanist traditions deriving from Cicero discussed in the previous chapter. These figures also had no intention of building systems or worldviews on this or that premise, just like Arendt.

⁴⁸ Now that we have her posthumously published writings and see that Cicero was clearly on Arendt’s mind as regards the ‘definite end’ of ‘the tradition’, I think it is curious to see his name carefully avoided in her ‘official’ story about it, and more curious still to see it used almost immediately afterwards, in the first sentence of the next essay, *The Concept of History*: “Let us begin with Herodotus, whom Cicero called *pater historiae* and who has remained father of Western history.” Perhaps Cicero is being used here to dethrone Thucydides, or perhaps he is being used to remind readers of his very existence after his deafening silence in the previous chapter (or perhaps both). *BPF*. p.41.

⁴⁹ *BPF*. p.28.

⁵⁰ *BPF*. pp.30 and 38–39.

That said, and as with Cicero, Arendt construes Marx, Kierkegaard and Nietzsche as preoccupied with reversing hierarchies of concepts, which does not sit very well with her claim that they were all railing against the abstractions of philosophy. Still, working in the shadow of Hegel—who appears very often as non-traditional in Arendt’s writings (‘He it was who for the first time...’)—the rebellion of Marx, Kierkegaard and Nietzsche against the tradition is portrayed as “no deliberate act of their own choosing”, and their writings as:

“... like guideposts to a past which has lost its authority. They were the first who dared to think without the guidance of any authority whatsoever; yet, for better and worse, they were still held by the categorical framework of the great tradition. In some respects we are better off. We need no longer be concerned with their scorn for the ‘educated philistines’, who all through the nineteenth century tried to make up for the loss of authentic authority with a spurious glorification of culture. To most people today this culture looks like a field of ruins which, far from being able to claim any authority, can hardly command their interest. This fact may be deplorable, but implicit in it is the great chance to look upon the past with eyes undistracted by any tradition, with a directness which has disappeared from Occidental reading and hearing ever since Roman civilization submitted to the authority of Greek thought.”⁵¹

This is yet another obscure passage of Arendt’s; I shall consider its different points in a different order to which she has put them and with reference to some of her other writings (the final words of the passage, in which Cicero seems to be present although not named, I have already addressed on pp.140-141). We saw in the previous chapter that Kant adopted as a slogan for enlightenment the phrase *sapere aude*, ‘dare to be wise’, from the Roman poet Horace, and we saw—it seems with Arendt as well—that he certainly was not the first to ‘dare to think without the guidance of any authority whatsoever’, drawing significantly upon Cicero’s (and others’) writings, which have been handed down from one generation to the next, in arriving at his own moral theory. Whether Marx, Kierkegaard, and Nietzsche in arriving at their own theories thought without the guidance of any authority whatsoever I doubt, but as mentioned above, that is not my concern here. Instead, let us turn next to Arendt’s claim that there is a chance ‘to look upon the past with eyes undistracted by any tradition.’ There is an informative, if rather convoluted, exchange between she and J.M. Cameron

⁵¹ BPF. p.28.

in the *New York Review of Books* concerning this matter (one of the convolutions being that it sometimes appears they are discussing tradition as such rather than ‘the tradition’). In his review of *Between Past and Future*, Cameron raises some doubts about the coherence of Arendt’s proposal that we ‘look upon the past with eyes undistracted by any tradition’:

“[For Arendt] the tradition that has since the ancient world determined our ways of thinking about public affairs is dead, and we are therefore like men who have to learn a new language ... [I argue that] we need to be aware of traditional ways of thinking and feeling in order to demonstrate the novelty of this or that phenomenon ... Above all, the past weighs upon the minds of the living, whether or not we perceive this weighing as a nightmare ... simply through the language we use. In their denseness, their complexity ... our languages give us the essence of the human past ... The very character of thought and discourse robs Miss Arendt’s proposal of sense. And of course she herself pays not the slightest attention to this proposal.”⁵²

I think Cameron is wrong that the tradition ‘determines’ our ways of thinking about public affairs and that Arendt as a matter ‘of course’ thinks and writes standing in it; it seems to me that she thinks and writes standing in it as a matter of her own freely exercised judgment and choice. Still, I think he is entirely correct to observe that she is not looking upon the past with ‘eyes undistracted by any tradition’, and indeed it is questionable that such a proposal even makes sense. Arendt does not deny in her response that she thinks and writes standing in the tradition, choosing instead to emphasise Cameron’s failure to distinguish properly between past and tradition. She acknowledges that “some past”, “not necessarily” its essence, is “alive and present” in every “form of speech”, and says that:

“... the point at issue is not the past but tradition, and the *distinction* between them: Tradition orders the past, hands it down (*tradere*), interprets it, omits, selects, and emphasizes according to a system of pre-established beliefs ... If I say that no tradition can claim validity today, I do not say that the past is dead but that we have no reliable guide through it any more, from which it follows that tradition itself has become a part of the past. To take an example which may be plausible because it involves a good deal of tradition: I can read Aquinas—agreeing or disagreeing with what he has to say—without following the tradition of Thomist thought in the Catholic church. I also can trace this tradition as part of the past. The result may well

⁵² J.M. Cameron, 1969. ‘Bad Times’. *New York Review of Books*. Issue: November 6th.

be a rediscovery of Aquinas and the destruction of Thomist tradition. Everything turns here on the *distinction* between tradition and past.”⁵³

Cameron argued that Arendt took the tradition, not the past, to be dead, and in response, Arendt has chosen to use the metaphors of life and death in relation to the past rather than ‘the’ tradition (the only ‘definite’ tradition in her response to Cameron is ‘the tradition of Thomist thought in the Catholic church’), leaving the possibility open that ‘the tradition’ is ‘alive and present’ and that it may be at least *her* reliable guide. Mischievously, she goes on (seemingly) to disparage the Thomist tradition of the Catholic church in which Cameron stands by pointing to its possible ‘destruction’ with a ‘rediscovery’ of Aquinas, thus admitting that the Thomist tradition has *not* become (merely) a part of the past, and underscoring, it seems to me, the conditional I have italicised for the reader in this passage (whether in terms of the Thomist or any other tradition, including ‘the tradition’). For his part, Cameron is allowed the final word:

“I did not, evidently, understand what she had to say about tradition and the past. I still do not understand it, for I do not understand her explanation. The natural languages constitute tradition in Miss Arendt’s sense since they do in relation to the past all that Miss Arendt says tradition does. Where Miss Arendt seems to me, if I may say so, confused is in her supposition that there are two ways of understanding the past, one in accordance with tradition and another which is free from tradition ... I take Miss Arendt to be arguing that we can stand outside all traditions and understand the past; and I think the nature of thought and language is such as to make this an absurd enterprise.”⁵⁴

I think Cameron makes an important point here that the natural languages themselves constitute traditions (although I would add that it is not only the natural languages that do so), but as far as I am aware, Arendt never says that we are unqualifiedly *free* from tradition; she either qualifies this freedom or uses negative adjectives (undistracted, unburdened, unguided etc.). In any event, towards the end of her response to Cameron’s initial review of her work, Arendt parenthetically asks “Why should he not wish to hold fast to tradition and maintain for instance that without tradition, the ordering guide to lead us safely

⁵³ Hannah Arendt, 1970. ‘Distinctions’. *New York Review of Books*. Issue: January 1st.

⁵⁴ Arendt, *Distinctions*: J.M. Cameron replies.

through the past, we shall lose our past as well?”, and argues that because he fails to distinguish between past and tradition they cannot even arrive at this controversy.⁵⁵ A few years later in *The Life of the Mind*, however, and doubtless with this exchange in mind, Arendt turns the question she asked of Cameron into her own proposition, albeit with typical paradox. After announcing that “we” are about to begin “speculating” about “the possible advantage of our situation following the demise of metaphysics and philosophy”—and after casting “the common unexamined assumption” of the ‘demise’ of metaphysics and philosophy into some doubt— she speculates that the possible advantage:

“...would be twofold. It would permit us to look on the past with new eyes, unburdened and unguided by any traditions, and thus to dispose of a tremendous wealth of raw experiences without being bound by any prescriptions as to how to deal with these treasures ... The advantage would be even greater had it not been accompanied, almost inevitably ... by the disrepute into which everything that is not visible, tangible, palpable has fallen, so that we are in danger of losing the past itself together with our traditions.”⁵⁶

I hope to have shown in this chapter so far that Arendt’s speculation on our behalf here is not only absurd but unnecessary. And yet again, she is speaking of our traditions as ‘alive and present’, even as she believes they are in danger of being lost—perhaps because, after Hegel, they have lost their authority for some. The ‘disrepute’ of which Arendt speaks she says was *almost* inevitable; what saves it from (dialectical) necessity in her understanding I think are the freely exercised judgments and choices in the world, the free opinions, of actual human beings.

It seems to me that Arendt is very often thinking and speaking *politically*. Despite her own constant and I think consistent protestations to the contrary, many continue to look upon Arendt as a philosopher, but I believe this to be a mistake, albeit an understandable one. Two marks of her unwavering commitment to political theory as distinguished from philosophy (political or otherwise) are that: (i) even in old age when she turned to her work on *The Life of the Mind*, and even in private conversation with a friend, she could not bring herself to describe its subject-matter as ‘philosophical’ but rather dealing

⁵⁵ Arendt, *Distinctions*.

⁵⁶ *LM1*. pp.10–12.

merely with “transpolitical things”; and (ii) both volumes of this most ‘transpolitical’ of her texts actually conclude with ‘political things’.⁵⁷ Bearing in mind, then, her status as a *political* thinker and writer, even when discussing the philosophers (as Young-Bruehl put it: “She did not tell the Story of Philosophy, she told the stories of the philosophers”), let us take another look at the passage quoted on p.143.⁵⁸ If, as Arendt strongly suggests, she herself deplores persons’ factual lack of interest in culture, then it seems to me likely that her intended consequence of putting before her readers the prospect of availing themselves of ‘the great chance to look upon the past’ was that those un-interested would be swayed by her wooing and partake in it, as she had done, was doing, and continued to do for the rest of her life. Even if those un-interested understood themselves to be engaging it with ‘eyes un-distracted by any traditions’, the fact would remain that they would be engaging it, and although Arendt does not often do so very explicitly, I argue that *of itself* this engagement could retrieve—not for Arendt, in whom it was never lost, but for anyone who took the chance she placed before them—some sense of what she calls in this passage ‘authentic authority’: something that is emphatically not absolute or dogmatic, something we shall be considering in the rest of this project, and something with which, as Kohn counter-factually but I think rightly says, “the horrendous evils of totalitarianism could never have occurred”.⁵⁹

But let us conclude this sub-section with Arendt, Cicero, and the tradition. Despite her portrayal of him as an exception to it and yet his factual influence upon it, she speaks of the tradition’s “formidable unanimity about the proper relationship between philosophy and politics [i.e. hierarchical, with philosophy above politics]”, which was challenged at what she takes to be the tradition’s end in the writings of Marx, including in the “explosive content” of his thesis that “the philosophers have only *interpreted* the world ... the point, however is to *change* it.”⁶⁰ It is of course unsurprising to Arendt and to us that Marx

⁵⁷ Hans Jonas, 1977. ‘Acting, Knowing, Thinking: Gleanings from Hannah Arendt’s Philosophical Work.’ *Social Research* 44(1). pp.25–43. Cf. *EU*. pp.1–2 and 428–446. *The Human Condition* I think is only just less ‘transpolitical’ than *The Life of the Mind*.

⁵⁸ Young-Bruehl. *Arendt’s Storytelling*. p.184.

⁵⁹ *BPF*. p.xiii.

⁶⁰ *PP*. p.86. Emphases in original. Arendt omits from Marx’s thesis here, but not elsewhere (Cf. *BPF*. p.21), “...differently...”. Although she is probably right here that his thesis is “so intimately

expressed himself in terms of ‘changing the world’, and I dare to say that Cicero might have rendered the same insight as something like this: ‘philosophers end up only *contemplating* in the world; the point, however, is to *act* in it.’⁶¹ In fact, we find Marx’s famous final thesis on Feuerbach expressed in so many words and in so many places in Cicero’s *oeuvre*, as well as in that of several others in the tradition both before and after him, including in Arendt’s. In a lecture she delivered in 1954, as well as in *What is Freedom?*, Arendt speaks of “the philosophical tradition of political thought”, and although of all her formulations I think it is *this* one which gets us closest to what she had in mind to oppose in her writings, as far as I am aware she never named explicitly what must be—and must always have been since the inception of philosophy—its counterpart: the political tradition of political thought.⁶² Although never having held public office herself, as Margaret Canovan puts it, Arendt stands “in the tradition of Machiavelli, Montesquieu, Burke, and Tocqueville [and I suggest Cicero can and should be added to the front of such a list], rather than in that of Plato or Hegel.”⁶³ But this is only to say that Arendt stands very comfortably in ‘the tradition’, which I hope to have shown in this sub-section has certainly not come to a ‘definite end’ in the modern world.

2.3 Persons

2.3.1 Arendt on Persons

Twenty-one years after drawing upon the words of cultural historian Jacob Burkhardt to describe the beginning of ‘the tradition’ as like “‘a fundamental chord’ which sounds in its endless modulations through the whole history of Western thought”, and at its ‘definite end’ sounds irritating and jarring in a world whose “sounds—and thought—it can no longer bring into harmony”, Arendt was awarded Denmark’s Sonning Prize for her contributions to European

phrased in Hegel’s terminology and thought along his lines”, we should also remember that he was—at least at this point in his life—a republican.

⁶¹ Cf. Beardsworth’s claim about postmodern thought and his conception of critical philosophy (p.46), and cf. *LM2*. pp.195–217, where Arendt very often festoons with scare quotes the phrase ‘change the world’ and drives home to the reader a distinction between ‘men of action’ and ‘men of revolution’.

⁶² *TWB*. p.50; *BPF*. p.156.

⁶³ Canovan, *Hannah Arendt*. p.273.

civilization, and in her acceptance speech, reminded her audience of the etymological origin of the word ‘person’, which:

“...has been [unanimously] adopted almost unchanged from the Latin *persona* by the European languages ... It is, of course, not without significance that such an important word in our contemporary vocabularies, which all over Europe we use to discuss a great variety of legal, political, and philosophical matters, derives from an identical source in antiquity. This ancient vocabulary provides something like the fundamental chord which in many modulations and variations sounds through the intellectual history of mankind.”⁶⁴

It seems, then, that Arendt might have been persuaded after all by Cameron’s claim that the natural languages constitute (at least ‘something like’) traditions; traditions in Europe alive and present and in unanimous agreement about the fundamental importance of the Latin term *persona*. Arendt turns to the term in trying to explain to her audience why she “tend[s] to shy away from the public realm” by “personal temperament and inclination—those innate psychic qualities which form not necessarily our final judgments but certainly our prejudices and instinctive impulses”.⁶⁵ She accepts the award as a “felicitous intrusion” into her life, as “a piece of good luck”, but admits that it troubles her as one who has no ambition to be a public figure, and she provides the audience with an account of the theatrical origins of the meaning of *persona*:

“ ... [It] originally referred to the actor’s mask that covered his individual ‘personal’ face and indicated to the spectator the role and the part of the actor in the play. But in this mask, which was designed and determined by the play, there existed a broad opening at the place of the mouth through which the individual, undisguised voice of the actor could sound ...”⁶⁶

Persona came to refer to the actor playing the role as well, and in time it was also carried over into Roman legal terminology. The Law of Persons in Rome was “the body of legal rules relating to a person’s rights, capacities and obligations as an individual, as a member of the community”; a *persona* was a bearer of rights and duties, endowed by the body politic with ‘legal personality’ and thus

⁶⁴ *BPF*. p.18; *RJ*. p.12.

⁶⁵ *RJ*. pp.7–8.

⁶⁶ *RJ*. pp.11–12.

answerable to a court of law for their actions if necessary.⁶⁷ Arendt, of course, strongly insisted on this aspect of personal responsibility in political society and on the fundamental importance of courts of law in maintaining it:

“...there exists still one institution in society in which it is well-nigh impossible to evade issues of personal responsibility, where all justifications of a nonspecific, abstract nature—from the Zeitgeist down to the Oedipus complex—break down, where not systems or trends or original sin are judged, but men of flesh and blood like you and me, whose deeds are of course still human deeds but who appear before a tribunal because they have broken some law whose maintenance we regard as essential for the integrity of our common humanity.”⁶⁸

“The focus of every trial is upon the person of the defendant, a man of flesh and blood with an individual history, with an always unique set of qualities, peculiarities, behavior patterns, and circumstances”, and this institution, as Arendt says, “presupposes the power of judgment” in persons such that they can be held personally responsible for their actions to the wider society of which they are a member; that they “be capable of telling right from wrong even when all they have to guide them is their own judgment”.⁶⁹ She was troubled by what she saw as a lack of this power or capability as evidenced in the actions of many under the Nazi and Stalinist regimes, and offered to report on the trial of Adolf Eichmann for the *New Yorker* in 1961, amongst other things to see his own faculty of judgment, or lack thereof—at any rate, his person—held responsible in a court of law. Yet, while still in line with many of her previous claims that this inability to think and/or judge was a problem for modern persons and societies everywhere and not just for those living under the Nazi and Stalinist regimes, Arendt seems to me to have attenuated these claims somewhat in the postscript to a revised edition of her *Eichmann in Jerusalem*, published in 1964, having considered the content of the controversy touched off by the first edition which had been published the year before. In this postscript, Arendt admitted her surprise at the controversy her book had touched off: she “would never have suspected [general moral questions] would haunt men’s minds today and weigh

⁶⁷ George Mousourakis, 2015. *Roman Law and the Origins of the Civil Law Tradition*. Auckland: Springer. p.97.

⁶⁸ *RJ*. pp.21–22.

⁶⁹ *RJ*. p.22; *EJ*. pp.285 and 294–295.

heavily on their hearts”.⁷⁰ This haunting and weighing would in time produce something salutary in the legal world which Arendt did not foresee, as we shall consider in some more detail below (pp.195-196), but at this point in time she maintained that the content of the controversy showed “a quite extraordinary confusion” over these questions, and this led to two series of lectures she gave in 1965 and 1966, entitled *Some Questions of Moral Philosophy* and *Basic Moral Propositions*.⁷¹

In the previous chapter, Dallmayr distinguished between the virtues as set out by Aristotle and Cicero on the one hand and *virtù* as set out by Machiavelli on the other, and said that Arendt had side-lined the former in favour of a celebration of the latter, but he deliberately did *not* say that she paid the former no heed, and here I wish to highlight some of the heed that she did pay. In the first lecture of *Some Questions of Moral Philosophy*, Arendt seemingly disdains the term ‘values’ by noting that, prior to the nineteenth century, they had “more correctly” been called ‘virtues.’⁷² She goes on to ask whether the things or principles from which all virtues “*are*” ultimately derived were mere ‘values’ to be exchanged against other ‘values’ and observes that the Nazi regime had announced a new set of ‘values’ and had designed a new ‘legal’ order in accordance with them.⁷³ In the second lecture, she notes that virtues “*are* the result of some training or teaching” and that the original names for morals and ethics, *mores* and *ethos*—sounding in a fundamental chord down the centuries without new terms ever replacing them—“... may in a sense be more adequate than philosophers have thought.”⁷⁴ It seems to me Arendt is saying here that tradition, in a sense—and perhaps, insofar as virtues are the result of some training or teaching, ‘authentic authority’ as well—is more acceptable in quality for matters pertaining to ethics and morals (as distinguished from theories of ethics and morals) than (some) philosophers may have thought; what troubles

⁷⁰ *EJ*. p.283.

⁷¹ *EJ*. p.295; *RJ*. pp.49–146 and 277–283.

⁷² *RJ*. p.51.

⁷³ *RJ*. p.51. Emphasis added.

⁷⁴ *RJ*. p.75. Emphasis added.

her are not *mores* as such but that persons switched their *mores*—‘exchanged their values’—seemingly with ease and without qualms.

As regards the few who exercised moral judgments for themselves under Nazi rule, who were not swept up by the ‘wave of coordination’, Arendt has something significant to say in her course on *Basic Moral Propositions*:

“...we are concerned in this course with [these few]. What prevented them from acting as everyone else did? Their noble nature (as Plato would suggest)? What does nobility consist of? We follow Plato and recognize them as those to whom certain moral propositions are self-evident. But why? *First, who* were they? ... Those who resisted could be found in all walks of life, among poor and entirely uneducated people as among members of good and high society ... we are concerned with the behavior of common people ... not with saints and heroes ... For if there is any such thing as what we call morality for want of a better term [such that it is different from *mores*], it certainly concerns such common people and common happenings.”⁷⁵

I think one of the significant things here is that Arendt is encouraging her students above all to look for models, for exemplary figures in acting morally, for persons before theories.⁷⁶ We saw Dallmayr in the previous chapter doing something similar in his *In Search of the Good Life: A Pedagogy for Troubled Times*; his searching question began ‘to whom should we look for moral guidance’ (pedagogy being partially rooted in the Greek term for ‘guide’, *agōgos*) and he provided account of some exemplary figures. But another significant thing in this passage I wish to highlight for the reader’s attention is Arendt’s statement that ‘we follow Plato and recognise’ those few who resisted conforming to the Nazis’ new ‘values’ which had been imposed on them, ‘as those to whom certain moral propositions are self-evident.’ In *Some Questions of Moral Philosophy*, Arendt presents to her students a truly remarkable passage in Cicero’s *Tusculanae Disputationes*, “as it were in self-defense”, which I think

⁷⁵ RJ. p.278.

⁷⁶ Cf. MDT. pp.vii and ix. “...this collection of essays and articles is primarily concerned with persons ... That even in the darkest of times we have the right to expect some illumination, and that such illumination may well come less from theories and concepts than from the uncertain, flickering, and often weak light that some men and women, in their lives and works, will kindle under almost all circumstances and shed over the time span that was given to them on earth—this conviction is the inarticulate background against which these profiles are drawn. Eyes so used to darkness as ours will hardly be able to tell whether their light was the light of a candle or that of a blazing sun. But such objective evaluation seems to me a matter of secondary importance which can safely be left to posterity.”

indicates why she says in *Basic Moral Propositions* that ‘we follow Plato’ in these matters.⁷⁷ In this dialogue, Cicero’s student says to him, “I prefer before heaven [*mehercule*] to go astray with Plato—I know how much you esteem him and I admire him on the strength of your testimony—rather than hold true views with his opponents”, to which he replies, “Well done [*Macte virtute*]! I should not myself be unwilling to go astray with such a man.”⁷⁸ As Arendt says, for Cicero “there comes a point where all objective standards ... yield precedence to the ‘subjective’ criterion of the kind of person I wish to be and live together with.”⁷⁹ And that ‘subjective’ criterion—at least for Cicero, his student, Arendt, and her students—seems to be the kind of person that follows such a man as Plato in these matters. Twelve years prior to *Basic Moral Propositions*, in *The Crisis in Culture*, Arendt cites the exact same passage from Cicero, describes the Roman sense of *humanitas*, “of the integrity of the person as person”, in terms of “human worth and personal rank”, and tells us that:

“What Cicero in fact says is that for the true humanist neither the verities of the scientist nor the truth of the philosopher nor the beauty of the artist can be absolutes; the humanist, because he is not a specialist, exerts a faculty of judgment and taste which is beyond the coercion which each specialty imposes upon us ... Cicero says: In what concerns my association with men and things, I refuse to be coerced even by truth, even by beauty”.⁸⁰

I imagine that there should be much debate about the accuracy of Arendt’s interpretation of what Cicero is saying in this passage from the *Tusculanae Disputationes*, but whatever the content or outcome of such debate might be, I think she concludes the essay with great eloquence, seeing *humanitas* in her readers:

“As humanists ... we can rise above specialization and philistinism of all sorts to the extent that we learn how to exercise our taste freely. Then we shall know how to reply to those who so frequently tell us that Plato or some other great author [like Cicero] has been superseded; we shall be able to understand that even if all criticism of Plato is right, Plato may still be better company than his critics. At

⁷⁷ *RJ*. p.110.

⁷⁸ *Tusc.* 1.39–40.

⁷⁹ *RJ*. p.111.

⁸⁰ *BPF*. pp.221–222. Cf. *Acad.* 1.46, 2.8 and 2.74, *Tusc.* 4.7; Elisabeth Young-Bruehl, 1982. *Hannah Arendt: For Love of the World*. New Haven: Yale University Press. p.352.

any rate, we may remember what the Romans—the first people that took culture seriously the way we [humanists] do—thought a cultivated person ought to be: one who knows how to choose his company among men, among things, among thoughts, in the present as well as in the past.”⁸¹

Arendt (somewhat unlike the Romans) speaks in the last sentence here of an ideal, which of course does not preclude *learning* how to choose one’s company among persons, among things, among thoughts, in the present as well as in the past; it does not preclude cultivation of the mind and person. Her conclusion in this essay speaks to several points I have already raised in this chapter. Arendt is relying on the authority of tradition, the help of the wisdom to be found in the testimonies which have been handed down from one generation to the next, and more than settling down in a complacent present to deprive it of peace of mind some citations or quotations from the past, it seems to me that she is not only transmitting them but also encouraging her readers in consulting them for ourselves. She has a healthy scepticism of any ‘absolutes’ emerging from specialists in a given field, and she looks instead to the words and deeds of concrete persons, actual human beings, for inspiration and guidance. And here—and there, but probably not everywhere (she is only human)—I think she chooses her company well.

“The realm of *humanitas*”, Arendt says, is one created by reason and in which “freedom reigns”.⁸² It is a realm that is “worldly” yet “invisible”, “reach[ing] into all the countries of the globe and into all their pasts”, and where all can “come to out of his own origins”.⁸³ A worldly aspect of *humanitas* is that it “is never acquired in solitude ... [and] can be achieved only by one who has thrown his life and his person into the ‘venture into the public realm’”, this venture in which *humanitas* is acquired “becom[ing] a gift to mankind”.⁸⁴ The reader might recall here what Dallmayr said in the previous chapter about Aristotle and how the virtuous life requires participation in public affairs, but these words of Arendt’s about *humanitas* are sung in praise of Karl Jaspers, published in *Men in Dark Times*. They are followed in this text, however, by her essay which

⁸¹ *BPF*. p.222.

⁸² *MDT*. p.80.

⁸³ *MDT*. p.80.

⁸⁴ *MDT*. pp.73–74.

questions Jaspers's status as a world citizen and raises some fears about "the forbidding nightmare of tyranny" that would be world government.⁸⁵ Arendt tells us in this essay that, "from a philosophical viewpoint", "the danger inherent" in globalisation seems to be the destruction "of all national traditions" and the burial of "the authentic origins of all human existence"; origins upon which she says all human thought depends for *its* existence and out of which all can come to our *humanitas*.⁸⁶ Although she is not surprised in this essay that the common reaction to globalisation is "political apathy, isolationist nationalism or desperate rebellion against all powers that be rather than enthusiasm or a desire for a revival of humanism", I hope to have shown in this chapter so far that it is indeed the latter which Arendt has and that she had come to harbour some hope that others might have or at least come to have as well.⁸⁷

Key to *humanitas* for Arendt is the fact, word and concept of culture, the latter two of which, as she says in *The Crisis in Culture*, are rooted in the Latin verb *colere*—to cultivate, to dwell, to take care, to tend and preserve.⁸⁸ Noting that Cicero appears to have been the first to use the term in relation to cultivating the life of the mind (*excolere animum*), she goes on to observe that cultural products, products that enable us to train or cultivate the mind, share with political 'products', words and deeds, "the quality that they are in need of some public space where they can appear and be seen; they can fulfil their own being, which is appearance, only in a world which is common to all".⁸⁹ While she knows well that we are all in need of some entertainment as a simple matter of fact of the life process, and regards it as "sheer hypocrisy or social snobbery" to deny that we can be entertained by the same things as "the masses of our fellow men", she still regrets the extent to which she can see the entertainment industry changing the products of culture such that they become usable, exchangeable, applicable, evaluable, ingestible or consumable, i.e. changing

⁸⁵ *MDT*. p.81.

⁸⁶ *MDT*. pp.80 and 87. One may recall at this point Dallmayr's claim that philosophers must not only inquire into but also learn what it means to be human, and Nussbaum's recounting of Kant's own *humanitas* (pp.51n23 and 73).

⁸⁷ *MDT*. p.83.

⁸⁸ *BPF*. p.208.

⁸⁹ *BPF*. pp.208 and 214–215.

them into (commercial) products of entertainment.⁹⁰ Cultural products, being beautiful, have precisely the opposite of these qualities, and as such, Arendt argues, should be tended to and taken care of in a way that they endure in a world common to all and for all to see. Whereas cultural products should serve us as “permanent appurtenances of the world”, products of entertainment are consumed in passing:

“The products needed for entertainment serve ... as the phrase is, to while away the time, and the vacant time which is whiled away is not leisure time, strictly speaking—time, that is, in which we are free *from* all cares and activities necessitated by the life process [including entertainment activities] and therefore free *for* the world and its culture—it is rather left-over time ... left over after labor and sleep have had their due. Vacant time which entertainment is supposed to fill is a hiatus in the biologically conditioned cycle of labor ... Under modern conditions, this hiatus is constantly growing; there is more and more time freed that must be filled with entertainment.”⁹¹

Arendt attributes the commodification of cultural products to what she calls the “socialisation” of the world, the fact that we are a “labouring society” or a “society of labourers”.⁹² But in a separate essay on this matter, she seems to call into question her claim in the above passage that the increasing time we are coming to have at our disposal *must* be filled with entertainment, and at the same time sees the disappearance of culture into entertainment as a choice (however circumscribed) rather than a destiny:

“...a society of laborers ... neither know nor need a public, worldly space existing independently of their life process, while, as *persons*, they of course do require such a space and would be able to construct it as soon as any other human beings under different temporal circumstances ... The rather common view that democracy is opposed to culture, and that culture may flourish only within aristocracies, is correct insofar as democracy is taken to signify the socialisation of man and world—which is by no means how it must necessarily be understood. In any case, it is the phenomenon of society, and that of good society no less than that of mass society, which is threatening to culture.”⁹³

⁹⁰ *BPF*. p.203.

⁹¹ *BPF*. p.202.

⁹² *TWB*. p.164.

⁹³ *TWB*. p.164. Emphasis in original.

Arendt has a very bleak view of what she calls ‘society’ (or ‘the social’) and what she takes to be its pernicious influence upon both culture and politics (or ‘the political’). We shall encounter some of her arguments as to why very shortly and quite a few problems with her understanding of society (or ‘the social’) when we consider it in more detail in the next section, but for now, suffice it to say that she understands ‘society’ as an essentially modern phenomenon. We shall also consider in the next section her writings on the age-old distinction between basic forms of government—by the one (monarchy or tyranny), the few (aristocracy or oligarchy), or the many (democracy or mob rule)—and her support for a mixture of more than one of these, a ‘non-basic’ form of government, as the best practicable for maintaining the public, worldly space in existence independently of our life processes, but here, we are concerned with her focus upon persons. Arendt it seems to me is concerned to tend to and to take care of—to preserve—certain cultural products of the past which, for she and many others, are still here in the present, they do not ‘look like a field of ruins’, and she is also arguing it is obvious, *qua* persons, both that we *need* this worldly space where culture and politics appear, and that we are able to take care of it like any and all human beings, if only we attend to our circumstances, if only we “think what we are doing”.⁹⁴

And our circumstances, according to Arendt, are adversely affected by what she calls ‘society’. We find some indications as to why she holds such a bleak view of it in *On Revolution*. Of the persons who threw themselves into the ‘venture into the public realm’ that was the French Revolution, she tells a tragic story tinged with deep irony about the “hideous process” that involved the hypocrisy of “high society” and the “hunt for” and “futile and pernicious war” against it—and later against the Revolution’s own children—which was declared by Robespierre.⁹⁵ According to Arendt:

“The violence of terror, at least to a certain extent, was the reaction to a series of broken oaths and unkept promises that were the perfect political equivalent of the customary intrigues of Court society, except that these willfully corrupted manners ... had by now reached the monarch as well ... Wherever society was permitted to invade, to overgrow, and eventually to absorb the political realm, it imposed its

⁹⁴ *HC*. p.5.

⁹⁵ *OR*. pp.95 and 97.

own *mores* and ‘moral’ standards, the intrigues and perfidies of high society, to which the lower strata responded by violence and brutality ... That the wretched life of the poor was confronted by the rotten life of the rich is crucial for an understanding of what Rousseau and Robespierre meant when they asserted that men are good ‘by nature’ and become rotten by means of society, and that the low people, simply by virtue of not belonging to society, must always be ‘just and good’. Seen from this viewpoint, the Revolution looked like the explosion of an uncorrupted and incorruptible inner core through an outward shell of decay and odorous decrepitude...”⁹⁶

The problem with the *mores* of Court society according to Arendt was not that they had been easily exchanged for different *mores*, but that they had been wilfully corrupted to the point of the habitually unjust behaviour of persons in that society which was carried over into the political realm, engendering violence and brutality. It seems, then, at least on Arendt’s telling, that not only justice but also *prudentia* was a victim of this wilful corruption. But it is important to point out that, very shortly before the above passage, she says that “probably no living man, in his capacity as an agent, can claim ... to be uncorrupted [and] incorruptible” and quotes historian of the revolution R.R. Palmer’s words that “the hunt for hypocrites is boundless and can produce nothing but demoralisation”, to which one might also add terror—at least insofar as boundaries to the hunt are unrecognised or imprudently unset.⁹⁷ It seems to me that Arendt is suggesting in her story about the French revolution that virtues and vices are to be found everywhere insofar as one is paying attention to persons as distinguished from non-persons like ‘high society’ or ‘the low people’. She provides an account of “the profound meaningfulness” of the Latin term *persona* in her story here as well, and while she says that Robespierre in his hunt to unmask all hypocrites knew what he was talking about when he spoke of “vices surrounded with riches”, she also says that “the men of the French Revolution had no conception of *persona*, and no respect for the legal personality which is given and guaranteed by the body politic.”⁹⁸ For Arendt, the passion for unmasking, “the demand that everybody display in public his innermost motivation, since it actually demands the impossible, transforms all actors into hypocrites; the moment the display of motives begins, hypocrisy

⁹⁶ OR. p.101.

⁹⁷ OR. pp.93 and 99.

⁹⁸ OR. pp.100, 102 and 104.

begins to poison all human relations.”⁹⁹ Arendt obviously never condones hypocrisy, but she regards the *passion* for unmasking as anti-political, its *satiatio* imprudent, and I think it may be for this reason she suggests to her readers that hypocrisy is one of the “minor vices”—contrasted with, for example, injustice, imprudence, intemperateness, and cowardice—and turns to Machiavelli in trying to explain to her readers why ‘the one-who-is’, or the ‘unmasked’, might have been hiding his vices because “he felt they were not fit to be seen” in the world (hypocrisy being the vice that pays compliment to virtue, and ‘the one-who-is’, the political actor, [ideally] having the world rather than themselves at the centre of their attention).¹⁰⁰

In the conclusion to her acceptance speech for the Sonning Prize, Arendt notes that *personae* are not inalienable (which of course she experienced for herself in being stripped of German citizenship) and says that:

“It is in this sense that I can come to terms with appearing here as a ‘public figure’ for the purpose of a public event. It means that when the events for which the mask was designed are over, and I have finished using and abusing my individual right to sound through the mask, things will again snap back into place. Then I, greatly honored and deeply thankful for this moment, shall be free not only to exchange the roles and masks that the great play of the world may offer, but free even to move through that play in my naked ‘thisness’, identifiable, I hope, but not definable and not seduced by the great temptation of recognition which, in no matter what form, can only recognise us *as* such and such, that is, as something which we fundamentally are *not*.”¹⁰¹

Arendt’s conclusion here necessitates, and so I hope excuses me in the reader’s eyes for taking, a slight detour on to ‘trans-political’ things. *What* Arendt fundamentally *is* may be Arendt’s concern, but it is not the world’s, and *who* she is we learn from her appearance in the world, from her deeds and her words in it as spoken through the various roles or masks that the great play of the world may offer. Arendt regards being and appearance as coinciding in human beings, but in sharp contrast to Heidegger, she argues for the priority of being-*of*-the-world, for the priority of appearance vis-à-vis being, and carrying out the various

⁹⁹ *OR*. p.93.

¹⁰⁰ *OR*. pp.96 and 99–100.

¹⁰¹ *RJ*. pp.13–14.

roles or wearing the various masks that the great play of the world may offer she sees as a specifically *human* way of being-of-and-in-the-world:

“Living things *make their appearance* like actors on a stage set for them ... I can flee appearance only into appearance ... the philosophers’ ‘conceptual efforts’ to find something beyond appearances have always ended with rather violent invectives against ‘mere appearances’ ... Men ... *present* themselves in deed and word and thus indicate how they wish to appear, what in their opinion is fit to be seen and what is not. This element of deliberate choice in what to show and what to hide seems specifically human. *Up to a point* we can choose how to appear to others ... we may make [such choices] because we wish to please ourselves or because we wish to set an example, that is, to persuade others to be pleased with what pleases us. Whatever the motives may be, success and failure in the enterprise of self-presentation depend on the consistency and duration of the image thereby presented to the world.”¹⁰²

Our *personae* are what we (not inalienably) have as *ethical, social, and political* beings. It seems to me that Arendt is saying in her acceptance speech for the Sonning prize that she moves through the great play of the world in her naked ‘thisness’ above all in the same way that the rest of us do, i.e. with clothes on, and in accepting the prize she was—to return to her metaphor—clothed by her professional *persona* (and turning away from the metaphor again, a new dress).¹⁰³ Her opinion as regards the rather violent invectives of philosophers against ‘mere’ appearances is perhaps best seen in her appraisal of the French existentialists. Arriving in Paris to seek a publisher for *The Origins of Totalitarianism* in 1955, Arendt wrote to her husband that it would be “senseless” to see “Sartre et al. ... They are entirely wrapped up in their theories and live in a world Hegelianly organised”, and although she admired Albert Camus for standing “head and shoulders above” the others in his commitment to reason and his hailing of “the old virtues”, she suggested in a presentation shortly before her trip that the French existentialists’ entrance into political life as revolutionaries “more often than not looks like a very complicated game of rather desperate children” unfamiliar with political reality

¹⁰² LM1. pp.21–36.

¹⁰³ Young-Bruehl, *Hannah Arendt: For Love of the World*. pp.460–463.

(the priority of appearances vis-à-vis being), which she tells us more than once is not the nursery.¹⁰⁴

Personally, I have no doubt whatsoever that Arendt's great honour and deep gratitude in accepting the Sonning prize was sincere—as she said in her acceptance of Hamburg's Lessing prize, an honour “...reminds us emphatically of the gratitude we owe the world”, “...a world and public to which we owe the space into which we speak and in which we are heard”—and, as already indicated on p.152 when she presented to her students some exemplary figures acting morally, I have no doubt whatsoever that her deliberate choices in how and what she presents in the world, what she thinks fit to be seen in it and what not, are made to persuade others to be pleased with what pleases her rather than merely to please her self.¹⁰⁵

2.3.2 Arendt on Statespersons

It seems to me significant that Arendt begins *Some Questions of Moral Philosophy* with a laudation of Winston Churchill:

“...the greatest statesman thus far of our century ... He has been called a figure of the eighteenth century driven into the twentieth as though the virtues of the past had taken over our destinies in their most desperate crisis, and this, I think, is true as far as it goes. But perhaps there is more to it. It is as though, in this shifting of centuries, some permanent eminence of the human spirit flashed up for an historically brief moment to show that whatever makes for greatness—nobility, dignity, steadfastness, and a kind of laughing courage—remains essentially the same throughout the centuries.”¹⁰⁶

‘The virtues of the past’ are spoken of at the very outset of the first lecture, followed shortly afterwards, as we have seen, with their elevation vis-à-vis ‘values’. I think it important to note here that, even if Arendt stands accused of some contextualists’ charge that she is engaging in ‘the mythology of perennial questions’, she leaves ‘some permanent eminence of the human spirit’ as a mere possibility or suggestion for her students to ponder before moving on to speak of other things, and it is probably a mark of her status as a *political*

¹⁰⁴ *EU*. p.439; *EJ*. p.279; *TWB*. p.450; Young-Bruehl, *Hannah Arendt: For Love of the World*. p.281.

¹⁰⁵ *MDT*. p.3.

¹⁰⁶ *RJ*. p.49.

thinker that she begins these ‘questions of moral philosophy’ by praising Churchill. In her biography of Arendt, Young-Bruehl notes that “writing a *Moralia* was not her mode” and that she had admitted as much in her private correspondence, saying during the Eichmann controversy to sociologist Hermann Meier-Cronemeyer “that [the writing of *Eichmann in Jerusalem*] was [as you say] an approach toward ‘the groundwork for creating new political morals’ is true—though I would never, out of modesty, use such a formulation”.¹⁰⁷ But she does touch upon the matter in *Collective Responsibility*:

“From the *Nicomachean Ethics* to Cicero, ethics or morals were part of politics, that part that dealt not with the institutions but with the citizen, and all the virtues in Greece or in Rome are definitely political virtues. The question is never whether an individual *is* good but whether his conduct is good for the world he lives in. In the center of interest is the world and not the self ... ‘What is important in the world is that there be no wrong; suffering wrong and doing wrong are equally bad.’ Never mind who suffers it; your duty is to prevent it ... This vicarious responsibility for things we have not done, this taking upon ourselves the consequences for things we are entirely innocent of, is the price we pay for the fact that we live our lives not by ourselves but among our fellow men...”¹⁰⁸

The reader may recall at this point Arendt’s arguments as set out in the previous section about the futile demands of others that we parade our innermost motives in public (‘*is* this individual good?’) and about *personae* (pp.160-163), and they may also see a certain tension between the language she is using here as regards ethics and politics as compared with Dallmayr’s language in describing their relation in the previous chapter (p.76, although we should note that Dallmayr said ‘*If* confined to the personal level, ethics functions in a *more* private context...’), but what I wish to point out here is that Arendt moves from a past fact to a present question in this passage; a fact, moreover, that extends far beyond Cicero in the tradition, as I think evidenced, for example, in the conduct of Winston Churchill vis-à-vis the grave threat to the world emanating from the Nazis. In her brief—and far from exhaustive—list of things that she says go into ‘whatever makes for greatness’, Arendt associates one of the primary virtues with Churchill, courage (who himself said that courage “is rightly esteemed as the first of human qualities, because it guarantees all the others”),

¹⁰⁷ Young-Bruehl, *Hannah Arendt: For Love of the World*. pp.374–375.

¹⁰⁸ *RJ*. p.151–158.

but in her praise of John F. Kennedy, she names what she sees as “the two highest virtues of the statesman—moderation and insight”:

“Most conspicuous in his handling of the Cuba crisis and the civil rights conflict were the extremes to which he did *not* go. He never lost sight of the thinking of his opponents, and as long as their position itself was not extreme, and hence dangerous to what he felt were the interests of the country, he did not attempt to rule it out, even though he might have to overrule it. It was in this spirit, which derived from his ability to grasp his opponents’ thinking, that he greeted the student demonstration which picketed the White House after he decided to resume nuclear testing.”¹⁰⁹

Kennedy could *understand* the opinions of the students demonstrating against his decision to resume nuclear testing, and without ‘ruling out’ their opinions or their right to demonstrate, ‘over-ruled’ them as part of the “awesome responsibilities” he had sworn to meet in ensuring the nation’s security.¹¹⁰ He displayed the virtue of moderation in not going to any extremes, whether in his words or his deeds, in handling the crises of his day. As for insight, this is the term Arendt uses to translate *phronesis*, which we have seen Dallmayr speak of in terms of one who “ponders the consequences of actions soberly and reforms them in light of the horizon of ‘goodness’ and wellness (*eudaemonia*)”; we have seen Morgenthau speak of it (or prudence) as “the weighing of the consequences of alternative political actions”; and we have seen Kelsay describe it as “a kind of practical wisdom by which one ties the realities of particular situations to virtues of justice, temperance and courage”. All of these descriptions I think come well at *phronesis* or *prudentia* in different ways, and Arendt herself describes *phronesis* briefly as “meaning nothing other than [!] the greatest possible overview of all the possible standpoints and viewpoints from which an issue can be seen and judged”, but in a separate paper, she provides a (conditional) definition:

“If we wanted to define, traditionally, the one outstanding virtue of the statesman, we could say that it consists in understanding the greatest possible number and variety of realities ... as those realities open themselves up to the various opinions of citizens; and, at the same time, in being able to communicate between the citizens and

¹⁰⁹ *TWB*. pp.263–264.

¹¹⁰ John F. Kennedy, 1962. *Nuclear Testing and Disarmament, 2nd March*. Available online: <https://www.jfklibrary.org/asset-viewer/archives/TNC/TNC-307/TNC-307> Accessed 27th November 2020.

their opinions so that the commonness of this world becomes apparent. If such an understanding—and action inspired by it—were to take place without the help of the statesman, then the prerequisite would be for each citizen to be articulate enough to show his opinion in its truthfulness and therefore to understand his fellow citizens.”¹¹¹

Arendt evidently wanted to define, traditionally and conditionally, the one outstanding virtue of the statesman, but as already seen in the first section of this chapter, she had her own doubts that “we” want to do so, even as I hope to have unsettled any doubts about tradition as such among “us”, and I am promoting study of the virtues. But in returning to a consideration of what *Arendt* is saying here about the ‘one outstanding virtue of the statesman’, I think it is useful if we look at how she distinguishes it from the kind of wisdom normally associated with philosophers. In *The Promise of Politics*, there is an essay on Socrates in which *Arendt* considers the “enormity” of Plato’s demand that the philosopher become ruler of the *polis*:

“The *sophos*, the wise man as ruler, must be seen in opposition to the current ideal of the *phronimos*, the understanding man whose insights into the world of human affairs qualify him for leadership, though of course not to rule. Philosophy, the love of wisdom, was not thought to be the same at all as this insight, *phronesis*. The wise man alone is concerned with matters outside the polis, and Aristotle is in full agreement with this public opinion when he states: ‘Anaxagoras and Thales were wise, but not understanding men. They were not interested in what is good for men [*anthrōpina agatha*].’”¹¹²

Arendt is well-known for opposing the notion of ‘rule’ in politics, but as we can see here, she is certainly not against the notion of leadership in them, and it is the *phronimos* whose insights into the world of human affairs who qualifies for leadership. In another version of this paper, *Arendt* describes philosophy as “the concern with truth regardless of the realm of human affairs” and we can see here that she understands the *phronimos* to be concerned precisely (although not only) with the realm of human affairs (thus the ‘enormity’ of Plato’s claim about philosopher-kings), with ‘what is good for men’ as distinguished from ‘the good’.¹¹³ Brown in the previous chapter said Morgenthau displayed the virtue of *phronesis* (although he did not call him a *phronimos*), and insofar as he did so in

¹¹¹ *PP*. pp.18 and 168;

¹¹² *PP*. p.9.

¹¹³ Hannah Arendt, 1990. ‘Philosophy and Politics’. *Social Research* 57(1) pp.73–103.

his action, i.e. in the publication of his paper on ‘The Intellectual and Political Functions of Theory’, we might say in Arendt’s terms that Morgenthau’s insights into the world of human affairs qualify him for leadership in his field, i.e. the field of international studies. But let us return to this virtue as it is manifest in statespersons. Not only is the *phronimos* an understanding person—it seems to me an outstandingly understanding person, insofar as he or she can understand the greatest possible number and variety of citizens’ opinions (I do baulk at Arendt’s use of the term ‘realities’ in this context)—he or she is also *able* to *communicate between* the citizens and their opinions so that the commonness of this world becomes apparent. To express this in Latin terminology: not only does the *prudens* have extraordinary abilities in terms of *ratio*, he or she also has extraordinary abilities in terms of *oratio*. And Arendt concludes her traditional and conditional definition of this one outstanding virtue of the statesperson by underscoring the tallness of this ‘order’: without the help of such persons who display these extraordinary abilities in their *conduct*, the prerequisite would be for everybody else to be displaying them. This it seems to me implies that Arendt realises that some sort of political organisation is required to secure conditions in which people can develop these abilities and display them in their actions to whatever extent, and it is her writings on this that we shall now consider.

2.4 Political Societies

2.4.1 Arendt’s ‘New’ Republicanism

We saw on p.148 that Canovan regards Arendt as standing in a civic republican tradition, but she also claims that Arendt provides us with “a new republicanism” in her writings, a “version ... significantly different from any of the models she inherited”.¹¹⁴ The “essential” difference, for Canovan, is Arendt’s emphasis on plurality, which “transforms ... the classical element” of her republicanism, even as she acknowledges that Arendt presented this emphasis not as an “original insight” but as “‘pearl-diving’ in the deep waters of the past.”¹¹⁵ Perhaps the clearest of Canovan’s claims for the significant novelty

¹¹⁴ Canovan, *Hannah Arendt*. pp.201–203.

¹¹⁵ Canovan, *Hannah Arendt*. p.205. Canovan sometimes uses the term ‘classical’ to describe Machiavelli et al.

of Arendt's republicanism and its essential difference from any previous models is that:

“Her own political thought is conceived as an attempt to salvage and articulate ancient republican experiences by rethinking the traditional concepts in a way that takes account of human plurality and recognises politics as something that happens in the space *between* plural men.”¹¹⁶

We have seen Young-Bruehl construe this way in terms of Arendt's aphoristic technique, ‘thinking poetically’; an opening up of our words rather than a rethinking of our concepts; and as Arendt gathering the surviving threads of tradition and making something new, dynamic and illuminating out of them. Both Canovan and Young-Bruehl agree that Arendt produced something new in her writings, but they also seem to agree, on some level, that it was not *entirely* new. It was not new in the sense of being ‘unprecedented’ or without previous models of any kind; what Arendt produced was both old and new at the same time. What might help in understanding this paradox I hope to have begun addressing in the first section of this chapter: neither tradition as such nor ‘the tradition’ have been lost or broken in the modern world. In this sub-section, the same theme is developed as we consider what Arendt would have called ‘that part of politics that deals not with the citizen but with the institutions’ (see p.162), although as we know, whether through the language of ‘individual-collective’ or ‘agent-structure’ or any other, each is always somehow dependent upon the other.

In terms of her republicanism, it seems to me that Arendt approved of and had great respect for the traditional framework in which we think about the basic forms of government, i.e. by the one, the few or the many—even as she criticised the concept of ‘rule’ as distinguished from government in this framework, and even as she argued that the phenomenon of totalitarianism could not be comprehended within it.¹¹⁷ We saw Dallmayr describe these basic

¹¹⁶ Canovan, *Hannah Arendt*. p.207.

¹¹⁷ *TWB*. pp.45 and 190; *OR*. p.315n43; *OT*. p.605; *LM2*. pp.201–202. I should add in regard to the last reference here that Arendt says it is Montesquieu's *enumeration* of principles of action (virtue, honour and fear), and not the traditional *distinction* of forms of government which inspired his enumeration, that she takes to be “pitifully inadequate to the rich diversity of human beings living together on the earth.” In my reading of Arendt's writings, she regards the traditional distinction of different forms of government as “astounding[ly]” adequate to this rich

forms of government in the previous chapter as monarchy, aristocracy and democracy, and Arendt I think correctly observes that all forms of government, including democracy, “in one way or another constrain the free will of their citizens”, even as she makes no claim as to what she thinks is the ‘best’ of these basic forms.¹¹⁸ That said, and again apart from when she construes them as ‘forms of rule’, Arendt does not express any doubt about the arguments made in our history—particularly by Aristotle and Polybius, and later “insisted upon” by Cicero—advocating a non-basic, ‘mixed’ form of government, i.e. a judicious mixing of more than one of the three basic forms, as the best *practicable* for maintaining the public space between persons—public freedom, the *res publica*—in existence.¹¹⁹ Since the Romans, the term we have always used to describe such mixed forms of government is ‘republican’, and we have already seen Dallmayr and Walzer, both democrats, supporting such non-basic forms. We find some of Arendt’s own support for mixed government in *On Revolution*, a text in which we have already seen her linking the American founding back to Rome’s. She connects in this text the constitutional debates of the American founders to “the age-old notion of a mixed form of government which, combining the monarchic, aristocratic, and the democratic elements in the same body politic, would be capable of arresting the cycle of sempiternal change ... and establish an immortal city.”¹²⁰ With her reference to ‘an immortal city’, we see Arendt’s focus here not on Greek but on Roman ways of republican thinking, or more specifically, not on Aristotle’s or Polybius’s but on Cicero’s. She describes mixed government elsewhere as meaning “no more than the combination or integration of three fundamental traits which characterise men in so far as they live with each other and exist in plurality”, and as we shall consider in more detail in the final chapter, these traits for Cicero are *potestas* (‘power’, the ‘monarchic’ element in a mixed form of government), *auctoritas* (‘authority’, the

diversity (even as the totalitarian form of government, at least in her own understanding, cannot be comprehended through that distinction and, at least in the understanding of Arendt and many others including myself, kills that rich diversity).

¹¹⁸ *LM2*. p.199.

¹¹⁹ *TWB*. p.56.

¹²⁰ *OR*. p.234.

‘aristocratic’ element) and *libertas* (‘freedom’, the ‘democratic’ element).¹²¹ Let us consider Arendt’s own writings around power, authority, and freedom.

As already mentioned, Arendt criticises the notion of rule which is to be found in Greek conceptions of power. Instead of the Greeks, she turns to the Romans in developing her own conception:

“Power corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together. When we say of somebody that he is ‘in power’ we actually refer to his being empowered by a certain number of people to act in their name. The moment the group, from which the power originated to begin with (*potestas in populo*, without a people or group there is no power), disappears, ‘his power’ also vanishes.”¹²²

Arendt is relying here upon the authority of Cicero, or more specifically, a passage taken from his *De Legibus*, ‘On the Laws’.¹²³ Ulrich Gotter, in his investigation of Greek and Roman concepts of power, explains that:

“*Potestas* had a limited range of application. It designated a quality that attached to Roman office ... every aspect of *potestas* was emphatically part of Rome’s *legal* discourse. Roman law simultaneously guaranteed and limited its exercise. A good translation of *potestas* into English would therefore be ‘the right [*ius*] to give orders’”.¹²⁴

Through the law, the Roman people vested *potestas* in the offices of the magistrates, the citizens’ *consensus* making the incumbent magistrates’ commands right (*ius*). ‘Raw power’ in Rome was not *potestas*, but *vis*, which we usually translate into English as ‘force’ or ‘violence’, and in line with this Roman understanding, Arendt is also very careful to distinguish power from violence in her writings. I think it is misleading, then, for Canovan to give her readers the impression that there is significant novelty in Arendt’s distinction between power and violence by saying that it “is particularly striking in the context of the

¹²¹ Quoted in Canovan, *Hannah Arendt*. p.207.

¹²² *CR*. p.143.

¹²³ *Leg.* 3.28: “...*potestas in populo auctoritas in senatu sit...*” (...power resides in the people and authority resides in the senate...).

¹²⁴ Ulrich Gotter, 2008. ‘Cultural Differences and Cross-Cultural Contact: Greek and Roman Concepts of Power’. *Harvard Studies in Classical Philology*. Vol.104. pp.179–230.

republican tradition, for ... this had been overwhelmingly a militaristic tradition...”.¹²⁵ Not only does this conceal what should be obvious differences between international and domestic affairs on the one hand and the conduct of soldiers and citizens on the other (Canovan conceals the latter by having Rousseau, who saw the solidarity of soldiers on the battlefield as a good model for citizenship, represent the republican tradition as a whole so as to contrast Arendt with it); it distorts the peaceable strand of the republican tradition in the international sphere as seen primarily in the writings of Cicero and continued by figures such as Vitoria, Grotius and Kant in the modern age—what we call today the just war tradition.¹²⁶ But in a segue back to discussing domestic politics, Canovan admits (to the attentive reader) that Arendt’s distinction between power and violence, as well as her understanding of citizenship and her writings on plurality and the public space in-between persons, are, after all, firmly in the republican tradition of Rome (or what she now calls ‘republican traditions’), even if this ‘oldness’ may be less than obvious. She goes on rightly at this point to place Arendt in the republican tradition as represented by Montesquieu and the American founders, who also understood power to arise from common action and mutual trust rather than as belonging to any individual. In the republican tradition, as Arendt says, and as Canovan quotes her as saying, government “is essentially organised and institutionalised power.”¹²⁷

An essentially Roman aspect of Arendt’s republicanism is also involved in her conception of authority. As she states, both the word and concept originated in Rome; *auctoritas* had no equivalent in Greek. However, in *What is Authority?* she begins her own tentative, Plato-inspired definition by asserting that it “always demands obedience”, before asserting further that the relation between the one who commands and the one who obeys is “authoritarian”, and from the

¹²⁵ Canovan, *Hannah Arendt*. p.210.

¹²⁶ Admittedly—and in some contrast to the picture Canovan is painting here—although Arendt did sometimes speak the moral language of just and unjust wars, it can be difficult to regard her as standing in this peaceable strand of the republican tradition in her writings; she sometimes appears to be what IR theorists would call ‘a realist’ in the international sphere. Cf. *OR*. p.3; *CR*. p.45; *TWB*. pp.336–337; *OT*. p.607; *PP*. pp.153–191; *EU*. pp.420–421; Patricia Owens, 2009. *Between War and Politics: International Relations and the Thought of Hannah Arendt*. Oxford: Oxford University Press. But see also sub-section 2.4.3 of this project.

¹²⁷ *CR*. p.150; Canovan, *Hannah Arendt*. p.209.

perspective of the Roman understanding of *auctoritas*, this is not right.¹²⁸ As Gotter puts it:

“*Auctoritas* was a personal quality. It derived from the rank, status, and dignity of an individual or a social group enjoyed in the Roman commonwealth ... [*Auctoritas*] referred to the ability of individual senators to assert themselves in political deliberations. Communication in the sphere of *auctoritas* did not rest on command or obedience, but anticipated consent ... Ultimately, the senate had no means effectively to enforce its will; it had no competence of its own to see to it that its preferences were followed and had to delegate this responsibility to the respective magistrates.”¹²⁹

As above, it was the Roman people who invested *potestas*, the right to give orders, in whoever was occupying the various magistracies at a given time. In distinguishing it from *potestas*, Mommsen very well described *auctoritas* as “more than advice and less than a command; an advice which one may not safely ignore”, which is a description Arendt also quotes, and Oakeshott provides us with another excellent one:

“...to exercise *auctoritas* was to advise, to give guidance, to educate ... [it] could be supplied by men steeped in the *traditio* which joined the present generation to its roots in the original foundation ... as the Romans thought of it, it supplied something *indispensable* for the care and custody of *res publica*. It was a spring of political initiative, not a reservoir of political power; for, to have *auctoritas* was, precisely, *not* to have power (*potestas*); it was to be a teacher, not a commander.”¹³⁰

Arendt, like the Romans, distinguishes power from authority, but it seems to me that she unhelpfully obscures her own distinction by implying that one who exercises authority is one who issues a command. That said, I hope to have

¹²⁸ *BPF*. pp.92–93. In another version of her argument about authority, Arendt admits that, in saying it “turns out” to reside in Plato’s Ideas (or his theory of Ideas), she is committing an “anachronism”. *TWB*. p.85. While both of her arguments here about authority seem to me to have been adversely affected by too strong a focus upon the Athenian *polis* and Plato’s philosophy, I think they still remain significant pieces of work, containing some important insights and observations, e.g. “...that the source of authority in ... [a] government is always ... external ... to its own power ... and against which [its] power can be checked.” *BPF*. p.97. There seems to me to be some highly complex thought-trains and rhetorical devices behind Arendt’s peculiar (re-)conception of authority, but to address them would be beyond the scope of my project (and my competence too).

¹²⁹ Gotter, *Greek and Roman Concepts of Power*. p.200.

¹³⁰ Mommsen quoted in *BPF*. p.122; Oakeshott quoted in Atkins, *Cicero on Politics and the Limits of Reason*. pp.107–108.

shown so far that Arendt herself was ‘steeped in *tradio*’ and that we *need* the *help* of authority and tradition in maintaining the public space, public freedom, the *res publica*, in existence. We have already seen Young-Bruehl speak of Arendt’s own authority: she presented her arguments historically and gathered the threads of tradition freely and in such a way as to protect (public) freedom, the *res publica*. And Arendt’s own writings on freedom, as Canovan says, are more than ordinarily obscure, but however she thinks of it, she certainly understands it as involving both our capacity to begin something new in the world and a worldly condition in which we are able to exercise this capacity, i.e. to act:

“[Arendt] stresses the ‘miraculous’ quality of human freedom, our ability to interrupt predictable chains of events and to do things that are utterly unexpected ... And ... freedom as a worldly condition persists only where ‘new beginnings are constantly injected into the stream of things already initiated’ ... [Arendt has a] vision of freedom as a condition in which people are continually joining together in dynamic association ... One of the implicit conditions for freedom in Arendt’s sense is that human spontaneity and the great power generated by cooperation should be exercised within the bounds of ... ‘lasting institutions’: within a public space guarded by constitutional arrangements upheld by the public commitments of citizens.”¹³¹

I think Canovan provides us here with a good working precis of Arendt’s own understanding of freedom, but once again, it seems to me that there is no significant novelty in it, nor essential difference between it and Roman *libertas*, a mark of which Cicero describes as “to live just as one pleases” and ties to the institutional arrangements upheld by *cives* which guarantee its condition in the world, the *civitas*.¹³² We shall consider Cicero’s writings on this in more detail in subsequent chapters, but here, we may begin to see the relation of authority and freedom, like I believe the Romans saw this relation, in Arendt’s own understanding. In *What is Authority?*, this relation first appears as a distinction between “liberal and conservative writers”, writing in the shadow of the nineteenth century’s unilinear view (or philosophy) of history.¹³³ The modern liberal writer is “concerned with history and the progress of freedom rather than with forms of government”, which leads them to “[ignore] that authoritarian

¹³¹ Canovan, *Hannah Arendt*. pp.214–216.

¹³² *Off.* 1.70; *Caec.* 96.

¹³³ *BPF.* p.96.

government committed to the restriction of liberty remains tied to the freedom it limits to the extent that it would lose its very substance if it abolished it altogether, that is, would change into tyranny”.¹³⁴ The modern conservative writer, according to Arendt, sees history instead as a process of doom “which started with the dwindling of authority [or ‘lasting institutions’], so that freedom, after it lost the restricting limitations which protected its boundaries, became *helpless*, defenseless, and bound to be destroyed”, which is to say that, with the dwindling of authority in an age of mass democracy, a very short step becomes more apparent to the modern conservative which leads from democracy to tyranny or totalitarian domination: the submergence of the island that is public (or in the case of the latter, both public and private) freedom.¹³⁵ Arendt’s main concern at this point is in distinguishing totalitarian domination from tyranny, a distinction she regards both modern conservative and modern liberal writers (in general) as failing to appreciate. That said, here I think she deliberately does *not* say modern conservative writers ignore forms of government as modern liberal writers tend to do; she seems to be less critical of modern conservative than modern liberal writers in this respect because the former more easily recognise the importance, the indispensability, of authority in maintaining public freedom, the worldly condition in which we are able to exercise our ‘inner’ freedom, our capacity to act. As she says elsewhere, “the principle of authority is in all important respects diametrically opposed to that of totalitarian domination ... authority, no matter in what form, is always meant to restrict or limit freedom, but *never* to abolish it.”¹³⁶ When Arendt uses the terms ‘restrict’ or ‘limit’ in this context, I understand her to mean something like ‘slow’, ‘check’ or ‘curb’. This, it seems to me, is what advice and guidance normally do and should be intended to do; they certainly do not remove or abolish the freedom of whoever is receiving the advice and guidance. And we saw Walzer in the previous chapter refer in this context to the guidance of a legislator and the restraint of a judge.

Both freedom and authority are absent in a totalitarian regime—or more accurately, with the absence of the latter, it becomes far easier, through the

¹³⁴ *BPF*. p.96.

¹³⁵ *BPF*. p.97. Emphasis added.

¹³⁶ *OT*. p.529. Emphasis added.

exercise of *unchecked* power, to abolish the former *in toto*. Time and again, it seems to me, Arendt's concern is to "tie together" liberal and conservative (or more vaguely: left and right) opinion, nurture the "relationship between both" which is precisely a hallmark of the tradition of politics, the civic republican tradition, she champions: the relation of authority and freedom.¹³⁷

I wish to provide two illustrations of this relation in Arendt's understanding, the first being found in her writings on the council system. My concern here is not to draw out the differences she posits between it and the party system and nor is it to assess the accuracy of her understanding of the various councils that sprung up in the revolutionary upheavals of the nineteenth and twentieth centuries. Rather, my concern is to show the relation of authority and freedom in her own understanding of the councils, and this in the context of her emphasis on the spontaneity, the 'new beginning' character, of their organisation. Indeed, it seems to me that it is often because of Arendt's emphasis in her writings on the plurality of human beings and actions as new beginnings that scholars are sometimes given to misunderstand her as either neglecting or regarding as relatively unimportant the institutional aspects of politics on the one hand, or as recommending a kind of radical democracy or anarchism on the other.¹³⁸ But as I hope to have already shown, while Arendt was certainly against the notion of 'rule' in politics, she was certainly not against the notions of leadership and government. In relation to anarchism, she points out in *On Revolution* the shortcomings of Proudhon and Bakunin after they were faced with the actual phenomenon of the councils:

"...the truth is that these essentially anarchist political thinkers were singularly unequipped to deal with a phenomenon which demonstrated

¹³⁷ *BPF*. pp.100–101. At an academic conference held in 1972, Hans Morgenthau asked Arendt: "What are you? Are you a conservative? Are you a liberal? Where is your position within the contemporary possibilities?", to which she replied, "I don't know ... the left think I'm a conservative, and the conservatives sometimes think I am left, or I am a maverick or God knows what ... I don't belong to any group ... I never was a socialist. I never was a communist ... I never was a liberal ...". *TWB*. pp.470–471.

¹³⁸ See for example: Anthony F. Lang Jr. and John Williams (eds.), 2005. *Hannah Arendt and International Relations: Readings Across the Lines*. London: Palgrave MacMillan. Chs.8 and 9; Andrew Schaap, 2020. 'Inequality, Loneliness, and Political Appearance: Picturing Radical Democracy with Hannah Arendt and Jacques Rancière.' *Political Theory*. pp.1–26; Ferdinando G. Menga, 2014. 'The Seduction of Radical Democracy. Deconstructing Hannah Arendt's Political Discourse.' *Constellations* 21(3). pp.313–326; Brian Smith, 2019. 'Anarcho-Republicanism? Arendt and the Federated Council System'. *Science & Society* 83(1). pp.87–116.

so clearly how a revolution did not end with the abolition of state and government but, on the contrary, aimed at the foundation of a new state and the establishment of a new government ... The councils ... were always organs of order as much as organs of action ...”¹³⁹

Writing from an anarchist perspective, Brian Smith regards this criticism as both odd and surprising in the context of Arendt’s support for the council system and, through an interview she gave which was published in *Crises of the Republic*, develops what she means here by ‘state’ and argues that it is a ‘state’—what Arendt calls a sort of ‘council-state’—to which Proudhon and Bakunin could have assented; one that is “highly divisible and decentralised”, comprising a federation of councils which “would not be ordered hierarchically, but horizontally.”¹⁴⁰ Arendt in fact refers in this interview to “the mere rudiments ... for a new state concept” that she sees in the federal system and a “new form of government” that she sees in the council system, and as regards the latter, she says that:

“[it] seems to correspond to and to spring from the very experience of political action ... [it] begins from below, continues upward, and finally leads to a parliament ... if only ten of us are sitting around a table, each expressing his opinion, each hearing the opinions of others ... it will become clear which one of us is best suited to present our view before the next higher council ... In this fashion, a self-selective process is possible that would draw together a true political elite in a country.”¹⁴¹

Smith may be correct to observe that this “mode of organization” supplants the “ostensive aims” of anarchists, but his claim that it was pioneered by the American and French revolutionaries seems to me to be inaccurate; as I hope to have shown in the first section of this chapter, it forms part of a much older tradition of politics.¹⁴² Nevertheless, despite her criticisms of Proudhon and Bakunin, and her rudimentary conception of a council-state drawing together a political elite for a given country, Smith seeks to recruit Arendt to the

¹³⁹ OR. pp.265–266.

¹⁴⁰ CR. p.233. Smith, *Anarcho-Republicanism?* pp.96–98. Smith re-describes ‘state’ here as ‘federation of councils’ or ‘cartels’, and talks of ‘political constitution’, ‘political form’, or ‘social collective of the future’ instead of government, or what he calls ‘governmental politics.’ His quotations from Proudhon, Bakunin and Rocker at this point in support of a kind of federalism seem to me to collapse the republican distinction between power and authority as I have set it out above.

¹⁴¹ CR. pp.230–233.

¹⁴² Smith, *Anarcho-Republicanism?* p.96.

anarchist's cause. Kimberley Hutchings, on the other hand, provides a less one-sided view than Smith's in saying that Arendt's politics "veer between conservatism and anarchism, elitism and radical democracy", but it seems to me that there is no veering at all: Arendt is a civic republican, concerned with tying both 'sides' together as the only means of maintaining (or, in the case of the councils, establishing and then maintaining) public freedom.¹⁴³ In the previous chapter, Dallmayr rightly voiced a concern that civic republicanism is understood today as merely a "theory", but I think a larger concern here is that it has come to be understood as merely one ideology amongst others, and as Arendt says:

"Ideologies [are] isms which to the satisfaction of their adherents can explain everything and every occurrence by deducing it from a single premise ... Ideologies are known for their scientific character: they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy. The word 'ideology' seems to imply that an idea can become the subject matter of a science ... An ideology is quite literally what its name indicates: it is the logic of an idea ... The ideology treats the course of events as though it followed the same 'law' as the logical exposition of its 'idea'. Ideologies pretend to know the mysteries of the whole historical process ... As soon as logic as a movement of thought [in the world]—and not as a necessary control of thinking [in individuals' minds]—is applied to an idea, this idea is transformed into a premise ... The tyranny of logicity begins with the mind's submission to logic as a never-ending process, on which man relies in order to engender his [own] thoughts. By this submission, he surrenders his inner freedom as he surrenders his freedom of movement when he bows down to an outward tyranny. Freedom as an inner capacity of man is identical with the capacity to begin, just as freedom as a political reality is identical with a space of movement between men."¹⁴⁴

No such outlandish attempts to explain everything or coerce by logic are made in the civic republican tradition and nor I think in the course of politics are they

¹⁴³ Kimberley Hutchings, 1996. *Kant, Critique and Politics*. London: Routledge. p.61. Cf. *OR*. p.226: "...the notion of democrats *versus* aristocrats did not exist prior to the revolutions ... in the act of foundation they were not mutually exclusive opposites but two sides of the same event, and it was only after the revolutions had come to their end, in success or defeat, that they parted company, solidified into ideologies, and began to oppose each other ... Terminologically speaking, the effort to recapture the lost spirit of revolution must, to a certain extent, consist in the attempt at thinking together and combining meaningfully what our present vocabulary presents to us in terms of opposition and contradiction."

¹⁴⁴ *OT*. pp.615–622. When I speak of 'civic republicanism', I mean to refer to a principle or a tradition, and not an ideology.

normally made by conservatives or anarchists, ‘elitists’ or radical democrats.¹⁴⁵ Ideologies are an affront to politics properly understood, which proceed for Arendt, and for the civic republican tradition in which she stands, through speech and persuasion rather than force (whether physical or logical) and violence; the faculty of judgment in all concerned remains intact in this tradition, whereas ideological thinking, at least on Arendt’s account, bulldozes one’s judgment, removes one’s discretion.¹⁴⁶

Freedom is plainly present in the spontaneous organisation of the councils in Arendt’s understanding and I think it is important for us to notice the “self-selective process” she sees engendering in this spontaneity: first in the formation of the councils themselves, and then as it happened in the exchange of opinions through which she saw authority being generated to protect public freedom:

“the men who sat in the councils were also an elite ... of the people and sprung from the people ... those who organised themselves were those who cared and those who took the initiative ... Once elected and sent into the next higher council, the deputy found himself again among his peers, for the deputies on any given level in this system were those who had received a special trust.”¹⁴⁷

We have already seen that it is through mutual trust, which is also called good faith, that Arendt sees power being generated, and that government is organised and institutionalised power. Within this atmosphere of mutual trust, the council members according to Arendt were ‘self-selected’.¹⁴⁸ In relation to all others

¹⁴⁵ The noun ‘elite’ is derived from the Latin verb *eligere*: to select, to choose, to pluck out. The debate about basic forms of government between the pure aristocrat and the pure democrat revolves around *who* should choose the ‘elite’, the select few. It is through the judgments of persons that an elite is chosen, even in democracies (that is, except for those direct democracies in which selection of the few is by lot, because all concerned agree that they are all equally capable of governing and being governed). It seems to me that it can only be the most thoroughgoing anarchist who is not ‘elitist’, at least insofar as we understand an elitist to be one who believes a given collective should be led or governed by an elite, a select(ed) few seen as ‘best’ suited for leading or governing. Cf. *OR*. pp.279–285; *TWB*. p.450.

¹⁴⁶ Cf. Bernard Crick, 2005. ‘A defence of politics against ideology’. *In Defence of Politics*. London: Continuum. Ch.2.

¹⁴⁷ *OR*. p.282.

¹⁴⁸ As with ‘elite’, it is worth pointing out here some of the roots of the term ‘council’ itself. *Consilium*, as Zetzel notes in his introduction to Cicero’s *De Re Publica*, “is an extraordinarily flexible term ... It represents both the necessary intelligence needed to guide a commonwealth, whether in a single person or a group (and hence shades into *concilium*, ‘council’), and also the specific virtue of aristocratic government.” The senses of *consilium* he identifies in the text are:

concerned, they were an ‘elite’; they had freely chosen themselves into politics, accepting the responsibility that unavoidably comes along with that choice, and those elected by council members to enter the next higher councils had exhibited their authority once more, had “...inspire[d] enough confidence in [their] personal integrity, courage and judgment [to be entrusted] with representing [their] own person[s] in all political matters.”¹⁴⁹ Arendt’s sympathy toward the council system may well have been “romantic” and she did indeed remain vague as to how it might have developed into a sort of ‘council-state’, but it seems to me nevertheless that her understanding of it involves not only “the combination or integration of three fundamental traits which characterise men in so far as they live with each other and exist in plurality” (p.170), but also, through what Gotter called the ability of individuals “to assert themselves in political deliberations” (p.173), wooing or anticipating the consent of their peers (and we might recall Garsten’s phrasing at this point, “the legitimising power of consent, by which authority and freedom can be made to co-exist”[p.89]), the eventual emergence of ‘council-statespersons’ most “able to communicate between the citizens and their opinions so that the commonness of this world becomes apparent” (pp.166-167).¹⁵⁰ Despite the spontaneity of their formation in different times, places and circumstances, Arendt observed “the curious stubbornness with which this system is suggested each time the people comes to raise its voice”.¹⁵¹ One of the things that might account for this curiously stubborn repetition of spontaneous action in different contexts I hope to have been indicating throughout the chapter: a tradition of politics that we call civic republican, which entails a necessary relation of authority and freedom.

“counsel, judgment, plan, planning, policy, deliberation, deliberative function, deliberative responsibility, council.” *Rep.* p.xxxviii. Cf. *OR.* pp.282–283.

¹⁴⁹ *TWB.* p.137.

¹⁵⁰ *TWB.* p.465. It is worth pointing out here a similarity between Arendt’s understanding of the council system and the principle of subsidiarity, which holds that social and political issues should be dealt with at the most immediate (or local) level that is consistent with their resolution. The council system on Arendt’s understanding “could constitute the solution to one of the most serious problems of all modern politics, which is not how to reconcile freedom and equality, but how to reconcile equality and authority”, and the similarity I point out here may be less surprising when we consider that Alexis de Tocqueville’s *Democracy in America*—written by a thinker who exerted a strong influence upon Arendt—may be viewed as an examination of the same principle. *OR.* pp.282–283.

¹⁵¹ *TWB.* p.137.

While Arendt certainly regretted the repeated failure of the council system to develop into a new sort of state and form of government, she was still highly impressed with the course of the American revolution as contrasted with the French, so for the second illustration of the relation between authority and freedom, let us return to her account of the American founders. In the final section of *The Life of the Mind: Willing*, she says, “let us put ... aside” the “professional thinkers, whether philosophers or scientists”, and “fasten our attention on men of action, who ought to be committed to freedom because of the very nature of their activity, which consists in ‘changing the world’, and not in interpreting or knowing it.”¹⁵² Regarding the point when the course of events had “carried [the American founders] into a full-fledged ‘revolution’”, Arendt tells us that:

“This was the moment when those who had started as men of action and had been transformed into men of revolution changed Virgil’s great line, ‘*Magnus ab integro saeculorum nascitur ordo*’ (‘the great order of the ages is [re]born as it was in the beginning’) to the *Novus Ordo Saeculorum* (the ‘new order’), which we still find on our dollar bills. For the Founding Fathers, the variation implied an admission that the great effort to reform and restore the body politic to its initial integrity (to found ‘Rome anew’) had led to the entirely unexpected and very different task of constituting something entirely new—founding a ‘new Rome’.”¹⁵³

This passage, admittedly, is yet another very obscure one of Arendt’s. In it, the agency of the American founders is heavily circumscribed, not unlike how it was in the older version of the story she had told about them in *On Revolution* (quoted on pp.129-130). We are told here that the American founders did not transform themselves from men of action into men of revolution but ‘had been’ transformed; we are not told of their but of ‘the’ variation made to Virgil’s great line; and ‘the’ variation implied not their but ‘an’ admission, i.e. ‘an’ acknowledgement of the truth, ‘for’ them (but not necessarily for us), that not their but ‘the’ great effort to reform and restore the body politic to the integrity of its beginning ‘had led’ to the ‘very different’ task of founding an entirely, which could also be to say an unprecedentedly, new order. But at the same time, according to Arendt, no longer was such ‘an’ admission

¹⁵² LM2. p.198.

¹⁵³ LM2. p.207.

‘inescapable’, like she had said in *On Revolution*; instead, it was merely ‘implied’ by ‘the’ variation of Virgil’s great line. Fate or necessity looms large in Arendt’s story here, again not unlike how it did in *On Revolution*, but just as with the glimmers of hope in *The Life of the Mind* I have already highlighted, I believe we can (just about) see judgments, choices and the freedom behind them present in her use of the verb ‘implied’ and her discarding of the adjective ‘inescapable’.¹⁵⁴ Once again, it seems to me that Arendt understood the American founders to have been relying on the authority of Roman antiquity and to have renewed the thread of tradition: to have freely and consciously constituted a new *Rome*. Although she evidently has much familiarity with the abstruse arguments of the professional thinkers around freedom and necessity, by far her greatest concern is with the historical-political world:

“When men of action, men who wanted to change the world, became aware that such a change might actually postulate a new order of the ages, the start of something unprecedented, they *began* to look to history for *help*. They set about rethinking such thought-things as the Pentateuch and the Aeneid, foundation legends that might tell them how to solve the problem of beginning ... The foundation legends, with their hiatus between liberation and the constitution of freedom, indicate the problem without solving it ... In any event, wherever men of action, driven by the very momentum of the liberation process, *began* to prepare in earnest for an entirely new beginning, the *novus ordo saeculorum* ... they ransacked the archives of Roman antiquity for ‘ancient prudence’ to *guide* them in the establishment of a Republic ... What they *needed* was ... a *lesson* in the art of foundation, in how to overcome the perplexities inherent in every beginning.”¹⁵⁵

It seems to me that to overcome a perplexity is not necessarily to solve it, with any proposed ‘solutions’—or what Arendt also refers to in *The Life of the Mind* and elsewhere as ‘answers’—to that perplexity perhaps safely being left to the discussions between ‘professional thinkers’ in contradistinction to the words and

¹⁵⁴ It would take us too far from the task at hand to examine the *philosophical* complexities of the ‘freewill versus determinism’ debates, which I think we might safely leave to those professional thinkers we call metaphysicians—whose subject, incidentally, even after the thundering pronouncements of a Nietzsche, a Carnap, a Heidegger, or an Arendt, is still handed down, it is a *tradition* of metaphysics, and studied in the universities to this day. Cf. *LM1*. pp.9–10. It is curious to see Arendt state here that “one almost suspects Kant was right when ... he prophesied that men will surely return to metaphysics ‘as one returns to one’s mistress after a quarrel’ ... I do not think this very likely or even desirable ...”. Kant was *right* in his prophecy, one almost suspects, but for the one that is Arendt—perhaps understandably, given the times in which she lived, thought and wrote—its fulfilment is not very likely or even desirable (but still right, one almost suspects).

¹⁵⁵ *LM2*. pp.207–210. Emphases added.

deeds of ‘men of action’, upon the latter of which and whom our attention has been fastened here. Here and elsewhere, Arendt borrows the words of Harrington and speaks of the American founders, or the men of revolution into whom they ‘had been’ transformed, and through (if not by) whom she says a *novus ordo saeculorum* was ‘postulated’, as ‘ransacking’ the archives of antiquity for ‘ancient prudence’, but *qua* men of action or men of revolution, Arendt still sees in them their *need* for a *lesson* in the art of foundation, when face to face with their *political* experience of liberation and the formidable task of constituting public freedom. Once again, it seems to me that we can see here the relation of authority and freedom in Arendt’s understanding—and this time as a *historical-political* relation.¹⁵⁶ And this, it seems to me, is of the essence of what we call ‘civic republicanism’. On Arendt’s telling, with which I am very much inclined to agree, despite the obscurity of her language, the American founding provides us with a modern example of a new beginning *actually* taking place with the help of the authority of the old. *Magnus ab integro saeculorum nascitur ordo*.¹⁵⁷ And something similar happens, it seems to me, in Arendt’s writings themselves; Canovan and Young-Bruehl are quite right to see ‘oldness’ and ‘newness’ in them at the same time.¹⁵⁸

2.4.2 Arendt on ‘Society’

Although I hope to have shown the reader that Arendt’s politics are civic republican, her theoretical distinction between ‘the social’ and ‘the political’,

¹⁵⁶ Whether the relation of authority and freedom in the various ‘council systems’ were *historical-political*, whether like the American founders they also had the help of the authority of those who had lived before them, whether they were ‘knowingly or unknowingly’ in the business of renewing the thread of tradition, would require an investigation of the persons and events themselves which is beyond the scope of my project—as indeed is an investigation of the American revolution and founders. My concern with both the councils and with the American revolution and founding is only with Arendt’s understanding of these persons and events.

¹⁵⁷ I believe the insight to be found in Virgil’s great line from the fourth Eclogue can also be found in so many different places in modernity, for example, here in one of Arendt’s favourite lines from Goethe: “For the soil again will grow them, as it ever has before”. Jonas, *Gleanings* p.31. Or indeed here, in these lines from W.B. Yeats’ *Byzantium*: “...Those images that yet / Fresh images beget...”. Cf. Diana Arbin Ben-Merre, 1979. ‘The Poet Laureate and the Golden Bird: A Note on Yeats’ Byzantium Poems’. *The Canadian Journal of Irish Studies* 5(1). pp.100–103. Alternatively, or additionally, there might well be a ring of truth to philosopher Philip Merlan’s claim that “if an idea emerges repeatedly in different ages but not as a result of direct influence, it is probably rooted in some fundamental need”. Philip Merlan, 1975. ‘The Stoic *Oikeiōsis* and Sartre’s “Situation”’. *Journal of the History of Philosophy* 13(1). p.1.

¹⁵⁸ A recent Guardian editorial I think touches upon this matter as well, in terms of what John Keats called ‘negative capability’: <https://www.theguardian.com/commentisfree/2019/dec/01/the-guardian-view-on-truth-and-art-fiction-as-a-guide> Accessed 24th September 2020.

notorious and notoriously difficult to understand, it seems to me mis-shapes them. We have already seen Arendt's bleak view of what she calls 'society'. Her idiosyncratic conception of 'the social' seems to have been precipitated by various modern events, including the writings of Rousseau and Marx, but we find her in *The Human Condition* going back to ancient Greece and Rome in trying to clarify her reasons for distinguishing it from her conception of 'the political'.¹⁵⁹ The following passage needs to be quoted at some length:

“All human activities are conditioned by the fact that men live together, but it is only action [rather than work or labour] that cannot even be imagined outside the society of men ... only action is entirely dependent upon the constant presence of others ... This special relationship between action and being together seems fully to justify the early translation of Aristotle's *zoon politikon* by *animal socialis*, already found in Seneca, which then became the standard translation through Thomas Aquinas: *homo est naturaliter politicus, id est, socialis* ('man is by nature political, that is, social'). More than any elaborate theory, this unconscious substitution of the social for the political betrays the extent to which the original Greek understanding of politics had been lost. For this, it is significant but not decisive that the word 'social' is Roman in origin and has no equivalent in Greek language or thought. Yet the Latin usage of the word *societas* also originally had a clear, though limited, political meaning; it indicated an alliance between people for a specific purpose, as when men organize in order to rule others or to commit a crime. It is only with the later concept of a *societas generis humani*, a 'society of mankind', that the term 'social' begins to acquire the general meaning of a fundamental human condition ... [For] Plato and Aristotle ... the fact that man cannot live outside the company of men ... was something human life had in common with animal life, and for this reason alone it could not be fundamentally human. The natural, merely social companionship of the human species was considered [by Plato and Aristotle] to be a limitation imposed upon us by the needs of biological life, which are the same for the human animal as for other forms of animal life.”¹⁶⁰

Much might be said of this pungent passage and although I shall say some of it in the next chapter, let us begin addressing it here. More than once, we seem to find Arendt admitting that society is a very condition, a *sine qua non*, of politics,

¹⁵⁹ While I agree with Ron H. Feldman when he says that “Arendt uses her experience as a Jew and her perspective as a conscious pariah standing outside the mainstream of Western society to analyze and gain an understanding of that society”, and that “Arendt places the modern Jewish experience at the center of her critique of modern society”, my concern in this section is with Arendt's understanding of society as such, and with what she conceptualises as 'the social'. *JW*. p. xliv.

¹⁶⁰ *HC*. pp.22–24.

yet she makes a move here to re-describe it in terms of ‘action’ in the ‘constant presence of others’. Whether she means to say that the ‘special relationship’ is between one actor and ‘constantly present others’, or between two abstractions, ‘action’ and ‘being together’, is unclear, but regardless, she leaps three and a half centuries forward from Aristotle’s *zoon politikon* to Seneca’s *animal socialis*, and then another twelve to Aquinas, in giving her account of how ‘the original Greek understanding of politics’ came to be lost. Across the next two chapters of this project, we shall be discussing Cicero’s use of the Latin term *societas*, a *legal* term, in his theoretical writings on politics—so far as we can tell, the first political thinker to do so—which Arendt seems to overlook in her first leap. We shall see the tendentiousness of her description of *societas* in the above passage become even more glaring, and we shall see as well that Cicero was the first (so far as we can tell) to use the phrase *societas generis humani*. But for now, let us observe some incongruities between what Arendt is saying here in *The Human Condition* about *societas* and what she says elsewhere, in her posthumously published writings. In *The Tradition of Political Thought*, she speaks correctly and rightly of “the Roman notion of human community as a *societas*, the living-together of *socii*, men allied on the basis of good faith”, and in *Introduction Into Politics*, shows that her own understanding of ‘society’ is essentially modern when she says, again correctly and rightly, that *societas* “has nothing to do with society [as Arendt understands it] but rather with a cooperative community that fostered relationships between partners.”¹⁶¹ In *The End of Tradition*, as we saw in the first section of this chapter, Arendt praised Cicero’s “great political experience” and his arguments in support of the practical life of the citizen over the theoretical life of the philosopher, quoting appreciatively a line of his from the *De Officiis* where he argues that human beings are naturally sociable: even if all our needs and wants were to be met by the work of some magic wand, we would still flee our solitude so we could be with others, whether to listen or to speak, to learn or to teach. But Arendt here in *The Human Condition*—seemingly devoted at this point, it must be said, to Plato’s and Aristotle’s philosophies rather than the lost ‘original Greek understanding of politics’—wishes to argue that this natural sociability is not ‘fundamentally human’. Yet in her *Lectures on Kant’s Political Philosophy*, she

¹⁶¹ *PP*, pp.50 and 185–186.

relies on Kant's argument that our sociability is 'fundamentally human' so that she can use his notion of 'enlarged mentality' in developing her theory of judgment:

"We find [in *The Critique of Judgment*] ... sociability as the very origin, not the goal, of man's humanity; that is, we find that sociability is the very essence of men insofar as they are of this world only. This is a radical departure from all those theories that stress human interdependence as dependence on our fellow men for our *needs* and *wants*. Kant stresses that at least one of our *mental faculties*, the faculty of judgment, presupposes the presence of others ... Communicability obviously depends on the enlarged mentality; one can communicate only if one is able to think from the other person's standpoint; otherwise one will never meet him, never speak in such a way that he understands."¹⁶²

It is true, as Canovan says, that Arendt usually spoke the language of 'the human condition' rather than 'human nature' so as to "challenge the hubristic fantasies of totalitarianism and modernity and to stress that we are all subject to conditions which we cannot escape", but as we can see here, incongruous with her writings in *The Human Condition*, she is very keen to stress to her students that 'the very essence of humanity' is sociability.¹⁶³ As we have already seen, Kant's theories were not thought up without the guidance of any authority whatsoever; they derive significantly from Stoic philosophy and from Cicero's writings, and this includes, it seems to me, his arguments about the natural sociability of human beings.¹⁶⁴ While such arguments of Kant's may well be a radical departure from strictly 'utilitarian' theories past and present, they do not depart radically from other theories in the tradition, as we shall see in the next chapter. But for now, let us return to Arendt's earlier writings to consider how she deals with this—our—empirical messiness.

¹⁶² *LKPP*, pp.73–74. With Robert J. Dostal, I am not convinced that Kant's *Critique of Judgment* was the best place for Arendt to find a political philosophy, either of Kant's or for anybody else (although I do think there are reasons to be found elsewhere in her work [e.g., *EU*, pp.2 and 428–446] as to why she called it a political philosophy rather than a political theory). Robert J. Dostal, 2001. 'Judging Human Action: Arendt's Appropriation of Kant'. Ronald Beiner and Jennifer Nedelsky (eds.), 2001. *Judgment, Imagination and Politics: Themes from Kant and Arendt*. Oxford: Rowman and Littlefield. Ch.8.

¹⁶³ Canovan, *Hannah Arendt*. p.104.

¹⁶⁴ An investigation of Kant's own notion of 'unsocial sociability', tied to his 'philosophy of history', is beyond the scope of my project.

Much of Arendt's opposition to 'the social' in modernity is bolstered by how she portrays the private and public spheres in the Athenian *polis*. The private sphere is the Athenian household, a realm of subjection where the biological necessities of life are mastered, which in turn liberates the patriarchal head of the household for the activities of the Athenian public sphere:

“Of all the activities necessary and present in human communities, only two were deemed to be political and to constitute what Aristotle called the *bios politikos*, namely action (*praxis*) and speech (*lexis*), out of which rises the realm of human affairs ... from which everything merely necessary or useful is excluded ... To be political, to live in a *polis*, meant that everything was decided through words and persuasion and not through force and violence.”¹⁶⁵

The reader may recall at this point Garsten's argument in the previous chapter that persuasion rather than force is the presumption of democratic politics. Both Garsten and Arendt I think are completely right that a fundamentally meaningful aspect of politics is that things are decided through words and persuasion rather than force and violence (consider cognate terms such as polite or politesse), and we shall be considering some of Cicero's theoretical contributions to this endeavour across the next two chapters. But to return to Arendt, she seems to be on a different page to Garsten in certain parts of *On Revolution*, for example, when she sets out what she says the American founders saw as a threat to politics from democracy (quoting words from Federalist no.50), insofar as democracy is understood as a (pure) form of government:

“Democracy, then, to the eighteenth century still a form of government, and neither an ideology nor an indication of class preference, was abhorred because public opinion was held to rule where the public spirit ought to prevail, and the sign of this perversion was the unanimity of the citizenry: for ‘when men exert their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are to be so called, will be the same.’ ... these sentences hint at least at the decisive incompatibility between the rule of a unanimously held ‘public opinion’ and freedom of opinion, for the truth of the matter is that no formation of opinion is even possible where all opinions have become the same. Since no one is capable of forming his own opinion without the benefit of a multitude of opinions held by others, the rule of public opinion endangers even the opinion of those few who may

¹⁶⁵ HC. pp.24–25.

have the strength not to share it ... public opinion, by virtue of its unanimity, provokes a unanimous opposition and thus kills true opinions everywhere.”¹⁶⁶

We saw in the previous chapter that Habermas had described the critical use of public reason as creating a forum in which private citizens ready themselves ‘to compel public authority to legitimate itself before public opinion’, and that Kant had described the verdict of critical reason as being ‘simply the agreement of free citizens’ in civil society. It seems to me that, even though the American founders spoke of it as a ‘common passion’, it is the kind of indivision in these rationalist arguments of both Kant and Habermas, whether construed as public opinion or the verdict of critical reason, which Arendt is concerned in this passage to oppose because it is harmful to the generation of public spirit in citizens, and which Garsten in the previous chapter was concerned to oppose because it engenders frustration and resentment in those citizens who do not share ‘civil society’s’ ‘opinion’ or ‘verdict’. That said, it seems to me that this is a problem deriving from modern liberalism in one form or another, rather than, as Arendt seems to imply here, a problem deriving from democracy as a form of government. We saw in the previous chapter that Walzer, in obvious and full support of democracy as a form of government, distances himself from terms which suggest indivision such as can be found in Rousseau’s theory, like ‘the general will’, and emphasises instead the ‘many-headed’ nature of the people, the plurality of citizens’ opinions, and the temporary, shifting, and unstable nature of majorities in a democracy. This seems to me to be a good understanding of democracy as a form of government, which engenders (or should engender) a kind of politics in which, as Garsten says, persuasion is the presumption, rather than force or violence.

As Arendt puts it in terms of “Greek self-understanding”, force and violence were used to decide things in spheres other than the *polis*, either in the private household or in the ‘international’ sphere (war), being used in these spheres for mastering ‘needs’ and ‘wants’.¹⁶⁷ But she says that, within the *polis*, the public and private spheres became blurred over time due to the “profound

¹⁶⁶ OR. pp.227–228. Cf. ‘A Defence of Politics Against Democracy’: Crick, *In Defence of Politics*. Ch.3.

¹⁶⁷ HC. p.26.

misunderstanding expressed in the Latin translation of ‘political’ as ‘social’”.¹⁶⁸ According to Arendt, this misunderstanding resulted in a wrongful blending of the private and the public spheres in modernity, with politics becoming a sort of “gigantic, nation-wide administration of housekeeping.”¹⁶⁹ She says that the Greeks understood a life lived in private to be ‘deprived’ of the fundamentally human experience of action and speech in the public sphere, and that the Romans looked on privacy as offering “a temporary refuge from the business of *res publica*”, before going on to observe that we struggle in the modern age to understand the private sphere as one of deprivation, partly because of its “enormous enrichment ... through modern individualism”.¹⁷⁰ But at an especially obscure point in drawing her distinction, Arendt says that “it seems even more important that modern privacy is at least as sharply opposed to the social realm—unknown to the ancients who considered its content a private matter—as it is to the political, properly speaking.”¹⁷¹ Ancient privacy was not like modern privacy, according to Arendt. The latter she says was “discovered” by Rousseau, “its most relevant function, to shelter the intimate”, as the opposite of the social realm.¹⁷² Yet she says that it is to the social realm, as with ancient privacy, that modern privacy (or ‘its content’) is “more closely and authentically related”.¹⁷³ In short, Arendt seeks to connect privacy or the private sphere to what she calls ‘the social’ and disconnect ‘the social’ from publicness or the public sphere, or from what she calls ‘the political’.

Why? Again, I think Canovan is right to trace Arendt’s understanding of ‘the social’ to her concerns with totalitarianism, and as mentioned above, it seems to have been the writings of Rousseau and Marx, and the (right or wrong) zeal of some others in their wake, which precipitated her distinction between ‘the social’ and ‘the political’. For Arendt, Rousseau’s ‘discovery’ of the modern private sphere’s function of sheltering the intimate:

¹⁶⁸ *HC*. p.27.

¹⁶⁹ *HC*. p.28.

¹⁷⁰ *HC*. p.38.

¹⁷¹ *HC*. p.38.

¹⁷² *HC*. p.38.

¹⁷³ *HC*. p.38.

“... was directed ... against the levelling demands of the social, against what we would call today the conformism inherent in every society ... for society always demands that its members act as though they were members of one enormous family which has only one opinion and one interest”.¹⁷⁴

We see ‘society’ on Arendt’s account connected here to the privacy of the ancient Greek household, which was ruled despotically by a patriarch’s ‘one opinion and one interest’. She regards it as “decisive that society ... excludes ... spontaneous action or outstanding achievement” between individuals like a despot, in the modern age conquering the public sphere where men in ancient Athens had once shown who they were as individuals through action and speech, and where “each was more or less willing to share in the burden of jurisdiction, defense, and administration of public affairs.”¹⁷⁵ Regardless of the extent to which we can see persons *still* capable of showing who they are through action and speech in the public sphere and being more or less willing to share in what Arendt calls here ‘the burden’ of politics (if not ‘the political’), we should note that, in line with Emerson, Habermas and Norval as set out in the previous chapter, she seems to have a monistic, or at least a ‘de-pluralising’ or ‘totalising’, view of what she calls ‘society’. And the private despotism of the ancient Athenian patriarch appears again without human form as ‘society’ in one of her critiques of Marx’s historical materialism:

“...in the rise of society it was ultimately the life of the species which asserted itself ... [In Marx] socialised mankind is that state of society where only one interest rules, and the subject of this interest is either classes or man-kind but neither man nor men. The point is that now even the last trace of action in what men were doing ... disappeared. What was left was a ‘natural force’, the force of the life process itself, to which all men and all human activities were equally submitted ... and whose only aim, if it had an aim at all, was survival of the animal species man.”¹⁷⁶

It seems that it is from Marx’s writings that Arendt puts forward the claim that ‘democracy’ is opposed to culture insofar as it is taken to signify ‘the socialisation of man and world’, and that we need not understand democracy in this Marxian way (p.159). I certainly agree that there is no need for us to

¹⁷⁴ HC. p.39.

¹⁷⁵ HC. pp.40–41.

¹⁷⁶ HC. p.321.

understand ‘democracy’ to be opposed to culture, nor is there a need for us to rely only upon Marx for our understanding of the term ‘democracy’, and I am questioning in this sub-section the very notion of ‘society’ which Arendt sees as underlying ‘democracy’s’ opposition to culture.¹⁷⁷ As we have seen, this is an essentially modern understanding of ‘society’, one deeply implicated in Hegel’s philosophy of history (and I agree here with Arendt that Marx wrongly focused on abstractions rather than human beings as the bearers of freedom or necessity), but Arendt still seems to want to understand it in terms of the private sphere of ancient Athenians; she thinks that the force and violence characteristic of the ancient private sphere has been brought into the modern public sphere. ‘The Social Question’, she says, “we may better and more simply call the existence of poverty”, which is “abject because it puts men under ... the absolute dictate of necessity”, and it was under the rule of this necessity she says that the poor rushed on to the public scene in the French Revolution, unleashing the terror that sent it to its doom.¹⁷⁸ Despite his ‘discovery’ of the modern private sphere’s function of ‘sheltering the intimate’, it was Rousseau according to Arendt who had introduced compassion, “the capacity to lose oneself in the sufferings of others”, into political theory with terrible consequences, because “compassion, in this respect not unlike love, abolishes the distance, the in-between which always exists in human discourse”, making the claim instead “for swift and direct action, that is for action with the means of violence.”¹⁷⁹ Thus necessity, force, violence, terror, and compassion are connected to Arendt’s conception of ‘the social’; some way indeed from special relationships, Roman *societas*, ‘social companionship’ and our ‘natural sociability’ of which she speaks approvingly elsewhere.

We find an indication that Arendt was not especially confident in her own distinction between ‘the social’ and ‘the political’ in a conference of academics which was held in 1972 on her work and at which she participated. Here, a fundamental problem with the distinction was pointed out clearly and succinctly by her close friend Mary McCarthy:

¹⁷⁷ Arendt’s personification of forms of government here is unhelpful.

¹⁷⁸ *OR*. p.54.

¹⁷⁹ *OR*. pp.76 and 81–82.

“... I have always asked myself: ‘What is somebody supposed to do on the public stage, in the public space, if he does not concern himself with the social? That is, what’s left?’ ... if all questions of economics, human welfare, busing, anything that touches the social sphere, are to be excluded from the political scene, then I am mystified. I am left with war and speeches. But the speeches can’t be just speeches. They have to be speeches about something.”¹⁸⁰

Arendt’s immediate response to McCarthy was “You’re absolutely right, and I may admit that I ask myself this question”, and the gist of her subsequent defence of her distinction was that:

“... what becomes public at every given period seems to me utterly different ... there will always be conflicts. And you don’t need war ... There are things where the right measures can be figured out. These things can really be administered and are not then subject to public debate. Public debate can only deal with things which ... we cannot figure out with certainty. Otherwise, if we can figure it out with certainty, why do we all need to get together? ... Let’s take the housing problem. The social problem is adequate housing ... There shouldn’t be any debate about the question that everybody should have decent housing.”¹⁸¹

Richard Bernstein was a participant in this discussion and tells us that nobody was convinced by Arendt’s “evasive and feeble” response.¹⁸² As he says, “the abstract proposition ‘everybody should have decent housing’ ... is not the locus of any real and serious conflict. Rather, only when we come down to concrete details of what is decent housing, how it is to be financed [etc.] ... do we face genuine issues of social and political conflict.”¹⁸³ Such concrete details it seems we cannot ‘figure out with certainty’ such that they can be left only to the administrations of bureaucracy, which Arendt acidly calls “the most social form of government”.¹⁸⁴ McCarthy rightly mentions that citizens are ‘busing’ in a given political society, as Arendt herself had said of the Romans when she spoke in *The Human Condition* of their retiring to the private sphere from the ‘business of *res publica*’. As we shall see in the final chapter, for Cicero, the *res publica* is

¹⁸⁰ *TWB*. p.455.

¹⁸¹ *TWB*. pp.455–457.

¹⁸² Richard Bernstein, 1986. ‘Rethinking the Social and the Political’. *Philosophical Profiles: Essays in a Pragmatic Mode*. Cambridge: Polity. p.251.

¹⁸³ Bernstein, *Rethinking the Social and the Political*. p.253.

¹⁸⁴ *HC*. p.40.

the business of the people, and the notion of its being so comes from several terms he uses in *De Re Publica*, but most especially *societas*.

In this sub-section, I have highlighted various problems with Arendt's distinction between 'the social' and 'the political', a distinction she had come to doubt for herself towards the end of her life. Although she sought to connect necessity, force, violence, terror, and compassion to her conception of 'the social', she mentioned none of these in relation to her understanding of *societas*, a "co-operative community that fostered relationships between partners." This latter I think is plain to see elsewhere in Arendt's theoretical writings on politics, in her civic republicanism, and it is with this understanding in mind that I think it is fair to say that she did in fact write of political societies, and her distinction between two abstractions, 'the social' and 'the political', is one we can do without, and do without well.

2.4.3 Arendt on International Political Society

With a conception of society, then, which involves 'a cooperative community that fosters relationships between partners', is it possible to see in Arendt's writings any conception of international political society? As indicated in the previous chapter through Beardsworth's consideration of Owens's *Between Politics and War*, Arendt can easily be construed as a 'realist' in the international sphere, which might suggest a resounding 'no' to this question. But as she says, she has no position that can be summed up with an -ism, and in this sub-section I highlight some of her writings in which we can see not only a conception of, but also an understanding of an existing, international political society. Before doing so, however, I consider Arendt's argument that we are now aware of 'a right to have rights', which might wrongfully suggest to some scholars the maturity not of an international but of a global political society.

In *The Origins of Totalitarianism*, Arendt provides an unsettling account of 'The Perplexities of the Rights of Man', arguing that their declaration in the eighteenth century "meant nothing more nor less than that from then on Man, and not God's command or the customs of history, should be the source of Law", and that it was only in the twentieth century they had become a practical, political issue when "it turned out that the moment human beings lacked their

own government and had to fall back on [only the Rights of Man], no authority was left to protect them and no institution was willing to guarantee them.”¹⁸⁵ It was this new factual situation—real human beings who were rightless in fact—rather than theoretical speculation which brought Arendt to argue that we have now become aware of the existence of ‘a right to have rights’:

“Something much more fundamental than freedom or justice, which are the rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice ... This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion ... We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose ... [and] could not be repaired, because there was no longer any ‘uncivilised’ spot on earth [to ‘civilise’, i.e. to organize a polity and so have rights], because whether we like it or not we have really started to live in One World.”¹⁸⁶

In *The Rights of Others*, Benhabib reads the phrase ‘a right to have rights’ from a universal standpoint, such that the first usage of right “evokes” or “invokes” a moral imperative, and the second builds upon this evocation or invocation to refer to juridico-civil rights.¹⁸⁷ She acknowledges that Arendt was sceptical of “such justificatory philosophical discourses” and had offered rather a *political* argument that we are now aware of a right to have rights, yet she also claims that, in Arendt’s view, such a right “transcends the contingencies of birth which differentiate and divide us”.¹⁸⁸ This might be the view of one who assented to Kant’s transcendental philosophy and his moral theory upon which it is built, and in the previous chapter, we saw Benhabib claim that Arendt was indeed a Kantian in moral theory, but if she was, I have not found her assenting to his philosophy or moral theory anywhere in her writings. Indeed, in *Some Questions*

¹⁸⁵ OT. pp.380–381.

¹⁸⁶ OT. p.388.

¹⁸⁷ Benhabib, *The Rights of Others*. p.56.

¹⁸⁸ Benhabib, *The Rights of Others*. p.59.

of *Moral Philosophy*, Arendt raises some doubts about his moral theory.¹⁸⁹ It seems to me that a close reading of Arendt's writings reveals that they never transcend or abstract from the unavoidable contingencies of birth which feed into our politics, i.e. history and experience, and this includes in her *political* argument that we have become aware of a right to have rights. In the above passage, and as Benhabib also admits, human rights for Arendt are *guaranteed* only by real, actual, particular political communities. She saw, with Kant, the extreme importance of these communities for human beings. One of the things that so horrified and indeed outraged Arendt was that in her own time millions *really* had been ripped apart juridically, morally and politically from these communities, from these 'contingencies of birth' which she regards as "much more fundamental" than even the rights of citizens. It was "in view of objective political conditions"—human beings rightless in fact rather than theory—Arendt argued that it was "hard to say" how the concepts of man upon which human rights are based "could have helped to find a solution to the problem".¹⁹⁰ Noting Arendt's argument that, in her own time, all societies formed for the protection of the Rights of Man and all attempts at establishing a new bill of human rights were sponsored by marginal figures, "a few international jurists without political experience or professional philanthropists supported by the uncertain sentiments of professional idealists", Waldron takes Arendt to task for seeming to belittle the efforts of these figures:

"Hannah Arendt can perhaps be forgiven for not foreseeing that [soft law] would in fact grow, fifty years later, into the dense thicket of human rights law whose influence is felt in every corner of the legal world. But we should not so readily forgive her for urging her readers to approach the earliest stages of this development with categories that simply assume that if we cannot already identify the hard outlines of familiar legal institutions, we should dismiss a body of practice that *aspires* to juridical status as mere claptrap."¹⁹¹

Waldron I think carries out excellent work on the emergence of positive law, "the question of what a normative order looks like as it is *beginning* to come into positive existence", and we have already seen him speak of recently evolving customs "growing out of but also constituting a social order [that is]

¹⁸⁹ *RJ*. pp.69–72; Cf. *MDT*. pp.27 and 91.

¹⁹⁰ *OT*. p.392.

¹⁹¹ *OT*. p.382. Waldron, *Cosmopolitan Norms*. p.96.

governed by norms, even when there is no one to enforce them” (p.51), but while Arendt might not have looked upon the practices of international jurists, philanthropists and idealists in terms of “the earliest stages of development” of a normative order, it seems to me that she neither dismissed these efforts and aspirations nor regarded them as mere claptrap, but rather focused her own efforts on the plight of human beings rightless in fact, there and then, who were actually invoking their ‘right to have rights’ as members of an organised community which could guarantee those rights, and not invoking the fundamental human rights of an embryonic normative order which could not. We saw Beardsworth in the first chapter criticise Owens’ “use of Arendtian categories to forge a political realism that [is] critical of idealism” and express some doubt that engagement with the liberal discourse of rights is possible through Arendt’s “normative distinctions”, and it seems to me that Waldron is also rather vague in his chapter on what Arendt’s categories or normative distinctions are such that they exclude ‘idealism’ or practices of aspiration (she does, after all, speak the language of rights). Arendt was no jurist herself, but as a *political* theorist, I believe her own practices were aspirational, even as they were so often articulated with a studied and understandable bitterness.¹⁹²

Benhabib is right that Arendt promotes a civic form of political community characterised by plurality—a plurality which also ‘differentiates and divides us’, as Benhabib says—but it seems to me that it is one of the great and distinctive features of Arendt’s theoretical writings on politics that she, not unlike Cicero as we shall see in the next two chapters, *holds on to both* the individualising and collectivising aspects of our lives at the same time. And this because both are our lived experiences. Benhabib often emphasises the individualising aspects in Arendt’s writings, but let us consider the collectivising aspects in relation to her investigation of Arendt’s writings alongside those of Raphael Lemkin, one of the above-mentioned international jurists who was a key figure in drawing up the Genocide Convention passed by the UN in 1948. In this article, Benhabib questions what she takes to be the “ontology of the group” that Lemkin holds

¹⁹² In quoting Arendt’s statement about jurists, philanthropists and idealists, Waldron omits the start of Arendt’s sentence: “*Even worse was that* [all societies formed for the protections of the Rights of Man...]. What she says about these figures is ‘even worse’ than the “fierce, violent group consciousness” of stateless persons in their “clamor for rights as—and only as—Poles or Jews or Germans, etc.” Arendt sees misery everywhere she looks, yet out of this comes her argument that we are now aware of a right to have rights.

and contrasts it with the ontologicalness of Arendt's conception of plurality.¹⁹³ Underlying the legal concept of genocide, Benhabib argues, is Lemkin's "ontology of groups", the origin of which she says is partially rooted in "a Herderian belief in the group as the *conditio sine qua non* of all human artistic and cultural achievement".¹⁹⁴ As Lemkin puts it, groups are based upon "genuine traditions" and "genuine culture" and Benhabib argues that both Lemkin's writings and the text of the Genocide Convention itself assume the 'ascriptive group', i.e. the group into which one is born, as constituting the key point of reference in relation to genocide, and goes on to contrast "such group concepts" with her interpretation of Arendt's work:

"Arendt ... only harbors skepticism towards such group concepts. Yet, like Lemkin, she believes in the ontological value and irreducibility of *human plurality*. It is because we inhabit the world with others who are *like us* and yet always different *from us* that the world is perspectival and can only manifest itself to us from a particular vantage point. Nevertheless, plurality need not be constituted through the 'ascribed' groups of ethnicity, nationhood, race or religion alone. Quite to the contrary. It is only when ascription is transcended through association and human beings come together for a joint purpose in the public sphere that plurality, which is the human condition, is most strikingly revealed. I shall argue that Arendt's philosophical grounding of the concept of plurality provides the concept of genocide with one of its strongest moral and existential underpinnings."¹⁹⁵

I think it is important to note that Benhabib does not exclude 'ascribed' groups from constituting plurality in the world, and nor I think does she suggest that Arendt does so. And while Arendt may sometimes harbour scepticism towards 'such group concepts'—the concerns of philosophers more than lawyers or (some) political theorists—it seems to me that she harbours no scepticism towards groups as such. Benhabib's own notion of 'transcending ascription' recalls the claim she made for Arendt's view on p.191 above, and again, it seems to me that it is un-Arendtian, as is the claim that Arendt provides a

¹⁹³ Seyla Benhabib, 2009. 'International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin.' *Constellations* 16(2). pp.331–350. Arendt is not described in this article as having an ontology of the group, nor an ontology of plurality, but Benhabib (p.345) argues that "the category of plurality is no less ontological in Arendt's thought than that of the group is in Lemkin's. That is to say, for both authors these categories represent some element and principle which is part of the order of being human in the universe."

¹⁹⁴ Benhabib, 2009. *International Law and Human Plurality*. pp.333 and 340.

¹⁹⁵ Benhabib, *Hannah Arendt and Raphael Lemkin*. p.334.

‘philosophical grounding’ for her conception of plurality. Benhabib is certainly right that Arendt attaches great importance to action, described here as human beings coming together for a joint purpose in the public sphere, but for Arendt this does not require ‘transcending ascription’. On the contrary, we have already seen Arendt’s deep commitment to culture and the preservation of the past, and I take her to be referring to such ‘ascriptive’ characteristics of groups when she talks about the reality of things only “within the historical-political and the sensate world”.¹⁹⁶ Arendt it seems to me does not “escape the ascriptivism and the culturalism of Lemkin’s concept of the group”; neither she nor Lemkin are ontologists and both ‘ascription’ and culture (as distinguished from any isms based upon them) “[belong] to the indisputable facts of [our lives]”.¹⁹⁷ Again, it seems to me one of the distinctive features of Arendt’s political thought that she holds on to human plurality, the distinctiveness and equality of each single human being as such, as well as our ‘ascriptive’ characteristics such as cultures and the groups into which we are born, at the same time. This can be seen, for example, when she speaks of territory in *Eichmann in Jerusalem* as relating:

“ ... to the space between individuals in a group whose members are bound to, and at the same time separated and protected from, each other by all kinds of relationships, based on a common language, religion, a common history, customs and laws.”¹⁹⁸

Similarly, she provides an account of our diversity and plurality in *The Life of the Mind* which is concerned not with ontology but with history and experience:

“Human plurality ... is divided into a great many units, and it is only as a member of such a unit, that is, of a community, that men are ready for action. The manifoldness of these communities is evinced in a great many different forms and shapes, each obeying different laws, having different habits and customs, and cherishing different memories of its past, i.e. a manifoldness of traditions ... [comprising] the rich diversity of human beings living together on the earth.”¹⁹⁹

Given Arendt’s acceptance of the facts of both groups and human plurality, as well as her approval of arguments in history concerning the natural sociability of

¹⁹⁶ *PP*. p.175. Benhabib omits this phrase in quoting Arendt on plurality. Benhabib, *Hannah Arendt and Raphael Lemkin*. p.342.

¹⁹⁷ Benhabib, *Hannah Arendt and Raphael Lemkin*. pp.343 and 349n67; *JW*. p.466.

¹⁹⁸ *EJ*. pp.262–263.

¹⁹⁹ *LM2*. pp.201–202.

human beings, is it possible to find any notion of a ‘plurality of groups’ or international political society in her writings? John Williams identifies a problem here, noting that Arendt’s conception of plurality as a ‘space in-between’ is explicated “almost entirely in the context of a territorially bordered political space”.²⁰⁰ Let us consider the ‘almost’ of which Williams speaks here. In *On Revolution*, Arendt says that the original meaning of the Roman term *lex* was ‘intimate connection’ or relationship, “namely something which connects two things or two partners whom external circumstances have brought together”:

“The people of Rome itself, the *populus Romanus*, owed its existence to ... a war-born partnership ... the Roman Republic, resting itself upon the perpetual alliance between patricians and plebeians, used the instrument of *leges* chiefly for treaties...”²⁰¹

Elsewhere, she describes *lex* as meaning ‘lasting tie’ which “very quickly came to mean ‘contract’, whether between private citizens or as a treaty between nations”; something that comes about not through command or force or the edicts of philosophers but through mutual agreement (what she calls in *The Human Condition* ‘the Power of Promise’).²⁰² Very significant here is the fact that the contract does not erase distinctions between those contracting, but creates “an in-between space between formerly hostile partners”.²⁰³ The proliferation of such treaties between nations Arendt refers to as having “woven a web around the earth” which has brought about something I think might justifiably be called an ‘international space in-between’, but is more often, and more justifiably and straightforwardly, called international society.²⁰⁴ We find her in *The Origins of Totalitarianism* referring to it as ‘the civilised world’ and linking it to something the character Scipio says in Cicero’s *De Re Publica*:

“If it is true that the link between totalitarian countries and the civilized world was broken through the monstrous crimes of totalitarian regimes, it is also true that this criminality was not due to simple aggressiveness, ruthlessness, warfare and treachery, but to a conscious break of that *consensus iuris* which, according to Cicero,

²⁰⁰ John Williams, 2005. ‘Hannah Arendt and the International Space In-Between?’. Lang and Williams (eds.). *Hannah Arendt and International Relations*. p.200.

²⁰¹ *OR*. pp.188–189.

²⁰² *PP*. pp.178–179; *HC*. pp.243–247.

²⁰³ *PP*. pp.179–180.

²⁰⁴ *OT*. p.384.

constitutes a ‘people’, and which, as international law, in modern times has constituted the civilized world insofar as it remains the foundation-stone of international relations even under the conditions of war. Both moral judgment and legal punishment presuppose this basic consent; the criminal can be judged justly only because he takes part in the *consensus iuris*”.²⁰⁵

We shall find that there are some issues with Arendt’s use of *consensus iuris* in this context in the final chapter; here, it suffices for us to observe that she can see an ‘international society’, a ‘civilised world’ that totalitarian regimes consciously broke in upon, even as she does not name it in terms of society. She refers also to “the spirit of unorganised solidarity” and “the silent acknowledgement of common interests” of “the comity of nations” or “international community”, but it is important to note that she speaks of “international crimes” in this context as well; she sees clearly that such solidarity, comity or community has—such common interests have—legal expression.²⁰⁶ Although I noted above that Arendt’s writings may sometimes suggest that she is a ‘realist’ in the international sphere (p.193), we can see now in more detail what her ‘realism’ involves: an understanding of the world as it actually is, i.e. a world in which international law exists, a world in which we may sensibly speak the moral language of just and unjust wars, and a world where it is possible to identify international crimes and now indeed crimes against humanity.

But what of Arendt’s notion of plurality in the international sphere? Is it possible to see it among nations or peoples in her writings? Williams speaks in his chapter of “the idea” of a space in-between as being important to “the Arendtian vision of an ideal politics”, but as I hope to have shown in this chapter so far, Arendt herself had no such idealistic visions; her political thought is firmly rooted in history and experience, which Williams construes as producing “a narrow definition of what politics is and can be.”²⁰⁷ He reads Arendt from within a tradition of political liberalism, which leads him to claim that “the space in-between does not possess an institutional form, indeed to try and institutionalise it in any but the loosest of ways is to demolish it”, but as we have already seen

²⁰⁵ OT. p.607.

²⁰⁶ OT. p.364; EJ. p.268.

²⁰⁷ Williams, *Hannah Arendt and the International Space In-Between?* pp.201 and 204.

(p.51), Arendt argued that modern liberal writers tend to ignore forms of government and lasting institutions, which she regards as indispensable in terms of maintaining the space in-between, and such writers often confuse such authority with the real demolisher: tyranny or totalitarian domination.²⁰⁸

Although Williams is certainly correct that Arendt's view of international politics is often bleak, I hope to have shown above that it is not entirely so, and that she did indeed recognise that authoritative institutions such as those identified by the pluralist English School have went into creating a plurality of groups in the international sphere: a civilized world, an international society, concerned with maintaining international peace and security.

2.5 Conclusions

2.5.1 *Enduring Traditions*

In the previous chapter, I asked whether it was necessary to have a philosophy of history to engage in critique and presented Devetak's argument that it is not. Through his contextualist investigations, Devetak recovered a way of being critical that was predicated instead on an engagement with the *studia humanitatis*, or what has become and is called today the humanities. In the first section of this chapter, I have sought to show that Arendt, albeit in her own unique way, is one who engages in a historical mode of critique and that she has important contributions to make in support of Devetak's arguments concerning dialectical philosophies produced during and after the enlightenment. Arendt argues that it was Hegel who for the first time produced a philosophy of history; a philosophy which was in sharp opposition to all previous metaphysics which had "looked for truth and the revelation of eternal Being everywhere except in the realm of human affairs" and, with its claim to 'reveal' Absolute Truth working itself out in a dialectical process in the realm of human affairs regardless of the judgments of actual human beings, had largely displaced political thinking and was designed to repudiate the authority of all traditions. As with Devetak and the humanist writers he recovers in his work, Arendt turns to the words and deeds of concrete actors, to persons, rather than historical processes or metaphysics to engage in critique and with the world, and as such, I

²⁰⁸ Williams, *Hannah Arendt and the International Space In-Between?* p.201.

think holds a better conception of politics and presents a good, if not the only, model for IP theorists in terms of how to engage in critique and how to do political theory.

Arendt lived through some very dark times indeed and this is clearly reflected in her writings. Grave and ostensibly categorical pronouncements along the lines of ‘the undeniable loss of tradition in the modern world’ and the ‘...definite end’ of ‘the tradition’ may be understandable if one tries—with great difficulty and very little success—to imagine what she and her contemporaries experienced. But I have sought to show in this chapter that, despite the unspeakable horrors of the last century, tradition as such has not been lost in the modern world, and in fact we can see this through a closer reading of Arendt’s own writings. I took from these writings and varied slightly Arendt’s excellent description of tradition as such: *tradition preserves the past by handing down from one generation to the next the testimonies of the ancestors*. We saw that testimonies such as Virgil’s had not been lost or forgotten in the modern world when they went into the American founding, as well as the authority associated with them, and I argued that we *need* the *help* of such authoritative testimonies in exercising judgments in the world. Reinforced by her own experiences, Arendt said in the 1950s that such “authority has vanished from the modern world”, and still in the late 1960s, in her essay on Benjamin, it seemed that she thought the only hope of preserving the authoritative testimonies of the past lay with the exceedingly few poets among us.²⁰⁹ But I hope to have shown, through my interpretation of what she says at the end of the first volume of *The Life of the Mind*, that by the end of her life Arendt had come to harbour some hope that others may be willing and able to preserve the past—for the sake of the present and future—as well. I intend my own project, such as it is, to be a contribution to this much larger one.

In the previous chapter, I hope already to have shown to the reader that ‘the great tradition of political and/or philosophic thought’, or whatever else we may wish to call it, has not come to an end in the modern age, given the sheer extent to which scholars are still engaging with it in their own work, as well as teaching it to their students, but in the second sub-section of the present chapter, I

²⁰⁹ *BPF*. p.91.

questioned Arendt's own claims about the '...definite end' of 'the tradition', first by considering what she had to say (explicitly or otherwise) about Cicero in different versions of her story over time. When she began writing on this matter (as evidenced in her posthumously published writings), Cicero was clearly on Arendt's mind, but as an 'exception' to the tradition. This 'exception' appears to have been made approvingly on Arendt's part since she agreed with him about our natural sociability and his championing of the practical life of the citizen over the theoretical life of the philosopher. But in the 'official' versions of her story about the end of the tradition that I considered, *Tradition and the Modern Age* and *What is Authority?*—with (or perhaps because of) some difficulties she found in Cicero's 'Roman' handling of Greek philosophy—his name does not appear at all.²¹⁰ Whatever Arendt's own reasons for removing Cicero's name from her stories about the end of the tradition, Hegel appears in them for her to be playing a key role in terms of ending it, being the first who designed to 'repudiate the authority of all traditions' with his philosophy of history, but quite apart from his influence upon later thinkers and actors, I hope to have shown in this sub-section that 'the tradition'—perhaps usefully understood as two traditions, the philosophical and the political traditions of political thought—in fact endures, and indeed Arendt's writings themselves stand comfortably in it. Subsequent chapters will show some of Cicero's place in 'the tradition'.

2.5.2 Persons and Virtues of the Past, Present and Future

In the second section of this chapter, I set out through Arendt's writings an understanding of the Latin term *persona* which may shed some light for the reader on Devetak's use of it as it appeared in the previous chapter. Coming originally from the theatre, *persona* signifies the various 'roles' or 'masks' that we unavoidably take on as ethical, social, and political beings, and as Arendt says, there is a "profound meaningfulness" to the term, which remains of fundamental importance today in our discussions of a great variety of different

²¹⁰ This sentence needs qualified. Cicero's name appears twice in the main body of the text of *What is Authority?*, but neither time is it in connection with the end of the tradition. It appears twice in the endnotes to *What is Authority?*: once mentioned as continuing the tradition and once mentioned in relation to Machiavelli's careful avoidance of Cicero's name in his own writings. Cicero's name is not mentioned at all in *Tradition and the Modern Age*. BPF. pp.121, 139 and 287.

legal, political, and philosophical matters. Arendt turned to the term in her acceptance speech for the Sonning prize in trying to explain to her audience about those “innate psychic qualities” that, while not necessarily forming her final judgments, went into her own lack of ambition to be a public figure, and she spoke of the award as a piece of “good luck” for which she was fully prepared to don her professional *persona* in gratefully accepting. In the next chapter, we shall consider Cicero’s own use of the term *persona* in his writings, from which it seems to me at least some of what Arendt had said in her acceptance speech was inspired.

Behind the various *personae* that the great play of the world offers are human beings, “men [and women] of flesh and blood, like you and me” who need a public, worldly space in which we can be seen and heard; a space, moreover, in which we can be held personally responsible for our actions to the wider society and body politic of which we are a part and to which we owe that worldly space where we can be seen and heard in the first place. These claims of Arendt’s seem right to me, as do her claims that courts of law both are of fundamental importance in terms of ensuring we meet these personal responsibilities and presuppose that we are “capable of telling right from wrong even when all [we] have to guide [us] is [our] own judgment”. But I hope to have shown throughout this chapter that exercising our own judgments in the world is not without help. Arendt not only pointed her students towards exemplary figures who acted morally even under the terrifying conditions of totalitarian domination, but also to great authors of the past such as Plato and Cicero, in whose writings we find much said about the virtues: qualities which Arendt speaks of in the present tense as being the result of some training or teaching. And it was Cicero especially to whom Arendt drew our attention in teaching us about the Roman sense of *humanitas*; a sense which involves refusing to be coerced by any absolutes emerging from any specialist fields of study. While it would be way beyond the scope of any PhD thesis to give an adequate account of Cicero’s development of the term *humanitas*, we shall nevertheless consider it in some more detail in the next chapter, through some of his writings about the *studia humanitatis*, and we shall also consider what he has to say in the *De Officiis* about the four primary virtues.

I also sought in the second section of this chapter to provide more content to these virtues through a consideration of Arendt's writings on statespersons. We saw that she associated courage with greatness, that she called moderation and insight 'the two highest virtues of the statesman', and she also called insight 'the one outstanding virtue of the statesman', distinguishing it sharply from the kind of wisdom normally associated with philosophers. Insight, on Arendt's telling, marks out the ability of a person to understand the greatest possible number and variety of citizens' opinions *and* to be able to communicate between them so that the commonness of this world becomes apparent; a person who is significantly concerned with 'what is good for men' as distinguished from 'the good' and through whose words and deeds show that they qualify for leadership. We shall be considering all these virtues and more in some detail as they are set out in Cicero's writings in subsequent chapters, but here it is sufficient to note that Arendt recognises the necessity of the leadership of such persons until such times as all citizens—perhaps through what Dallmayr called "a large-scale pedagogical effort"—show the same abilities in understanding. In the meantime, it is important to secure conditions in which people are able to develop such abilities in understanding their fellow-citizens, and doing so involves what Arendt would have called 'that aspect of politics that deals with the institutions and not the citizen.'

2.5.3 This Tradition of Politics

We saw in the first section of this chapter that Arendt spoke of 'this tradition' of the Romans which is a tradition of politics, and that she described this tradition in terms of 'the deeds of the ancestors' held as (good or bad) examples, authoritative models and 'the moral political standard as such'. In the previous chapter, I called this the civic republican tradition, and in the final section of this chapter, I sought to show some of the extent to which Arendt's writings are informed by it. The first sub-section questioned how far we can say correctly that Arendt offers us a 'new' republicanism by highlighting her approval of the traditional distinction between three basic forms of government, the evidence in her writings that she supported a non-basic, mixed form of government as the best practicable in terms of maintaining the *res publica*, and various similarities between her conceptions of power, authority and freedom as compared with the Romans. We saw that public freedom for Arendt requires authority in one form

or another and I sought to show the necessary relation of authority and freedom that is a hallmark of the civic republican tradition in her understanding of the various councils that were formed during the revolutions of the nineteenth and twentieth centuries, as well as in the American founding itself. Arendt's civic republican perspective, while having much to contribute to IPT in relation to exercising judgments in the world, it seems to me is significantly informed by Cicero's, whose writings I think provide a yet more copious account than Arendt's which (although by no means exhausting it) I will set out for the reader in the final chapter of this project.

Following an account of her civic republicanism, I sought to highlight for the reader several problems with Arendt's understanding of 'society' and her theoretical distinction between 'the social' and 'the political', beginning with her problematic account of the Latin term *societas* in *The Human Condition* and its incongruity with some of her posthumously published work written around the same time or shortly before. In addition, I highlighted her support of Kant's arguments about our natural sociability in her *Lectures on Kant's Political Philosophy*, the different versions of which she delivered in 1964 and 1970, i.e. two or six years before she admitted at an academic conference that she was doubtful of her own distinction between 'the social' and 'the political'.²¹¹ One of Arendt's concerns with 'society' as she understood it was that it was 'de-pluralising' in the manner of the ancient Athenian patriarch in the private sphere, who ruled the household as though it had "one opinion and one interest" and removed possibilities both for acting and for deciding things through words and persuasion rather than force or violence (whether on the back of intimacy and compassion or not), but as we shall see in subsequent chapters—and as Arendt herself understood as well—this is very far indeed from the Roman understanding of *societas*, which by definition is plural, denoting a partnership.

In the final sub-section of this chapter, I considered Arendt's argument that the catastrophes through which she lived have made us aware of a right to have rights and I sought to show the reader that her argument was not a philosophical one; it was an urgently political one. Human rights for Arendt are guaranteed by citizenship rather than 'Man', nature, the *cosmos*, or ontology, even as we may

²¹¹ *LKPP*. p.vii; *TWB*. p.455.

see today, with Waldron, “a dense thicket of human rights law”, with Dallmayr “embryonic forms of a global community”, and support Walzer’s foreign policy proposal to nurture this thicket and these embryonic forms. Arendt may not have had much to say about how they are or should be nurtured, but she certainly had a concern for the human rights of actual human beings who turned out to be rightless when no authority was left to guarantee those rights. The most immediate concern, a *political* concern, is for human beings ‘to have rights’, and history shows us that they are guaranteed through citizenship. I believe Arendt would have shared Waldron’s wariness about philosophers’ “thunderous imposition of positive law from on high”, and supported Walzer’s first foreign policy proposal to complete the state system so that every human being’s security and ‘right to have rights’ is met. What Walzer has said about “a conception of rights that transcends all immediate considerations” I think may well apply to any given conception of human rights: “it arises out of our common history; it holds the key to our common future”, but it is the mark of a political theorist, I think, to be concerned with the present too (as Walzer puts it, ‘justice-right-now’), and of course Arendt herself showed great concern for what is ‘between past and future’.²¹² And for Arendt, it is of fundamental importance that ‘ascriptive’ characteristics such as histories, cultures and the groups into which we are born are come to be understood by all to be very often cherished aspects of our lives which, cherished or otherwise, unavoidably feed into and shape our politics. And we saw that she understood part of that shaping to involve the emergence of international political society, a ‘plurality of groups’ formed through mutual agreements, “an in-between space between formerly hostile partners” which has been given legal expression such that we are able to identify international crimes. This speaks to Walzer’s second and third foreign policy proposals that we engage in a “slow process of political alliance among states to create wider and wider zones of peace” and “the improvement of existing international institutions”. Arendt’s own understanding of international political society, as we have seen and as we shall see again in subsequent chapters, is informed by Cicero’s.

²¹² Walzer, *Just and Unjust Wars*. p.259; Walzer, *A Foreign Policy for the Left*. p.101; BPF.

2.5.4 Concluding Remarks

Again, it will probably help the reader's understanding and certainly help the progression of my argument on to those chapters if I provide a summary of my conclusions to the present one, and I will do so firstly by providing a brief answer to the chapter's research questions, and secondly according to the qualities listed in its introduction.

What can some of Hannah Arendt's theoretical writings on politics contribute to the arguments addressed in the previous chapter? They can provide a deep and rich understanding of what the term 'tradition' means; through her deep engagement with history, they can provide a critique of philosophies of history; they can provide a unique perspective on 'the virtues of the past'; and they can provide a rich account of the civic republican tradition.

How are Hannah Arendt's theoretical writings on politics related to Cicero's? Arendt at certain points appears displeased with how Cicero handled Greek philosophy in his own writings, but due to her self-confessed lack of communication, it seems to me to be impossible to arrive at a secure judgment as to what, if anything, in Cicero's theoretical writings on politics she disagrees with, disjoins from, or does not believe in. That said, like Cicero's, Arendt's writings stand comfortably in 'the tradition', and furthermore, both stand comfortably in a tradition within 'the tradition': the civic republican tradition, or the political tradition of political thought. Like Cicero, Arendt recognises the indispensability of authority as that quality which mediates between power and freedom in terms of maintaining the *res publica*, maintaining the plurality of persons in dynamic association. And like Cicero, Arendt recognises the importance of virtue in public life, the fact that deciding things through speech and persuasion rather than force and violence is a fundamentally meaningful aspect of what we call politics, and that human beings are naturally sociable.

Let us now go through the qualities listed on the left-hand side of the table as set out in the introduction to this chapter. With a slight variation of Arendt's excellent description—*tradition preserves the past by handing down from one generation to the next the testimonies of the ancestors*—I argue that tradition as such has not been lost in the modern world, as evidenced, for example, in the

broad tradition of philosophy and the various philosophical traditions within it such as those considered in the previous chapter, or in the tradition of politics Arendt saw resumed in the American founding. Additionally, I argue that ‘the great tradition of political and/or philosophic thought’, even if it cannot be defined, nevertheless endures, again as evidenced in the literature reviewed in the previous chapter, and as evidenced in Arendt’s own writings as well. As Arendt recognised, tradition is closely associated with authority; the testimonies handed down from one generation to the next guide and teach us, they *help* us in exercising judgments in the world, and my intention across the next two chapters is to provide some of Cicero’s.

Arendt recognised the virtues as being the result of some training or teaching, as requiring guidance in their development, and although she did not have much to say about them herself and so might not have much to contribute to the discussions about virtue ethics reviewed in the previous chapter (‘writing a *Moralia* was not her mode’), I argue that she nevertheless did acknowledge and appreciate their existence in human beings *still* in the twentieth century, as evidenced in her appraisals of Churchill and Kennedy, that she has a unique perspective on ‘the virtues of the past’, and that we do well in consulting ‘the great authors of the past’ who wrote about them, just like Arendt did. We shall consider in subsequent chapters what Cicero says about the virtues in his theoretical writings on politics.

While I began addressing the civic republican tradition in the last chapter, it is in the present chapter that I sought to give it more shape through Arendt’s writings, and in terms of republican institutions, more shape to the notion within this tradition of a non-basic, mixed form of government. I argue that, although we require republican institutions, and a mixed form of government is probably the best practicable for maintaining a public space, public freedom, the *res publica*, in existence, the actual form an actual government takes is not for political theorists or philosophers to decide; that is up to concrete populations. This argument will be developed in subsequent chapters. But I also argue that a significant part of what the civic republican tradition provides, as seen in Arendt’s writings and as we shall see in subsequent chapters through Cicero’s, are frameworks and intimations as regards republican institutions which help us in exercising judgments in the world. Walzer puts the point very admirably

indeed: “... we have to make judgments. I see no alternative to this ‘have to’, no way of deducing a decision from a theory. Theories are frameworks and intimations, not decision machines.”²¹³

We have seen that, for Arendt, who in turn was relying on the authority of Aristotle, deciding things through speech and persuasion rather than force or violence is a fundamentally meaningful part of what we call politics. Speech that aims to persuade engages our practical judgments—or to use Norval’s (and Chamber’s) terms as set out in the previous chapter: it promotes the skills required of democratic citizens through “face to face encounters of everyday talk”. I argue that this is talk that appeals, or at least should appeal, to *sensus communis*, in Gadamer’s words “a sense [in citizens] that founds community or communality”. Dallmayr I think said rightly that democracies exhibit authority and that such authority must be based on the consent of citizens, and I argue for an understanding of authority which is more in line with the Roman sense of *auctoritas*: a *personal* quality, albeit intangible and inalienable, which marks the ability of persons to uphold themselves in political deliberations, inspiring confidence in their fellow citizens, manifest in words and deeds, and the use of which takes the form of advice or guidance and never command, and never involves what Dallmayr called citizens’ “domination or bullying”, which are uses of force, not authority. *Auctoritas* is translated well and variously as ‘standing’, ‘influence’ and ‘reputation’. All of this speaks directly to the three final qualities I listed in the introduction to this chapter: exercising judgments (including about persons) in the world, discretion in exercising judgments in the world, and trust in the authority of persons in political societies. We saw in Arendt’s understanding of the council system that it was those who *inspired* by their *virtues* in *action* enough confidence in their fellows to be elected to the next higher councils; those who had received a special *trust*, with all involved freely exercising their own judgments, and these activities are by no means restricted to the persons involved in the formations of the councils during the revolutions of the last two centuries. They are a fundamental aspect of the civic republican tradition, Cicero’s writings on which I set out in more detail in the final chapter.

²¹³ Michael Walzer, 1997. ‘A Response’. *Ethics and International Affairs* 11(1). pp.99–104.

Chapter 3 Cicero on the Conduct of Persons

3.1 Introduction

We saw in the first chapter that IPT is currently dominated by two rules-based approaches to ethics, usually referred to as deontology and consequentialism, and that ‘virtue ethics’ was a practical and person-centred approach more focused on moral education and the exercising of moral judgments. I sought to show that what was missing from impersonal ethical approaches was a consideration of the substantive content of the moral principles in public life, and that such a consideration is what would be required in avoiding, for example, what Benhabib called ‘jurispathic processes’ in her theory of democratic iterations. Scholars such as Dallmayr, Brown, Norval and Devetak have all, in different ways, turned to virtue ethics in this regard and one of my purposes in the present chapter is to provide an account—by no means exhaustive—of Cicero’s ‘virtue ethics’ as they are to be found (mainly) in the *De Officiis*, because I regard it as an excellent framework for those who agree with me that politics should be conceived of as (partly) personal.

In the first section of this chapter, we consider some starting points from which I think we may best understand Cicero’s ethical project, within which sit his theoretical writings on politics. The first sub-section picks up on the theme of ‘society’ that has been developed across previous chapters by considering his handling in the *De Finibus* of the philosophical arguments being made in his time that human beings are naturally sociable. This leads us into the second sub-section, in which I provide an account of what Cicero means by *officia* in society, ‘duties’ or ‘appropriate actions’, as he sets them out in the *De Officiis*. In the third sub-section, we turn to one of Cicero’s speeches, the *Pro Archia*, in considering the great esteem in which he held education, and more specifically an education in the literary arts (or what became called in the Renaissance the *studia humanitatis*), in terms of both the private and public advantages they bestow.

Having set out these ‘springs of initiative’, we move on in the second section to a consideration of each of the four primary virtues, again mainly from the account Cicero gives of them in the *De Officiis*. The first sub-section considers

what he has to say about the virtue of justice, which he divides into two parts, ‘justice simply’ (*iustitia*) and beneficence (*beneficentia*), although he moves on later in the text to speak of both parts together as a single category of virtue, justice, which he regards as the supreme *social* virtue: that which builds up *societas*. Next, we consider the virtues of wisdom (*sapientia*) and prudence (*prudentia*) which, although described as within the ‘first’ part of ‘goodness’ or ‘moral rightness’ (*honestas*), receives relatively brief treatment in comparison with justice in this text, whose subject-matter is the *conduct* of persons in society, *officia*. The third section looks at what Cicero says in the *De Officiis* concerning greatness of spirit (*magnitudo animi*), a virtue required of anyone holding public office, but on its own runs a high risk of sliding into a desire for pre-eminence and glory leading to the commission of deeds which are to the detriment of *societas*, unjust deeds. The final sub-section considers his writings on the virtue of *decorum*. We saw this virtue described in previous chapters as temperance or moderation; these are both included within the virtue of *decorum* which, following the unorthodox Stoicism of Panaetius, is a term Cicero brings over from the sphere of aesthetics and puts to ethical use. It is from within his account of *decorum* that Cicero provides what is usually called in the literature the four-*personae* theory, and it is in this sub-section that we consider its key features.

Having provided an account of the four primary virtues as they appear (mainly) in the *De Officiis*, I move on in the final section of the chapter to consider how Cicero sees them manifest in political societies. The first sub-section considers virtuous conduct within the *societas* that is the *res publica*. After providing account of why Cicero says that it is the *res publica* which stands at the centre of the network of social relations in which we all stand, I move on to a consideration of the juridical background of the term *societas*, which denotes a partnership: an agreement between persons to contribute their resources to a shared endeavour. It is within this juridical context that partners (persons) are expected to be behaving fairly towards one another and subjected to legal action when they do not. But since the law on its own cannot guarantee that we act fairly towards one another and we must assume legal and moral responsibilities for ourselves as persons, I provide an account in this sub-section of virtuous conduct in political society based upon the civic virtues as set out in

the previous section. The final sub-section moves on to consider virtuous conduct in international political society. It begins with a consideration of Cicero's account in the *De Officiis* of different degrees of *societas*, before going on to consider the sections in the *De Officiis* especially relevant to international political society, those that are concerned with the *officia* which are owed to non-citizens (of Rome) even in battle and which were developed by subsequent thinkers and writers in what we have come to call the just war tradition. The section concludes with a brief discussion of some of the virtues of the ideal statesperson in situations of war, in preparation for a more detailed discussion of this type of person in the next chapter.

The question to which I am responding in this chapter is: *what can Cicero's theoretical writings concerning the conduct of persons contribute to arguments in IPT related to exercising judgments in the world?* In summary, my response to this question is that Cicero's theoretical writings concerning the conduct of persons contribute towards a deeper understanding of both Arendt's arguments about the virtues and about our natural sociability, as well as the arguments about the same as reviewed in the first chapter, and it also contributes towards a deeper understanding of the notion of just war, as addressed through the just war scholarship of that chapter; as Atkins says, Cicero's writings are an important basis upon which just war scholarship has always rested. But apart from this, and as mentioned above, my purpose in the present chapter is also to provide, in broad outline (given the sheer fecundity of his writings), Cicero's framework of civic virtues and some of the starting points from which they spring, as an excellent resource for scholars in IPT, whether 'communitarian' or 'cosmopolitan', whether 'civic republican' or 'liberal', who hold a conception of politics as (partly) personal.

3.2 Springs of Initiative

3.2.1 Cicero on Natural Sociability

We saw in the first chapter that many of the philosophers and political theorists discussed had some conception of society in their arguments and we saw in the previous chapter that, despite her idiosyncratic and essentially modern conception of 'the social', Arendt's political thought, in the end, has a close

affinity with the Latin term *societas*, which she described as meaning (or at least, as having meant to the Romans) ‘a cooperative community that fostered relationships between partners’. We also saw that she supported and indeed relied upon Kant’s argument in his *Critique of Judgment* that human beings are naturally sociable, and that Kant was relying in turn upon the authority of the Stoics and upon Cicero in arriving at his own theories. In this sub-section, we consider some of the testimonies of some of the authorities upon which Kant, and by extension Arendt, rely as regards our natural sociability, and which allow for a different conception of society than that held from certain modern liberal perspectives.

When Arendt admitted in *The Human Condition* that Aristotle was not unconcerned with “the fact that man cannot live outside the company of men”, said that he saw this fact as “a limitation imposed upon us by the needs of biological life”, and asserted it was “something human life had in common with animal life, and for this reason alone it could not be fundamentally human”, she avoided at this point in her argument any consideration of his own that “man is born for citizenship (*to politikon*)”, that “friendly relations with one’s neighbours ... seem to have proceeded from a man’s relations to himself”, and that “there is a very great pleasure in helping doing favours to friends and strangers and associates”, and it is considerations of his such as these that were studied, varied and continued by philosophers in the Peripatetic and Stoic traditions, as well as in the philosophy of Antiochus of Ascalon (who we have seen had syncretised the philosophies of the Academics, Peripatetics and Stoics). In all of these philosophical traditions we find arguments that human beings are naturally sociable.¹ We saw Arendt leap over these traditions, touching down upon Seneca but only to leap once again on to Aquinas, in her efforts to trace the loss of ‘the original Greek understanding of politics’ and to distinguish ‘the social’ from ‘the political’, and in this section, we address some of the arguments concerning our natural sociability that she seems to have overlooked in her first leap, but which she came to rely upon later through Kant.

¹ *HC*. pp.22–24; Aristotle, *Nicomachean Ethics*. 1.7, 1097b11; 9.4, 1166a4; Aristotle, *Politics*. 2.5, 1263a40.

The Peripatetic account of *oikeiotēs*, ‘friendship’ or ‘natural adaptedness’, given by Aristotle’s student Theophrastus in a continuation and development of his teacher’s ethics, seems to have been related in some way to the theories of *oikeiōsis* developed by the Stoics and by Antiochus.² Classicists tell us that the latter term is difficult to translate into English; it has been translated variously as ‘affiliation’, ‘self-extension or ‘familiarisation’’, ‘appropriation’ (in contradistinction to alienation), and ‘identifying with’, and Gisela Striker offers us a helpful transliteration: *oikeiōsis* may be conveniently labelled as “recognition and appreciation of something as belonging to one”, as ‘one’s own’.³ Both the Stoics and Antiochus make use of what is often called the ‘cradle argument’: by observing neonatal behaviour, they argue, we can see that by nature the first impulse of human beings is *oikeiōsis*, a recognition and appreciation of one’s own constitution. As Brad Inwood explains:

“...‘constitution’ seems to refer to the person, the compound of body and soul which constitutes the identifiable individual. It is most natural to think of it as the Stoic counterpart of what we would call the ‘self’. One’s constitution has both general and individual features, but is still one’s own self, the self to whose preservation one is committed from birth on ... While it might be odd to say that the child and [that child who has become an] adult have different selves, it is relatively straightforward to say that they are differently constituted, that is, have different constitutions. It is the notion of the evolving constitution which enables the Stoics to develop the claim that one’s primal affiliation [*oikeiōsis*] to oneself can be both stable and dynamic; it is always directed to one’s constitution, but that constitution itself develops.”⁴

There are different phases in the Stoic account of ethical development. The first involves this natural impulse to preserve one’s own constitution, leading one to select things which are in accordance with nature (e.g. a mother’s milk) and

² Brad Inwood and Pierluigi Donini, 1999. ‘Stoic Ethics’. Keimpe Algra, Jonathan Barnes, Jaap Mansfeld and Malcolm Schofield (eds.), 1999. *The Cambridge History of Hellenistic Philosophy*. Cambridge: Cambridge University Press. p.677; T.H. Irwin, 2012. ‘Antiochus, Aristotle and the Stoics on degrees of happiness’. David Sedley (ed.), 2012. *The Philosophy of Antiochus*. Cambridge: Cambridge University Press. Ch.7; Georgia Tsouni, 2019. *Antiochus and Peripatetic Ethics*. Cambridge: Cambridge University Press.

³ Inwood and Donini, *Stoic Ethics*. p.677; Christopher Gill, 2016. ‘Antiochus’ theory of *oikeiōsis*’. Julia Annas and Gábor Betegh (eds.), 2016. *Cicero’s De Finibus: Philosophical Approaches*. Cambridge: Cambridge University Press. Ch.9; Malcolm Schofield, 1995. ‘Two Stoic Approaches to Justice’. André Laks and Malcolm Schofield (eds.), 1995. *Justice and Generosity: Studies in Hellenistic Social and Political Philosophy. Proceedings of the Sixth Symposium Hellenisticum*. Cambridge: Cambridge University Press. p.196.

⁴ Inwood and Donini, *Stoic Ethics*. pp.679–680.

reject things which are not (e.g. pain). But as sharers in reason, these selections of what is appropriate and rejections of what is inappropriate become more steady as one's constitution evolves and as one develops one's reason, and the culmination of this development is seen, according to the Stoics, in the perfect virtue or wisdom of the Stoic sage, 'the wise man', who has come to regard what we select or reject from nature not as good or bad things, but as 'preferred' or 'dispreferred' 'indifferents', since the only good thing according to the Stoics is virtue and the only bad thing is vice, and this the wise man has come to see for himself.⁵ But an earlier phase in the Stoic account of ethical development more relevant to my argument here involves a natural impulse to benefit others of one's kind, as exemplified in a parent's love for their child. As the Stoic character Cato puts it in Book III of Cicero's *De Finibus*:

“Now the Stoics consider it important to realise that parents' love [*amentur*] for their children arises naturally. From this starting-point we trace the development of all human society ... our impulse to love ... is ... the source of the mutual and natural sympathy between humans, so that the very fact of being human requires that no human be considered a stranger to any other ... we are born to join together and associate with one another and form natural communities.”⁶

While according to the Stoics it is only with the *culmination* of the development of one's reason that one comes to have a *rational* concern for human beings as such in a *cosmopolis*, we can see here that they regard the social impulse, as can be seen in a parent's love for their child, as arising naturally—what is often called in the literature social *oikeiōsis*. Contrary to what Arendt says in *The Human Condition*, 'the social realm' was *not* 'unknown to the ancients' (p.189). As Malcolm Schofield puts it, the Stoics viewed human beings as by nature “the most variously and ambitiously sociable of all animals”, even as we are not—or do not (or at least do not yet) all become—Stoic sages in a *cosmopolis*, forming

⁵ Hence the (in)famous claim of the Stoics that the wise man would be happy on the rack, torture being only a 'dispreferred indifferent'. Although Kant, just like Plato, strongly objected to rhetoric in public affairs, he had mastered it nonetheless, and I think one example of this may now be seen in the first chapter of my project (p.90), when we saw him label the popular philosophers as 'indifferentists', 'feigning indifference' to the philosophical problems that absorbed him. Kant well knew that he was 'the Stoic' of his own time, concerned with far loftier things than what they had called 'indifferents'; his borrowing of the Stoics' jargon to use against the popular philosophers seems to me to have been a very deliberate (and quite ingenious) rhetorical manoeuvre.

⁶ *Fin.* 3.62–65. Cf. M.R. Wright, 1995. 'Cicero on Self-Love and Love of Humanity in *De Finibus* 3'. Powell (ed.), *Cicero the Philosopher*. Ch.6.

various other kinds of associations instead (or at least in the meantime).⁷ Although Arendt's challenge to the "passion of compassion" in modern politics was directed specifically against Rousseau's writings, since she saw this passion which was inspired by his work as abolishing 'the distance, the in-between' in all human discourse, we can see here that this does not apply to the Stoics; the natural impulse of a parent's love for their child which they trace out to the development of all human society results in a mutual and natural sympathy *between* humans as they join—not melt—together and associate.⁸ This seems to me to be something like the kind of *societas* between humans of which Arendt might have approved.

Whereas the Stoics held virtue to be the only good and called the things we select and reject from nature 'indifferents', Antiochus objected to their new-fangled terminology, argued that they actually agreed in substance with the Academics and Peripatetics, and claimed that although virtue was sufficient for a happy life (*eudaimonia*), the happiest or completely happy life also required bodily goods such as health and external goods such as friendship or prosperity (the latter three of which, again, the Stoics called—with qualifications, to be sure—'preferred indifferents').⁹ Antiochus provided what Schofield has called "a largely neglected theory of virtue" which is "a subtle contribution to ethics in an Aristotelian mode."¹⁰ Like the Peripatetics and Stoics, Antiochus also argued that human beings are naturally sociable, and like the Stoics but not the Peripatetics, argued that this natural sociability, stemming from our *oikeiōsis*, spread gradually outwards, still including but going beyond our fellow citizens in the *polis* to human beings as such. Our main account of Antiochus's ethical theory is provided by the character Piso in Book V of Cicero's *De Finibus*. Schofield provides us with a good account of what is distinctive about Cicero's account of

⁷ Malcolm Schofield, 1999a. 'Social and political thought'. Algra et al. *The Cambridge History of Hellenistic Philosophy*. p.761.

⁸ OR. p.79.

⁹ The threefold division between goods of the mind, goods of the body, and external goods, was regularly associated at this time with Aristotle's writings. Christopher Gill, 2006. *The Structured Self in Hellenistic and Roman Thought*. Oxford: Oxford University Press. p.168.

¹⁰ Malcolm Schofield, 2012. 'Antiochus on social virtue'. *The Philosophy of Antiochus*. Cambridge: Cambridge University Press. p.176.

Antiochus's theory as set out through the voice of Piso, as well as of how Antiochus's theory differs from that of the Stoics:

“The whole account of the virtues and the good offered by Piso focuses on humans as social animals, to a quite remarkable degree, without parallel in other Hellenistic presentations of ethics ... [The] account of human sociability and of the solidarity of the human race itself, as what underpins the virtue of justice, is clearly indebted to Stoic theory, and particularly the Stoic notion of social *oikeiōsis* ... The most un-Stoic element in Piso's entire account is the implication that justice is fundamentally a matter of what Hume would have called sympathy ... The Stoics took justice to be purely a matter of reason ... Antiochus would evidently have disagreed: not that justice does not crucially involve rationality, but that at bottom and most significantly it is the most notable and important form that human sympathy takes ... What Piso stresses (an idea not salient in most Stoic texts on the virtues) is that *all* the virtues have a social orientation, fundamentally because they are human virtues, and as [Piso argues,] humans are innately social and civic creatures.”¹¹

In the *De Finibus* (written in 45 BCE), the Stoic account given by the character Cato in Book III, as well as its criticism given by the character Cicero from an Antiochean perspective in Book IV, are set by the author Cicero as a conversation that took place between the two senators in a Roman country house in 52 BCE. Book V, on the other hand, where we find both the Antiochean account given by Piso and its criticism by the character Cicero, is set by the author Cicero at an earlier point in time, on the grounds of the (by then defunct) Academy in Athens in 79 BCE.¹² As set out in my introduction to this project, Cicero employs a sceptical method in his theoretical writings, and his writing of the *De Finibus* is no exception. Through careful attention to literary settings, as well as in writing prefaces to separate books within a text as he deems appropriate, Cicero manages both to include and to remove his voice in his theoretical writings in interesting ways. As regards his own position on the different ethical theories as set out in the *De Finibus*, I think Julia Annas sums the matter up wonderfully:

“...he shows that for him no theory is left standing as the clearly preferable one. Attractive as is a synthesis like that of Antiochus, we are, in Cicero's view, back where we always were: trying to think

¹¹ Schofield, *Antiochus on social virtue*. pp.176–181. Emphasis in original.

¹² Malcolm Schofield, 2013. 'Writing philosophy'. Catherine Steel (ed.), 2013. *The Cambridge Companion to Cicero*. Cambridge: Cambridge University Press. p.78.

through for ourselves the arguments on each side and come to our own understanding of which is the best way to live ... This message, rather than any positive doctrine, is what Cicero hopes to leave with his readers, and, whatever our historical interest in the theories he presents, it is a message that is still, and will always be, timely in ethical philosophy.”¹³

But I think Christopher Gill is right when he says that “the fact that Cicero repeatedly presents [the Stoic and Antiochean] theories as the most ‘persuasive’ or the ones to be given greatest weight, and that he refrains from a decisive rejection of either of them [as he rejects the Epicurean ethical theory across Books I and II], is surely significant”, and it is with the Stoic and Antiochean theories in mind that we can perhaps best understand the account of our natural sociability that is to be found in the advice Cicero gives to his son in the *De Officiis*:

“From the beginning nature has assigned to every type of creature the tendency to preserve itself, its life and body, and to reject anything that seems likely to harm them, seeking and procuring everything necessary for life, such as nourishment, shelter and so on. Common also to all animals is the impulse to unite for the purpose of procreation, and a certain care for those that are born. The great difference between man and beast, however, is this: the latter adapts itself only in responding to the senses, and only to something that is present and at hand, scarcely aware of the past and future. Man, however, is a sharer in reason; this enables him to perceive consequences, to comprehend the causes of things, their precursors and antecedents, so to speak; to compare similarities and to link and combine future with present events; and by seeing with ease the whole course of life to prepare whatever is necessary for living it ... The same nature, by the power of reason, brings together one man with another for the fellowship both of common speech and of life, creating above all a particular love [*amorem*] for his offspring. It drives him to desire that men should meet together and congregate, and that he should join them himself; and for the same reason to devote himself to providing whatever may contribute to the comfort and sustenance not only of himself, but also of his wife, his children, and others whom he holds dear and ought to protect. Furthermore, such concern also arouses men’s spirits, rendering them greater for achieving whatever they attempt.”^{14*}

¹³ *Fin.* p.xxvii.

¹⁴ Gill, *Antiochus’ theory of oikeiōsis*; *Off.* 1.11–12; Cf. *Acad.* 2.134, *Tusc.* 5.32–33, *Tusc.* 5.75–76, *Off.* 3.33.

3.2.2 Cicero on Officia

Cicero wrote the *De Officiis* between October and December of 44 BCE, before he was killed by Marcus Antonius's death squad in December 43 after having delivered the *Philippics*, the set of fourteen speeches against Antonius which he had begun articulating concurrently with the *De Officiis* in defence of the *res publica*. Unlike the theoretical works he had written before it, the *De Officiis* is not written in the form of a dialogue, but instead as a letter of advice to his son Marcus who was studying in Athens at the time—although, as ever, Cicero draws in his writing of this text “from [the philosophers'] fountains when and as it seems best, using [his] own judgment and discretion”.¹⁵ The text is made up of three books, the first setting out what is honourable or ‘morally right’ or ‘good’ (*honestum*), the second what is beneficial or useful or expedient (*utile*), with the third given over to a consideration of cases where what is *honestum* and what is *utile* appear to be in conflict. Cicero above all follows the Stoics in the text in holding that whatever is *honestum* is *utile* and whatever is *utile* is *honestum*, with any conflict between the two being only apparent. This is not to say that he identifies *honestum* and *utile* but, as A.A. Long puts it in relation to a key passage in the text, “he is saying that no individual or society can derive genuine benefit from actions that are not grounded in morality; the moral is an essential attribute of the useful.”¹⁶ The *De Officiis* is a work of practical ethics (not applied ethics, which is an application of ethical theory to practice), giving practical advice to his son—and of course with its publication, to a much wider audience—on our duties in the world.

We normally associate the term ‘duty’ with deontology, which itself means the metaphysical or scientific statements (*logoi*) concerning duty (*deon*), and furthermore, we normally associate deontology with Kant. But as Dallmayr points out (p.99), Kant also reformulated the very nature and competence of human reason in his philosophy. When we use the term duty, it seems Kant's reformulation is often assumed in the background, which I think we should not assume when it comes to understanding Cicero's *De Officiis*, even as this text is

¹⁵ *Off.* 1.6.

¹⁶ *Off.* 3.101. A.A. Long, 1995. ‘Cicero's Politics in *De Officiis*’. Laks and Schofield (eds.), *Justice and Generosity*. p.217.

often rightly translated as ‘On Duties’. In the Oxford World’s Classics edition of the text, it is translated by P.G. Walsh as ‘On Obligations’, and a more literal translation of *officium* is ‘appropriate action’, which is a term associated with Stoic ethics. As we shall see in some more detail below, *officium* is a broader term than (rigorist) Kantian ‘duty’, and with the hope of avoiding any misunderstandings in the reader along (rigorist) Kantian lines, I leave it untranslated in my argument, even as my own preferred translation would indeed be ‘duty’.

Near the beginning of the *De Officiis*, Cicero says that “everything that is honourable [*honestum*] in a life depends upon ... cultivation [of *officium*], and everything dishonourable [*turpitude*] upon its neglect”, before going on to begin a definition of *officium* itself:

“The whole debate about *officium* is twofold. One kind of question relates to the end of good things; the other depends upon watchwords [*praecepta*] by which daily life in all its bearings may be shaped. The following are examples of the former: are all *officia* ‘perfect’? Is one *officium* more important than another? and other questions of that type. The *officia* for which advice has been offered do indeed relate to the end of good things, but here it is less obvious, because they appear rather to have in view instruction for a life that is shared. It is these that I must expound in these books.”^{17*}

Here, Cicero makes a division between ‘ethical theory’ (or what Annas on p.216 called ‘ethical philosophy’) on the one hand, and what I (and of course many others) have called ‘practical ethics’ on the other, the former dealing with matters which are considerably more remote from lived practice than the latter. Although of interest to some, including myself, inquiries in ethical theory of the kind that Cicero illustrates in this passage by way of two examples are beyond the scope of my project, and in this chapter, we are concerned with the *conduct* of persons, instead of inquiring, say, into the ‘perfection’ or ‘relative importance’ of *officia*. Nonetheless, we have already seen that Cicero himself by no means neglects such inquiries, continuing to study and to think through the different ethical theories of his day in developing his own understanding about the best way to live, and having made this division between ethical theory and practical ethics, he has distinguished for the reader what he is setting out in the

¹⁷ *Off.* 1.4–7.

rest of the *De Officiis*: ‘watchwords by which daily life in all its bearings may be shaped’.

Cicero’s division in the above passage concerns two ‘kinds of questions’, the latter of which, questions of practical ethics, questions about choosing well in the world, *depend* upon ‘watchwords by which daily life in all its bearings may be shaped’, and recalling a question from the former about those that are ‘perfect’, he goes on to distinguish between two kinds of *officia*:

“ ... an *officium* can be called either ‘middle’ or ‘perfect’. ‘Perfect’ *officium* we may, I think, label ‘right’ (*recte*), as the Greeks call it *katorthoma*; while the *officium* that is shared they call *kathekon*. They give their definitions in such a way as to define perfect *officium* as what is right (*recte*); while middle *officium*, they say, is that for which a persuasive reason can be given as to why it has been done.”^{18*}

We are dealing here again with some technical Stoic terminology. *Katorthomata* are actions undertaken only by the Stoic sage: ‘perfect’, unconditionally ‘right’ or ‘correct’ actions which, as Cicero tells us the Stoic philosophers had said about them, “fulfil all the numbers”.¹⁹ They can also be understood as a ‘subset’ of *kathekonta*, appropriate actions, which we have seen the Stoics say are carried out by all from the cradle onwards (indeed, they are carried out by plants and animals as well). Only when one’s reason has culminated, the Stoics argue, when one is ‘fully enlightened’ and has attained perfect virtue or wisdom, are one’s actions ‘perfectly appropriate’, ‘right’ or ‘correct’, and these impeccable actions, moreover, are impeccable, as Griffins and Atkins put it, “apart from [their] consequences”.²⁰ The *De Officiis* is modelled on a work (now lost) by Panaetius, who we have seen was less austere in his ethics than earlier Stoics, seeking to provide practical advice to ‘non-Sages’ like you and me on practising *kathekonta*, on making moral progress towards virtue, on actions for which a persuasive reason can be given in public life, a life that is shared.²¹ But of the three books of Cicero’s *De Officiis*, Panaetius’s version consisted only of the first two. Although having said he would write a book about apparent

¹⁸ *Off.* 1.8.

¹⁹ *Off.* 3.14. Cf. *Fin.* 3.58.

²⁰ *Off.* p.5n1. Cf. p.65n81.

²¹ Cf. Woolf, *Cicero*. pp.156–158;

conflicts between what is *kalon* and what is *sympheron* (the Greek equivalents of *honestum* and *utile*), he seems never to have done so, and that task was taken up by his student Posidonius. In writing the *De Officiis*, Cicero sent for the relevant Posidonian material but found it brief and disappointing, and so was thrown back on his own resources in writing the third book, some of which we shall consider in the final section of this chapter.²²

But what of Cicero's choice of *officium* as a Latin translation of the Greek *kathekon*? Some of his correspondence with his friend Atticus shows that Atticus had some reservations about his choice but was unable to suggest a better alternative, and as Andrew Dyck says:

“In selecting *officium* to render *kathekon* Cicero surely chose the nearest Latin equivalent to the Greek term ... The problem ... was inherent in any translation project of this kind, in which one had to find a Latin equivalent for a special term already developed in Greek. In our case Cicero's innovation was ... successful ... the Latin *officium* being proved by later usage to have been analogously extensible to the Greek *kathekon*.”²³

Cicero's skill and historical success in 'analogous extensibility' I think testifies to the subtlety and refinement with which he handled Greek philosophy and which Arendt seems to have implied was lacking in his writings. One important result of Cicero's translation of the Greek *kathekon* into the Latin *officium* is his extension of its use to include opponents with whom the *civitas* is at war; *officia* can be owed to non-citizens of Rome even in battle.²⁴ In his commentary on the text, Dyck argues that “the problem [in Cicero's choice of *officium* as a translation of *kathekon*] is not ... a divergence in sense of *officium* from *kathekon* per se, but rather the special Stoic sense of *kathekon*, directed toward fulfilling the rational nature of the human being”, which might be a philosophical as much as a translational problem, but, I think as shown in its extension to include *officia* owed to non-citizens of Rome even in battle, it is not a *social* problem, which arguably was Cicero's over-riding concern in the text, being in the latter case directed towards maintaining *societas* between

²² *Off.* p.xx–xxi; *Off.* 3.8 and 3.34.

²³ *Att.* 16.11.4, *Att.* 16.14.3; Andrew R. Dyck, 1996. *A Commentary on Cicero, De Officiis*. Ann Arbor: The University of Michigan Press. p.7.

²⁴ Dyck, *A Commentary on Cicero, De Officiis*. p.6.

civitates.²⁵ We shall be considering such *officia* in the final sub-section of this chapter, but for now, we move on to consider some of what Cicero has to say about the private and public benefits of study in the liberal arts.

3.2.3 Cicero and Studia Humanitatis

I mentioned in the previous chapter that no PhD thesis could give an adequate account of Cicero's development of the term *humanitas* and I did so to prepare the reader for the inadequacy of what I write in this sub-section, but it is emphatically not my intention to say that what Cicero *does* provide in his *corpus* is in any way 'complete' or 'perfect' or 'the final word' on *humanitas*; it is not. He provides no definition of the term and nor it seems to me should he have done. But he did use it, connected it very closely indeed with education—in the words of the 2018 World Congress of Philosophy and Dallmayr: Learning [to be] Human—and in doing so, significantly broadened its semantic range in a way indicated by the words (albeit rather dated) of S.J. Aubrey Gwynn:

“The truth is that neither ‘philosopher’ nor ‘orator’ is an adequate term for Cicero’s [educational] ideal. Only one word gives full expression to that ideal—*humanitas*, or its corresponding epithet, *humanus* ... The word ... runs like a thread of gold through all the discussions and digressions of the *De Oratore*, taking on countless shades of meaning under the play of Cicero’s thought, but always recalling in its varying use the fundamental ideal of human excellence ... To be a man in all that is most human, and to be human in one’s relations with all other men; that is Cicero’s ethical and social ideal, and his educational theory is based on the same principle.”²⁶

In the rest of this sub-section, we digress from Cicero's theoretical writings on politics to consider his views on the *studia humanitatis*, mainly as he articulated them in one of his speeches, the *Pro Archia*. Aulus Licinius Archias was a poet and Greek immigrant to Rome, who in 62 BCE had suffered under some political manoeuvrings in being accused of illegally claiming Roman citizenship. The accusation may have been instigated by Gnaeus Pompeius Magnus (Pompey) to disgrace his rival Lucius Lucullus, Archias's patron. We know very little about Archias and none of his work has come down to us (at least of which we can be

²⁵ Dyck, *A Commentary on Cicero, De Officiis*. p.7.

²⁶ S.J. Aubrey Gwynn, 1926. *Roman Education from Cicero to Quintillian*. Oxford: Clarendon.

certain), but Cicero's speech in his defence has gained enormous fame and popularity across the ages for containing "perhaps the finest panegyric of literature that the ancient world offers us".²⁷ Cicero summarily refutes the charges levelled against Archias (in less than a sixth of the speech) and spends the rest of his time extolling the private and public services of the literary arts and artists:

"You will no doubt ask me, Grattius [the prosecutor], why I am so delighted with this man [Archias]. The answer is that it is he who enables my mind to recover [*reficio*] from the din of the courts and gives my tired ears a rest from the shouting and abuse. How do you imagine I could find material for my daily speeches on so many different subjects if I did not train [*excolo*] my mind with literary study, and how could my mind cope with so much strain if I did not use such study to help it unwind? Yes, I for one am not ashamed to admit that I am devoted to the study of literature. Let others be ashamed if they have buried their heads in books and have not been able to find anything in them which could either be applied to the common good or brought out into the open and the light of day."²⁸

What the literary arts provide us with is not only "a ready supply of language to suit a variety of situations" in public life—and for Cicero this includes his activities in defending his clients in that most fundamental of institutions, a court of law—but also things that enable the recovery of our minds.²⁹ *Reficio*, as Erika J. Nesholm says, suggests "refashioning or restoring an artifact", rebuilding or making anew, repairing or making once more, the mind after all its exertions in public affairs.³⁰ "So, too, *excolo* suggests polishing a work of art"—and we have already seen Arendt presenting to her readers this phrase from the *Pro Archia*, *excolo animum*, training or polishing or cultivating the mind—with Cicero's use of it in this context "suggesting an ongoing process of continual refinement".³¹ But it was only in 1333 that the *Pro Archia* was recovered by Petrarch in a monastic library at Liège in France—among the first in a succession

²⁷ N.H Watts, 1923. 'Pro Archia: Introduction'. Jeffrey Henderson (ed.), 1923. *Cicero: Pro Archia, Post Reditum in Senatu, Post Reditum ad Quirites, De Domo Sua, De Haruspicum Responsis, Pro Plancio*. With an English Translation by N.H. Watts. Loeb Classical Library. Cambridge: Harvard University Press. p.2.

²⁸ *Arc.* 12.

²⁹ Erika J. Nesholm, 2010. 'Language and Artistry in Cicero's 'Pro Archia''. *The Classical World* 103(4). pp.477–490.

³⁰ Nesholm, *Language and Artistry*. p.486.

³¹ Nesholm, *Language and Artistry*. p.486. *Animus* has a very broad semantic range, translations of the term including soul, mind, reason, intellect, spirit, mental powers, and intelligence.

of recoveries leading into the sixteenth century which transformed the canon of Latin literature—and it is only in 1369 that we find the phrase *humanitatis studia* attested by the Italian humanists in connection with training or polishing or cultivating the mind (in the writings of Coluccio Salutati).³² Trying to ‘define’ these studies is probably as futile an exercise as trying to define *humanitas*, but in the context of the renaissance of antiquity, as Michael D. Reeve nicely puts it:

“If it is true that the Italian humanists had no expression closer to ‘classical scholarship’ than *studia humanitatis*, then *Pro Archia* provided classical scholarship in the Renaissance with its charter of foundation.”³³

Petrarch was drawn to the effusive praise of poets in this speech, with other Italian humanists particularly appreciating what Cicero says about the practical advantages to be had from, or the public services that are provided by, the literary arts more generally:

“All literature [*libri*], all spoken wisdom [*sapientum voces*], all history [*exemplorum vetustas*], abounds with incentives to noble action, incentives which would be buried in sheer darkness were the light of the written word [*litterarum lumen*] not beamed upon them. How many pictures [*imagines*] of high endeavour the great authors of Greece and Rome have drawn for our use, and bequeathed to us, not only for our contemplation, but for our emulation! Indeed, I myself, when serving as a magistrate, have always kept these before my eyes, and have modelled myself on them, heart and mind, by meditating on their excellences.”^{34*}

Sketching a lamp or candle beside it in his own copy at this point, Petrarch felt moved to write *lumen litterarum* alongside *litterarum lumen*.³⁵ It is through the light of the written word that the testimonies of the ancestors are handed down from one generation to the next.³⁶ In Arendt’s words (p.129), “anything that

³² The phrase *studia humanitatis* can be found in three of Cicero’s speeches (*Arc.* 3, *Mur.* 61, *Cael.* 24), but it seems these were either not read or overlooked by Italian humanists until 1415. Michael D. Reeve, 1996. ‘Classical Scholarship’. Jill Kraye (ed.), 1996. *The Cambridge Companion to Renaissance Humanism*. Cambridge: Cambridge University Press. p.21; Benjamin G. Kohl, 1992. ‘The changing concept of the *studia humanitatis* in the early Renaissance.’ *Renaissance Studies* 6(2). pp.185–202.

³³ Reeve, *Classical Scholarship*. p.22.

³⁴ *Arc.* 14.

³⁵ Reeve, *Classical Scholarship*. p.21.

³⁶ Such testimonies are of course often handed down also through the light of the spoken word. Cf. Gotter, *Cultural Differences and Cross-Cultural Contact*. pp.179–180.

happen[s] [is] transformed into an example” which helps us in exercising judgments in the world, and Cicero is extolling the written word and the beautiful forms into which written words are put in providing us with this public service. Unlike his other legal speeches, the *Pro Archia* is unorthodox, being an exercise much more in epideictic than forensic oratory, a speech that is made up of fulsome praise rather than one that merely considers the legal charges brought against a person. But just like all his speeches, it is an example of outstanding eloquence. In the above passage, for example:

“‘There is the constant confusion ... between great men of the past and the literature that has immortalised them, and almost incidentally, the authors who produced that literature.’ ... The implication of this multivalent image is that literature can now take the place of the ancestors in providing a distinguished background and establishing one’s social and political standing. These redefined *imagines*, the quintessential symbol of elite identity, are no longer the exclusive province of the elite, but are more widely accessible. Learning and education can provide the requisite background for social and political success. Cicero, as *novus homo*, holds up these *imagines* as support for his role in Rome, adopting literature in place of aristocratic ancestry; and these *imagines* might be available to others who take similar advantage of them.”³⁷

We saw Devetak cite humanist historians of the Renaissance such as Bruni, Valla, Machiavelli and Guicciardini who were engaged in ‘ransacking the archives of antiquity’ for *imagines*, for exemplary figures in securing good outcomes in public affairs; we saw Dallmayr draw on a wide array of *imagines* from both philosophy and history in doing the same; and we saw Arendt turn to the actions of the American founders, to those of some good people living under the terror of totalitarianism, as well as to some great authors of the past such as Plato and Cicero, in doing the same yet again. And again, what Cicero is saying is that it is through the light of the written word that these *imagines* are made accessible to us; without having been fixed in time through the literary arts, the actions of those who have lived before us would have disappeared into oblivion. He pre-empted at this point in the speech an objection from the prosecutor that the men

³⁷ Nesholm, *Language and Artistry*. pp.483–484. On Cicero as *novus homo*, a ‘new man’ in politics as distinguished from the *nobiles*, see for example: John Dugan, 2001. *Making a New Man: Ciceronian Self-Fashioning in the Rhetorical Works*. Oxford: Oxford University Press; T.P. Wiseman, 1971. *New Men in the Roman Senate: 139 BC–AD 14*. Oxford: Oxford University Press.

whose praises have been sung by the great authors of the past were not themselves schooled in the literary arts:

“I do admit that there have been many men of outstanding temperament and ability who were not well-read, but who achieved a natural self-possession and dignity of character because of their innate, almost godlike endowments. Moreover, I would even go so far as to say that character without learning has made for excellence and ability more often than learning without character. And yet I also firmly maintain this, that when natural disposition which is noble and elevated is given in addition a basis and a shaping through education, then something remarkable and unique comes about.”^{38*}

Cicero can see excellence in the actions of many who have not been educated in the literary arts (which include philosophy) and we saw in chapter one that Brown provided us with the example of Forrest Gump in this respect: a human being of innately magnificent character whose actions shine out for themselves without the help of learning and education. It seems to me that Brown deliberately did *not* say in his argument that Forrest *is not* a virtuous person (Forrest is a ‘good-natured simpleton’); he said that Forrest’s inability to articulate clearly why he does what he does only disqualifies him, for the Aristotelian, in *being able to claim* to be one. In this respect, Cicero and Aristotle appear to converge in some way, in seeing that such an ability would require education in what Cicero called *studia humanitatis*, those arts which provide “a ready supply of language to suit a variety of situations” in public life. But Brown did say that the ‘instinct’ of a virtuous person is “something that *only* the trained mind can achieve”, and if his interpretation of Aristotle on this is correct, it suggests that Ciceronian ethics might be different to Aristotelian ethics on some key point, and I suggest it may involve Cicero’s statesman-informed or ‘Roman’ focus upon the common good more than a philosopher-informed or ‘Greek’ focus upon the condition of the *psychē* of any person upholding it in outstanding ways, like Forrest (which of course is not to say that Cicero does not also have this philosopher-informed or ‘Greek’ focus). And we saw in the previous chapter that Arendt, more like Cicero and less like (Brown’s) Aristotle, pointing to the noble character of those who were “entirely uneducated” and who had resisted falling into line with the Nazis’ ‘new values’. But even as Cicero sees excellence in the actions of many who have not received

³⁸ *Arc.* 15. Cf. *Tusc.* 2.13; *Rep.* 3.5.

education in the literary arts, he insists that such characters, when provided with such education, bring about something truly remarkable and unique. And again, it is not only public advantages which *studia humanitatis* bestow; after listing numerous *imagines* which have been handed down as examples of truly remarkable and unique individuals whose learning contributed to their own excellent actions, he says:

“But suppose one could not point to this great benefit, suppose that the study of literature conferred only enjoyment [*delectatio*]: even then, I believe, you would agree that this form of mental release [*animi remissionem*] broadens and enlightens the mind like no other [*humanissimam ac liberalissimam iudicaretis*]. For other forms of mental release are in no way suited to every time, age, and place. But the study of literature sharpens youth and delights old age; it enhances prosperity and provides refuge and comfort in adversity; it gives enjoyment at home without being a hindrance in the wider world; at night, and when travelling, and on country visits, it is an unfailing companion.”^{39*}

We saw Arendt in the previous chapter draw a sharp distinction between culture and entertainment, which we can see is not so sharp for Cicero here. The study of literature he says confers *delectatio*: delight, pleasure, enjoyment, amusement. While he is certainly not a stranger to the things that entertain “the masses of our fellow men”, he sees the more time-bound and place-bound qualities of these things when compared with the study of literature, the study of written words including those handed down from one generation to the next, which “broadens and enlightens the mind like no other” form of mental release, and which is a study suited to all times, places, and ages.⁴⁰

Recovering the mind; training or polishing or cultivating the mind; delighting the mind; a form of mental release—and Cicero elsewhere describes the study of philosophy in particular as *medicina animi*, the healing art of the mind.⁴¹ As Catherine Steel says, he is extolling qualities in the *Pro Archia* which make “literary activity important to all citizens ... and, ultimately, [to] the whole of

³⁹ *Arc.* 16.

⁴⁰ Cicero mentions in the *Pro Archia* “playing dice and ball”, which of course pales in comparison with, say, the Playstation 5. It is interesting to note that what Berry translates here as a ‘broadening’ of the mind, Arendt construes mainly as a ‘deepening’. Cf. *EU*. p.436, *MDT*. p.87. It seems to me that the study of literature does both.

⁴¹ *Tusc.* 3.1.

humanity”.⁴² And these are not qualities that can flourish “only in aristocracies”, as Arendt had put it in terms of culture more generally; an understanding of democracy where we cultivate our minds, our imaginations, our “capacit[ies] to see the world through another person’s eyes”, our “capacit[ies] for genuine concern for others”, I think is wholly within our reach, if only we attend to the importance of humanistic education.⁴³

Although the increasing precarity of the humanities from the scientific revolution onwards is well-documented, and sometimes even lampooned, exemplary figures in this ‘good-sense tradition’ continue to extol both the private and public advantages these studies confer in the world.⁴⁴ One such figure writing at the turn of the nineteenth and twentieth centuries was American sociologist W.E.B. Du Bois, who in his *The Souls of Black Folk* recounts his experience as a teenager teaching rural African-American children in a log hut outside Alexandria, Tennessee. Du Bois relays how some of the children’s parents were doubtful as to the benefits of book-learning, and how he managed to persuade them of the continuing relevance of an education in the humanities by translating Cicero’s *Pro Archia* and connecting its teachings to local and everyday matters. If such defenders of this type of education form a ‘cultural elite’, it comprises individuals who have chosen themselves into “a tradition of tolerance”; a tradition which gives “vibrant testimony to the hypocrisy of white supremacists” who claim the antiquity of Greece and Rome as their own; is forever open to “other open-minded readers”, and from which only “any bigot is definitively excluded”, as bigotry does not comport and has never comported with *humanitas* and *liberalitas*.⁴⁵ As Wellman puts it:

⁴² Catherine Steel, 2013. ‘Cicero, oratory and public life’. Steel (ed.), *Cambridge Companion to Cicero*. pp.164–165.

⁴³ Martha C. Nussbaum, 2010. *Not for Profit: Why Democracy Needs the Humanities*. Princeton: Princeton University Press. p.96.

⁴⁴ For example, Dallmayr, *Dialogue and Cosmopolis*. Ch.4; Nussbaum, *Not for Profit*.

⁴⁵ Mathias Hanses, 2019. ‘Cicero Crosses the Color Line: *Pro Archia Poeta* and W.E.B. Du Bois’s *The Souls of Black Folk*’. *International Journal of the Classical Tradition* 26(1). pp.10–26. Cf. *OT*. pp.206–240, where Arendt argues that the roots of ‘race-thinking’ are to be found at the beginning of the eighteenth century. This is, of course, a highly complex and controversial issue upon which others have more authority to speak than myself, and I remain ready to learn, or at least hope that I do. Cicero’s writings, like those of so many others, have gathered accretions in meaning good and bad across the centuries. To borrow some more of Hanses’ words, what I hope to be doing in this project is “creati[ng] ... a meaningful connection in the mind of the

“...the entire basis of civilization in Cicero's view is man helping his fellow man rather than fearing and harming him. Thus *humanitas* grows directly out of *communitas* and the man of *humanitas* recognizes that nothing is more sacred than the welfare of his fellow man.”⁴⁶

This accords with Arendt's understanding that *humanitas* is never acquired in solitude; it can come about only through ‘the venture into the public realm’, a venture in which *humanitas* is acquired becoming ‘a gift to mankind’. Through Piso in the *De Finibus*, Cicero links *communitas* to *liberalitas* (liberality or affability), *bonitas* (goodness) and *benignitas* (kindness): qualities, as Wellman says, which are all embodied in the term *humanitas*, which itself is a term “encompassing the social and moral virtues”, the four primary or ‘cardinal’ ones of which in Cicero's writings we shall now consider.⁴⁷

3.3 Civic Virtues

3.3.1 Cicero on Justice: Good Faith and Beneficence

We begin with the virtue of justice because I agree with E.M. Atkins that for Cicero “it is the most important of the four primary virtues ... and consequently, it helps to define the other virtues, which must be limited by it.”⁴⁸ He sets out two parts of justice in Book I of the *De Officiis*:

“...the most wide-reaching [*latissime*] [virtue] is the reasoning by which the fellowship of men with one another [*societas hominum inter ipsos*], and the communal life, are held together. There are two parts of this: justice [*iustitia*], the most illustrious of the virtues, on account of which men are called ‘good’ [*boni*]; and the beneficence connected with it, which may be called either kindness [*benignitas*] or liberality [*liberalitas*].”⁴⁹

reader”, and “I submit ... that we should visualize our own relationship with Cicero as each reader holding their own used copy of” any of his texts, mindful that the accretion of meanings in these used copies across the centuries do not occur in the texts themselves. Arendt talked of re-discovering Aquinas; we might re-discover Cicero.

⁴⁶ Robert R. Wellmann, 1965. ‘Cicero: Education for *Humanitas*’. *Harvard Educational Review* 35(3). pp.349–362.

⁴⁷ *Fin.* 5.65; Wellman, *Cicero: Education for Humanitas*. p.354.

⁴⁸ E.M. Atkins, 1990. ‘Domina et Regina Virtutum’: Justice and Societas in ‘De Officiis’. *Phronesis* 35(3). pp.258–289.

⁴⁹ *Off.* 1.20.

Cicero's discussion of justice in the *De Officiis*, as Atkins says, is unlike any earlier account of the virtue that has come down to us.⁵⁰ The reader might note that his partition of 'justice simply' (*iustitia*) and beneficence (*beneficentia*) recalls some elements from the Stoic and Antiochean ethical theories discussed in sub-section 3.2.1, but it is important to remember that he is not 'applying' these theories in a deductive fashion, but rather using his own judgment and discretion about their different elements and offering *practical* advice or guidance to his son on *officia* in the world. Although later in Book I, Cicero will treat both parts of justice as a single category of virtue in relation to the other three primary virtues, we shall consider here each of the parts of justice in turn. Having made the partition at *Off.* 1.20, Cicero goes on immediately to give account of *iustitia*:

“Of *iustitia*, the first office [*munus*] is that no man should harm another unless he has been provoked by injustice [*iniuria*]; the next that one should treat common goods as common and private ones as one's own ... We are not born for ourselves alone ... our country [*patria*] claims for itself one part of our birth, and our friends another ... men are born for the sake of men, so that they may be able to assist one another ... we ought in this to follow nature as our leader, to contribute to the common stock [*communes utilitates*] the things that benefit everyone together, and, by the exchange of dutiful services [*mutatio officiorum*], by giving and receiving expertise and effort and means, to bind fast the fellowship of men with each other [*hominum inter homines societatem*]. Moreover, the keeping of faith is fundamental to *iustitia*, that is constancy and truth in what is said and agreed ... let us trust that keeping faith (*fides*) is so called because what has been said is actually done (*fiat*).”⁵¹

The second office of *iustitia*, treating common goods as common and private ones as one's own, relates to Cicero's defence of private property (so long as it is acquired with *iustitia*) which we shall consider in some more detail below, but for now, let us consider the first office and what Cicero calls a *fundamentum iustitiae*, keeping faith (*fides*). As Atkins says, it is *fides* according to Cicero which is “the cement of the *res publica* ... of civic society”, the mutual trust and

⁵⁰ Atkins, *Domina et Regina Virtutum*. p.263.

⁵¹ *Off.* 1.20–23. *Munus* can have numerous senses, including service, office, post, employment, function and duty. Dyck comments that “*Munus* is used here by *variatio* for *officium*, with which it is, in one of its senses, identical ... However ... *de Muneribus* would hardly have served as a title for our essay”. *Munus* has a more concrete sense than *officium*, perhaps something like duty as action. Dyck, *A Commentary on Cicero, De Officiis*. p.109.

trustworthiness which is in accordance with our natural sociability.⁵² What Schofield said about Cicero's account of Antiochus's theory as expounded by the character Piso in the *De Finibus*—that *all* the virtues have a social orientation—is highly relevant to what we find in the *De Officiis* as well. Whereas the virtue of justice in Greek philosophy often places stress on the harmony of the *psychē*, Cicero's fixing of *fides* as a *fundamentum* of the virtue emphasises that “what matters is ... the strength of the relationships that enable individuals to cooperate in a common life.”⁵³ Acting upon what one has said and agreed, keeping faith, is to act justly.⁵⁴

But what of the first office of *iustitia* itself? ‘That no [person] should harm another’ I trust needs no analysis on the reader's behalf, so let us consider Cicero's qualification: ‘...unless he has been provoked by injustice’:

“Of injustice there are two types: men may inflict injury; or else, when it is being inflicted upon others, they may fail to deflect it, even though they could. Anyone who makes an unjust attack on another, whether driven by anger or some other agitation, seems to be laying hands, so to speak, upon a fellow. But also, the man who does not defend someone, or obstruct the injustice when he can, is at fault just as if he had abandoned his parents or his friends or his country.”⁵⁵

Cicero distinguishes here between ‘positive’ and ‘negative’ types of injustice (a fast and loose analogy might be Christian sins of commission and sins of omission). If one inflicts injury upon another without provocation, one has actively broken the first office of *iustitia*, that no human being should harm another. Cicero goes on immediately after this passage to consider the motives that may lead to the positive type of injustice: fear and certain kinds of desire. He finds desire to be the more common source of the commission of injustice and says that “where this fault is concerned avarice is extremely widespread”, but “men are led most of all to being overwhelmed by forgetfulness of justice when they *slip* into desiring positions of command [*imperia*] or honour or glory”.⁵⁶ It is a desire for might (*potentia*) or honour or glory more than wealth

⁵² Atkins, *Domina et Regina Virtutum*. pp.262 and 268.

⁵³ Atkins, *Domina et Regina Virtutum*. p.268.

⁵⁴ But cf. *Off.* 1.31–32, 3.92–95.

⁵⁵ *Off.* 1.23.

⁵⁶ *Off.* 1.24–26. Emphasis added.

that he says is particularly troubling because it usually exists “in men of the greatest spirit and most brilliant intellectual talent” who have slipped away from *honestas*, and we shall consider this in more detail later in this chapter, but here, it suffices to note that he concludes his discussion of the positive type of injustice by saying that such acts committed because of some sudden impulse are generally less serious than those which are pre-meditated.⁵⁷

The negative type of injustice evinces the social orientation of the virtue of justice in Cicero’s advice as well. Contrasting it with a meditation of Roman emperor and Stoic philosopher Marcus Aurelius (121-180 CE)—“Another does wrong. What is that to me? He will look to it. He has his own disposition, his own activity”—Atkins notes that “if ... someone values justice precisely because it preserves and strengthens society, then he will be concerned not only that he himself acts justly, but also that others do”.⁵⁸ As with the positive type of injustice, Cicero also considers the motives that may lead to the negative type:

“As for neglecting to defend others and deserting one’s *officium*, there tend to be several causes of this. For some men do not wish to incur enmities, or toil, or expense; others are hindered by indifference, laziness, inactivity or some pursuits or business of their own, to the extent that they allow the people whom they ought to protect to be abandoned.”⁵⁹

The negative type of injustice corresponds to what Cicero had said earlier about contributing to the ‘*communes utilitates* the things that benefit everyone together’ through mutual exchange of *officia*. Other things being equal, it would be a good citizen, a citizen acting justly, who defended another from an unprovoked attack by yet another in the street. Such actions may often require courage, which we discuss in more detail below, but to return to Cicero’s account of the negative type of injustice, he makes reference to those philosophers immersed in their studies who, although fulfilling the first office of *iustitia* by harming no one, are “hindered by their devotion to learning” such that “they abandon those whom they ought to protect”.⁶⁰ He offers more

⁵⁷ *Off.* 1.26.

⁵⁸ Atkins, *Domina et Regina Virtutum*. p.267 with note 13.

⁵⁹ *Off.* 1.28.

⁶⁰ *Off.* 1.28.

concrete examples in “some who, whether through devotion to preserving their personal wealth or through some dislike of mankind”, although claiming to be attending only to their own business and in deed harming no one, run into the negative type of injustice: “such men abandon the fellowship of life [*vitae societatem*], because they contribute to it nothing of their devotion, nothing of their effort, nothing of their means.”⁶¹ And as we have seen, such contributions according to Cicero are connected to *beneficentia*, the other half of that *honestas* which derives only from “those things that constitute the justice of human fellowship”:

“Nothing is more suited to human nature than [*beneficentia* and *liberalitas*], but there are many caveats. For first one must see that kindness harms neither the very people whom one seems to be treating kindly, nor others; next, that one’s kindness does not exceed one’s capabilities [*facultates*]; and then, that kindness is bestowed upon each person according to his character. Indeed, that is fundamental to *iustitia*, to which all these things ought to be referred.^{62*}

The first caveat Cicero sets out here relates to the first office of *iustitia*, that no human being should harm another, and his account of *beneficentia* is shaped overall by the second office, that one should treat common goods as common and private ones as one’s own. Scholarly debates over Cicero’s defence of private property are complex and contentious, and an analysis of these debates would take up too much time and space in my project.⁶³ But A.A. Long provides us with an excellent summary of Cicero’s general position on private property in the *De Officiis*:

“Justice enters *Off.* as the natural and rational way for individual human beings to organize their lives in ways that are socially beneficial. ‘Human society and [connection]’ (*societas hominum coniunctioque*)—a standard phrase in the work—is the supreme *utile* ... because it comprehends the particular interests of every individual ...

⁶¹ *Off.* 1.29.

⁶² *Off.* 1.42–45, 1.60; Atkins, *Domina et Regina Virtutum*. p.263.

⁶³ For scholarship on Cicero’s account of private property, see for example: Neal Wood, 1983. ‘The Economic Dimension of Cicero’s Political Thought: Property and State’. *Canadian Journal of Political Science* 16. pp.739–756; Neal Wood, 1988. *Cicero’s Social and Political Thought*. Oxford: University of California Press; J. Jackson Barlow, 1995. ‘Cicero on Property and the State’. Nicgorski (ed.), *Cicero’s Practical Philosophy*. Ch.9; Martha C. Nussbaum, 2000. ‘Duties of Justice, Duties of Material Aid: Cicero’s Problematic Legacy’. *The Journal of Political Philosophy* 8(2). pp.176–206; Julia Annas, 1989. ‘Cicero on Stoics and Private Property’. Griffin and Barnes (eds.), *Philosophia Togata I*. Ch.6.

In his characteristic use of [communal utility], it refers to the interest that anyone shares in the right of all to retain what they happen to own. That principle, he insists, is the foundation of civil society ... [Beneficentia] involves a voluntary disbursement of resources on another's behalf. For Cicero, the communal interest presupposes a willingness on behalf of the wealthy to go beyond what strict justice requires of them in looking to another's interests ... From his use of *communal utility* ... we can see that this concept does not do away with self-interest in its everyday sense but justifies it on the condition that it is coextensive with the interest of all. That condition is what reconciles *utile*, the unavoidable object of individual human endeavour, with the social goods specified by justice."⁶⁴

As Dyck notes in his commentary, Cicero offers no definition of *beneficium* in the *De Officiis* and indeed he uses it interchangeably in the relevant section of Book I with *officium* itself, it seems to me shaping his advice in such a way that it pushes whoever heeds it in the direction of *societas hominum coniunctioque*.⁶⁵ And as we shall touch upon again in the next chapter, *utile* signifies any kind of benefit (including the security [*salve*] maintained by the good citizen protecting another from an unprovoked attack in the street [p.231]); its meaning extends beyond only material wealth. *Beneficentia* relates not only to material kindnesses bestowed upon others; it is “an ideal within reach of all”, rich and poor alike.⁶⁶ Indeed, we saw Dallmayr in the first chapter understand tolerance in terms of the closely connected classical virtue of *liberalitas* or generosity, rather than understanding it in a modern liberal sense as Rasmussen does.⁶⁷ Nevertheless, material wealth is an obviously key aspect of *beneficentia* and I think an important point for us to note from Long's summary is that, although in Cicero's account of *iustitia* ‘self-interest in its everyday sense’ is not done away with, this is only on the condition that it is coextensive with the interest of all. Again, all the virtues in Cicero's writings have a social orientation. At all times, it seems to me, he is concerned with maintaining the *res publica* in existence

⁶⁴ A.A. Long, 1995. ‘Cicero's politics in *De Officiis*’. Laks and Schofield (eds.), *Justice and Generosity*. pp.234–238. Emphasis in original.

⁶⁵ Dyck, *A Commentary on Cicero, De Officiis*. p.156n69.

⁶⁶ Dyck, *A Commentary on Cicero, De Officiis*. p.159.

⁶⁷ Although they are beyond the scope of my project to investigate, I think two points are worth noting here. The virtue of tolerance in Dallmayr's understanding (and my own) is distinct from the Medieval Latin term *tolerantia*, which Bejan describes as “a policy of permission without approval that Christians applied to ‘acknowledged evils’.” Bejan, *Mere Civility*. p.16. The second point is that *liberalitas* as conceived by Romans such as Cicero and Seneca contrasts with the Christian morality that was to follow shortly afterwards, as exemplified in Lactantius's criticism of ‘measured charity’. Dyck, *Commentary on Cicero, De Officiis*. p.159.

and the unbridled pursuit of ‘self-interest in its everyday sense’ not only might suggest the vice of *avaritia* in the pursuer; its proliferation also runs the risk of bringing about what Garrett Hardin (inspired by lectures delivered by British economist William Forster Lloyd in 1833, as the industrial revolution was in full swing) called ‘the tragedy of the commons’.⁶⁸ *Iustitia* for Cicero is “the reasoning by which the fellowship of men with one another, and the communal life, are held together”, and one of the ‘bridles’ on ‘self-interest in its everyday sense’ is a part of justice, *beneficentia* and *liberalitas*; acts of kindness which promote fellowship.

Let us return, then, to the two other caveats Cicero sets out in relation to this part of justice. The second caveat is that it is important to be sure that one’s kindness does not exceed one’s capabilities (*facultates*). As the first caveat related to the first office of *iustitia*, so the second relates to the second; any kindness one bestows upon another must come from and be limited by one’s own private resources (*facultates*). Cicero says that “those who want to be kinder than their possessions [*res*] allow first go wrong by being unjust to those nearest to them; they transfer to strangers [that] which would more fairly [*aequius*] be provided for, or left to, them.”⁶⁹ This seems to me to be a curiously constructed sentence, and we shall discuss in more detail in the next section the different degrees of fellowship that Cicero sets out in the *De Officiis*, but here it suffices to note that he is referring back once more to the first office of *iustitia*, that no human being should harm another, and pointing out its transgression in one who bestows kindnesses on strangers to the detriment of those nearest to them (*sunt in proximos*). He sees “lurking” within such liberality usually “a greediness to plunder and deprive unjustly, so that resources may be available for lavish gifts” in a quest for some sort of glory, with such pretence to *beneficentia* being “closer to sham than to either *liberalitas* or *honestas*.”⁷⁰

⁶⁸ Roughly: by pursuing only one’s self-interest, one ends up acting contrary to the common good and thereby damaging one’s self-interest. Garrett Hardin, 1968. ‘The Tragedy of the Commons’. *Science*. Issue 162. pp.1243–1248. Whilst the general tenor of his argument as encapsulated in the article’s title is convenient for our purposes here, (and also a bit of a cliché), let me emphasise that I do not endorse all of the arguments Hardin makes in his article.

⁶⁹ *Off.* 1.44.

⁷⁰ *Off.* 1.44. In cautioning against any inappropriate generalisations here, I would emphasise that Cicero is speaking about virtues, i.e. *personal* qualities, and point to Dyck’s commentary on this

The third caveat Cicero sets out is that kindness should be bestowed according to the character of the person receiving it:

“Here we should look both at the conduct of the man on whom we are conferring a kindness, and at the spirit in which he views us, at the association and fellowship of our lives together, and at the dutiful services that he has previously carried out for our benefit. It is desirable [*optabile*] that all such considerations should come together. If they do not, then the more numerous and more important grounds will carry more weight ... I think that we must understand this too ... no one should be wholly neglected if any indication of virtue appears in him; moreover, one must particularly foster those who are most equipped with the gentler virtues, modesty [*modestia*], restraint [*temperantia*], and that very *iustitia* which I have now been discussing at length. For a brave and great spirit in a man [*fortis animus et magnus in homine*] who is not perfect nor wise [*sapiente*] is generally too impetuous [*ferventior*]; but those other virtues seem rather to attach themselves to a good man.”^{71*}

We shall consider the other virtues Cicero mentions here later in the chapter, but we may recall at this point, both in the context of the above passage and for what is to follow, that in the *De Officiis* he is concerned with providing advice on middle *officia*—those *officia* that are within reach of all and who are concerned with progress toward virtue in a life that is shared—as distinct from the perfect *officia* of the Stoic sage. “[W]e do not live with men who are perfect and clearly wise, but with those who are doing splendidly if they have in them mere images of virtue”, and fittingly, towards the conclusion of his discussion of *beneficentia* in Book I, Cicero advises Marcus that in providing *beneficia* “the most important function of *officium* (if all else is equal) is to enrich above all the person who is most in need of riches”.⁷²

With both parts of the virtue of *iustitia* set out, we are in a better position to begin considering what Cicero says about human fellowship more generally. After advising his son Marcus that human fellowship is best preserved overall if a

passage that “in practice, it will be very difficult to distinguish between those whose benefactions are prompted by ‘nature’ and those who desire glory.” Dyck, *A Commentary on Cicero, De Officiis*. p.160.

⁷¹ *Off.* 1.45–46. It is unclear to me whether “all such considerations” refers only to *Off.* 1.45, those in relation to the character of the person receiving the kindness, or to *all* the caveats Cicero sets out in relation to *beneficentia*, *Off.* 1.42–45.

⁷² *Off.* 1.46–49.

person's conferral of *beneficia* increases the more closely the recipients are to that person, he goes on to talk of the universal fellowship of humanity:

“Perhaps, though, we should examine more thoroughly what are the natural principles of human fellowship and community [*naturae principia sint communitatis et societatis humanae*]. First is something that is seen in the fellowship of the entire human race [*est enim primum, quod cernitur in universi generis humani societate*]. For its bonding consists of reason and speech [*vinculum est ratio et oratio*], which reconcile men to one another, through teaching, learning, communicating, debating and making judgments, and unite them in a kind of natural fellowship [*naturali quadam societate*]. It is this that most distances us from the nature of other animals. To them we often impute courage [*fortitudo*], as with horses or lions, but we do not impute to them justice, fairness or goodness. For they have no share in reason and speech ... The most widespread [*latissime*] fellowship existing among men is that of all with all others [*omnibus inter omnes societas*].”⁷³

Here we can see “the later concept of a *societas generis humani*” (i.e. later than Plato and Aristotle) which Arendt seemed to have spoken disapprovingly of in *The Human Condition* because she saw it as something that is not ‘fundamentally human’. What for Arendt in that text was “the natural, merely social companionship of the human species” we can see here for Cicero, drawing upon some of the arguments of the Stoics, is rooted in the ‘fundamentally human’ capacities we have for reason and speech, *ratio et oratio*. These are the *vinculum*, the social bond, which reconcile human beings to one another, and which we saw Dallmayr in the first chapter, “in more recent philosophical language” (i.e. Gadamerian), call speech and deliberation which can facilitate mutual understanding (pp.71-72). But Cicero’s use of *cernitur* and *universi* at *Off.* 1.50 I think suggests (despite not being technical philosophical terms) that he begins this passage in speaking of something that is seen with the ‘eyes of the mind’ by, for example, a Stoic sage.⁷⁴ But he goes on in *Off.* 1.51 to speak of an *already existing societas* of human beings who are not Stoic sages; a *societas* which is that of ‘all with all others’—a sublunary *societas* and not a *cosmopolis*—using the same adjective he used, *latissime*, in describing the virtue of *iustitia* (p.231). It is the most widespread *societas* across the earth as distinct from the *cosmos*, one we saw Waldron (p.51) speak of when he construed Kant’s writings

⁷³ *Off.* 1.50–51.

⁷⁴ Cf. *LM1*. pp.6–7.

on hospitality as referring to “the myriad processes by which humans, at all levels of *social* organisation, all over the world, come into direct and indirect contact with one another”. But we can see that for Cicero here it is not about processes; it is about ‘one’ and ‘another’ in contact, or more specifically still, one and another’s virtues of sociability, *iustitia* and *beneficentia* (and indeed a virtue deriving from these, *hospitalitas*), *in action*.⁷⁵ While the different degrees of *societas* that Cicero sets out in the *De Officiis* at this point will be discussed in more detail in the final section of this chapter, we may note here that he concludes his discussion of *beneficentia* by suggesting that conferral of *beneficia* is not the result of a competition between different benefactors, that one ought always “to look at what each person most greatly needs”, and finally, as is right regarding middle *officia*, that one should *practise* them, “so that we can become good calculators [*ratiocinatiores*] of our *officia*”:

“...neither doctors nor generals nor orators are able, however much they have taken to heart advice about their art, to achieve anything very worthy of praise without experience and practice. Similarly, advice on observing *officium* certainly has been handed down, as I myself am now handing it down, but a matter of such importance also demands experience and practice.”⁷⁶

In concluding this sub-section, we return to Atkins’ excellent article which provides us with a good summary of Cicero’s account of this most social of all the virtues as he sets it out in the *De Officiis*:

“Cicero’s society ... was bound together by a network of relationships of service, protection, kinship and affection, and by the social [norms] that governed these. On the one hand, *beneficentia* in such a society is more [‘normative’] and less spontaneous than our ‘generosity’. Cicero tells us that the benefactor should take into account what the recipient deserves in respect of his character, the closeness of his relationship and his previous services. Thus *beneficentia* is at least strictly limited by the idea of giving to each his own. On the other hand ... Cicero can see justice and beneficence as playing complementary roles in the single task of building up *societas*.”⁷⁷

⁷⁵ Cf. *Off.* 2.64, Nussbaum, *Kant and Stoic Cosmopolitanism*. pp.11–13.

⁷⁶ *Off.* 1.60.

⁷⁷ Atkins, *Domina et Regina Virtutum*. p.266.

3.3.2 Cicero on Wisdom and Prudence

Wisdom (*sapientia*) Cicero says in Book I of the *De Legibus* is “the mother of all good things, from the love of which philosophy took its name in Greek”, and after personifying and praising philosophy (again) as “searcher out of virtue, expeller of vices” in Book V of the *Tusculanae Disputationes*, says that:

“No one can deny that *sapientia* itself is ancient not only in fact but also in name. Through knowledge [*cognitio*] of things human and divine, and then of the origins and causes of each single thing, it acquired the fairest of names with the people of old. So we have heard the Seven [Sages of Greece in the sixth century BCE], who were considered and called *sophoi* by the Greeks and ‘wise’ (*sapientes*) by us Romans, and—many generations earlier—Lycurgus, in whose time Homer too is said to have lived before the foundation of this city, and already in Homeric times Ulysses and Nestor both were, and were considered, wise (*sapientes*).”⁷⁸

These passages highlight for us that wisdom has not always been understood as the property or purview of its lovers, the philosophers, who came after the Seven Sages and so often inquired into the properties of ‘the wise man’, the *sophos*. Precisely what *sophia* or *sapientia* was meant to be picking out in the Seven Sages is unclear, and insofar as any of our ‘professional’ terms make any sense in this context, they were variously and/or simultaneously lawgivers, statesmen, orators, poets, ‘philosophers’, and ‘scientists’.⁷⁹ They were not *sophoi* in the sense in which Arendt meant in the previous chapter (p.167), who was drawing at that point on Plato’s argument about *philosopher-kings*, and we shall see in the next chapter that Cicero continues to associate *sapientia* with non-philosophers, even as he associates it with (some) philosophers as well. But another important point for us to notice in the above passage is the *social*, and indeed the historical, inflections in Cicero’s language as he is speaking about *sapientia*: it was *the Greeks* who considered the Seven Sages as *sophoi* and *the Romans* who called them *sapientes*; and both Ulysses and Nestor not only were (in Cicero’s judgment), but also *were considered by others* to be *sapientes*. The reader might recall at this point Brown’s argument in the first chapter that

⁷⁸ *Leg.* 1.58; *Tusc.* 5.5–7.

⁷⁹ Richard P. Martin, 1998. ‘The Seven Sages as Performers of Wisdom’. Carol Dougherty and Leslie Kurke (eds.). *Cultural Poetics in Archaic Greece: Cult, Performance, Politics*. Oxford: Oxford University Press. Ch.6.

wisdom cannot be claimed for oneself and can only be recognised as such by others, and we shall be considering a more fundamental way in which Cicero understands the virtue of *sapientia* as being socially placed towards the end of this sub-section.

Immediately after the account of our natural sociability that he sets out in Book I of the *De Officiis* (quoted on p.216), Cicero says that “the search for truth and its investigation are, above all, peculiar to man” and that “whenever we are free from necessary business and other concerns we are eager to see or to hear or to learn”.⁸⁰ After setting out briefly how our share in reason manifests itself in the other virtues, and that it is from the virtues that *honestas* is created and through the virtues that it is accomplished, he affirms *honestas* as something that both attracts and is yet beyond the praise of others, something that “even if no one praises it, it is by nature worthy of praise”, and says:

“You are seeing, my son, the very face and form, so to speak, of the *honestas*: if it could be seen with the eyes [of the body], as Plato says, it would inspire an amazing love [*amores*] of *sapientia*. Everything that is *honestas* arises from one of four parts: it is involved [*versatur*] either with the perception of truth [*perspicientia veri*] and with skill [*sollertia*]; or with preserving fellowship among men, with assigning to each his own, and with faithfulness to agreements one has made; or with the greatness and strength of a lofty and unconquered spirit; or with order and limit in everything that is said and done (modesty and restraint are included here). Although these four are bound together and interwoven [*inter se colligata atque implicata sunt*], certain kinds of *officia* have their origin in each individually. For example, in the part that we described as first, in which we placed wisdom [*sapientia*] and good sense [*prudentia*], there lie the investigation and finding out of what is true, and that is the peculiar function of that virtue. For when a man is extremely good at perceiving what is most true [*verissimum*] in each particular thing, and when he is able with great acuity and speed to see and to explain the reason, then he is rightly considered extremely sensible [*prudentissimus*] and wise [*sapientissimus*]. Therefore, the thing that underlies this virtue, the matter (as it were) that it handles and treats, is truth.”^{81*}

Sapientia, the ‘mother of all good things’, delivers the *honestas*, which Cicero then proceeds to set out in four parts, i.e. according to the four primary virtues.

⁸⁰ *Off.* 1.13.

⁸¹ *Off.* 1.15–16.

Although we began this section with the virtue of *iustitia*, we can see here that it is the part of the *honestas* involved with *sapientia* and *prudencia* which Cicero describes as first in the *De Officiis*, although he describes it very briefly in the rest of the text as compared with *iustitia*.⁸² In the above passage, the four parts of the *honestas* are described first of all not by the names of the virtues themselves, but by their manifestations in the world; in human beings perceiving, assigning, preserving and so on, and we see that he then goes on to say that the four parts of the *honestas* are bound together and inter-woven. This recalls what Kelsay said in the first chapter as regards the virtue of prudence tying the realities of situations to virtues of justice, temperance and courage, as well as some of the binding and inter-weaving of the virtues that we saw in the previous sub-section in Cicero's account of justice; and it also prepares the reader for yet more binding and inter-weaving in the rest of this chapter. But the final thing I wish to highlight from the above passage is that Cicero concludes it by naming the virtues of *sapientia* and *prudencia* as placed in the first part of the *honestas*, and he identifies truth as the 'matter' it handles and treats. Having already written numerous philosophical treatises highly relevant to this 'matter', Cicero provides no disquisition on truth itself in the *De Officiis* (which is about *officia*); he summarises instead that its pursuit "most closely relates to human nature" vis-à-vis the other parts of the *honestas*, that its pursuit is both natural and *honestum*, that a fault associated with its pursuit can be seen in those who rashly assent to the truth of things that have not been ascertained instead of taking their time and care in pondering about any given thing, and that another fault associated with the pursuit of truth is that "some men bestow excessive devotion and effort upon matters that are both abstruse and difficult, and unnecessary."⁸³ So long as these two faults are avoided, Cicero says, the pursuit of truth "will rightly be praised", although it is contrary to *officium* to be drawn by an *excessive* devotion to its pursuit "away from practical achievements: all the praise that belongs to virtue lies in action".⁸⁴ It seems to me that we can see here, even as he himself is devoted to the pursuit of truth, Cicero's fuller appreciation of the practical life of the citizen over the

⁸² Cicero spends two chapters of Book I setting out *sapientia* and *prudencia*, and forty-one setting out *iustitia*.

⁸³ *Off.* 1.18–19.

⁸⁴ *Off.* 1.19.

theoretical life of the philosopher in the shaping of his advice, and this is something we shall consider in more detail below and in the next chapter. But to return to his account of *sapientia* and *prudentia* in the *De Officiis*, he has more to say about these virtues towards the end of Book I:

“The foremost of all the virtues is the wisdom [*sapientia*] that the Greeks call *sophia*. (Good sense [*prudentia*], which they call *phronesis*, we realise is something distinct, that is the knowledge [*scientia*] of things that one should pursue and avoid). But the wisdom [*sapientia*] that I declared to be the foremost is the knowledge of all things human and divine [*rerum divinarum et humanarum scientia*]; and it includes the sociability and fellowship [*communitas et societas*] of gods and men with each other. If, as is certain, that is something of the greatest importance, then necessarily the *officium* that is based upon sociability is also of the greatest importance. Moreover, learning about and reflecting upon [*cognitio contemplatioque*] nature is somewhat truncated and incomplete if it results in no action. Such action is seen most clearly in the protection of men’s interests and therefore is concerned with the fellowship of the human race [*societatem generis humani*]. For that reason this should be ranked above mere learning [*cognition*].”⁸⁵

Cicero’s claim here, not unlike his claim in the passage quoted above from the *Tusculanae Disputationes* (p.241), is that *sapientia* is ‘the knowledge of all things human and divine’, but he is also saying in this passage from the *De Officiis* that this includes the *communitas et societas* of gods and men with each other, and so the *officia* deriving from this natural sociability are of the greatest importance *as well*. As Atkins puts it, Cicero understands *sapientia* to be foremost of all the virtues “in the sense that it provides the very understanding of the universe that explains the priority of justice”.⁸⁶ It differs from *prudentia*, which is concerned only with making practical choices in the world, and which “ill-will [*malitia*] wants to mimic”, by comprehending the correct picture of that world “that allows *prudentia* to make the right choices, and that explains why *iustitia* ought to be preferred to pure inquiry itself.”⁸⁷ And as we have seen, *iustitia* plays a controlling role in relation to *sapientia* in the *De Officiis* in that Cicero warns against an excessive devotion to pure inquiry such that it results in

⁸⁵ *Off.* 1.153.

⁸⁶ Atkins, *Domina et Regina Virtutum*. p.259.

⁸⁷ Atkins, *Domina et Regina Virtutum*. p.259; *Off.* 3.96. Cf. *Off.* 3.62–96.

the negative type of injustice, the abandoning of those whom one ought to be protecting.

More will be said about the virtue of *sapientia* as it is to be found in the *De Re Publica* in the next chapter, but here, having set out this foremost of all the virtues in the *De Officiis*, whose ‘matter’ that it handles and treats is truth, Cicero says:

“As for the other three virtues, their aim is necessities: they are to procure and to conserve whatever is required for the activities of life, in order both to preserve the fellowship and bonding between men, and to allow excellence and greatness of spirit [*magnitudo animi*] to shine out—both in increasing influence and in acquiring *utilitates* for oneself and those dear to one, and also, and much more, in disdaining [*despiciendus*] the very same things.”⁸⁸

This underscores the practical nature of Cicero’s wider ethical project; orienting *sapientia* and *prudentia* to the building up of *societas*. That Cicero says the aim of the virtue of *iustitia* is necessities I think speaks not only to his practical, ‘Roman’ outlook on life, but also to the *strategic* role that this virtue is carrying out in the *De Officiis*, which seems to me to be an exercise of *prudentia* (and *consilium*) on his part. As Atkins shows in her article, Cicero stresses throughout this text various pragmatic reasons as to why not only the other virtues but also our *officia* that derive from them must be limited by *iustitia*; for it is precisely the virtue that ensures the ongoingness of the conditions in which all virtues may develop.⁸⁹ And another point worth making about the above passage is that it makes plain that Cicero’s account of the virtues certainly does not ‘decisively exclude spontaneous action or achievement’, as Arendt in the previous chapter understood ‘society’ as doing in the modern age; Cicero is seeking to preserve and maintain precisely those worldly conditions that allow human excellence and greatness to shine out. As for disdaining *utilitates*, i.e., what Long called “the unavoidable object of individual human endeavour” (p.236), this would require what Cicero calls *magnitudo animi*, greatness of spirit, which we shall now consider.

⁸⁸ *Off.* 1.17.

⁸⁹ ‘Ongoingness’ is a term I picked up from Walzer (*Arguing About War*, p.43), some more features of which in my own understanding I hope become apparent to the reader in the next chapter.

3.3.3 Cicero on Greatness of Spirit and Courage

In the first chapter, we saw Brown describe as “breath-taking” Morgenthau’s claim that the “perhaps most noble” task of the IR theorist today is to prepare the ground for a new international order, and that this was a display of the virtue of *phronesis* on Morgenthau’s part. But one might also argue that what Morgenthau displayed and what he was calling for in other IR theorists was the virtue of courage. As Kelsay said, *phronesis* is a kind of practical wisdom by which one ties the realities of particular situations to virtues of justice, temperance and courage, and for Morgenthau, in the reality of a world of sovereign nation-states, to publish an argument that some groundwork was required by theorists for “a new international order radically different from that which preceded it” I think did indeed show a certain measure of courage on his part. But what is meant by courage? I think Walzer was right when he said that it is something that ‘you never know whether you have until you need it’, and Kelsay refers to this virtue in his article as fortitude.⁹⁰ Broadly speaking, to have courage or fortitude is to be brave in the face of adversity. Arendt says that it is “a big word”, “indispensable for political action” and “demanded of us by the very nature of the political realm”, and we saw in the previous chapter that she associated this virtue with greatness and that Churchill had ‘a kind of laughing courage’ (p.164). His was not simply the kind of courage (*fortitudo*) that Cicero says we impute to horses and lions (p.239); it was a greatness of spirit (*magnitudo animi*) as evidenced in his deeds, a specifically human kind of fortitude tied closely to our share in reason, which Aristotle called *megalopsychia*.⁹¹

In speaking of Churchill’s courage, Arendt’s modifier—‘a kind of laughing...’—I think refers to the disdain for human things that we have already seen Cicero touching upon (pp.244-245), and he says that this is one of the two things that constitute *magnitudo animi*:

“A brave and great spirit [*fortis animus et magnus*] is in general seen in two things. One lies in disdain for things external, in the conviction

⁹⁰ Regrettably, I cannot find again where Walzer says this, but I do recall it was in a YouTube video.

⁹¹ *TWB*. p.227.

that a man should admire, should choose, should pursue nothing except what is honourable and seemly [*honestum decorumque*], and should yield to no man, nor to agitation of the spirit, nor to fortune. The second thing is that you should, in the spirit I have described, do deeds which are great, certainly, but above all beneficial, and you should undertake with vigour difficult and laborious tasks which endanger both life itself and much that concerns life.”^{92*}

As we have seen (sub-section 3.2.1), the disdain of external things suggests a specifically Stoic orientation, one that considers only that which is *honestum* as good. Cicero is careful to distinguish here this disdain of external things from the other constituent of *magnitudo animi*, the deeds, in Dyck’s words, “that constitute the glamor and usefulness” to *societas* of this virtue.⁹³ We have already seen Cicero hold up as cautionary examples some who have displayed the virtue of *magnitudo animi* slipping into a desire for glory which leads them to the commission of deeds which are to the detriment of *societas*, i.e. unjust deeds, and we shall consider this in more detail below, but in returning to a consideration of the first constituent, a further Stoic feature of it is what Cicero sets out here as an ability not to yield to agitations of the spirit, and later renders positively as *tranquillitas animi*.⁹⁴ He notes that there have been many who have sought this kind of tranquillity by abandoning public business and living a life of leisure, including “the noblest and foremost philosophers” whose outstanding abilities “perhaps” excuse them from living the *vita activa*, but repeats his concern that behind such life-choices (and in those “without a reason” to provide for disdain of external things) may be the causes that lead to the negative type of injustice (pp.234-235).⁹⁵ Of those engaged in public business, however, he says that they must acquire this *tranquillitas animi* so as to live “without anxiety, with seriousness and with constancy”, and distinguishes at this point in his discussion between the military and civilian aspects of the *vita activa*:

“Most men consider that military affairs are of greater significance than civic; I must deflate that opinion. For men have not infrequently sought war out of desire for glory ... if we are prepared to judge the

⁹² *Off.* 1.66.

⁹³ Dyck, *A Commentary on Cicero, De Officiis*. p.195.

⁹⁴ *Off.* 1.69.

⁹⁵ *Off.* 1.70–71.

matter correctly, many achievements of civic life have proved greater and more famous than those of war.”⁹⁶

Here we see some of the beginnings of the less militaristic and more peaceable strand of the republican tradition—the just war tradition—that Canovan sidelined in assessing Arendt’s work.⁹⁷ After a comparison of military and civilian achievements that he provides by way of numerous examples in history in order to make his point, Cicero goes on to emphasise that even in warfare it is strength of spirit more than body that counts, that “we ... must value the reason [*ratio*] which makes decisions above the courage [*fortitudo*] which makes battle”, and a mark not only of a great spirit in a human being, but:

“... also of great intellectual talent [*ingenii magni*] [is] to anticipate the future by reflection, deciding somewhat beforehand how things could go in either direction, and what should be done in either event, never acting so that one will need to say, ‘I had not thought of that’. Such is the work of a spirit not only great and lofty but also relying on good sense and good counsel [*prudencia consilioque fidentis*] ... It is also the mark of a great man [*magni viri*] in times of unrest to punish the guilty [*punire sotes*] but to preserve the multitude of people [*multitudinem conservare*], holding fast to what is upright and *honesta*, whatever fortune may bring. For just as some ... put war before civic affairs, so you will find many to whom dangerously hot-headed counsels seem greater and more brilliant than calm and considered ones. We must never purposefully avoid danger so as to appear cowardly and fearful, yet we must avoid exposing ourselves pointlessly to risk. Nothing can be stupider than that. When confronting danger, therefore, we should copy the doctor, whose custom it is to treat mild illnesses mildly, though he is forced to apply riskier, double-edged, remedies to more serious illnesses. Only a madman would pray for a facing storm during a calm; but when a storm does arise the wise man [*sapientes*] meets it using all his reason. That is particularly so when a successful outcome may bring more good than the period of uncertainty evil.”⁹⁸

This I think is an important passage and the first thing for us to note from it is the inter-weaving of *magnitudo animi* with *prudencia* and *consilium*, the latter two of which we saw Kelsay speak of together in the first chapter through the

⁹⁶ *Off.* 1.74.

⁹⁷ Which may also be seen in President Obama’s acceptance speech for the Nobel Peace Prize in 2009: “The soldier’s courage and sacrifice is full of glory, expressing devotion to country, to cause and to comrades in arms. But war itself is never glorious, and we must never trumpet it as such.” Available online at <https://www.nbcnews.com/id/wbna34360743> Accessed 9th December 2020.

⁹⁸ *Off.* 1.81–83.

writings of Aquinas. *Prudentia* and *consilium* act as limits upon *magnitudo animi*, helping to prevent this virtue from degenerating into recklessness through its holder slipping into a desire for glory and acting to fulfil that desire. We may also note here the presence of that *fundamentum* of justice, *fides*, without which the person of great spirit could not *trust* another's counsel, and indeed it looks like justice is carrying out a controlling role in the rest of the passage. No one concerned with protecting and building up *societas* would expose it pointlessly to risk, and as a good doctor cures a body of illness, so the good statesperson cures the body politic of danger. And again, Cicero is tying justice, *magnitudo animi* and *prudentia* to *sapientia*; it is the wise statesperson who copies the doctor. The 'riskier, double-edged remedies' the doctor is *forced* to apply *only* in serious cases perhaps anticipates arguments such as Walzer's about 'supreme emergency', where the normal rules of warfare may need to be overridden *in extremis*, for the sake of the community's survival:

“[Supreme emergency is] a desperate time, when the measures taken are ones we would avoid if we possibly could. I wish no such time on my own country and my fellow citizens. Let this be a theoretical discussion and an educational exercise ... I suggest a certain wariness about the exercise. As hard cases make bad law, so supreme emergencies put morality itself at risk. We need to be careful ... Egoists and communalists, who recognise no one's rights but their own, act badly on the smallest pretext, at the first hint of danger (perhaps also at the first hint of advantage) to themselves. A non-fetishized community, by contrast, sustains the discipline of its soldiers and the restraint of its leaders, who thus act badly only at the last minute and under absolute necessity.”⁹⁹

This seems to me to be good counsel, fully aware that 'serious illnesses' or supreme emergencies are possibilities and placing prudential and moral limits as to when any 'riskier, double-edged remedies' might be necessary. We saw in the first chapter that Walzer described some of the IR realists of the 1950s and 60s as 'modern Machiavellis', yet only a few of whom argued for prudential limits and none of whom argued for moral ones, and although he said that they practised being 'cool and tough-minded', it seems to me that, insofar as these limits were absent, their counsels would have been closer to what Cicero calls here 'dangerously hot-headed'. Walzer's, by contrast, is calm and considered, it

⁹⁹ Michael Walzer, 2004. 'Emergency Ethics'. *Arguing About War*. New Haven: Yale University Press. Ch.3.

seems to me closer to *sapientia*, *prudentia*, *iustitia*, *magnitudo animi*, and as will be discussed in more detail in the next sub-section, to *decorum* as well.

Cicero goes on after this passage to praise those who face dangerous undertakings and who sacrifice their own glory or even the goodwill of their fellow-citizens for the sake of the common welfare—again, the virtue of *iustitia* is playing a controlling role here—before moving on to discuss how *magnitudo animi* is manifest by statespersons in peacetime. The advice he offers here should be familiar to the reader:

“In general those who are about to take charge of public affairs should ... fix their gaze so firmly on what is beneficial to the citizens that whatever they do, they do with that in mind, forgetful of their own advantage ... [and] ... care for the whole body of the *res publica* rather than protect one part and neglect the rest. The management of *res publica* is like a guardianship [*tutela*], and must be conducted [*procuratio*] in the light of what is beneficial not to the guardians, but to those who are put in their charge. By consulting the interests of some of the citizens and neglecting others, they bring upon the *civitas* the ruinous conditions of unrest and strife. Consequently, some appear as *populares*, and others as devotees of the *optimates*, but few as champions of everyone ... Electioneering and the struggle for positions of honour is an altogether wretched practice ... we should consider as enemies [*adversarios*] those who take up arms against us, not those who want to protect the *res publica* in the way each considers best. It was in that way that Publius Africanus and Quintus Metellus used to disagree with one another, without bitterness [*acerbitas*].”^{100*}

According to Cicero, it is a person of *magnitudo animi* who is forgetful of their own advantage and mindful of the entire *res publica*, and it seems to me that it would also be such a person, disdainful of external things, who finds electioneering and the struggle for positions of honour ‘an altogether wretched practice’, albeit necessary and from which they do not shrink. And again, it seems to me that the virtue of justice, insofar as it is flourishing, is in the background here carrying out a controlling role, holding the communal life together with citizens disagreeing in good faith, and without *acerbitas*. Cicero mentions here the *populares* and *optimates* in the Roman republic. As Griffin and Atkins put it, these refer to “two types of politics, not two parties”; politics of ‘elite’ *persons*, i.e. those persons who freely chose themselves into politics

¹⁰⁰ *Off.* 1.85–87.

(and many of whom switched types of politics throughout their lifetime).¹⁰¹ Roughly speaking, the *populares* stressed *potestas in populo* and the *optimates* stressed *auctoritas in senatu*, with few championing *potestas in populo auctoritas in senatu sit*. Scholars are right of course that there is no clear mapping of the *populares* and *optimates* in the Roman republic on to modern party politics, but the vaguest of similarities I think is nevertheless discernible. Arendt, of course, would never admit it out of modesty, but it seems to me that it was the virtue of justice that was on her mind in trying to tie together and nurture the relationship between liberals and conservatives, or left and right, in contemporary politics, and that, notwithstanding the Stoic influences upon Cicero's own account of it, she was a woman of *magnitudo animi* who almost always avoided the pitfalls posed by this particular virtue. As Cicero warns of these pitfalls and points out what is needed to avoid them:

“...if the loftiness of spirit [*elatio animi*] that reveals itself amid danger and toil is empty of justice, if it fights not for the common safety but for its own advantages, it is a vice. It is not merely unvirtuous; it is rather a monstrosity [*immanitas*] which repels all humane feeling [*humanitas*] ... It is a hateful fact that loftiness and *magnitudo animi* all too easily give birth to wilfulness and an excessive desire for pre-eminence [*pertinacia et nimia cupiditas principatis innascitur*] ... the more outstanding an individual is in *magnitudo animi*, the more he desires complete pre-eminence, or rather to be the sole ruler. But when you desire to surpass all others, it is difficult to respect the fairness [*aequitas*] that is a special mark of *iustitia* ... The greater the difficulty, however, the greater the splendour: there is no occasion from which *iustitia* should be absent.”^{102*}

As Young-Bruehl says, Arendt in her youth “was not one to be thwarted in her desires”, at home “her displays of ... willfulness were ceaseless”, and these issues did not end in the early 1920s when she got expelled from school for (rightly or wrongly) leading her fellow pupils in a boycott of a certain teacher's classes after he had insulted her, being perhaps most clearly in evidence to many four decades later, in the Eichmann controversy.¹⁰³ But during this controversy, not all ‘humane feeling’ was lost in Arendt, and as she says a few

¹⁰¹ *Off.* p.34n2. Based on my own understanding of this point in history, I think Griffin and Atkins are right in describing Cicero himself as a ‘moderate *optimatus*’.

¹⁰² *Off.* 1.62–64.

¹⁰³ Young-Bruehl, *Hannah Arendt: For Love of the World*. pp.29, 33–34. Cf. *JW.* pp.465–511.

times in *Eichmann in Jerusalem*, her concern to see justice being done was paramount, and whether or not she was harbouring a desire for glory in writing the text up (I doubt very much that she was), she certainly was not basking in it after its publication.¹⁰⁴ The *desire (cupiditas)* for glory—or what Arendt had called in her acceptance speech for the Sonning Prize, ‘the great temptation of recognition’ (p.162)—Cicero says “destroys the *libertas* to which end every endeavour of men of great spirit [*magnanimis viris*] ought to be devoted”*, and to which Arendt also said men of action ought to be committed due to the very nature of their activity (p.181).¹⁰⁵ And what also helps prevent one from slipping into this dangerous desire is the virtue of *decorum*, in which appears “a calming of all the agitations of the spirit [*omnisque sedatio perturbationum animi*]”.¹⁰⁶

3.3.4 Cicero on Decorum

We saw in the first chapter that Dallmayr in his review of Gadamer spoke of “the empirical messiness deriving from contingent interests and inclinations” and also spoke of “the motivating force of human inclination” (p.72), which it seems to me can be understood, albeit very broadly, as a distinction between ‘world’ and ‘self’, and it also seems to me that Cicero’s discussion of *decorum* in the *De Officiis* comprehends both sides of this distinction; as with the rest of the virtues, it is a virtue of persons which has a social orientation. As regards the motivating force of human inclination, the *motus animi*, he says:

“... the force of the spirit [*vis animorum*], that is its nature [*natura*], is twofold: one part of it consists of impulse, called in Greek *horme*, which snatches a man this way and that; the other of reason, which teaches and explains what should be done and what avoided. Hence reason charges, and impulse yields. All action should be free from rashness and carelessness; nor should anyone do anything for which he cannot give a persuasive justification: that is practically a definition of *officium*.”^{107*}

¹⁰⁴ Young-Bruehl, *Hannah Arendt: For Love of the World*. p.352.

¹⁰⁵ *Off.* 1.68.

¹⁰⁶ *Off.* 1.93.

¹⁰⁷ *Off.* 1.101. There is some scholarly debate as to whether these are Cicero’s words—in context, unusually strong in their Stoicism—or an interpolation which has been made at a later (but not much later) date during transmission. Dyck, *A Commentary on Cicero, De Officiis*. pp.261–263.

Part of the teaching and explaining that reason carries out inside a ‘self’ involves a calming of the agitations of the *animus* (insofar as one’s impulses yield to one’s reason), and what this produces in one’s actions, Cicero says, is constancy and moderation, virtues of *decorum*, that shine out in the world for themselves. An example of moderation may be seen in the interview Arendt gave to Günter Gaus after the Eichmann controversy, when he said that some of the criticism of her book was based on the tone of certain passages:

“ARENDR: I can’t say anything [about that]. And I don’t want to. If people think you can only write about these things in a tone filled with pathos ... and ... Let’s put it differently. I don’t want to get angry.

GAUS: Does it make you angry?

ARENDR: No, what’s the point.”¹⁰⁸

In the previous chapter, Arendt had said that her tendency to shy away from the public realm was due to her “personal temperament and inclination—those innate psychic qualities which form not necessarily our final judgments but certainly our prejudices and instinctive impulses”, and in this exchange with Gaus, it seems to me that we can see an instinctive impulse of anger arising in Arendt as her person (*ethos*) instead of her book (*logos*) is criticised (by others of whom Gaus is merely reporting), before she arrives at her final judgment as to how she will speak through an exercising of her reason which has moderated that impulse.¹⁰⁹ In other words, I believe Arendt in this brief exchange has shown the virtue of *decorum*.¹¹⁰

Decorum is Cicero’s translation of the Greek *prepon*, which Panaetius seems innovatively (and ‘eclectically’) to have used in relation to Stoic ethics. It is a term carried over from the aesthetic sphere and put to ethical use, and it means

¹⁰⁸ Regrettably, this specific exchange is missing at *EU*, p.16, but can be seen in the televised version at <https://www.youtube.com/watch?v=dsolmQfVsO4&t=3057s> Accessed 26th November 2020. Cf. *Off.* 1.136–137.

¹⁰⁹ Arendt also says in the interview that “...the tone of voice in this case is really the person.” *EU*, p.16.

¹¹⁰ Whether or not Arendt *always* displayed the virtue of *decorum* in her actions is of course an altogether different matter.

‘be conspicuous’, ‘shine forth, show oneself’, or ‘beseem’.¹¹¹ The reader may recall at this point Arendt’s argument that living beings “make their appearance” in the world, and more specifically, that human beings “present themselves in deed and word and thus indicate how they wish to appear, what in their opinion is fit to be seen and what not” (p.163). In her exchange with Gaus, it seems to me that the world was closer to the centre of Arendt’s attention than her self; she decided that her anger was not fit to be seen in the world at that point, it was not fitting for the occasion.¹¹² *Decorum* has been translated variously as ‘seemly’, ‘fitting’, and ‘appropriate’, but as Schofield says (and says well), “a really satisfying English equivalent has proved elusive: *decorum* is what both *is* and *looks* just right.”¹¹³ Gill notes that *decorum* is presented in the *De Officiis* “as being the *outward* aspect of moral excellence (*honestas* and *virtus*); it is thus a kind of moral beauty that ‘shines out’ (*elucet*) in the life of the virtuous person.”¹¹⁴ In his commentary, Dyck says that Cicero’s explication of *decorum* at *Off.* 1.93-99 “is perhaps the most difficult section in the entire essay”, and Schofield I think is nearer the mark when he says that “there is not much difficulty in getting from the text a general sense of what Cicero means by *decorum*. But a coherent and precise philosophical understanding has proved hard to achieve.”¹¹⁵ We recall that the *De Officiis* is a work of practical ethics, providing “watchwords by which daily life in all its bearings may be shaped”. In this connection, arriving at a general sense of what Cicero means by *decorum* seems to me to be sufficient, and arriving at a coherent and precise philosophical understanding of what he means to say, although certainly and legitimately of interest to many philosophers, is not my aim in this subsection.¹¹⁶ With that said, let us consider what Cicero says about *decorum*:

¹¹¹ Dyck, *A Commentary on Cicero, De Officiis*. p.242.

¹¹² Cf. *Off.* 1.142–149.

¹¹³ Malcolm Schofield, 1995. ‘The Fourth Virtue’. Nicgorski (ed.), *Cicero’s Practical Philosophy*. p.43. Emphases in original.

¹¹⁴ Christopher Gill, 1988. ‘Personhood and Personality: The Four-*Personae* Theory in Cicero, *De Officiis* I’. *Oxford Studies in Ancient Philosophy* Vol. 6. pp.169–199. Emphasis added.

¹¹⁵ Dyck, *A Commentary on Cicero, De Officiis*. p.241; Schofield, *The Fourth Virtue*. p.44.

¹¹⁶ For philosophical accounts of this virtue, see for example, Gill, *Personhood and Personality*; Schofield, ‘The Fourth Virtue’. Nicgorski (ed.), *Cicero’s Practical Philosophy*; and David Machek, 2016. ‘Using Our Selves: An Interpretation of the Stoic Four-*personae* Theory in Cicero’s *De Officiis* I’. *Apeiron* 49(2). pp.163–191.

“...we must discuss the one remaining element of *honestas*. Under this appear a sense of shame [*verecundia*] and what one might call the ordered beauty of a life [*ornatus vitae*], restraint and modesty [*temperantia et modesta*], a calming of all the agitations of the spirit, and due measure in all things. Under this heading is included what in Latin may be called *decorum*; the Greek for it is *prepon*. The essence of this is that it cannot be separated from what is *honestum*: for what is *decorum* is *honestum*, and what is *honestum* is *decorum*. It is easier to grasp than to explain what the difference is between *honestum* and *decorum*.”¹¹⁷

We saw in previous chapters that the fourth primary virtue is usually called temperance or moderation (it is also sometimes called self-discipline), and again, it was an innovation of Panaetius in his own ethics to bring *to prepon* over from aesthetics and have virtues such as temperance and moderation subsumed within it, although this subsumption takes on a curious form in Cicero’s account. But before we take a closer look at it, let us consider what he says in the above passage as to what appears in this one remaining element of *honestas*. I hope already to have shown through the examples of Arendt (pp.252-253) and Walzer (p.249) something of what he means here by restraint, a calming of the agitations of the spirit, and due measure, and through Gill the aesthetic features derived from Panaetius’s ethics which lead Cicero to say that what appears in this element of *honestas* is what one might call the ordered beauty of a life. But he also says here that a sense of shame appears in this element of *honestas*. As Schofield puts it, *verecundia* is that “untranslatable quality ‘between respect and shame’—‘modesty’ is as good as I can do”.¹¹⁸ *Verecundia* is an especial aspect of the fourth virtue which marks out its social orientation; an aspect which involves managing the impression we create upon others through taking others into our consideration. Robert A. Kaster says that “the mutuality of *verecundia*, the way that its wariness looks both to the self and to the other—to the extent of seeing the matter as the other sees it ...—is the essence of the emotion as a force of social cohesion.”¹¹⁹ Although justice is the key virtue for Cicero in building up *societas*, *verecundia* plays an important role here as well:

¹¹⁷ *Off.* 1.93.

¹¹⁸ Schofield, *The Fourth Virtue*. p.44.

¹¹⁹ Robert A. Kaster, 2005. ‘Between Respect and Shame: *Verecundia and the Art of Social Worry*’. *Emotion, Restraint and Community in Ancient Rome*. Oxford: Oxford University Press. Ch.1.

“... we must exercise a respectfulness [*reverentia*] towards men, both towards the best of them and also towards the rest. To neglect what others think about oneself is the mark not only of arrogance, but also of utter carelessness. There is a difference between *iustitia* and *verecundia* when reasoning about humans. The part of *iustitia* is not to harm a man, that of *verecundia* not to outrage him. Here is seen most clearly the essence of *decorum*.”^{120*}

Elsewhere, he describes *verecundia* as that “which nature has given men as a sort of fear of criticism that is not undeserved.”¹²¹ Kaster offers a contemporary example where *verecundia* is most often seen in action, in that of occupants in an elevator typically spacing themselves as far apart as possible, standing facing in the same direction, avoiding eye-contact, and so on. He talks of this in terms of one’s ‘ignorability’, with the un-ignorable person loudly conversing over their phone as though nobody else was in the elevator as failing to show *verecundia*, failing to avoid giving offence to others:

“*Verecundia* operates in circumstances where there is in principle a choice to be made as to whose interests will be put to the fore and whose will be restrained: ... it implies a voluntary stepping back from pressing one’s own interest (at a minimum) or a voluntary privileging of the interests of the other.”¹²²

The un-ignorable person speaking loudly into their phone in an elevator is, as Cicero says, being either arrogant or careless, and as Kaster says, “because the opportunities for offense are so rich and varied, the self-monitoring that *verecundia* entails is constant”, and this I think shows why it comes under the heading of the fourth virtue, associated with temperance and moderation, and like the rest of the virtues, requires practice. But in returning to the passage quoted on p.251, let us begin to consider the curious form *decorum* takes in Cicero’s account. He says that what is *honestum* is *decorum* and what is *decorum* is *honestum*, and he goes on after this passage to say how it is associated both with *honestas* as a whole and more specifically as the fourth primary virtue:

“... first, we understand a *decorum* of a general kind, involved [*versitur*] with *honestum* behaviour as a whole, and secondly,

¹²⁰ *Off.* 1.99.

¹²¹ *Rep.* 5.6.

¹²² Kaster, *Between Respect and Shame*. p.24.

something subordinate to this, which relates to an individual element of what is *honestas*. The former is customarily defined something like this: what is *decorum* is that which agrees with the excellence of man just where his nature differs from that of other creatures. Their definition of the part subordinate to this takes *decorum* to be that which agrees with nature in such a way that moderation and restraint [*moderatio et temperantia*] appear in it, along with the appearance of a free person [*liberali*].”¹²³

As all the virtues have a social orientation, so all the *officia* carried out which derive from them are *decorum*: fitting or appropriate actions for a human being *as a member of society*, as a person. Just where human beings differ from that of other creatures is in our capacities for reason and speech, with our reason in particular being the thing that superintends our instinctive impulses, and which we develop through education so that the things we choose to do and choose not to do in society become steadier over time, as our constitutions evolve. In the first chapter, we saw Beiner describe the virtue of *phronesis* as the union of good judgment and the action which is the *fitting* embodiment of that judgment, and in the second chapter, we saw Arendt speaking of the ‘two highest virtues of the statesman, moderation and insight’, and saying that most *conspicuous* in Kennedy’s handling of the Cuba crisis and civil rights conflict were the extremes to which he did *not* go in his actions. Political events of such gravity cannot but give rise to instinctive impulses, and whatever Kennedy’s were, he was able to moderate them, on Arendt’s telling, in his words and deeds. Again, as Cicero puts it, all the virtues are “bound together and inter-woven” and I think we may see this inter-weaving in what Beiner and Arendt are saying as regards (what Arendt called) moderation and insight.¹²⁴ We may also have seen it in Morgenthau’s article which called for IR theorists to prepare the ground for statespersons (who are the ones making the relevant decisions) by investigating principles of political organisation appropriate to the existence of nuclear power. This not only showed insight on Morgenthau’s part; it also showed a certain level of courage (pp.245-246) and moderation (p.116).

But in returning to what Cicero says about *decorum*, as well as being seen in the whole of *honestas*, he also speaks of it being customarily defined as one of its

¹²³ *Off.* 1.95–96. Cicero also says here that *decorum* is ‘related’ [*pertinet*] to the whole of *honestas* “in such a way that it is not seen by esoteric reasoning, but springs ready to view.”

¹²⁴ Cf. *Off.* 1.142–143 and 2.35.

four parts. He takes this latter definition from Panaetius (probably) as that which agrees with nature in such a way that moderation and restraint appear in it, along with the appearance of a free person.¹²⁵ We have already covered moderation and restraint, as well as the associated sense of *verecundia*. A free person is understood here in more ‘republican’ than ‘liberal’ terms, i.e. a freedom that unavoidably comes along with accepting responsibility for one’s actions to the wider society of which one is a member and in which one is entrusted with the freedom to act in the first place.¹²⁶ Here we may see some more of the aesthetic aspect of this virtue; acting with *decorum* entails “a style of freedom” in the person which sustains freedom’s worldly condition, i.e. the maintenance and development of social relationships.¹²⁷ As set out through Arendt’s writings in the previous chapter, a fundamental aspect of this freedom and responsibility involves our status as *persons*, and it is in his discussion of the fourth primary virtue in the *De Officiis* that Cicero provides what is often called in the literature ‘the four-*personae* theory’. Before we consider what Cicero has to say on this, I think it useful to keep in mind a distinction that Gill makes between personhood and personality in approaching this part of the *De Officiis*:

“Those who are concerned with personhood, as I understand this notion, are interested in persons as a class, and are, especially, concerned to define the nature and boundaries of this class by reference to normative criteria of personhood. Thus, in modern thinking, the conditions of personhood have been stipulated as, for instance, rationality, self-consciousness, and the capacity for assuming legal and moral responsibility for oneself. By a concern with ‘personality’, I understand an interest in persons as individuals, and, especially, an interest in what makes each individual distinctive and unique. This interest is typically combined with the placing of a high valuation on personal individuality and uniqueness ... Part of what makes the four-*personae* theory interesting and, in the ancient context, unusual, is that it seems to be concerned with personality as well as personhood, and to place value on the preservation and development of personal individuality ... [In the four-*personae* theory] there seems to be an increased interest in actual, differentiated, human beings and a reduced interest in the normative ‘sage’.”¹²⁸

¹²⁵ Cf. Dyck, *A Commentary on Cicero, De Officiis*. p.254.

¹²⁶ The term for freedom without such responsibility in Latin is *licentia*. Cf. *Off.* 1.148, and in this project, pp.328 and 350.

¹²⁷ Schofield, *The Fourth Virtue*. p.55. Emphasis added.

¹²⁸ Gill, *Personhood and Personality*. pp.169–170.

I think several things are worthy of note here. Gill says that those interested in personhood today—for example, philosophers or legal theorists or lawyers—are concerned with defining the nature and boundaries of a *class* (I would say ‘category’), and not with defining the natures or boundaries of actual persons. Similarly, those interested in personality—for example, philosophers or psychologists or citizens—are not interested in *defining* the personality of actual persons. Earlier in this chapter, we saw Brad Inwood say that ‘constitution’ for the Stoics “seems to refer to the person, the compound of body and soul which constitutes the identifiable individual”, and in the previous chapter, we saw Arendt conclude her acceptance speech for the Sonning Prize by expressing a hope that, after the event was over, she could move through the great play of the world without her professional *persona* but still be “identifiable”, although “not definable”, and all of this I think speaks, or at least should speak, loudly to *free* persons, each of whom in our distinctiveness and uniqueness is not definable, but nevertheless identifiable and both legally and morally responsible for our actions to the wider society of which we are a part. We are each a person, “a man [or woman] of flesh and blood with an individual history, with an always unique set of qualities, peculiarities, behaviour patterns, and circumstances” who is exercising judgments in the world (p.153), and whose constitution is always both “stable and dynamic”, always identifiable yet always evolving (p.215). Inwood also said that, for the Stoics, each constitution (or ‘self’) has both general and individual features, and through Panaetius’s ‘eclectic’ or unorthodox Stoicism, this seems to me to be something like the distinction that Cicero is drawing with the first two of the four *personae*:

“...one must understand that we have been dressed, as it were, by nature for two roles [*personae*]: one is common, arising from the fact that we all have a share in reason ... Everything *honestum* and *decorum* are derived from this, and from it we discover a method of finding out our *officia*. The other, however, is that assigned specifically to individuals [*singuli*]. For just as there are enormous bodily differences (for some, as we see, their strength is the speed that they can run, for others the might with which they wrestle; again, some have figures that are dignified, others that are graceful), similarly there are still greater differences in men’s spirits [*animis*] ... Each person should hold on to what is his as far as it is not vicious, but is peculiar to him, so that the *decorum* that we are seeking might more easily be maintained. For we must act in such a way that we attempt nothing contrary to universal nature; but while conserving that, let us follow our own nature, so that even if other pursuits may

be weightier and better, we should measure our own by the rule [*regula*] of our own nature ... Everyone ... should acquire knowledge of his own talents, and show himself a sharp judge of his own good qualities and faults, else it will seem that actors have more *prudencia* than us. For they do not choose the best plays, but those that are most suited to themselves.”¹²⁹

Everything *honestum* and *decorum* derive from the first *persona*, the one we hold in common with every single human being as sharers in reason, the one that leads contemporary scholars to list ‘rationality’ as one of the key aspects of personhood, and the one that led to Arendt’s final judgment to moderate her instinctive impulse towards anger. Gill argues that:

“we will embody this *persona* best if we submit our impulses to rational control, and if we act the ‘parts’ which nature has given us [as the first *persona*, i.e. the four primary virtues] ... The combination of these several ‘parts’ goes to make up the harmonious whole which constitutes moral beauty.”¹³⁰

Although Cicero’s account of it is brief in comparison with the second *persona*, the first *persona* is “implicitly ubiquitous in the whole theory, and plays a fundamental role”.¹³¹ We can see from the passage quoted that it regulates our natural and unique dispositions which make up our second *persona* insofar as what we are holding on to of these dispositions is not vicious. Given that the *De Officiis* is aimed not at would-be Stoic sages but at ordinary human beings interested in making moral progress in their actions in a life that is shared, Machek argues that the relation between these two *personae* may be understood as involving a “narrowing [of] the gap between [them], in which all our individuating characteristics are developed so they are fully in service of virtue” (which, again, requires practice), with the dispositions themselves that go into making up our second *persona* being neither virtues nor vices, and so not subject to moral appraisal.¹³² This, of course, does not exclude one’s *actions* from being subject to moral appraisal, and indeed is only one interpretation of many that

¹²⁹ *Off.* 1.107–114.

¹³⁰ Gill, *Personhood and Personality*. p.174.

¹³¹ Machek, *Using Our Selves*. p.174. I would add here that the first *persona* is implicitly ubiquitous in the whole of the *De Officiis*.

¹³² Machek, *Using Our Selves*. pp.169 and 177.

can be made of the four-*personae* theory as set out in the *De Officiis*.¹³³ But in general terms, and recalling Gill's distinction, the theory retains an interest in the 'normative ideal' of personhood, but places *at the same time* significance on the development and flourishing of each of our individual personalities. Indeed, whilst conserving the first *persona*, it is *precisely* in holding on to each of our own peculiarities, conserving the second *persona*, that Cicero says *decorum* might more easily be maintained.

The third and fourth *personae* are set out rather briefly in comparison with the second:

“To the two *personae* of which I spoke above, a third is added: this is imposed by some chance or circumstance. There is also a fourth, which we assume for ourselves by our own decision [*iudicio*]. Kingdoms, military powers, nobility, political honours, wealth and influence, as well as the opposites of these, are in the gift of chance and governed by circumstances. In addition, assuming a *persona* that we want ourselves is something that proceeds from our own will [*voluntas*]; as a consequence, some people apply themselves to philosophy, others to civil law, and others again to oratory, while even in the case of the virtues, different men prefer to excel in different of them.”

Whereas the first and second *personae* derive from what nature has provided to each of us, in common and individually, the third *persona* relates to what is imposed upon each of us by *fortuna*. The examples Cicero lists here as being in the gift of chance and (changing) circumstances relate to the social positions in which we find ourselves at any given time. As Machek puts it, it is chancy circumstances such as these that “the exemplary person uses in the right manner when deciding about the appropriate action” for them to take in any given situation.¹³⁴ Here, we may recall Arendt's acceptance speech for the Sonning Prize, when she said that the honour was a “felicitous intrusion” and “a piece of good luck” (p.152); it seems to me that she had Cicero's third *persona* in mind when saying this to her audience. While all four of the *personae* are meant to be influencing our choices in life, it is only the fourth *persona* which derives purely

¹³³ Machek's argument that our unique dispositions are neither virtues nor vices seems to hinge on how one interprets this sentence (*Off.* 1.110, emphasis added): “Each person should hold on to *what is his as far as it is not vicious, but is peculiar to him*, so that the *decorum* that we are seeking might more easily be maintained.”

¹³⁴ Machek, *Using Our Selves*. p.172.

from our own choice. The other three derive from either nature or *fortuna*, which themselves Cicero says should be influencing this fourth *persona* that we choose for ourselves:

“For just as in each specific thing that we do we seek what is seemly according to what and how each of us has been born (as I said above), we must exercise much more care when establishing our whole way of life, so that we can be constant to ourselves for the whole length of our life, not wavering in any of our *officia* ... Nature carries the greatest weight in such reasoning, and after that fortune. We should generally take account of both in choosing a type of life, but of nature more; for it is far steadier and more constant.”¹³⁵

In setting out the second *persona*, Cicero provides a list of exemplary figures whose individual natural dispositions, resultant actions and ways of life differed greatly, says that there are “countless other dissimilarities of nature and conduct, which do not in the least deserve censure”, and we have seen that he lists some careers or vocations, such as philosophy, the civil law, and oratory, to which the natural abilities of certain individuals are especially suited.¹³⁶ In the next chapter, we shall be considering some of Cicero’s arguments in support of the practical life of the citizen, but we can see here that he fully accepts that there are different kinds of lives that different kinds of individuals may choose for themselves based upon their own natural abilities and their circumstances which do not in the least deserve censure, and he was not concerned to build what Arendt called ‘a hierarchical structure of the *bios theoretikos* and the *bios politikos*’ as something that governs individuals’ choices of how to live, separately from the other three *personae*, nor with developing this Peripatetic division into a ‘hierarchical structure’ and integrating that structure into his theoretical writings on politics.¹³⁷ Admittedly, we have already seen him identify

¹³⁵ *Off.* 1.119–120. It is worth noting here that in her own copy of the *De Officiis*, Arendt placed an exclamation mark beside Cicero’s statement that nature is far steadier and more constant than *fortuna*. It seems to me that she did so because, after the nineteenth century, nature has been understood by many to be a movement (or worse, a *law* of movement)—which need not mean (or so it seems to me) that it is *not* steady or *not* constant, and in any case, it is far steadier and more constant than *fortuna*. <https://blogs.bard.edu/arendtcollection/marginalia/> Accessed 4th January 2021.

¹³⁶ *Off.* 1.109.

¹³⁷ Whereas Plato saw the philosopher as having an active role to play in public life as philosopher-king, it seems that the controversy over the *bios theoretikos* and *bios politikos* was a Peripatetic one: it went on between two of Aristotle’s students, Theophrastus and Dicaearchus. Theophrastus followed his teacher as set out in Book 10 of the *Nicomachean Ethics*, taking the *bios theoretikos* to be ‘the best’ way to live, whereas Dicaearchus, by no means ruling out the

some of the problems that those choosing the *bios theoretikos* may fall into if they have an excessive devotion to the pursuit of truth and knowledge, i.e. the negative type of injustice, but he also says that many of those who have devoted their entire life to this pursuit, in the end, have contributed to the benefits of mankind, at least insofar as they wrote, spoke and taught:

“They have educated many to be better citizens and more beneficial to their countries ... they seem to have devoted their leisure [*otium*] to our business [*negotium*]. The very men, then, who have given their lives to the pursuit of teaching [*doctrinae studiis*] and wisdom [*sapientia*], provide above all good sense [*prudencia*] and understanding [*intellegentia*] for the benefit of mankind. Therefore it is better to speak at length, provided one does so wisely [*prudenter*], than to think [*cogitare*], however penetratingly, without eloquence. For speculation turns in on itself [*cogitatio in se ipsa vertitur*], but eloquence embraces those to whom we are joined by social life.”¹³⁸

One may recall at this point Beardsworth’s broad conception of critical philosophy as “ethical (it is disposed to society as a whole)” and critical philosophising as concerned “to promote, in one way or another, better human relations” (p.46). But it seems to me that Cicero takes us a step further here. Beardsworth called philosophising ‘the force of thought’ that promotes better human relations, whereas Cicero in this passage and elsewhere makes it clear, I think, that this force on its own is impotent; to be socially beneficial, *ratio* also requires *oratio*.

In concluding this section, I think Raphael Woolf nicely summarises for us what Cicero has set out in Book I of the *De Officiis* as regards the four primary virtues:

“Underlying [Cicero’s] descriptions are two convictions that structure much of Book I and provide a rich view of the nature of human life ...

bios theoretikos, saw it as a clear second-best alternative, given that ‘man’ is *zoon politikon*. Sean McConnell (p.120n7) states it clearly: “the *controversia* concerns the question: in what does *eudaimonia* reside: activity in accordance with intellectual or practical virtue?” Cicero’s engagement with this dispute is both subtle and refined, as we shall consider in some more detail in the next chapter, but for a more comprehensive account, see Sean McConnell, 2014. ‘Cicero and Dicaearchus’. *Philosophical Life in Cicero’s Letters*. Cambridge: Cambridge University Press.

¹³⁸ *Off.* 1.155–156. Cf. *MDT*. p.4, where in her acceptance speech for the Lessing Prize, and after lamenting in modernity individuals’ retreats from the world, Arendt says that “This withdrawal from the world need not harm an individual; he may even cultivate great talents to the point of genius and so by a detour be useful to the world again. But with each such retreat an almost demonstrable loss to the world takes place; what is lost is the specific and usually irreplaceable in-between which should have formed between this individual and his fellow men.”

First, there is no purely private virtue. Humans are first and foremost social animals and anything that might count as appropriate in action has to be weighed in the context of its social dimensions. But second, humans are infinitely diverse individuals, and the question of what is the appropriate way to act cannot be settled without reference to the agent's own character and circumstances."¹³⁹

Keeping these two convictions in mind, we can turn now to what Cicero says regarding the virtuous conduct of persons in political societies.

3.4 Virtuous Conduct in Political Societies

3.4.1 Cicero on Virtuous Conduct in Political Society

Although Cicero seemed most drawn to both the Stoic and Antiochean ethical theories in the *De Finibus*, there is by no means any kind of 'application' of these theories in the *De Officiis* such that what we are reading in it are unreconstructed 'cosmopolitan' watchwords; there is in it no *simple* spreading out of our social *oikeiōsis* in ever-expanding circles so that we all seamlessly join in a *cosmopolis*. In Book IV of the *De Finibus*, the character Cicero had criticised the Stoicism to which Cato adhered in Book III for the obscurity of its doctrines and the un-persuasive, ultra-logical and unnecessarily alienating style in which Stoics expound them as compared with the writings of the Academics or Peripatetics, who were well-versed in (their own versions of) logic *and* rhetoric, and so had what Dallmayr called greater "traction and leverage" in terms of influencing actual human conduct.¹⁴⁰ Even those who are inexorably driven into assenting to the Stoics' conclusions once they have entered their logical thickets, Cicero argues, "are not converted in their hearts, and leave in the same state as when they came" into them (excepting a few "split hairs" and "logical pin-pricks"), whereas freer and more practical forms of discourse, such as he uses in the *De Officiis* (and more freely and practically still in his poetry, letters and speeches), is better suited to 'changing hearts and minds'.¹⁴¹ Significant elements of both the Stoic and Antiochean ethical theories are to be

¹³⁹ Woolf, *Cicero*. p.173.

¹⁴⁰ Cicero does admit here that some of the Stoics had written treatises on rhetoric, but he says that they "are perfect reading for those whose burning ambition is to keep quiet." *Fin.* 4.7. Cf. Catherine Atherton, 1988. 'Hand over Fist: The Failure of Stoic Rhetoric'. *The Classical Quarterly* 38(2). pp.392–427.

¹⁴¹ *Fin.* 4.6–7.

found throughout the *De Officiis*, but Cicero uses them at his own discretion and in pursuit of a more practical kind of progress than the philosophers (un)usually have on their own minds, one aspect of which involves his recognition that his audience are *in fact* deeply committed to their own country which, unlike in the mind of a Stoic sage, holds the most privileged place in the hearts and minds of citizens:

“ ... when you have surveyed everything with reason and spirit [*cum omnia ratione animoque lustraris*], of all *societates* none is more serious [*gravior*], and none dearer [*carior*], than that of each of us with the *res publica*. Parents are dear [*cari*], and children, relatives and acquaintances are dear [*cari*], but our country [*patria*] has on its own embraced all the affections [*caritates*] of all of us.”¹⁴²

We shall discuss shortly, and in more detail in the next sub-section, what Cicero has to say about different degrees of *societas* in the world, and in the next chapter the specific ways in which the *res publica* is a *societas*, but in this sub-section, we are concerned with what he has to say about the *virtuous conduct of persons* in the political society that is the *res publica*. In the first chapter, we saw that many of the philosophers or theorists discussed had an underlying conception of society in their writings which was to varying degrees informed by modern liberal philosophy, and we saw in the previous chapter that Arendt also had an essentially modern conception of society in much of her work which had precipitated her obscure distinction between ‘the social’ and ‘the political’, although she later deflated this particular distinction (or so it seems to me) by providing such a weak defence of it. In the initial drawing of her distinction, however, she had gone back to the Greeks and Romans in her investigations of ‘the political’ and ‘the social’ in *The Human Condition* and had provided a tendentious account of the Latin term *societas* by insinuating that notions of ‘rule’ and ‘crime’ were built into it (p.184). But we also saw that, in her posthumously published work, she had spoken much more accurately of *societas* as “a cooperative community that fosters relationships between partners” and she also spoke of *lex* as “something which connects two things or two partners whom external circumstances have brought together” (pp.185 and 199). *Societas* is a legal term, denoting a partnership, and before we consider Cicero’s advice concerning the virtuous conduct of persons in political society, it is important for

¹⁴² *Off.* 1.57.

us to keep in mind this juridical background, of which Elizabeth Asmis provides a useful summary:

“In Roman law, partnerships are classified as a type of obligation based on contract (*ex contractu*). All partnerships rely on ‘consent’ or ‘common agreement’ (*consensu*); but some rely only on consent (*nudo consensu*), whereas others reinforce common agreement with formal elements, such as special wording, written records or the transfer of an object. All partnerships are governed by laws (*iura*), which constitute ‘the law of partnership’, *ius societatis*. In partnerships that rely only on consent, a person is legally responsible for acting ‘according to the [*ius gentium*]’ or ‘the natural reason of humans’. In general, there can be no partnership in a dishonest endeavour: a partnership in crime (*malificii societas*) is null and void.”¹⁴³

Societas is a term appropriate to human beings in an untold variety of contexts. At its most basic, it may be understood as an agreement between persons to contribute their resources (*facultates*) towards a shared endeavour. Asmis describes in her article the underlying principle of *societas* as “a fair division of contributions and rewards”, and although one might speak in this context of a ‘partnership in crime’, as Arendt did, such a ‘partnership’ by definition is outside of the law, it is criminal, and therefore null and void (however much ‘honour’ there might be among thieves in dividing up their ill-gotten gains).¹⁴⁴ Partners relying only upon *nudo consensu* nevertheless have a legal responsibility to act in accordance with the *ius gentium*, which Asmis describes here as ‘the natural reason of humans’, and which coming into the modern age we saw Vitoria describe in the first chapter as ‘what natural reason has established among all peoples (or nations)’ (p.98). Asmis speaks of the *ius gentium* again in setting out some of the obligations of partners in any given *societas*:

“All partners have an obligation to deal *ex bono et aequo*, ‘fairly’, with one another. Fraud or negligence makes a partner liable to prosecution. The type of action brought by one partner against another is an action on good faith (*bona fide*) ... These trials use the formula ‘good conduct among good men’ (*inter bonos bene agier*) or ‘the better, the more fairly’ (*melius aequius*). A partner who deceives

¹⁴³ Elizabeth Asmis, 2004. ‘The State as a Partnership: Cicero’s Definition of *Res Publica* in his *Work On The State*’. *History of Political Thought* 25(4). p.581.

¹⁴⁴ Cf. *Off.* 2.40.

another is not ‘a good man’. Like later lawyers, Cicero associates good faith with the [*ius gentium*].”¹⁴⁵

Though the *civitas* can enforce the civil law through the courts, the civil law itself, as Griffin and Atkins put it, is “an imperfect instrument for enforcing morality”.¹⁴⁶ Partners, which is also to say, persons, have both moral and legal responsibilities for acting fairly with other members of the *societas* or *societates* of which they themselves are members; they are ‘enforcers’ of their own morals through the exercise of their natural reason. In the previous chapter, Arendt spoke of the “series of broken oaths and unkept promises” of persons in Court society in revolutionary France, of their “wilfully corrupted ... *mores* and ‘moral’ standards”, of their “customary intrigues ... and perfidies” which were carried over into the political realm and led ultimately to violence and brutality being visited upon them by the “lower strata”, with the likes of Robespierre, although having correctly sniffed out the corruption of Court society, having “no respect for the legal personality which is given and guaranteed by the body politic” (p.161). Towards the end of the Roman Republic, we find Cicero also complaining about corrupted *mores*, including in the passage from the *De Officiis* which Asmis cites at this point in her argument, where he says that good faith is rooted in laws that are beyond merely the *ius civile*. As we have seen, he says that good faith is a fundamental aspect of the virtue of *iustitia* itself, and after setting out some ‘hard cases’ in Rome and elsewhere where it seems not to have been kept, he says:

“I see that because custom is so corrupted such behaviour is neither thought dishonest nor forbidden by statute and *ius civile*. It is, however, forbidden by the *lex naturae*. For there is a *societas* that is extremely widespread, shared by all with all (even if this has often been said, it ought to be said still more often); a closer one exists among those of the same *gens*, and one more intimate still among those of the same *civitas*. For this reason our ancestors wanted the *ius gentium* and the *ius civile* to be different: everything in the *ius civile* need not be in the *ius gentium*, but everything in the *ius gentium* ought also to be a part of *ius civile* ... How great are the words ‘That I may not be caught or deceived because of you and my faith in you.’

¹⁴⁵ Asmis, *State as Partnership*. pp.581–582.

¹⁴⁶ *Off.* p.125n2.

How golden are these, ‘One must act well, as among good men, and without fraudulence.’”^{147*}

Again, we shall consider how good faith is manifest in other *societates* than the *res publica* in the next sub-section, and we shall consider both *lex naturae* and *ius gentium* in some more detail in the next chapter, but here it suffices for us to note once more that Cicero sees good faith as the thing that cements *all societates*, including the *res publica*, and it relies upon each individual in a given *societas* keeping faith with their fellows, exercising the virtue of *iustitia*, the wisdom of doing so of which is to be found in customs, *mores*, which have been developed and upheld over centuries by individuals learning this lesson for themselves, and not infrequently the hard way. Given this fundamental aspect of the virtue of *iustitia* and yet the existence of what Woolf called “infinitely diverse individuals” each with their “own characters and circumstances”, Cicero sets out in the *De Officiis* a *formula*, or ‘rule of procedure’, the abiding by which means that one would “never fall away from *officium*”:

“...for one man to take something from another and to increase his own advantage at the cost of another’s disadvantage is more contrary to nature than death, than poverty, than pain and than anything else that may happen to his body or external possessions. In the first place, it destroys the common life and fellowship of men [*convictum humanum et societatem*]: for if we are so minded that any one man will use theft or violence against another for his own profit, then necessarily the thing that is most of all in accordance with nature will be shattered, that is the fellowship of humankind [*humani generis societatem*] ... It is permitted to us—nature does not oppose it—that each man should prefer to secure for himself rather than for another anything connected with the necessities of life. However, nature does not allow us to increase our means, our resources and our wealth by despoiling others.”^{148*}

This *formula* underscores the natural sociability of human beings and the centrality of the virtue of justice in the *De Officiis*. In Book I, Cicero says that fraud and force (*fraus et vis*) seem “most alien” to a human being; they mark out the very worst extremity of humanity because they work to destroy social relationships, and as we shall see in the next sub-section, this *formula* has

¹⁴⁷ *Off.* 3.69–70. The words Cicero quotes here are clauses of contracts that rely on equity (fairness, *aequabilitas*) for their fulfilment. For Cicero on equity, see pp.335–336.

¹⁴⁸ *Off.* 3.19–22.

important implications for *societates* beyond the *res publica* as well.¹⁴⁹ But another important point to note here is that Cicero in coming up with his *formula* for virtuous conduct in political society is drawing significantly on those arguments of the Stoics which, as an Academic sceptic, he finds most persuasive, and which shapes the practical advice he is giving his son in a more cosmopolitan direction, even as it still relates to virtuous conduct within the *res publica*:

“...all men should have this one object, that the benefit of each individual and the benefit of all together should be the same. If anyone arrogates it to himself, all human intercourse will be dissolved. Furthermore, if nature prescribes that one man should want to consider the interests of another, whoever he may be, for the very reason that he is a man, it is necessary according to the same nature, that what is beneficial to all is something common. If that is so, then we are all constrained by one and the same *lex naturae*; and if that is also true, then we are certainly forbidden by the *lex naturae* from acting violently against another person. The first claim is indeed true; therefore the last is true.”¹⁵⁰

Although self-consciously retaining the Stoics’ syllogistic way of putting a point, Cicero not only expresses their argument about natural law in a language more persuasive to non-philosophers; he also connects it more immediately to the conduct of actual human beings. We can also see that built into Cicero’s *formula* and the above Stoicising argument about natural law is the condition that Long said reconciles what is *utile* with what is *honestum* in the *De Officiis*: that the self-interest of each individual, ‘the unavoidable object of individual human endeavour’, must be coextensive with the interest of all.

Justice is plainly on Cicero’s mind throughout the *De Officiis*, but what of the other virtues as they relate to the conduct of persons in political society? We have already seen that he recognises the social benefits to be had from those who have devoted their lives to the virtue of *sapientia*, the pursuit of truth, i.e. imparting their knowledge and learning to fellow citizens, which constitutes virtuous conduct on their part. With the virtue of *magnitudo animi*, however, Cicero again provides some warning in his advice by speaking of those who slip

¹⁴⁹ *Off.* 1.41.

¹⁵⁰ *Off.* 3.27.

from this virtue into a desire for glory, leading to conduct that has deleterious effects on society:

“...such men allow themselves to be defeated neither by argument nor by any public or legal obligation. Only too often do they emerge in public life as bribers or agitators, seeking to acquire as much wealth as possible, preferring violent pre-eminence to equality through *iustitia* ... It is not, therefore, those who inflict injury, but those who prevent it, whom we should consider the men of courage and great spirit [*fortes et magnanimi*]. A true and wise greatness of spirit [*vera et sapiens animi magnitudo*] judges that deeds and not glory are the basis of the *honestum* that nature most seeks. It prefers not to seem pre-eminent but to be so; he who is carried by the errors of the inexperienced mob should not be counted a great man [*magnis viris*].”^{151*}

Greatness of spirit in one who is not wise can be a dangerous thing, and as we have seen (p.238), Cicero advises that in providing *beneficia* one should particularly foster those in political society who show themselves to be equipped with gentler virtues such as *iustitia* and *decorum*. He observes that when we think people possess “all the virtues that are associated with gentleness and easiness of conduct ... we are compelled by nature to love [*diligere*] them”, that it is from carrying out the *officia* deriving from these virtues that *true* glory is achieved in public life, and that the greatest effect in carrying out *officia* is achieved in being what we wish to seem.¹⁵² Cicero, as with Romans more generally, understood glory to be of the greatest importance in managing the *res publica*. Broadly speaking, it signifies great fame or renown bestowed upon one by others for great deeds undertaken in preserving and protecting the *res publica*. Glorious deeds require a courageous disposition, but as we have seen, Cicero regards this quality on its own to be dangerous, and so he sought (quite radically) to rework glory in the *De Officiis*, tying it much more closely to the other virtues, especially justice.¹⁵³ Slipping into a desire for pre-eminence may involve desiring to be feared by others, and Cicero is at pains to emphasise how far more useful (and wise and just) it is to be loved rather than feared. Indeed,

¹⁵¹ *Off.* 1.64–65.

¹⁵² *Off.* 2.32 and 2.44. Cf. Long, *Cicero's politics in De Officiis*. pp.224–233.

¹⁵³ He also wrote a treatise on it, *De Gloria*, which has not come down to us except for a few fragments. For his treatment of glory in the *De Officiis*, cf. Long, *Cicero's Politics in the De Officiis*.

he regards the desire to be feared as that which has brought the Roman *res publica* to ruin:

“...there is nothing at all more suited to protecting and retaining influence than to be loved [*diligi*], and nothing less suited than to be feared [*timeri*] ... Fear is a poor guardian over any length of time; but goodwill [*benivolentia*] keeps faithful guard forever ... those who wish to be feared cannot but themselves be afraid of the very men who fear them ... The *res publica* we have utterly lost. And we have fallen into this disaster ... because we prefer to be feared than to be held dear and loved ... it is obvious that the power of goodwill is great, and that of fear feeble ...”¹⁵⁴

Once again, we see Cicero limiting *magnitudo animi* through the other virtues, especially justice.¹⁵⁵ But what of *decorum*? After setting out the four-personae theory, Cicero provides advice regarding the *officia* of those holding different positions in political society:

“It would not go beyond my brief to say something also of the *officia* of magistrates, of private individuals [*privatorum*], of citizens [*civium*] and of foreigners [*peregrinorum*]. It is, then, the particular function [*munus*] of a magistrate to realize that he bears and carries through the role of the *civitas* [*gerere personam civitatis*] and ought to sustain its standing and its seemliness [*dignitas et decus*], to preserve the laws [*leges*], to administer *ius*, and to be mindful of the things that have been entrusted to his good faith [*fides*] ... A private person, on the other hand, ought first to live on fair and equal terms with the other citizens, neither behaving submissively and abjectly or giving himself airs; and secondly to want public affairs [*res publica*] to be peaceful and *honestum*. For we are accustomed to think and say that such a man is a good citizen ... It is the *officium* of a foreigner [*peregrini*] or resident alien [*incoli*] to do nothing except his own business, asking no questions about anyone else, and never to meddle in public affairs which are not his own [*aliena re publica curiosem*].”^{156*}

We can see here for Cicero that conduct which is *decorum* in political society will very much depend upon the position one holds in it and whatever *persona* relates to that position.¹⁵⁷ And we can also see that this passage speaks to the tensions between republican and liberal institutions set out by Brown in his

¹⁵⁴ *Off.* 2.23–29.

¹⁵⁵ Cf. *PP.* pp.68–69.

¹⁵⁶ *Off.* 1.124–125.

¹⁵⁷ On *gerere personam civitatis*, cf. Quentin Skinner, 2018. *From Humanism to Hobbes: Studies in Rhetoric and Politics*. Cambridge: Cambridge University Press. Ch.2.

discussion of civil society in the first chapter (p.85). Cicero here distinguishes clearly between the *officia* of magistrates and the *officia* of private citizens (his use of *privatus* refers to citizens who hold no public office), with the former rather than the latter bearing the role of the *civitas* through the constitutional arrangements which are upheld by all citizens, shouldering the public responsibilities for maintaining peace and arbitrating disputes between private citizens (administering *ius*)—all of which, as Brown says, enables civil society to exist in the first place. The *officia* Cicero sets out for private citizens here I think are very much in line with many liberal accounts of civil society, even as Habermas’s language of ‘compulsion’ might suggest to some readers (I suspect against his best intentions) that risks along the lines of what Montesquieu warned democratic citizens against (insofar as they want to sustain democracy) might be worth taking, i.e. pursuing a want ‘to manage everything themselves, to debate for the senate, to execute for the magistrate, and to decide for the judges.’¹⁵⁸ Although there is a clear distinction drawn by Cicero here between the *officia* of magistrates and private citizens, it seems to me that Brown’s claim that republican civic virtue and civil society are in principle two opposing ideals is worth closer consideration by both ‘civic republican’ and ‘liberal’ scholars, and that Norval is indeed working along the right lines in seeking to develop civic virtues in members of civil society. With Dallmayr (p.92), I believe most modern liberals are not anarchists, and so have not “abandoned the idea of managed consensus”, even if Arendt is right that they tend to ignore forms of government, the question of who is ‘managing’. Brown says that they have abandoned the idea that consensus is or should be managed by “the standard-bearers of republican virtue”, and my argument is, whatever the form of government, these standard-bearers are to be found in history and should be found in citizens themselves, by themselves with the help of education, and with “the degree of moral unity” in any given *societas* being up to its members. I sought to show in the previous chapter through Arendt’s writings how consensus and ‘a degree of moral unity’ has manifest itself and has been ‘managed’ both in the various councils that sprung up during some of the revolutions of the past two centuries and in the American founding—without ‘forcing’ anyone to be ‘free’—and we shall be discussing these matters in more detail in the next

¹⁵⁸ It is worth noting here the novelty of Montesquieu’s ‘separation of powers’; the functions of magistrates and senators in the Roman republic were often those of judges as well.

chapter. But to return to the above passage, as regards Cicero's advice concerning the *officia* of foreign residents, this again speaks to the republican context in which he is writing, but it certainly does not exclude these residents from *social* life within the boundaries of the *civitas*:

“...hospitality was rightly praised by Theophrastus. For it is most seemly [*valde decorum*] (or so it seems to me) for the homes of distinguished men to be open to distinguished guests. Furthermore, it reflects splendidly on the *res publica* that foreigners [*homines externos*] do not in our city [*urbs*] go short of that kind of *liberalitas*.”¹⁵⁹

I believe it is in the context of Cicero's writings that Waldron in the first chapter was reading Kant's writings on hospitality as a virtue of sociability (p.51). Whereas Benhabib interpreted them as being about relations between individuals and states, Waldron interpreted them as being about relations between people and peoples—‘there is nothing inherently unjust or inappropriate about individually initiated contact among peoples’—and we have already seen that for Cicero the virtue of *iustitia* is one accessible to all as sharers in reason and involves ‘the reasoning by which the fellowship of men and communal life are held together’, whether in the *societas* that is the *res publica*, or the *societas generis humani*. Towards the end of his discussion of *personae*, he sums up the practical advice he has provided in Book I through a discussion of the four primary virtues:

“...we ought to respect and revere those whose life has been conspicuous for its *magnis* and *honestis* deeds, who have held sound views about the *res publica*, and have deserved, or still deserve, well of her—just as if they had achieved a specific honour or command. We ought also to grant a great deal to old age; to yield to those who exercise magistracies; and to distinguish [*dilectum*] between citizen and foreigner [*peregrini*], and in the case of a foreigner as to whether he has come in a private or public capacity. In short, so as not to go into details, we ought to revere, to guard and to preserve the common affection and fellowship of the whole of humankind [*communem totius generis hominum conciliationem et consociationem colere, tueri, servare debemus*].”^{160*}

¹⁵⁹ *Off.* 2.64. Cf. *Tusc.* 4.25–27, where Cicero discusses “infirmities of the mind” such as misanthropy and hostility to guests (*inhospitalitas*) arising from “aversion” (*offensionum*) to *generis humani*.

¹⁶⁰ *Off.* 1.149.

At least three things are worthy of note here. First, we see Cicero upholding the respect for old age that we saw Arendt highlighting in Romans in general in the previous chapter (p.129). Again, this underscores the *auctoritas* that Romans found in the accumulated practical wisdom of and experience in the world that certain persons gain in life and who have reached old age, but as I hope already to have indicated in this chapter and as we shall see in some more detail in the next, this by no means results in a facile rejection of ‘theory’ in favour of ‘practice’ for Cicero, or of ‘philosophy’ in favour of ‘history’; it is, rather, a recognition that we always need the *help* of such practical wisdom and experience for ‘going on’ in the world.¹⁶¹ Second, we see his focus very much upon the *deeds* of persons, since “all the praise that belongs to virtue lies in action.”¹⁶² And third, although the discussion has proceeded on the basis that it is the *res publica* which is the most important *societas*, this has by no means been to the exclusion of those who are not fellow citizens in our *officia*; we ought to be revering, guarding and building up *societas* wherever possible across the whole of humankind. Philosophers may be disappointed that Cicero speaks here ‘in short’, but it seems to me that if his advice lacks philosophical precision, it is nevertheless “noble and practical”, and that it is not difficult to get a general sense of what he means to say.¹⁶³

3.4.2 Cicero on Virtuous Conduct in International Political Society

Even if and as we can get this general sense, however, there is much legitimate scholarly debate about the passages in the *De Officiis* (*Off.* 1.50-58) where Cicero sets out the different ‘degrees’ (*gradus*) of *societas* among human beings, but these are debates amongst classicists, philosophers, ancient historians, and legal theorists, consideration of which has yet to find its way into IPT, and I do not engage with them in this sub-section.¹⁶⁴ We began considering one of these degrees under the heading of the virtue of *iustitia* earlier in this chapter, when we saw Cicero speak of *societas generis humani* and its social bonding that is

¹⁶¹ Cf. *Sen.* 17; Woolf, pp.190–192.

¹⁶² *Off.* 1.19.

¹⁶³ Nussbaum, *Kant and Stoic Cosmopolitanism*. p.3.

¹⁶⁴ And with insufficient education in these different fields, nor could I, though I believe it is the kind of education that would be of immeasurable benefit in IPT. Cf. Dyck, *A Commentary on Cicero, De Officiis*. pp.165–181.

reason and speech, the two things that reconcile human beings with one another. We saw Dallmayr in the first chapter speaking of this *societas* in terms of “cosmopolitan coexistence and collaboration”, and that what is urgently needed in our own time is a “strengthening of the dispositions [in human beings] conducive” to it, chiefly “generosity, hospitality, mutuality and striving for justice” (p.71). While I sought to show that Cicero was not quite speaking about a *cosmopolis* and was speaking instead about an already existing, sublunary *societas* of ‘all with all others’, I think it is clear that Dallmayr and Cicero are on the same page as to what is required for building it up; the former’s list of dispositions here largely converge with the latter’s accounts of *iustitia* and *societas*, and both recognise that it requires ‘a large-scale pedagogical effort’ as distinct from ‘the edicts of a select group of philosophers’ or what Waldron called a ‘thunderous imposition of positive law from on high’. Cicero says that each and every human being shares in reason, and uses the Stoics’ language in saying that this means all of us have “the seeds” of virtue which may lead ultimately to a Stoic *cosmopolis*, but to develop, all of these seeds require care and attention, careful preservation and cultivation, in Dallmayr’s words a ‘large-scale pedagogical effort’, and so long as they are not all flourishing, some continue to fall away from the *societas* of ‘all with all others’—and yet there still exist different degrees of *societas* in the world deriving from our natural sociability:

“There are indeed several degrees of *societas* among men. To move from the one that is unlimited [*Ut enim ab illa infinita discedatur*], next there is a closer one of the same *gens, natio* and tongue, through which men are connected very closely to one another [*propior est eiusdem gentis, nationis, linguae, qua maxime homines coniunguntur*]. More intimate still is that of the same *civitas* [*interius etiam est eiusdem esse civitatis*], as citizens have many things that are shared with one another: the forum, temples, porticoes and roads, laws and legal rights, law-courts and political elections; and besides these acquaintances and companionship [*familiaritates multisque*], and those business and commercial transactions that many of them make with many others. A tie narrower still is that of the fellowship between relations [*societatis propinquorum*]: moving from the vast fellowship of humankind [*immensa societate humani generis*] we end up with a confined and limited one.”^{165*}

¹⁶⁵ *Rep.* 1.41; *Off.* 1.53.

We saw that Cicero spoke in *Off.* 1.50 of *societas generis humani*, and in the above passage we see him proceeding from it in degrees to the most ‘confined and limited’ *societas* in what Woolf has called “a model of reverse *oikeiōsis*.”¹⁶⁶ But he goes on immediately from this passage to trace social *oikeiōsis* back out from the *societas* between relations to arrive at the passage quoted on p.261 above, where he says that it is the *patria* we hold most dear after we have surveyed everything with reason and spirit, and which is “at the centre of the network of social relations” that connect people and peoples.¹⁶⁷ This comports with the watchwords he provides at the very beginning of *Off.* 1.50—“the fellowship between men and their common bonding [*societas hominum coniunctioque*] will best be preserved if the closer [*coniunctissimus*] someone is to you the more kindness [*benignitas*] you confer upon him”—as a *practical* route towards building *societas generis humani*, yet of course never losing sight of the latter and always nurturing the gentler virtues such as *iustitia*, *beneficentia*, *liberalitas* and *hospitalitas* that actually build it.

But as Dallmayr and many others recognise, there is urgent need today for *education* to strengthen such virtues, just as there was in Cicero’s own day, and while we are not all joining together like Stoic sages in a *cosmopolis*, “revering, guarding and preserving the common affection and fellowship of the whole of humankind” (quoted on p.270) Cicero recognises in an imperfect world may sometimes require the use of force, but even here we find him placing both moral and legal limitations upon its use:

“Something else that must very much be preserved in public affairs [*res publica*] is the *ius* of warfare [*iura belli*]. There are two types of conflict: the one proceeds by debate [*disceptatio*], the other by force [*vis*]. Since the former is the proper concern of a man [*hominis*], but the latter of beasts [*beluarum*], one should only resort to the latter if one may not employ the former. Wars, then, ought to be undertaken for this purpose, that we may live in peace, without injustice [*sine iniuria*]; and once victory has been secured, those who were not cruel [*crudelis*] or monstrous [*immanes*] in warfare should be spared.”^{168*}

¹⁶⁶ Woolf, *Cicero*. p.182. Cf. Schofield, *Two Stoic Approaches to Justice*.

¹⁶⁷ *Off.* 1.54–58; Woolf, *Cicero*. p.182. For the possible influences on this passage of Plato, Aristotle, as well as the Stoic and Peripatetic traditions, cf. Dyck, *A Commentary on Cicero, De Officiis*. pp.173–174.

¹⁶⁸ *Off.* 1.34–35.

We have already seen that for Cicero the very bonding of *societas generis humani* consists in our shared capacities for reason and speech, through which conflicts are mediated and resolved, and this of course recalls Arendt's claim that a fundamentally meaningful part of *politics* is that things are decided through words and persuasion rather than force or violence. By this point in my argument, it is my hope that the reader has come to understand more fully why I think it is not only reasonable but also meaningful to speak of political societies. But in the above passage we see Cicero (implicitly) referring to a different kind of *societas* than that of the *res publica* or of humankind, international political society, where what Arendt calls "the silent acknowledgement of common interests" concerning the use of force exists, "the foundation-stone of international relations even under the conditions of war" that allows for international crimes to be identified and a plurality of groups to co-exist (pp.199-200). This 'foundation-stone' she calls earlier in the same text, in distinction from the Rights of Man, "the customs of history" (quoted on p.190) which, if silently acknowledged by statespersons in international political society, have also been given legal expression over time, and indeed Cicero's writings on the *ius* of war in the *De Officiis* and elsewhere in his *corpus* are major sources in which the *ius gentium* receives this expression. We shall be discussing the meaning of *ius* as well as the *ius gentium* in some more detail in the next chapter, but here we are concerned with the virtuous conduct of persons in international political society.

In considering this conduct, it is useful for us to begin by recalling the juridical background of *societas* as set out by Asmis on pp.262-263 above. Whether through treaties or *nudo consensu* (which also sounds something like Arendt's 'silent acknowledgement'), partners are responsible for acting according to the *ius gentium*, *ex bono et aequo*, 'fairly' with one another, as 'good men' do. A legal action brought by one partner against another is an action on good faith, the keeping of which we have seen Cicero say is a *fundamentum* of *iustitia*, that which binds a given *societas* together. His advice regarding the *ius* of warfare here was conditioned by the general sense of international obligation that already existed amongst numerous *civitates* across the Mediterranean at this point; a mutual understanding which had developed over centuries allowing each member of 'international' political society to be confident that their relations

with each other, even with their different cultures, could be based on good faith. The initiation and conduct of hostilities in this *societas* performed the function of a kind of religious-legal redress or punishment for a (perceived) wrong that had been committed, or good faith that had been broken. It is in this broader context of what the *ius gentium* had already established between different *civitates* that Cicero says “no war is *iustum* unless it is waged after a formal demand for restoration [of a wrong done], or unless it has been formally announced and declared beforehand”, and “if any individuals have been constrained by circumstance to promise anything to an enemy [*hosti*], they must keep faith even in that”.¹⁶⁹ Whilst the *res publica* is at the centre of the network of social relations that binds people and peoples, we can see here that Cicero is no ‘egoist or communalist’, to use Walzer’s terms (p.249); he has his eyes fixed simultaneously upon, and a concern for preserving and building up, both the *societas* that is *res publica* and other *societates*, including that between different *civitates*, ‘international’ political society. We recall that for Cicero it is magistrates who bear and carry through the role of the *civitas* (*gerere personam civitatis*) (pp.270-271) and it seems to me that he had not only the *societas* of Rome but also ‘international’ political society on his mind in saying so; *officia* are owed to non-citizens (of Rome) even in battle.

We have already seen that Cicero is concerned to promote the gentler virtues, that he places limits on those virtues which may slip easily into the commission of unjust deeds, and that he deflates opinions about the glory of military achievements in favour of civilian ones. His writings are peaceable without being ‘pacifist’, the latter of which is a disposition no *statesperson* sworn to protect any given political *societas* can sustain.¹⁷⁰ In Walzer’s words, Cicero’s writings “[make] war possible in a world where war [is], sometimes, necessary”, but they do so by embedding it in a framework of *virtue* that seeks to limit it as far as possible in the name of justice, and I think this can be seen in the very language

¹⁶⁹ *Off.* 1.36 and 39.

¹⁷⁰ Again, President Obama’s acceptance speech for the Nobel Peace Prize is informative: “As someone who stands here as a direct consequence of Dr. King’s life’s work, I am living testimony to the moral force of non-violence. I know there is nothing weak, nothing passive, nothing naïve, in the creed of the lives of Gandhi and King. But as a head of state sworn to protect and defend my nation, I cannot be guided by their examples alone. I face the world as it is ...”. (For reference, see p.244n97).

he is using in the above passage.¹⁷¹ Whereas when Plato said in *The Laws* that “the best ... is neither war nor civil war—the necessity for these things is to be regretted—but rather peace, and at the same time goodwill towards one another” he was writing about the best imaginable, Cicero in the *De Officiis*, although I think plainly in the same spirit as Plato here, is writing about the best practicable.¹⁷² His focus, like all expect or should expect statespersons to have, is fixed upon our *living* in peace without injustice, and rather than hot-headedly writing here about our *officia* in the face of those who *are* cruel and monstrous in battle, he leaves it merely as a possibility and an implication for the reader to consider for themselves and writes instead about those who are not.¹⁷³

We saw in the passage quoted on p.245 an articulation of what came in time to be called the *ius ad bellum* principle of proportionality, and in the passage quoted on p.273 we can see the *ius ad bellum* principle of last resort, although as Johnson put it in the first chapter, these are not ‘rules’ for statespersons to obey or a ‘checklist’ for them to tick off as ‘done’, but rather ‘*praxes* of judgment’, or what he calls elsewhere ‘prudential concerns’.¹⁷⁴ In the case of ‘last resort’, when Cicero says “one should only resort to the latter if one may not employ the former”, he is leaving it for the statesperson to judge whether the problem at hand is a situation of debate or a situation of war, since statespersons are the ‘proper authority’ for resorting to the latter.¹⁷⁵ We have also seen in his writings what came to be called the *ius ad bellum* principle of just cause, which Johnson describes as “specifically defense of the common

¹⁷¹ Walzer, *The Triumph of Just War Theory*. p.925.

¹⁷² Plato, *The Laws*. 628c–d.

¹⁷³ Cf. Virgil’s *Aeneid* 6.847–853, ‘...*parcere subiectis et debellare superbos*’: it is the Roman way to ‘spare the vanquished and ‘war down’ [or ‘subdue’ or perhaps even ‘not spare’] the arrogant’. See also Cassius Dio, *Historiae Romanae* 36.37, who provided account of Pompey’s actions towards the pirates, i.e. those whose indiscriminate criminality made them *hostes generis humani* (enemies of humankind): “...[Pompey] was irresistible both on sea and on land, but his leniency towards those [pirates] who made terms with him was equally great, so that he won over large numbers by such a course”. Plutarch, *The Life of Pompey* 29.1–5, tells us that he “determined to transfer the men [who made terms with him] from the sea to the land, and let them have a taste of gentle life by being accustomed to dwell in cities and till the ground.” We are less concerned here with the historical accuracy of these accounts than with the moral message they mean to convey. While Dio speaks of Pompey’s leniency (*clementia*), it seems to me that his actions—even in this dire situation for which he was granted an extraordinary command—towards those who made terms with him also showed certain other virtues, including *beneficentia*: acts of kindness that promote fellowship.

¹⁷⁴ Johnson, *The Just War Idea*. p.177.

¹⁷⁵ *Leg.* 3.8.

good against serious injury, recovery of something wrongly taken, or punishment for wrongdoing”, and while the principle of ‘right intention’ has been largely informed by Christian thought, I hope to have shown in this chapter thus far that Cicero manifests it, this principle being described by Johnson as “not aggression, domination, implacable enmity, just plain cruelty and the like, but the intention to protect, restore or establish peace.”¹⁷⁶

The passage quoted above contains a sonorous fusion of what came to be called *ius ad bellum*, *ius in bello* and *ius post bellum*: *ius* ‘before’, ‘during’ and ‘after’ hostilities.¹⁷⁷ Since the *officia* of statespersons and generals were often carried out by the same individual at Rome, we find much of the advice Cicero offers to his son (and by extension other would-be statespersons and generals) in the *De Officiis* regarding warfare relating not only to its initiation and peace-aiming conclusion but also to its conduct, and all within a framework of virtue where justice plays a leading role. In his discussion of the conduct of Marcus Atilius Regulus (consul 267 and 256 BCE) in Book III, for example, he recounts how Regulus was captured by the Carthaginians in 255 and sent back to the Roman senate, having sworn to them that he would return (i.e., to certain death) unless certain Carthaginian nobles who were being held captive by the Romans were returned. Cicero begins by praising Regulus’s greatness of spirit before going on to praise the fact that he kept faith with the enemy:

“When he reached Rome, he could see the thing that was apparently *utile*, but, as events reveal, he judged it specious. It was this: to remain in his own country, to be at home with his wife and children, to maintain his rank and standing as ex-consul, counting the disaster that had befallen him in war as common to the fortune of warfare. Who can deny that such things are *utile*? Whom do you think? *Magnitudo animi* and *fortitudo* deny it. Surely you are not seeking authorities [*auctores*] still more reliable? For it is characteristic of these virtues to fear nothing, to disdain everything human, and to think nothing that can happen to a man unendurable ... What,

¹⁷⁶ Johnson, *The Just War Idea*. p.169. Cf. *Rep.* 3.34a and 3.35a.

¹⁷⁷ It is useful to note in this connection that the virtue of *prudencia* has, since at least Cicero (e.g., *Rep.* 2.67, *Leg.* 1.60, *Off.* 1.11 with 1.15–16), been associated with ‘before’, ‘during’ and ‘after’, or put differently: past (*praeteritis*), present (*praesentibus*) and future (*futura*). It may be described as holding a necessary connection in the present to the past with a care for the future (and so is closely connected to both *consilium* and *auctoritas*), or as Aquinas has it (in the words of Quentin Skinner), “what distinguishes prudence is the ability to learn about things in the future by way of considering things in the present as well as things in the past.” Quentin Skinner, 2002. ‘Lorenzetti and the Portrayal of Virtuous Government’. *Visions of Politics Vol. II: Renaissance Virtues*. Cambridge: Cambridge University Press. p.83.

therefore, did he do? Entering the senate, he revealed his instructions; then he refused to vote himself, saying that as long as he was held under oath by the enemy, he was not a senator. And furthermore—‘Foolish man’, someone will say, ‘to oppose his own *utilitas!*’—he even claimed that it was not *utile* to restore the captives: for they were young men and good leaders while he was worn out by old age. His *auctoritas* prevailed, and the captives were kept there. He himself returned to Carthage, held back by love neither for his country nor for his family and friends ... he thought that his oath should be kept [*ius iurandum conservandum putabat*].”¹⁷⁸

Earlier in the discussion, Cicero had already said that a fair code of warfare had been drawn up in the *ius fetiale* which seems in some sense to have reflected the *ius gentium*, and he repeats the point in his discussion here:

“Regulus was right [*vero*] not to overturn by perjury stipulations and agreements made with an enemy [*hostiles*] in war. For the enemy [*hoste*] with whom the war was being waged was rightful [*iusto*] and legitimate [*legitimo*]. The whole of our fetial code is about such an enemy [*adversus*] and we have many other laws that are shared [*iura communia*]. If that were not so, the senate would never have delivered notable men in chains to the enemy [*hostibus*].”^{179*}

It seems to me that that Carthage (at this point) was a member of international political society is what made them a *iusto* and *legitimo* enemy [*hostis*], or what Cicero calls by analogy with domestic affairs a ‘rival’ [*competitor*] instead of an ‘enemy’ [*inimicus*]:

“When, then, we are fighting for empire [*imperium*] and seeking glory through warfare, those grounds that I mentioned a little above as rightful grounds [*iustas causas*] for war should be wholly present. But wars in which the goal is the glory of empire are waged less bitterly. For just as in civilian matters we may compete [*contendimus*] in one way with an enemy [*inimicus*], in another with a rival [*competitor*] (for the latter contest is for honor [*honoris*] and standing [*dignitas*],

¹⁷⁸ *Off.* 3.99–100. Again, the historical accuracy is less our concern here than the moral message Cicero means to convey. Cf. Dyck, *A Commentary on Cicero, De Officiis*. pp.619–645.

¹⁷⁹ *Off.* 3.108. Carthage was viewed as a *iusto* and *legitimo* enemy—with whom one should fight according to the *ius fetiale* and *ius gentium*—during the First Punic War (264–241), but not so during the Third (149–146), when Scipio destroyed the city, for “the Carthaginians were breakers of truces, and Hannibal was cruel”. *Off.* 1.38. For both sides of the debate as to whether the Roman judgment to destroy Carthage was right or wrong, see Alberico Gentili, 2011. Benedict Kingsbury and Benjamin Straumann (eds.). *The Wars of the Romans: A Critical Edition and Translation of De Armis Romanis*. Oxford: Oxford University Press. The *fetiales* were a college of priests tasked with the oversight of international affairs who would approach the senate informing them as to the *ius* or otherwise of particular wars. Cf. Clifford Ando, 2010. ‘Empire and the Laws of War: A Roman Archaeology’. Benedict Kingsbury and Benjamin Straumann (eds.), 2010. *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*. Oxford: Oxford University Press. Ch.3.

the former for one's civic life [*capitis*] and reputation [*famae*]), similarly the wars against the Celtiberi and the Cimbri were waged with *inimicis*: the question was not who would command [*imperaret*], but who would exist."^{180*}

Imperial competition in antiquity aside, it seems to me that the distinction that Cicero is drawing here is between belligerents who are protected by the *ius fetiale* and *ius gentium*, where fighting is carried out with less bitterness (or put differently, [a mutually recognised level of] *justice* is conducted in warfare), and belligerents who are outside of these protections. The implication is that a war whose aim is the very survival of the *civitas* need not require such moderate behaviour as is required in international political society (although again, notice that Cicero leaves it as an implication for the reader to consider for themselves, rather than writing hot-headedly about such desperate situations, as I fear I am writing about them just now).¹⁸¹ Thus, while praising Roman restraint against the Tusculanes, the Sabines, and others, Cicero shows no remorse here for the far more immoderate actions of Romans in their battles against the Cimbri and the Celtiberi, both of whom were regarded as cruel, and their destruction understood as necessary for the survival of the Roman *civitas*. The moral and legal limitations upon war on this account, it seems to me, can only exist among the more or less civilised: *civitates* who have deliberated, written their own civil laws, and recognise that *officia* are owed to other *cives* and *civitates*, which is also to say, members of international political society—or as Arendt put it, ‘the civilised world’ (pp.199-200).

Deciding whether the survival of the *civitas* is threatened or not involves making a prior judgment which is by no means straightforward or trivial. Getting it wrong involves committing injustice against another *civitas*, which in turn threatens the fabric that holds international political society together as a whole. For Cicero, such desperate situations cannot be theorised; they cannot be brought under a set of rules or procedures that are to be unwaveringly followed always. Rather, they are to be considered extremely carefully as and when (or better, before) they arise, and the judgments made require a great deal of *prudencia* so that conditions of absolute necessity are correctly

¹⁸⁰ *Off.* 1.38.

¹⁸¹ *Off.* 1.38.

recognised and dealt with appropriately. To this end, Cicero is concerned to discover the characteristics of the ideal statesperson, some of his writings upon which we shall be considering in more detail in the next chapter, but here, it suffices for us to note that he understands there to be, in one sense, a radical separation between justice and necessity, but in another sense, they come together in the virtue (specifically the *sapientia* and *prudentia*) of the ideal statesperson. As we have seen, *iustitia* is the supreme *social* virtue for Cicero. It requires good faith (*fides*), mutual trust, which is only possible amongst those who recognise *officia* to one another. If, for example, a rival is seen to threaten the survival of the *civitas*, this would be taken as a sign that it recognised no such *officia* to others and could not therefore be the recipient of good faith. In this scenario, the rival is transformed into a deadly enemy who sits outside of international political society and so outside the protections of the *ius gentium*. Determining the veracity of this threat becomes all-important because it entails actions that would be unjust *within* international political society, though they might be necessary to save the *civitas* from existential threats outside of it. This it seems to me converges in some way with Walzer's 'supreme emergency' argument: an extremely desperate and terrifying situation that nobody should wish upon any *res publica*, and it places a great deal of responsibility on the statesperson to understand what both justice and necessity are in times of war, and what threat means in the face of a deadly enemy disposed to wreak havoc in international political society, such as, for example, the Nazi and Stalinist regimes in fact wrought. As with Kelsay's arguments in the first chapter, Cicero's writings on warfare blend a form of 'realism' (the necessity of wars of survival) and 'just war' (based on shared *officia*), but again, it is important to remember that he embeds them in a framework of *virtue* that seeks to place limits on 'realism' as far as possible in the name of *iustitia*. Indeed, *iustitia* and necessity come together in the *sapientia* and *prudentia* of the ideal statesperson.

3.5 Conclusions

3.5.1 Springs of Initiative

In the first chapter, I foregrounded an approach to ethics which has hitherto been marginalised in IPT, virtue ethics, since it is an approach fundamental to

Cicero's writings and I think by far the best for understanding politics as (partly) personal when it is contrasted with the rules-based approaches that are deontology and consequentialism (although at the same time I sought to show that 'rules-based' philosophers such as Kant also had much to say about the virtues). The approach is commonly understood as being rooted in the work of Aristotle, who was our point of departure in the first section of this chapter in considering some arguments in the Academic, Peripatetic and Stoic traditions of philosophy that human beings are naturally sociable; arguments upon which Kant and at one remove, Arendt, relied upon in their own writings. I proceeded to set out some of the key features of the Stoic and Antiochean ethical theories as given by the characters Cato and Piso in Cicero's *De Finibus*, both of which relied in different ways upon the Stoic account of social *oikeiōsis* in arguing that human beings are naturally sociable. We saw in this sub-section that, for the Stoics, virtue is the only good, whereas Antiochus, whilst agreeing with the Stoics that virtue was sufficient for a happy life, argued in a Peripatetic mode that the happiest life also required bodily goods such as health and external goods such as friendship and prosperity. While Cicero sought to impart to his readers in the *De Finibus* that no ethical theory was left standing as the clearly preferable one and we must come to our own understanding of what is the best way to live, he drew at his own discretion upon significant elements of both the Stoic and Antiochean ethical theories (and not only these theories) in writing the *De Officiis*.

In the second sub-section of this chapter, I sought to distinguish for the reader what Cicero is doing in the *De Finibus* from what he is doing in the *De Officiis*. Whereas the former is written in the form of a dialogue and concerns different ethical theories, the latter is written in the form of a letter of advice to his son and is concerned with practical ethics. I also sought in this sub-section to clarify what Cicero means by *officium*. 'Duty' is an excellent translation of the term—to this day, 'office' still means *inter alia* 'a position of authority or service, typically of a public nature'—although in scholarly settings, 'duty' tends often to carry rigorist Kantian connotations (which themselves I hope to have shown bear a certain resemblance in meaning to the Stoics' 'perfect' *officia* as carried out by 'the sage'), and so I have left it untranslated throughout the chapter. Cicero is providing advice in the *De Officiis* concerning 'middle' *officia*, those within

reach of all, concerning a life that is shared, and for which a persuasive reason can be given in public life.

I concluded the first section of this chapter by endeavouring to draw out at least a little of what Cicero means by *humanitas* through a consideration of the *Pro Archia*. We saw that he connects the term very closely indeed to education, and that this speech was an important source throughout the Renaissance in terms of the development of the *studia humanitatis*. Cicero extols in this speech both the private and public advantages to be had from an education in the literary arts. Not only does reading help us unwind and provide enjoyment after exerting ourselves in public life; it also provides the mind with recovery and refinement, as well as a ready supply of language for us to be using to ‘go on’ in the world. And yet more than this, it is through “the light of the written word”, through *imagines*, that people and events from the past are saved from oblivion and become examples for posterity in exercising judgments in the world (in this, I think Kant was quite right in saying that examples are the ‘go-kart’ of judgments). We saw that Cicero through his own eloquence had woven great persons and deeds of the past, traditionally handed down only within the aristocracy, into the literary arts in such a way that exemplary figures became models available to all. For Cicero, it is virtue rather than birth or wealth which is the mark of true nobility, and he acknowledges that, although excellence of character may shine out for itself without the help of any literary study, it is when such character is paired with such study that something truly remarkable and unique comes about. The sub-section concluded with a brief look at how the humanities have been faring in our age of science (and social science) and technology, before returning to Cicero to give account of how intimately these studies are tied to notions of society, community and civic virtue.

3.5.2 Civic Virtues

Justice is the most important primary virtue for Cicero; that without which *societas* cannot exist. We saw that elements of both the Stoic and Antiochean ethical theories influenced his partition of this civic virtue into ‘justice simply’ (*iustitia*) and beneficence (*beneficentia*), although he still treated it as a single category of virtue: “the reasoning by which the fellowship of men with one another, and the communal life, are held together”. The first office of *iustitia* is

that no person should harm another unless provoked by injustice, the second that one should treat common goods as common and private ones as one's own, and a *fundamentum* of *iustitia* is keeping faith, *fides*. Cicero distinguishes between 'positive' and 'negative' types of injustice, the former being the infliction of injury and the latter being the failure to deflect it from others. We saw that *beneficentia* was itself informed by 'justice simply': one must ensure that any *beneficium* given to another is doing no harm, either to the benefactor or to anybody else; that any *beneficium* given to another must come from and be limited by one's own resources; and that *beneficia* are given according to the character of the benefactor, with especial attention given to those equipped with the gentler virtues such as *iustitia* and *decorum*. Although Cicero was a staunch defender of private property, we saw that his commitment to the virtue of *iustitia* and the building up of *societas* meant that it was anathema to him for any pursuit of self-interest to be made at the cost of communal utility, hence for him the virtue of *beneficentia* and associated virtues such as *liberalitas* and *hospitalitas* are key parts of *iustitia*.

While it is to be regretted that Cicero's *Hortensius* has not come down to us, he still has much to say in his extant writings about the virtues of wisdom (*sapientia*) and good sense (*prudentia*), and while in the *De Officiis* these are given a relatively brief treatment in comparison with *iustitia*, it is this part of *honestas* that Cicero describes as 'first', with *sapientia* being 'foremost'. We saw that *sapientia* had been attributed to human beings long before the philosophers came along and we shall see in the next chapter that Cicero continues to associate this virtue with non-philosophers as well as philosophers, but my concern in this chapter has been to highlight to the reader some of the ways in which these virtues are socially oriented in Cicero's writings and how they are connected to virtuous conduct. As Atkins put it, *sapientia* is foremost of the virtues for Cicero "in the sense that it provides the very understanding of the universe that explains the priority of justice", allowing *prudentia* to make the right choices, and with the priority of *iustitia* throughout the *De Officiis*, he makes a point of noting some faults that may result from an *excessive* devotion to the pursuit of truth: some fix their focus and efforts upon "matters that are both abstruse and difficult, and unnecessary", some fall into the negative type of injustice by abandoning those whom they ought to be protecting, and mere

speculation (*cogitatio*)—or as he also puts it, speculation without eloquence—turns in on itself. But for Cicero, it seems that this could not be for long in any case; our natural sociability is such that, even if the solitary thinker could have all their wants and needs met by the work of some magic wand, they would still flee their solitude to be together with others, whether to teach or to learn, to listen or to speak, and Cicero makes a point of praising those who have devoted their lives to the pursuit of truth and have imparted their knowledge and learning to others for the sake of *societas*.

The third part of the *honestas* considered in this section concerned greatness of spirit (*magnitudo animi*) and courage (*fortitudo*). Doubtless informed by the intemperate passions for glory he could see all around him at the time which were bringing the *res publica* to its knees, Cicero in the *De Officiis* brings raw *fortitudo* within the ambit of reason and sets out how it is seen in a person of *magnitudo animi*. Such a person is disdainful of external things, does not yield to fortune, calms any agitations of the *animus*, undertakes with vigour dangerous tasks for the *res publica*, but pursues nothing except that which is *honestas*. It is also a mark of such a person to rely on *prudencia* and *consilium*, never exposing the *res publica* pointlessly to risk, and confronting all risks which external circumstances bring to the *res publica* with *sapientia*. In peacetime, it is the mark of a person of *magnitudo animi* to be forgetful of their own advantage and to be caring for the whole body of the *res publica* rather than only this or that part of it, the latter inevitably bringing about ruin to all concerned. Cicero regrets at this point in his discussion that champions of the ‘left’ and ‘right’ of his day were to be found everywhere, but few champions of ‘left-and-right’ were to be found; it is a person of *magnitudo animi* able to champion so, and able to disagree with their opponents in good faith. Time and again throughout his discussion of this virtue, however, Cicero warns against the risk inhering in it that, without the other virtues sufficiently developed in a person who shows it, can lead to a dangerous desire for pre-eminence which “destroys the *libertas* to which end every endeavour of men of great spirit [*magnanimis viris*] ought to be devoted.”*

This section concluded with a consideration of the final part of the *honestas*, in which Cicero says appear a sense of *verecundia*, a kind of moral beauty, restraint and modesty, a calming of the agitations of the spirit, and due measure

in all things. Often referred to in other accounts of the virtues as temperance, moderation, or self-discipline, we saw that Cicero, following Panaetius, brought over from the aesthetic sphere the term *decorum* in giving account of it. *Verecundia* marks out a socially sensitive quality which involves managing the impression we create upon others by taking the other's perspective into our consideration, sometimes involving a voluntary stepping back from pressing one's interests and privileging the interests of others instead for the sake of social cohesion. Since the pursuit of one's interests are unavoidable in life and the chances of stepping on the toes of another in doing so are so rich and varied, the self-monitoring in social situations that *verecundia* requires is constant, but as with all the virtues, it improves with both education and practice. *Decorum* Cicero says appears in all actions that are *honestum*, which speaks both to the features that distinguish us from other living creatures, our capacities for reason and speech, as well as the fact that all the virtues are bound together and interwoven. But it also marks out the fourth primary virtue specifically: that which agrees with nature in such a way that moderation and restraint appear in it, along with the appearance of a free person, a person who is both free and concerned to maintain freedom's worldly condition. It is at this point in the *De Officiis* that Cicero provides what is called the four-*personae* theory, which considers that with which we are 'dressed' by nature, both in common (the first *persona*) and individually (the second *persona*), as well as that with which *fortuna* 'dresses' us (the third *persona*) and the 'dress', the role, that we choose for ourselves (the fourth *persona*): our career, *métier* or way of life.

Throughout this section of the chapter, I have sought to show some of the different ways in which all four of the primary virtues are bound together and inter-related. While Cicero separates them out in the *De Officiis* in giving his advice, and while he says that it is part of the outcomes of the second and fourth *personae* that some choose to excel in one or another of these virtues, it is in the development of them all that excellence is most clearly seen, that *magnitudo animi* is prevented from degenerating into *cupiditas gloria*, *sapientia* into *iniuria*, *prudencia* into *malitia*, and so on. And to repeat a point I have been emphasising throughout, it is the virtue of *iustitia* that Cicero regards in the *De Officiis* as the supreme *social* virtue.

3.5.3 *Virtuous Conduct in Political Societies*

In the final section of this chapter, I have sought to build on the previous one by providing the reader with an account of some of the watchwords that Cicero himself provides in the *De Officiis* concerning virtuous conduct in different *societates*. The first sub-section looked at virtuous conduct within the *societas* that is the *res publica*, beginning with a consideration of Cicero's own that it is this of all *societates* that stands at the centre of the vast network of social relations amongst human beings in the world. After this, I provided an account of some of the juridical background to the term *societas* itself, which denotes a partnership, an agreement between more than one person to contribute their resources towards a shared endeavour. Partners in a *societas* are both legally and morally responsible for acting according to the civil law or, if their *consensus* has not been written as a contract, according to the *ius gentium*, 'the natural reason of humans'. We saw Cicero deriving the keeping of faith, *fides*, from both the *ius gentium* and *lex naturae*: something that is rooted not only in the arguments of Stoic philosophers but also in what the natural reason of human beings has established amongst all peoples over centuries anyway, with both these strands of law speaking against what he saw as the corrupted *mores* of his time which had led some to regard the breaking of faith as neither dishonest nor forbidden by the civil law. Again, the priority of justice as that which builds up *societas* is on Cicero's mind here, and given the infinite diversity of characters in the world which we have seen him focusing upon as a means of maintaining *decorum* (unusual in his own time), he sets out a *formula* or 'rule of procedure' in the *De Officiis* so as to fix this fundamental aspect of justice more securely: that it is more contrary to nature than even death or pain or anything else adversely affecting our bodily or external possessions for one person to secure an advantage for themselves at the cost of disadvantaging another, since it destroys the social bond which ties the whole of humankind together. The sub-section continued with a discussion of the other primary virtues as they are manifest in the conduct of persons in political society and with a consideration of the distinction Cicero underscores between the *officia* of magistrates, private citizens, and foreign residents, as these related both to the contrast Brown had drawn in the first chapter between civic virtues and civil society and Norval's work on 'de-contrasting' them. The sub-section concluded with a discussion of

Cicero on *hospitalitas* and by setting his writings on virtuous conduct within the *res publica* in the broader network of *societates* that exist in the world.

This led into the final sub-section of the chapter, in which I set out for the reader some of Cicero's advice on our *officia* in international political society. I began this sub-section by pointing out some close parallels between the arguments of Dallmayr and Cicero concerning *societas generis humani*, before moving on to consider the different degrees of *societas* that Cicero sets out in the *De Officiis*, one of which is international political society, the *societas* of *civitates*, where his advice concerning the *ius* of warfare is salient. We saw here, again, that justice had a key role in binding this *societas* together, with Cicero insisting that the laws of warfare must be preserved in public affairs and if circumstances are such that a promise has been made to an enemy, faith must be kept even in that. I sought to show here in Cicero's writings the same kind of simultaneous concern for domestic, international, and global affairs as was apparent in different ways in the arguments of Brown, Johnson, Kelsay and Walzer in the first chapter. The sub-section continued by drawing some connections between the just war principles that have developed over time as they had been articulated in Cicero's writings with the intention of showing how these principles may be understood within a republican framework of virtues as distinguished from a liberal framework of rules, before going on to consider the actions of Regulus that Cicero sets out as an example of virtuous conduct in international political society. By way of conclusion, I considered the distinction that Cicero draws between 'rivals' and 'enemies' in relation to warfare which suggests how the framework of virtue as set out in this chapter is also relevant to conduct towards those who are deemed outside of the protections of the *ius gentium*, i.e. those who present an existential threat to the *civitas*, and in preparation for the discussion of Cicero's *rector rei publicae*, or 'ideal statesperson', in the next chapter.

3.5.4 Concluding Remarks

What can Cicero's theoretical writings concerning the conduct of persons contribute to arguments in IPT related to exercising judgments in the world? Briefly stated, I argue that the framework of civic virtues which Cicero contributes towards a deeper understanding of the various arguments addressed

in the first chapter, is excellently suited to IP theorists holding a conception of politics as (partly) personal, that it is of continuing relevance to a great variety of issues across the entire breadth of IPT whether one is a ‘civic republican’ or a ‘liberal’, a ‘communitarian’ or a ‘cosmopolitan’, and that it helps us all a great deal in exercising judgments in the world.

To paraphrase Bernard Crick, boredom with established watchwords is a great enemy of free persons, and in troubling times it might be enough just to make some old platitudes pregnant again.¹⁸² In this chapter, I have developed numerous arguments made by scholars as set out in the previous chapters, but at the same time, I have sought to provide in broad outline the framework of civic virtues that Cicero sets out in the *De Officiis* as well as some of the ‘springs of initiative’ from whence they come. As such, it is likely that the reader will connect what has been said in this chapter to many more of the arguments of scholars as I have set them out in previous chapters, and many arguments being made in IPT more generally besides. I think this is as it should be. It is necessary that free persons retain their own discretion in exercising judgments in the world, and quite apart from the fundamental importance of laws and rules, whether in the world or in logic, it need not result in anarchy if we are trusting in the authority of persons, and I am suggesting to the reader in this project that we place our trust in Cicero’s.

Having considered in this chapter what Arendt calls ‘that part of politics that deals not with the institutions but with the citizen’, we move on in the next chapter to consider the obverse.

¹⁸² Crick, *In Defence of Politics*. p.1.

Chapter 4 Cicero on *Res Publica*

4.1 Introduction

In the first chapter, we saw Brown complexifying the relationship between civil society and the state, drawing out the former's dependence on the latter for its existence. He went on to contrast modern notions of civil society with ancient republican societies and the notion of civic virtue, arguing that the former holds a minimalist approach to law and the abandonment of the idea of 'managed consensus ... by the standard-bearers of republican virtue', whereas the latter implies a 'degree of moral unity', a positive role for law, and (presumably) managed consensus in one form or another by standard-bearers of republican virtue. I argued in the previous chapter that the opposition between 'civic republican' and 'liberal' perspectives on this matter is not as clear-cut as it might seem (as indeed indicated by Brown's non-opposite descriptors 'positive role for' and 'minimalist approach to' law), that Norval was on the right track in seeking to develop civic virtues in civil society, and that Cicero's distinction between the *officia* of magistrates and the *officia* of private citizens, the latter of which converging significantly with liberal notions of civil society, is an important one. In the present chapter, we take a closer look at what Cicero has to say about forms of government, the question of who 'manages the consensus', in the *De Re Publica*.

Cicero wrote his treatises on politics—the *De Oratore*, *De Re Publica* and *De Legibus*—in the 50s BCE, a time of “political uproar” at Rome when his own political influence had been extensively curtailed by those more powerful than him.¹ The scandal of Clodius's act of sacrilege in 61 and subsequent acquittal of the charge; the passing of laws Clodius proposed in 58 which sent Cicero into exile; the domination of the senate by Pompey, Caesar and Crassus in pursuit of their interests; all of these and various other troubling issues had a de-stabilising effect upon the *res publica*.² As Zetzel comments on these years, “the personal politics of the decade before the civil war gave a terrifying reality to theoretical

¹ Catherine Steel, 2013. *The End of the Roman Republic: Conquest and Crisis*. Edinburgh: Edinburgh University Press. p.228.

² Steel, *The End of the Roman Republic*. Ch.6.

questions that had been discussed for generations”.³ Following his return from exile in 57, Cicero was warned by Pompey, Caesar and Crassus not to interfere with their control of the *civitas*, and to history’s huge and lasting benefit, chose to undertake a programme of theoretical writing on politics in his enforced *otium*, producing the three treatises mentioned above. Again, due to the sheer fecundity of his writings, our focus in this chapter is fixed mainly upon the *De Re Publica*, although we also consider some of his arguments from the *De Legibus* in the second section and touch upon the *De Oratore* in the third.

The *De Re Publica* enjoyed great popularity in antiquity but no copy of the complete text is known to have survived later than the seventh century CE. While fragments of the text have been transmitted in the writings of others since its publication, it was only in 1819 that the Prefect of the Vatican Library discovered an erased script of the text beneath a manuscript of Augustine’s commentary on the Psalms (a palimpsest). Around two-thirds of Book I, half of Book II, a sixth of Book III, and a few leaves of Books IV-VI have been recovered through the palimpsest. As such, it makes the *De Re Publica* difficult to interpret overall, but there nevertheless remains a great deal for us to learn and consider in what is extant.

Cicero sets the dialogue of the *De Re Publica* in the early months of 129, during a political crisis which had come about after the Gracchan land reforms of 133 and shortly before the main protagonist, Scipio, died in somewhat mysterious circumstances. Doing so allowed him to avoid giving offence to any living persons by having them (or not) as characters in the dialogue, to evoke the literary models of the Platonic dialogues, and yet still speak to the political uproar of the 50s BCE. Although there are nine participants to the conversation, the main protagonists in what remains of the text are: (i) Publius Cornelius Scipio Aemilianus Africanus (hereinafter Scipio), consul in 147 and 134, and destroyer of Carthage in 146 and Numantia in 133; (ii) Gaius Laelius Sapiens (hereinafter Laelius), consul in 140 and Scipio’s closest friend and confidant; and (iii) Lucius Furius Philus (hereinafter Philus), consul in 136, and frequently mentioned along with Scipio and Laelius in the ancient sources. The dialogue takes place over three days and is set out across six books. On the first day, the interlocutors

³ Zetzel, *Political Philosophy*. p.182.

discuss the best (practicable) kind of commonwealth, with the first Book being a discussion of the ‘theory’ and Book II setting out a narrative of Rome’s history showing it to be the best (practicable) kind. On the second day, the discussion turns to institutional organisation, with what remains of Book III showing a discussion between Philus and Laelius about justice and what remains of Book IV showing a discussion about Rome’s *instituta* (customary standards of social behaviour). Whereas Books I and II are *de optimo civitatis* (on the best kind of *civitas*) and Books III and IV appear to be transitional in some way, Books V and VI are *de optimo civis*, ‘on the best citizen’, very little of which has survived other than Scipio’s dream in Book VI, having had its own manuscript tradition since the text’s publication.

The first section of the chapter considers several key themes of the text, beginning in the first sub-section with Cicero’s arguments in favour of the practical life of the citizen vis-à-vis the theoretical life of the philosopher, as set out in the Preface to Books I and II, and as further developed in the Preface to Books III and IV, all in his own voice. The second sub-section provides in broad outline an account of (non-Hegelian) history and philosophy as they appear in the *De Re Publica*, the former understood as providing an irreplaceable fount of practical wisdom, and the latter an important source of reason, which the ancient philosophers divided into three parts, Ethics, Physics, and Logic, all of which make an appearance in the *De Re Publica*. The third sub-section considers the definition of *res publica* that Scipio provides in Book I, and the final sub-section looks at the different kinds of organisation a *populus* may take in terms of maintaining *res publica*.

The second section of the chapter concerns laws and institutions in Cicero’s writings, (mainly) from the *De Re Publica* and the *De Legibus*. The first sub-section considers the debate between Philus and Laelius in Book III of the *De Re Publica* as to whether a *res publica* can possibly function without justice (*iustitia*), with Philus arguing the ‘conventionalist’ account that it cannot function without injustice and Laelius providing the Stoics’ account of natural law. The second sub-section moves beyond both the *De Re Publica* and *De Legibus* to consider Cicero’s writings on the *ius gentium*, with the aim of distinguishing it from the Stoics’ natural law argument. The third sub-section returns to the *De Legibus*, with a consideration of the law-code that the

character Marcus writes for Rome (what is considered by many scholars to be the beginnings of what we call constitutional law), and the final sub-section considers Cicero's writings on *instituta*, customary standards of social behaviour.

The final section of the chapter considers what Cicero has to say, both in the *De Re Publica* and elsewhere, about the *optimis civis*, 'the ideal statesperson', the good statesperson. The first sub-section considers the account of this type of person given by the character Antonius in the *De Oratore*, and then Scipio in the *De Re Publica*, with the aim of showing to the reader that what Cicero provides us with in his writings here is an 'ideal-type'. The second sub-section moves on to consider what Cicero says in two of his speeches (*Pro Lege Manilia* and *Pro Marcello*), one of his letters to Pompey, and the *De Officiis*, regarding the qualities of a good statesperson, with the aim of adding some of these qualities to our 'ideal-type' and enriching our understanding of some of what is already there in it. This section, and the chapter, concludes with a consideration of the culmination of the *De Re Publica*, Scipio's Dream, in which Physics (re-)appears in imparting some important Ethical lessons.

The question to which I am responding in this chapter is: *what can Cicero's theoretical writings on res publica contribute to arguments in IPT related to exercising judgments in the world?* In summary, I argue that they contribute an outstanding account in the history of political thought of the principle of political organisation, the civic republican principle, which, for example, Morgenthau was calling upon IR theorists to investigate. I argue that these writings are of continuing relevance to IPT and that they contain very important watchwords concerning the institutional and constitutional checks upon personal politics, in whatever form of government. And I argue that these writings speak directly, and respond very well indeed to, Arendt's justified concerns and worries about preserving plurality in the world, by having *societas*—by definition, plural—built into Scipio's definition of *res publica*.

4.2 *De Re Publica*

4.2.1 *Cicero on the Practical Life of the Citizen*

We saw in the second chapter that Arendt agreed with Cicero about our natural sociability and that she approvingly ‘excepted’ him from her portrayal of ‘the tradition’, since he favoured the practical life of the citizen (the life of *negotium*) over the theoretical life of the philosopher (the life of *otium*). I sought to show at that point that Cicero certainly did not hold philosophy in ‘contempt’ as Arendt implied, and I also developed this point in the previous chapter through a consideration of his writings on the four primary virtues, and more specifically, the fourth *persona*: that role in life which derives purely from our own choice, each of our ‘ways of life’, our occupations or careers or *métiers*. Although understanding fully that each person should be making their own choices in this according to their own *personae*—and emphasising to his son in the *De Officiis* that these choices require an extraordinary amount of care—it looks very much like Cicero himself (if and when push comes to shove) favours the practical life of the citizen over the theoretical life of the philosopher; he is closer to Dicaearchus than Theophrastus in the philosophical dispute about whether the *bios politikos* or the *bios theoretikos* is ‘the best’ way of life.⁴ In line with the second *persona*, however, it bears repeating his advice that “even if other pursuits may be weightier or better, we should measure our own by the *regula* of our own nature”, and regardless of whether a life devoted to ‘practice’ or ‘theory’ is the ‘weightier or better’, it is clear that Cicero engaged in both throughout his own lifetime, whatever *personae* were involved in his doing so.⁵

It is in the *De Re Publica*, and specifically in the Preface to Book I where he is speaking in his own voice, that we find I think the most comprehensive account from Cicero in favour of the practical life of the citizen, which is worth quoting at some length:

⁴ McConnell, *Philosophical Life in Cicero's Letters*; Carlos Lévy, 1995. ‘Philosophical Life versus Political Life: An Impossible Choice for Cicero?’. Nicgorski (ed.), *Cicero's Practical Philosophy*. Ch.3.

⁵ *Off.* 1.110.

“... nature has given men such a need for virtue and such a desire to defend the common safety that this force has overcome all the enticements of pleasure [*voluptas*] and ease [*otium*]. Furthermore, virtue is not some kind of knowledge [*quasi artem*] to be possessed without using it: even if the intellectual possession of knowledge [*scientia*] can be maintained without use, virtue consists entirely in its employment; moreover, its most important employment [*usus maximus*] is the governance of *civitates* and the accomplishment in deeds rather than words of the things that philosophers talk through and through in their corners [*quas isti in angulis personant*]. Philosophers in fact say nothing ... that does not derive from the men who established laws [*iura*] for *civitates*. What is the source of piety and religion [*pietas et religio*]? of *ius gentium* and *ius civile*? of justice, good faith and equity? of modesty and moderation, the avoidance of shame, and the desire for praise and honor? of courage in toil and danger? Surely they derive from the men who established such things through education and strengthened some by custom [*moribus*] and ordained others by law [*legibus*] ... that citizen, who through his formal injunction and the punishments established by law [*legumque*] compels everyone to do what philosophers through their teaching can only persuade a few people to do [*quod vix paucis persuadere oratione philosophi possunt*], is to be preferred even to the teachers who make those arguments. What is so remarkable about their teaching that it should outrank a *civitas* that is well established through public laws and customs [*iure et moribus*]? For my own part, just as I think ‘great and powerful cities’ (as Ennius calls them) better than villages and forts, so too I think that the men who lead these cities by their *consilium* and *auctoritas* should be considered far wiser [*sapientia ipsa*] than philosophers who have no experience at all in public life.”^{6*}

We saw across the first two chapters that many philosophers in the modern age are not *only* ‘talking things through and through in their corners’, and what seemed to be missing in the writings of many of them was sustained attention to or appreciation of what Cicero says here consists (or should consist) in things accomplished in deeds rather than words: virtue. I set out some of his own writings on the four primary virtues in the previous chapter, and here we see that he regards their “most important employment” in the governance of *civitates*, and that he thinks those who are leading great ones—those who have nurtured successfully and continue to do so our natural sociability by establishing and strengthening *ius* and virtue through education, *mores* and laws (*legibus*)—should be considered far wiser than philosophers without any experience at all in public life. He goes on in the Preface to counter some arguments in his day which were “philosophic devaluation[s] of civic

⁶ *Rep.* 1.1–3.

responsibility” (usually coming from the Epicureans): that public life is dangerous, unworthy of respectable persons and only to be pursued by philosophers in a crisis.⁷ As the reader might expect, Cicero marshals here virtues such as *bonitas*, *magnitudo animi*, and *fortitudo* in arguing for the moral and practical necessity of living a life of *negotium*, of fulfilling one’s *officia*, so as to “not be subject to wicked [*inprobis*] men or allow them to ravage the *res publica*”, and he is astonished at philosophers’ arguments that they could be of any use in a crisis when they lack both the practical experience and public office to act with good effect in one.⁸ That said, he thinks that even if it were true that a philosopher should not step into public life unless and until the heavens really were just about to fall, still they should by no means neglect close study of public affairs if they want to be prepared to help, which of course is what the *De Re Publica* manifests, and what some philosophers, even having never held public office, also studied and wrote upon and thereby performed a public function.⁹

As we saw in the previous chapter (p.262), it is such philosophers Cicero praised for devoting their *otium* to our *negotium*. And we also saw there as we are seeing in the above passage that he is very willing to associate *sapientia* with both philosophers and non-philosophers. We find a discussion regarding this, again in his own voice, in the Preface to Books III and IV. Unfortunately, this part of the text is in fragments, and so the discussion is, as Zetzel says, “tantalizingly uncertain”.¹⁰ In one of the fragments, Cicero distinguishes between two different kinds of *sapientia*:

“... great *sapientia* existed, but there was this difference between the two approaches, that one group cultivated the principles of nature [*aluerunt naturae principia*] through words [*verbis*] and learning [*artibus*], the other through institutions [*institutis*] and laws [*legibus*]. This single *civitas* has brought forth many, if not *sapientes* (since this term is used so narrowly by them), then at least men worthy of the greatest praise, because they cultivated the watchwords and discoveries [*inventae*] of *sapientes*. And if we take the praiseworthy *civitates* which exist and have existed (since the foundation of a *res*

⁷ Zetzel, *Selections*. p.95; *Rep.* 1.4–11.

⁸ *Rep.* 1.9–11.

⁹ *Rep.* 1.11–12. Cf. *Off.* 1.155–156.

¹⁰ James G. Zetzel, 2017. ‘Cicero on the Origins of Civilization and Society: The Preface to *De re publica* Book 3’. *American Journal of Philology* 138(3). pp.461–487.

publica capable of lasting a long time takes greater *consilium* than anything in the world) [*Atque etiam, quot et sunt laudandae civitates et fuerunt, quoniam id est in rerum natura longe maximi consilii, constituere eam rem publicam*], and if we count one person to each *civitas*, then how great a multitude will we find of excellent men! If in Italy we consider Latium, or the Sabine and Volscian nations, or Samnium, Etruria, Magna Graecia, and add to them the Assyrians, Persians, Carthaginians, if these ...”^{11*}

Regrettably, the text breaks off at this point, but there is still much for us to consider. The narrow sense of *sapientia* is used by the Greeks (and particularly the Stoics), but Cicero seems to me in this passage to be flitting in and out of the ‘narrow’ and a ‘broad’ sense (as discussed in more detail below). He is counting ‘one person to each *civitas*’ here I think only because the Greeks at this point are the topic of discussion, and they generally understood wise lawgivers to be single individuals from outside of the *polis*, whereas, as we shall see later in this chapter, Rome’s constitution is understood to be the work of many *sapientes* within the *res publica* across generations. But whatever the case may be, we can see here that Cicero is distinguishing between two kinds of *sapientia*, both of which can be seen in those who cultivate the principles of nature, the one group through words and learning and the other through laws and institutions; these seem to me to be the “different angles” of which Brown spoke in relation to Morgenthau and Kennan (p.80). Whereas Cicero expressed his own belief in the Preface to Books I and II that persons accomplished in the latter should be regarded as far wiser than the former (at least where the former has no experience in public affairs), we can see here that he nevertheless sees the virtue in both approaches; both spring from nature. But as expected, we find his focus very much upon *sapientia* of whatever sort as it relates to civic life, and we see this focus yet again in another fragment from the Preface to Books III and IV:

“... So let’s grant that those men who discuss the conduct of human life [*ratio vivendi disserunt*] are great men (as indeed they are)—scholars, teachers of truth and virtue [*sint eruditi, sint veritatis et virtutis magistri*—so long as this too, the conduct of society and the structuring of peoples [*ratio civilis et disciplina populorum*], is also (as indeed it is) deserving of our considerable respect, whether it was discovered by men experienced in the varieties of public life [*rerum republicanum varietate versatis inventa*] or examined in the literary

¹¹ *Rep.* 3.7.

leisure of men of the other sort [*in istorum otio ac litteris tractata est*]: it accomplishes (as indeed it very often has already) in good minds [*bonis ingeniis*] the creation of an unbelievable, superhuman virtue.”¹²

Cicero is continually pointing here to the practices, the ‘in-deeds’, of people, whether in those who not only ‘talk it through and through in their corners’ but also teach *ratio vivendi* (which Zetzl glosses as ‘ethics’), or in those experienced in public affairs instituting *ratio civilis* (‘government’), or in those who bestow considerable respect and praise upon the deeds of great theoreticians or practitioners, and moreover, the two approaches seem to be drawn closely together. And sure enough, we find them combined in the leading characters Cicero has chosen for the *De Re Publica*, as he goes on immediately to say:

“But if anyone has thought to add scholarly learning and a richer knowledge of human affairs [*doctrinam et uberio rem rerum cognitionem*] to the intellectual equipment [*instrumenta animi*] which he acquired from nature and from civil institutions [*civilibus institutis*], like the men who take part in the conversation recorded in this work, then everyone ought to prize them above all others. What, after all, can be more glorious than the conjunction of practical experience in great affairs of state with the knowledge of these arts acquired through study and learning? What can be imagined more perfect than Publius Scipio or Gaius Laelius or Lucius Philus? In order to achieve the highest glory of great men, they added to the traditional knowledge of their own ancestors the imported learning of the Socratic school. The person who has had the will and the capacity to acquire both—that is, ancestral traditions and scholarly learning—is the one who I think has done everything deserving of praise.”¹³

We have already seen Cicero’s devotion to the literary arts and his appreciation of the public advantages they bestow, that he engaged extensively in both ‘practice’ and ‘theory’ throughout his own life, and here we find him articulating a similar point once more in the *De Re Publica*. Civilisation itself comes about through human beings cultivating the principles of nature; in particular, the virtue of *sapientia*, ‘the mother of all good things’, whether it is cultivated and shown through words and learning or through establishing and working through institutions and laws. There also seems to be a ‘virtuous circle’

¹² *Rep.* 3.4.

¹³ *Rep.* 3.5.

here in which the civil institutions established by *sapientes* of the more practical kind feed into the development of the ‘intellectual equipment’ of citizens more generally. As Zetzel puts it:

“Philosophers talk about paths of life; they may even imagine, in their *otium*, the institutions of civic life. But the task of changing the world belongs to statesmen: creating and working through actual institutions, *ratio civilis et disciplina populorum*, they make a good life for their fellow-citizens and thus make them good.”¹⁴

In a letter to his brother Quintus, Cicero describes the subject of *De Re Publica* as *de optimo statu civitatis et de optimo cive*: on the best kind of *civitas* and the best citizen.¹⁵ By ‘statesmen’ here, as indicated by the end of his sentence, Zetzel also means to say (I think) ‘best citizens’ (in a democracy, those judged ‘best’ by the people). We saw Arendt describe these ‘best citizens’ as those showing virtues such as courage, moderation and insight in their actions; as those able to communicate successfully between the citizens so that the commonness of this world becomes apparent; as those who understand (in Aristotle’s terms) ‘what is good for men’; and articulating this in the language Cicero is using in the Preface to Books III and IV of *De Re Publica*, the ‘best citizens’ include those cultivating the principles of nature through laws and institutions and are thereby engaged in nurturing what Dallmayr (p.76) calls “the good life of the larger community”. We shall be discussing laws, institutions and the *optimis civis* in the final two sections of this chapter, but to return here to Cicero’s distinction between the two kinds of *sapientia*, I think it is important for us to note that he articulates it in such a way that what he is saying does not have to be tied to the cultures of Rome and Greece. We have already seen in the passage quoted on pp.295-296 that Cicero lists numerous different *civitates* of different cultures which have produced excellence; ‘ancestral traditions and scholarly learning’ are available all over the world. Again, Zetzel provides us with some good commentary:

“...while the combination of Greek philosophy and Roman experience is an absolute prerequisite for being able to offer the kinds of analysis of Rome that Scipio and his friends produce in *De Re Publica*, for Cicero’s argument about Rome’s development to work it is equally

¹⁴ Zetzel, *Cicero on the Origins of Civilization and Society*. p.474.

¹⁵ *Fam.* 3.5. Quoted in Zetzel, *Selections*. p.24.

essential that Greek philosophical knowledge *not* be a prerequisite for good statesmanship itself. Not all peoples, not even all Romans, have had access to Greek philosophy; and yet they managed to create successful governments all over the world. The desire and the ability to improve human society do not come from reading Plato, but from nature itself: the establishment of an enduring *res publica* is located *in rerum natura* [‘in the nature of things’], just as ... all moral and intellectual achievements of humans are derived, via the divine spark, from nature. By the middle of Book 3, at the end of Laelius’s speech, the divine spark of nature has grown to become the natural law, an immanent condition of moral existence and not just a starting point for human inventiveness.”¹⁶

We saw in the second chapter that Arendt observed ‘the curious stubbornness’ with which ‘the council system’ presented itself each time the people comes to raise its voice, and I suggested that one of the things that might account for this is the civic republican tradition to which the council members were ‘knowingly or unknowingly bound in their understanding of the world and their own experiences’ (pp.128 and 180). I also sought to show through the example of the American founding and Arendt’s understanding of it that it was in the civic republican tradition that the founding itself took place. But from Zetzel’s analysis here, we can now say more than this; we can say that one of the things that account for the curious stubbornness which Arendt observed in various councils being set up in different contexts, and that also account for the fact that the American founders looked to history for help in founding, is that the establishment and nurturing of an enduring *res publica*, of community life, is simply *natural*; the desire and ability to improve human society is in the nature of things, and not reducible to the writings of this or that genius or these or those geniuses. In this respect, Cicero offers in the Preface to Books III and IV the example of an early Roman, Manius Curius, “whom no-one could overcome with either steel or gold” and who had no access to Greek philosophy, and as Powell says, it is “most frustrating” that the fragment breaks off at this point.¹⁷ Still, Cicero uses Curius as an exemplary figure elsewhere in his writings, including in the *De Amicitia*, where the character Laelius (the same Laelius in the *De Re Publica*) disposes of the Greeks’ (Stoics’) ‘narrow’ definitions of

¹⁶ Zetzel, *Cicero on the Origins of Civilization and Society*. p.476.

¹⁷ *Rep.* 3.6a; Powell, ‘Cicero’s *De Re Publica* and the Virtues of the Statesman’. Nicgorski (ed.), *Cicero’s Practical Philosophy*. p.28.

sapientia and *bonus* and says that his ancestors judged Curius to be both wise and good:

“... let [Greek philosophers] keep to themselves their name of *sapientia*, which attracts both envy and misunderstanding, as long as they grant that [Curius was] *boni*. Yet not even this will they do; they will say that only a *sapientes* [in their narrow sense] is entitled to be called *boni* ... Let us therefore proceed using our own homespun *sapientia*, as the saying goes. Men who live in such a way that praise is bestowed on their honesty [*fides*], integrity [*integritas*], fairness [*aequitas*] and generosity [*liberalitas*], and who are entirely free from greed [*cupiditas*], sensual desire [*libido*] and presumption [*audacia*], and possess great strength of character [*magna constantia*], like [Curius]—such men let us regard as *boni*, in accordance with their reputation hitherto, and also worthy of receiving this name, since, as far as is humanly possible, they follow Nature, the best guide for living well.”¹⁸

As both Powell and Zetzel point out, Curius is said here to have followed the basic watchword of Stoicism, to follow nature, but he did so without ever having listened to a Stoic. Reminiscent of Brown’s example of Forrest Gump, Curius is held up as an example here of an early Roman who was “naturally good without fancy philosophizing ... goodness derived from an unmediated contact with nature”.¹⁹ Yet while Zetzel is correct that, in the fragment from the Preface to Books III and IV of the *De Re Publica*, it is a Curius or a Forrest to whom a Scipio, a Laelius or a Philus has given way as an example of praiseworthy character, “what can be imagined more perfect” than “when natural disposition which is noble and elevated is given in addition a basis and shaping through education” (pp.228 and 300)? Reading Plato and the Stoics, and indeed other *sapientes* from all cultures who have cultivated the principles of nature and shone the light of the written word upon those principles, is itself a cultivation of the principles of nature. Education remains of fundamental importance to Cicero—“literary activity [is] important to all citizens ... and, ultimately, [to] the whole of humanity” (p.229)—and he regards those who have developed their natural dispositions through learning *and* who have gained practical experience in great affairs of state as those who should be prized above all others.

¹⁸ *Amic.* 18–19.

¹⁹ Zetzel, *Cicero on the Origins of Civilization*. p.473.

We shall be considering all of this in some more detail in the rest of the chapter, but in concluding this sub-section, we can note what Cicero has to say about ‘when push comes to shove’ in terms of choosing how one should live:

“...if it should be necessary to choose one path of understanding [*prudencia*] or the other, even if the tranquil pattern of life devoted to study and learning may seem more blessed [*beatior*], nevertheless civic life is both more praiseworthy [*laudabilior*] and more illustrious [*inlustrior*] ...”²⁰

In his investigation of Cicero’s own choice of how to live, Carlos Lévy argues that “the profound belief in the superiority of practical life over a purely theoretical life never really left him”, and I would add only that what he never really left *us* was a ‘hierarchical structure’ within which to approach the question of how one should live.²¹

4.2.2 History and Philosophy in De Re Publica

As mentioned above, we saw in the first chapter that many philosophers in the modern age are not *only* ‘talking things through and through in their corners’. Beardsworth described critical philosophising as ‘the force of thought pitched against other more determined forces (economic, political, military etc.) to promote, in one way or another, better human relations’; Benhabib is engaged in a Kantian project (with strong notes of Habermas and Derrida) which seeks to develop through democratic iterations cosmopolitan norms in actual liberal democracies; and we saw through Devetak’s writings that both Kant and Hegel regarded the philosopher as having an important *social* role to play, either in making universal reason ‘public reason’, or in mediating a range of real-life oppositions through their expertise in dialectics and philosophy of history. We saw in the second chapter that Arendt had some suspicions about Hegel’s dialectics and his philosophy of history, and some concerns about how later writers interpreted his work, along with Marx’s, such that ideological thinking set in, completely detached from history (in a non-Hegelian sense) as well as experience, with the ideology pretending to know (or acting as a placeholder for) the mysteries of ‘the whole historical process’ and removing one’s judgment

²⁰ *Rep.* 3.6a.

²¹ Lévy, *Philosophical Life versus Political Life*. p.76.

and discretion in the world ('the tyranny of logicity'). Arendt's account of ideology in *The Origins of Totalitarianism* is a difficult and unsettling one, but howsoever it may be interpreted, I have been seeking in this project to set out a conception of politics that requires neither Hegelian dialectics, nor any philosophy of history, nor any ideology; that appreciates the importance of rhetoric *and* logic, *in their appropriate spheres*, that recognises the *need* for the *help* of tradition and authority in exercising judgments in the world, and that pays attention, like Cicero in the passage quoted on p.294 and also like the philosophers of whom he is speaking in it, to *virtue*, some of his writings on which I set out in the previous chapter. In the present sub-section, we consider how non-Hegelian 'philosophy' and 'history' appear in Cicero's *De Re Publica*.

It is perhaps best to begin with a brief (and necessarily crude) outline of some of the philosophical context in which Cicero is writing. There is general agreement amongst contemporary scholars that the ancient tripartition of philosophy into Ethics, Physics and Logic can be traced back to Xenocrates (c.396-314 BCE), if not Plato himself, and it became a standard feature of Hellenistic philosophy outside of the Academy as well. Logic—the field “which studies *logos* in all its manifestations”—included not only what we refer to as logic, but also numerous other kinds of study, such as philosophy of language, semiotics, epistemology, dialectic (which “permeates all areas of enquiry, but as a collaborator or ancillary”), and sometimes even rhetoric as well.²² Physics comprehended areas of enquiry into nature (*physis*), such as what we would call biology, cosmology, philosophy of science, metaphysics and theology, and Ethics consisted of those areas enquiring into things specifically human, such as what we would call economics, political theory and moral philosophy. As Jonathan Barnes notes, this tripartition was the site of two general philosophical disputes: the status of Logic and the proper ordering of the three parts.²³ The Peripatetics regarded Logic as merely a tool or instrument of philosophy (and philosophy they divided into theoretical [roughly: Physical] and practical [roughly: Ethical] sciences), whereas the Stoics regarded Logic as part of philosophy itself. Across his own

²² Algra et al. *Cambridge History of Hellenistic Philosophy*. pp.xiii–xvi. Broadly speaking, the Academics and Peripatetics regarded dialectic as a collaborator, and the Stoics regarded it as ancillary.

²³ Jonathan Barnes, 1997. 'Logic in *Academica* I and Lucullus'. Brad Inwood and Jaap Mansfeld (eds.), 1997. *Assent and Argument: Studies in Cicero's Academic Books*. Leiden: Brill. p.140.

philosophica, Cicero writes treatises concerning each of the three parts of philosophy (for example, a text in the part called Logic is the *Academica*, in Physics the *De Natura Deorum*, and in Ethics the *De Officiis*), provides a very strong indication throughout his *corpus* that he regards Ethics as “the most essential part”, but often inter-weaves within each text, within whichever part of philosophy is its subject-matter, the other two parts.^{24*}

Most Stoics appear to have placed Logic as the first part in their ordering, and others than Cicero who ordered the three parts such that Ethics comes first include Seneca, Eudorus of Alexandria, and Augustine.²⁵ In his ‘Two Stoic Approaches to Justice’, i.e. an Ethical and a (meta-)Physical approach, Schofield seems to me to be sensitive to this tripartition.²⁶ Benjamin Straumann, in his criticism of Schofield’s article, argues that the Ethical approach “is founded on important anthropological conditions in the area of metaphysics and therefore excludes clear differentiation of this kind ... the two approaches are occasionally found together, inevitably resulting in contradictions in his line of argument”.²⁷ Straumann here, it seems to me, is less sensitive to the tripartition, although sensitive to the facts that the Stoic system is densely inter-connected and so many of these philosophers held Logic to be the most important of the three parts.²⁸ Barnes notes that “the Stoics used ... [logical] arguments explicitly, self-consciously, deliberately; they were concerned, in their philosophical writings to apply argument forms which their dialectical studies had investigated and approved. The Stoics studied logic fervently and they used it sedulously”, to which I would add only that Stoic dialectic was different to dialectic as it is to be found in the Platonist or Aristotelian traditions.²⁹ Stoics generally, it might be said, in Dallmayr’s words (p.73), tend to be “over-confident thinkers—well-

²⁴ *Acad.* 1.34; cf. *Acad.* 1.19, 2.91 and *Leg.* 1.17.

²⁵ Barnes, *Logic in Academica I and Lucullus*.

²⁶ Schofield, ‘Two Stoic Approaches to Justice’, Laks and Schofield (eds.), *Justice and Generosity*. Ch.7.

²⁷ Benjamin Straumann, 2003/2004. ‘Oikeiosis and appetitus societatis: Hugo Grotius’ Ciceronian Argument for Natural Law and Just War’. *Grotiana* 24/25. pp.41–66.

²⁸ Katerina Ierodiakonou, 1993. ‘The Stoic Division of Philosophy’. *Phronesis* 38(1). pp.57–74.

²⁹ Jonathan Barnes, 1999. ‘Introduction’. Part II: Logic and Language. Algra et al. *Cambridge History of Hellenistic Philosophy*. p.66; cf. Fink (ed.), *The Development of Dialectic from Plato to Aristotle*; Thomas Bénatouïl and Katerina Ierodiakonou (eds.), 2018. *Dialectic after Plato and Aristotle*. Cambridge: Cambridge University Press.

versed in logic and epistemology—[who] settle for a robust definition or handy formula.”

In this context and in these terms, the *De Re Publica* is a text within that part of philosophy called Ethics. One of the components of Logic in the text is that it is written in the form of a dialogue: a literary extension of dialectic. And we find (in what remains of the text) that Physics makes its most prominent appearance in Books I, III and VI. In Book I, the youthful character Tubero, a Stoic, asks his uncle Scipio to explain the recent sighting of two suns in the sky, which Scipio dismisses as unimportant given the current political turmoil, citing Socrates, “the first to call down philosophy from the skies and to settle it in cities” and whose tradition the Stoics claimed to be continuing, in support of doing so.^{30*} The conversation and its topic is interrupted by the arrival of Philus and then Laelius, between whom it is continued, with Philus (an Academic sceptic) arguing Tubero’s case for cosmology’s relevance to politics since the *cosmos* is as much ‘home’ as Rome is. He sets out an explanation of the sighting of the two suns with the help of Archimedes’ orrery which anticipates some of the arguments about politics made later on, and in response, Laelius tacks practically, i.e. Ethical, arguing that the “most outstanding task of *sapientia*” is not in pondering about the heavens, but in teaching “the skills [*artes*] that make us useful to the *civitas*”.³¹ Just before he had done so, Scipio had responded astonishingly to the Physical talk of Tubero and Philus, rowing back quite a bit from his initial dismissal of Physics’ relevance to Ethics, and without the debate having been settled, Laelius requests that Scipio explain to all gathered “what he thinks the best organization of the *civitas* (*optimum statum civitatis*) to be”, setting up the rest of the discussion of Book I.³²

Quite apart from Physics’ relevance to Ethics in the text, one of the things it looks like Cicero is doing is using the *language* of Physics *metaphorically*. As we shall see below, astronomical language used by Philus to describe the motions of the planets, such as *conversio* (‘revolution’) and its root, *convertere* (to

³⁰ *Rep.* 1.14–15; *Tusc.* 5.10. A parhelion, or ‘sundog’, is a meteorological and optical phenomenon that consists of a bright spot to one or both sides of the sun, caused by the refraction of sunlight by ice crystals in the atmosphere.

³¹ *Rep.* 1.17–33.

³² *Rep.* 1.33.

revolve), are used later in the text to describe the course of politics.³³ In the *De Oratore*, the character Crassus tells us that:

“When something that can scarcely be signified by a proper word is expressed by means of a metaphorical one, what happens is this: the meaning we want to convey is clarified by the resemblance between this thing and the thing that we evoke by means of the metaphorical word (which belongs to another context).”³⁴

In Gallagher’s words, “just as the science of astronomy reveals order in the motions of the planets, so the science [or “almost a science”] of politics reveals order in the movements of states.”³⁵

As regards the almost-political-science of Book I in which Scipio sets out different kinds of organisation or ‘constitution’, Jed W. Atkins rightly points out that Cicero was drawing upon an established tradition of thought stretching back through the likes of Polybius, Aristotle and Plato to at least Thucydides (Zetzel sees it in Herodotus too), but under his pen it takes on a specifically Roman character which pays closer attention to what Zetzel calls (not unlike Dallmayr) “the untidiness of human affairs”.³⁶ Gone is the Polybian rigidity of an organisational form which is elevated over human action and follows a fixed cyclical path, and in its place, although the language of *conversio* remains, a greater role is acknowledged for the actual persons who shape these forms, topics of Books IV, V and VI.

With an (all-too-brief) account of philosophy in the *De Re Publica* now given, we can move on to an (all-too-brief) account of history as it appears in it. Having discussed different organisations that a *res publica* might take in Book I—a

³³ Robert L. Gallagher, 2001. ‘Metaphor in Cicero’s *De Re Publica*’. *Classical Quarterly* 51(2). pp.509–519. Cf. *BPF*. pp.41–90; *OR*. pp.13–52; *LM1*. pp.110–128.

³⁴ *De Or.* 3.155. The technical term Cicero uses for metaphor is *translatio*. It is interesting to note in this connection Arendt’s description of lawful government: “By lawful government we understand a body politic in which positive laws are needed to translate and realize the immutable *ius naturale* or the eternal commandments of God into standards of right and wrong. Only in these standards, in the body of positive laws of each country, do the *ius naturale* or the Commandments of God achieve their political reality.” *OT*. p.610. This seems to me not inconsistent with Straumann’s own description of natural law as “amenable to being codified and positivized”, although perhaps not consistent either. Straumann, *Crisis and Constitutionalism*. p.164.

³⁵ *Rep.* 1.37; Gallagher, *Metaphor in Cicero’s De Re Publica*. p.518; Atkins, *Cicero on Politics*. Ch.2.

³⁶ Zetzel, *Selections*. p.24.

discussion about monarchy, aristocracy, democracy, and a mixture of these, which we will be considering later in this section—Scipio reverently (*vereor*) says that if he “continues too long in this vein” amongst all of his “good and wise friends [*Laeli vosque homines amicissimi ac prudentissimi*]”, he may begin to sound too much like an instructor or lecturer instead of a fellow inquirer (*considerantis*) into the subject, preparing for the account of Rome’s history which is the subject of Book II and in which he states his:

“...own opinion [*decerno*] and belief [*sensio*] and judgment [*adfirmo*] that no *res publica*, in either its organisation [*constitutione*] or structure [*discriptione*] or its conduct and training [*disciplina conferendam*], can be compared to the one our fathers received from their ancestors and have passed on to us.”³⁷

He begins by speaking of Cato the Elder, to whom he was deeply attached and who used to say that the organisation of Rome surpassed that of all others because it was shaped not by a single lawgiver but by the talent of many over generations:

“He said that there never was a genius so great that he could miss nothing, nor could all the geniuses in the world brought together in one place at one time foresee all contingencies without the practical experience afforded by the passage of time.”³⁸

I think this is testimony of fundamental importance, quite apart from Arendt’s interpretations of Hegel, his genius, and the American founders’.³⁹ It by no means removes or excludes geniuses (philosophical or otherwise) from practical affairs; rather, it speaks to the importance of (non-Hegelian) *history* as a fount of *practical* wisdom, of *prudentia*, that no amount of genius or number of geniuses could ever replace. We saw Devetak in the first chapter recover for IP theorists a historical mode of critique and I hope to have shown in the second chapter that Arendt (if not Hegel) stood within “authority-claiming systems and beliefs of the past” and was herself engaging in this mode, albeit in her own peculiar way (p.131); along with her deep familiarity with the work of

³⁷ *Rep.* 1.70.

³⁸ *Rep.* 2.2.

³⁹ Arendt was also fond of quoting ‘the old Cato’: *OR.* pp.202 and 252, *HC.* p.325, *PP.* pp.174 and 184, *LM1.* pp.7, 8, 123, and 216, *TWB.* pp.27, 446, 487 and 515.

philosophers, she had a ‘Thracian maid’ kind of common sense through her deep familiarity with the past more generally.⁴⁰

But let us return to Book II of the *De Re Publica*. With the discussion around constitutional theory having taken place in Book I, Scipio narrates a history of Rome—to show that it surpasses all others in terms of organisation, structure, conduct and training—in such a way that it reconciles with what has already been said in Book I, and he begins, “happy to make use of Cato’s own word”, with the “origins” of the Roman people as founded by Romulus.⁴¹ Following praise of Romulus’ great foresight (*providentia*) in choice of location and *sapientia* in marking out the natural defences of the city, elements of the mixed constitution discussed in Book I very quickly follow, with Romulus and Titus Tatius choosing leading citizens upon whose *auctoritas* they could rely. Scipio asks the group if they see that the *consilium* of Romulus “not only created a new people but brought it to full growth, almost to maturity”, and in a passage of the text attractive to those interested in Scipio’s method, Laelius responds affirmatively:

“We do see that, and we see that you have introduced a new kind of analysis, something to be found nowhere in the writings of the Greeks. That great man [i.e. Plato], the greatest of all writers, chose his own territory on which to build a *civitas* to suit his own ideas. It may be a noble *civitas*, but it is totally alien to human life [*vita hominum*] and customs [*moribus*]. All the others [i.e. Aristotle and the Peripatetics] wrote about the types and principles of *civitates* without any specific model or form [*exemplari formaque*] of *res publica*. You seem to me to be doing both: from the outset, you have preferred to attribute your own discoveries to others rather than inventing it all yourself in the manner of Plato’s Socrates, and you ascribe to Romulus’ deliberate planning all the features of the site of the city [*urbs*] which were actually the result of chance or necessity. Moreover, your discussion does not wander but is fixed on one *res publica*. So go on as you have begun, I think I can foresee a *res publica* being brought to completion as you go through the remaining kings.”^{42*}

⁴⁰ Jacques Taminiaux, 1997. *The Thracian Maid and the Professional Thinker: Arendt and Heidegger*. Albany: State University of New York Press.

⁴¹ *Rep.* 2.3. Cato wrote a historical work called *Origines*.

⁴² *Rep.* 2.21.

Laelius seems to be saying here that Scipio's historical account contains the best of both philosophical worlds. In Zetzel's words, "Plato had concentrated on a single state, but a fictitious one; the Peripatetics had catalogued constitutions and political systems, but had not focused on the structural development of any one", whereas Scipio is giving account of the best kind of *civitas* through the *exemplum* of Rome.⁴³ Note here also Laelius' opinion that Scipio is saying something 'new', although attributing it from the outset to what others have said before him, i.e. something 'old', whether through his attachments to Cato and history or to his friend Polybius and political theory, or to 'the Socratic school', the tradition of philosophy. In the context of the above passage, Matthew Fox argues that:

"Rome becomes the historical proof of the correctness of Greek political theory, demonstrating the excellence of the mixed constitution, and although the speakers in the dialogue acknowledge the happy accident, it is clear from their discussion that Rome's constitutional excellence is due not to theory, but to history; but at the same time, that history is not really history, but a narrative forced upon the traditional story in order to make it work as a verification of the theory ... The crucial difference between Plato and Scipio is that Scipio has chosen a historical city, rather than an ideal one ... Scipio is said [in the dialogue] to be occupying a compromise position: using the history of Rome, but at the same time shaping his narrative so as to draw out the congruency between the ideal constitution and Rome's actual historical development."⁴⁴

'Ideal' and 'best' are two amongst many possible translations of *optimum*; others could be 'excellent' or 'good'. Atkins uses the phrase "ideal regime" in speaking about constitutional theory in the *De Re Publica*, but also qualifies it with "chance", argues that the interlocutors are aiming for the "best *practicable* regime" and speaks of "relaxing reason's reign even while continuing to hold it as normative".⁴⁵ However we may choose to interpret and speak about the text, it is clear that both philosophy and history are playing key roles in it, but it seems to me that Cicero is inter-weaving them rather than collapsing them

⁴³ Zetzel, *Selections*. p.178. On the Latin term *exemplum*, cf. J.G.F. Powell, 2001. 'Were Cicero's Laws the Laws of Cicero's Republic?' Powell and North (eds.), *Cicero's Republic*. pp.28–29. On *exempla* at Rome, cf. Henriette van der Blom, 2010. *Cicero's Role Models: The Political Strategy of a Newcomer*. Oxford: Oxford University Press.

⁴⁴ Matthew Fox, 2007. *Cicero's Philosophy of History*. Oxford: Oxford University Press. Fox's title is slightly and deliberately provocative. p.1. Cf. *De Or.* 2.51–64.

⁴⁵ Atkins, *Cicero on Politics*. pp.96–99, and 116. Emphasis added.

into each other. There is no throwing together into a singular whole of Plato's 'two worlds', the 'rational' and the 'actual'.

In recalling some of the passages quoted from the previous sub-section, it seems that, for all the correctness of Greek philosophy (whether in Ethics, Physics or Logic), Greek philosophy is not a prerequisite for producing excellent *civitates*, since it was not always available at Rome, and never available to so many other excellent *civitates* around the world. Again, "cultivating the principles of nature", whether through "words and learning" or "institutions and laws"—the two kinds of *sapientia* of which Cicero speaks in the Preface to Books III and IV—need not be the purview of only the philosophers, though philosophers may also cultivate them through the former, as well as the latter through the former.

As with his consideration of different ethical theories in the *De Finibus*, readers looking for an 'answer' or 'solution' in the *De Re Publica* to 'the complex and troubled relations' between history and philosophy, or between contextualism and universalism, or between practice and theory, will be disappointed. As Atkins puts it, what Cicero provides in the text is a dialogue which is:

"an invitation to political philosophy ... [a] dialogue [that] will communicate political teachings that its author believes are important while simultaneously maintaining authorial detachment requisite for prompting the reader to exercise his or her critical faculties."⁴⁶

Or as Fox puts it, Cicero:

"allows theory and practice to struggle before his readers' eyes, making them aware of the difficulties, suggesting provisional solutions, but not providing any final version."⁴⁷

Scholars of a more disciplinary persuasion may agree with Mommsen and Moses Finley that the "central idea" of *De Re Publica* is "as unphilosophical as unhistorical", but it seems to me Atkins is much more on target in saying that Cicero "deftly appropriates, transforms, and, at times transcends Greek philosophy" in this text, and that it represents "a substantial contribution to ancient political philosophy with important implications for our understanding of

⁴⁶ Atkins, *Cicero on Politics*. pp.27 and 33.

⁴⁷ Matthew Fox, 2007. *Cicero's Philosophy of History*. Oxford: Oxford University Press.

the history of political thought”.⁴⁸ I hope also to be showing that it has important implications for understanding in IPT, and having now (all-too-briefly) considered Cicero’s weaving together of history and philosophy in this text, the rest of this section is given over to an analysis of the political theory it contains.

4.2.3 *Scipio’s Definition of Res Publica*

In line with the argument set out in Plato’s *Phaedrus* about definitions, Scipio says to his interlocutors that in order to avoid mistakes in their discussion, everybody must agree first of all upon the name of the thing being discussed and what is signified by that name.⁴⁹ Elizabeth Asmis provides some useful commentary here:

“the aim of the definition is to provide an unambiguous, fixed standard by reference to which the issue is judged ... The definition shows ‘what’ [*res publica*] is; subsequent argument based on the definition will show ‘what sort’ of thing [*res publica*] is. It is assumed that when we know what qualities [*res publica*] has, we will know what sort of [*res publica*] is best [practicable].”⁵⁰

When it is agreed that a definition of *res publica* is required, Scipio goes on to emphasise that he will be speaking as one Roman statesperson to others (along with some of the younger generation such as Tubero), avoiding the mistake of “making the subject of [his] speech ... clearer than the speech itself.”⁵¹ Having judiciously set out this proviso for his interlocutors, Scipio defines *res publica* as follows:

“Well then: the commonwealth is the concern of a people (*res publica res populi*), but a people is not any group of men assembled in any way, but an assemblage of some size associated (*sociatus*) with one

⁴⁸ Atkins, *Cicero on Politics*. p.2; Finley quoted in Schofield, *Cicero’s Definition of Res Publica*. p.63.

⁴⁹ *Rep.* 1.38; Plato, *Phaedrus* 237bc.

⁵⁰ Asmis, *State as Partnership*. p.574.

⁵¹ *Rep.* 1.38. His allusion here I think is to philosophers such as the Stoics whose excessive precision in definition was notorious, and he reminds his interlocutors of the nature of his speech again at the end of it: *Rep.* 1.70.

another through agreement on law (*iuris consensu*) and community of interest (*utilitatis communione*).⁵²

There is an inexhaustible literature on this definition stretching from antiquity to the present, and while Ronald Syme complained that the *De Re Publica* is “a book about which too much has been written”, I believe there can never be too much of a good thing.⁵³ It is beyond the scope of my project to engage in any kind of depth with this vast secondary literature, but it seems to me that this should not prevent a consideration in IPT, in our own time, of what Scipio is actually saying in the text itself.⁵⁴ We may begin with a consideration of the term *res publica*. As Zetzel says, it is difficult to translate into English:

“... ‘commonwealth’ emphasises too much the material aspects of *res*; ‘republic’ begs the constitutional issues which C. is careful here to leave open; ‘public affairs’ omits the institutional element ... Heinz best approximated its scope as ‘including all interests of the community of the people’.”⁵⁵

Although I think it is excellent, I do not know if Heinz’s transliteration best approximates the scope of the meaning of *res publica*, but I am sure the reader would agree that, however accurate it may be, it is a bit unwieldy. For that reason, and Zetzel’s other reasons above, I leave the term untranslated, but would urge the reader to keep Heinz’s transliteration in mind whenever they see it used. To consider the term in some more detail, I think it is useful for us to look at something else Scipio says shortly after giving his definition:

“...[the] first act [of peoples] was to establish a settlement in a fixed location for their homes ... they called this combination of buildings a town or a city [*oppidum eul urbem*], marked out by shrines and common spaces. Now every *populus* (which is the kind of large assemblage I have described), every *civitas* (which is the organisation of the people [*constitutio populi*]), every *res publica* (which is, as I said, the concern of a people [*res populi*]) needs to be directed

⁵² *Rep.* 1.39. For discussion of the proviso at *Rep.* 1.38, see Asmis, *State as Partnership*, pp.573–75; Schofield, *Cicero’s Definition of Res Publica*, p.69; Atkins, *Cicero on Politics and the Limits of Reason*. pp.128–130.

⁵³ Quoted in Powell and North (eds.), *Cicero’s Republic*. p.1.

⁵⁴ Cf. M.S. Kempshall, 2001. ‘*De Re Publica* 1.39 in Medieval and Renaissance Political Thought’. Powell and North (eds.), *Cicero’s Republic*. Ch.6.

⁵⁵ Zetzel, *Selections*. p.127.

[*regenda*] by some sort of deliberation and judgment [*consilium*] in order to be long-lived.”^{56*}

It seems to me that this passage helps clarify for us what Scipio is saying *res publica* is *not*. It is not a territorially defined space, which is called a town (*oppidum*) or a city (*urbs*). Nor is he saying that it is a people (*populus*), a definition of which he has already set out and which we will consider in some more detail very shortly. And nor is Scipio saying that *res publica* is a *civitas*, the latter of which we can see in this passage corresponds more closely to the Greek term *polis* (itself having senses of both *urbs* and *civitas*).⁵⁷ As Jed Atkins puts it, “a *civitas* is reducible to the citizens who constitute it in a way that a *res publica* is not”; although closely connected, a *civitas* is not *identical* to *res publica*, even as both terms (along with *polis*) are often used synonymously.⁵⁸ Scipio’s argument in this passage that ‘every *populus*, every *civitas*, every *res publica*’ needs to be directed by some sort of *consilium* in order to be long-lived we shall consider in the next sub-section.

With a little more clarity given around the meaning of *res publica*, let us now consider what Augustine calls Scipio’s “brief definition” of it: *res publica res populi*, it is the concern of a people.⁵⁹ Zetzel translates *res* here as concern “in order to emphasise its connection with ideas of property as well as of government.”⁶⁰ Others’ translations of *res populi* have included ‘people’s thing’ (lit.), ‘the affairs and interests of a people’, ‘the business of a people’ and ‘the property of a people’. The semantic range of *res* is wide, and it seems that Scipio (in conjunction with his interlocutors) brings a few of its senses to bear upon the definition. But whatever the case may be—and taking the above renderings of *res populi* into account—it looks beyond doubt that, for Scipio, *res*

⁵⁶ *Rep.* 1.41. Cf. J.G. Powell, 1994. ‘The *rector rei publicae* of Cicero’s *De Re Publica*’. *Scripta Classica Israelica* 13. pp.19–29: “...the traditional English translation ‘rule’ is itself too strong for *regere* in many contexts; ‘direct’, ‘guide’, ‘govern’, ‘manage’, or ‘control’ would be better.” p.23n5.

⁵⁷ Cf. *HC.* p.198: “The *polis*, properly speaking, is not the city-state in its physical location; it is the organisation of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be.” Arendt seems to me here to have provided a ‘Romanising’ account of the *polis*, its meaning shading into that of *res publica*.

⁵⁸ Atkins, *Cicero on Politics*. pp.131–132.

⁵⁹ Quoted in Schofield, *Cicero’s Definition of Res Publica*. p.69.

⁶⁰ *Rep.* p.xxxvii.

publica is a thing with which a given assemblage of individuals, all of whom comprise a people, are *occupied*: it takes up (at least some of) their time.

But what is a people on Scipio's account such that *res publica* is its concern? The two features through which he says individuals are associated—*iuris consensus* and *utilitatis communio*—such that they are a people were already present in all the major Greek political theories of his day; Scipio provides a definition of 'people' already familiar to his interlocutors.⁶¹ Even so, his rendering of these two features in Latin makes them far from identical with those of his Greek predecessors.⁶² Let us begin with a consideration of *iuris consensus*. *Ius* is another difficult term to translate into English (hence why, for example, it is usually left untranslated in the just war categories *ius ad bellum*, *ius in bello* and *ius post bellum*, and why Benhabib and Waldron disagree over the meaning of Kant's *ius cosmopolitanum* [pp.48-49]). It signifies 'right' or 'law' or a 'policy of justice' (as distinguished from justice simply: *iustitia*), and it is *consensus*, common agreement, with respect to *ius* which Scipio regards as one feature that distinguishes a people from a mere assemblage of individuals.⁶³ *Consensus* has a broader meaning than the English term 'consent', covering anything between "mere compliance and strong commitment ... what is required is not simply [the] assent [of individuals] but a shared position".⁶⁴ One might, as Schofield does, usefully render *iuris consensus* as a shared or communal *sense* of *ius*.⁶⁵ In chapter two, we saw the beginnings of what Cicero is calling here *iuris consensus*, it seems to me, in the various councils that sprung up during some of the revolutions of the last two centuries; individuals had a 'shared position', acting in an atmosphere of mutual trust, with those who took the initiative, those who exhibited authority in their actions by inspiring confidence in their fellows, those most able "to communicate between [fellows] and their opinions so that the commonness of this world becomes apparent", being entrusted by their fellows to 'manage the consensus', administer *ius*, in the next higher council, and the next again, and so on. Noting the ambiguity of the Latin, Asmis says that "the

⁶¹ Schofield, *Cicero's Definition of Res Publica*. p.70.

⁶² Cf. Straumann, *Crisis and Constitutionalism*. Chs.4 and 5.

⁶³ Asmis, *State as Partnership*. p.578.

⁶⁴ Asmis, *State as Partnership*. p.578.

⁶⁵ Schofield, *Cicero's Definition of Res Publica*. p.72.

phrase [*iuris consensus*] suggests both an agreement on the kinds of rules [which comprise some sort of legal system] and an agreement to abide by them.”⁶⁶ In this sense, Arendt was not exactly wrong to speak of a *consensus iuris* ‘as international law’ that makes up ‘a civilised world’ which the Nazi and Stalinist regimes grievously violated, to say the least, but she was also not exactly right, since ‘the civilised world’ does not constitute ‘a people’ (the phrase *iuris consensus* is found nowhere else in the extant Latin literature before Cicero).

Near the end of Book II, Scipio links *consensus* with justice (*iustitia*) by way of analogy with musical harmony:

“For just as in the music of harps and flutes, and of course in choral singing, a degree of harmony must be maintained among the different sounds, and if it is altered or discordant a trained ear cannot endure it; and this harmony, through the regulation of very different voices, is made pleasing and concordant. So too the *civitas*, through the reasoned balance [*moderata ratione*] of the highest and the lowest and the intervening orders, is harmonious in the concord of the most dissimilar elements. What musicians call harmony with regard to song is *consensu* in the *civitas*, the tightest and the best bond of safety in every *res publica*; and that concord can never exist without *iustitia*.”^{67*}

We considered in the previous chapter Cicero’s writings on the virtue of *iustitia*. Scipio’s use of this musical analogy is not identical to Plato’s, but as in Plato, it does bring forth a discussion about *iustitia* in relation to *res publica*—Book III of *De Re Publica*—which we shall consider in more detail in sub-section 4.3.1. But here, let us return to Scipio’s definition of *populus* and consider the second feature through which persons associate such that they comprise a people: *utilitatis communio*. This has been translated variously as ‘community of interest’, ‘sharing in advantage’, ‘commonality of advantage’ and ‘sharing of benefits’. It seems to me that this aspect of Scipio’s definition of *populus* is sometimes put into a kind of competition with *iuris consensus* in the secondary literature instead of being appreciated as an equally necessary aspect of the definition, and so of *res publica*. Thus, Neal Wood, in setting out the ‘economic dimension of Cicero’s political thought’, omits discussion of *iuris consensus*, and in response J. Jackson Barlow, although rightly arguing that “the consensus

⁶⁶ Asmis, *State as Partnership*. p.580.

⁶⁷ *Rep.* 2.69.

about [*ius*] is [as] equally fundamental [as *utilitatis communio*]”, also says that “for Cicero, the *iuris consensus* is the prior principle by nature”.⁶⁸ Similarly, Benjamin Straumann argues that:

“Scipio maintains ... the people have to be associated with one another through an agreement about *ius* and, furthermore, through commonality of interest or utility (*utilitas*). Associating for the purpose of realizing or maximising utility corresponds to weakness as the ‘first cause of assembly’ (*prima causa cœundi*). Cicero therefore does not entirely lose sight of weakness, utility, and the realisation of some common advantage but no longer seems to think it necessary for his account of the state ... [Weakness, utility and the realisation of some common advantage are] present, still, but no longer necessary; nature would compel us to congregate even in the absence of weakness and common advantage.”⁶⁹

As with Barlow, Straumann’s argument here I think unduly merges the voices of Scipio and Cicero, the latter of whom, as we have seen, has deliberately removed himself from the conversation. While it is true that Scipio seems often to be Cicero’s ‘spokesman’ in the text, we should remain wary of attributing everything that he says to the author.⁷⁰ But even when we take it to be only Scipio’s voice that we are hearing, we still see Straumann acknowledging here that *utilitatis communio* has been built into his definition of a *populus*. This suggests to me that Scipio ‘thinks it necessary for his account of the state’, and furthermore, *just as necessary as iuris consensus*. We shall be discussing what Scipio says about the ‘first cause of assembly’ in more detail later in this chapter, but in considering Straumann’s argument here about *utilitatis communio*, I cannot see where he has taken ‘realising and maximising’ from Scipio’s definition; the key term here is *communio*, which denotes a sharing in common, or mutual participation. It is useful for us to recall what Long had said in the previous chapter about Cicero and communal utility in the *De Officiis* (pp.235-236). He argued that, for Cicero, human society and connection “is the supreme *utile* ... because it comprehends the particular interests of every individual”. Cicero’s use of communal utility in the *De Officiis* “refers to the interest anyone shares in the right of all to retain what they happen to own”,

⁶⁸ Wood, *The Economic Dimension*; J. Jackson Barlow, 1995. ‘Cicero on Property and the State’. Nicgorski (ed.), *Cicero’s Practical Philosophy*. p.228.

⁶⁹ Straumann, *Crisis and Constitutionalism*. p.170 with n.80.

⁷⁰ Cf. Atkins, *Cicero on Politics and the Limits of Reason*. Ch.1.

and he reconciles *utile*, “the unavoidable object of human endeavour, with the social goods specified by justice”, and more specifically, through individuals exercising the virtue of *beneficentia*. Again, Heinz’s transliteration of *res publica* is good to keep in mind here: ‘including all interests of the community of the people.’

This I think can lead us into a wider point which stretches beyond the scope of my project. Asmis notes that *utilitas* “covers any type of benefit, including material wealth, security, freedom, power, fame, virtue [and] happiness”, which suggests to me two things: (i) that we should refrain, *pace* Wood, from reducing Cicero’s theoretical writings on politics to their ‘economic dimension’; and (ii) exploration of the ways in which these multifarious benefits—Asmis’s list is not exhaustive—are, or could be, or should be commonly held or shared (*utilitatis communio*), whether in theory or practice, is a broad area of research brimming with possibilities, insofar as we are interested in maintaining *res publica*.

But let us return to what Scipio is saying about *res publica*. Relating everything here is yet another important aspect of his definition of *populus*, one we considered in some detail in the previous chapter: it is an assemblage of individuals *associated* with one another *through* a communal sense of *ius* and a sharing of *utilitas*. I understand the preposition or adverb ‘through’ here to mean ‘continuing in time towards completion of’ something, and that something—association, *iuris consensus* and *utilitatis communio*—which has never *actually* completed, we call politics. Use of ‘through’ in translation I think highlights for us, and correctly, that Scipio understands *res publica* to be a *going* concern of the *populus*; it takes up (at least some of) the time of the people. It is in this sense I think it extremely useful to understand the *res publica* in terms of what Walzer calls its *ongoingness* (p.245n89); it goes on in the world.

Although I think she provides an excellent account of Scipio’s definitions and arguments concerning *res publica*, I would want to question the numerous references Asmis makes to ‘unity’ in her arguments.⁷¹ I do not think them

⁷¹ Cf. Elizabeth Asmis, 2005. ‘A New Kind of Model: Cicero’s Roman Constitution in *De Republica*.’ *American Journal of Philology*. 126(3). pp.377–416.

wrong—and I think Brown (p.85) was probably closer to being right in saying that some “*degree of moral unity*” is required in maintaining *res publica*—but it seems to me very important to keep in mind that completely absent from Scipio’s definitions of *res publica* and *populus* is the term *universitas*, which in subsequent legal theory came to signify a collectivised legal entity endowed with some of the features of a whole individual.⁷² While Scipio’s definition of *res publica* is *collectivising*—and Asmis rightly notes a progressive sequence of definitional terms compounded by *con-*: *cœtus*, *congregatus*, *consensus*, *communio*—it is not *totalising*. The sequence is not rounded off by *universitas*, it is rounded off by *societas*, or more accurately, one of its verbal forms, *sociatus*.⁷³ Whereas Zetzel retains in his translation the historical-political sense of proceedings which are active and incomplete by rendering the relevant passage as “...associated with one another through...”, it seems to me that this sense is slightly obscured by Asmis’s rendering of it as “...formed into a partnership by...”, even as the latter is still of course a highly appropriate translation. To put the matter in Arendtian terms, it seems to me that Scipio’s definitions (and arguments) unfold *what* is held in common *at the same time as* preserving the plurality of persons, which is also to say the distinctiveness of *each* person, *who* hold(s) it in common, and who are engaged, as Canovan (p.174) puts it, in “dynamic association”. Let us move on now to consider some of the ways in which this can take place.

⁷² In civil and canon law, *universitates* included hospitals, cathedral chapters and universities, which were later joined by the independent city-republics or communes of Florence, Pisa and Siena. Cf. Skinner, *From Humanism to Hobbes*. pp.12–44.

⁷³ It is usually the verb which rounds off a Latin sentence—in this case: ...*cœtus multitudinis iuris consensu et utilitatis communione sociatus*. Perhaps a rough analogy could be drawn here with some aspects of British business law: incorporating a company turns it into a separate ‘legal person’ (a ‘*universitas*’) thus limiting the liability of its directors, whereas partners in a partnership (citizens in the present context) have complete personal liability, ‘jointly and severally’, for their business (*res publica* in the present context). The extent to which Oakeshott was relying upon Cicero in his *On Human Conduct* in his “borrowing” of the Latin terms *societas* (‘civil association’) and *universitas* (‘enterprise association’) is something I continue to ponder. Michael Oakeshott, 1975. *On Human Conduct*. Oxford: Clarendon; Nicholas Rengger, 2013. *Just War and International Order: The Uncivil Condition in World Politics*. Cambridge: Cambridge University Press. p.31. *Universitas* appears nowhere in the Ciceronian corpus except in the *De Natura Deorum* and in his translation of (some of) Plato’s *Timæus*.

4.2.4 Organisations for Res Publica

In the previous sub-section, we saw Straumann considering what Scipio says about a people's 'first cause of assembly'. Scipio provides account of this immediately after giving his definition of *populus*:

“The first cause of [a people's] assembly [*prima causa cœundi*] is not so much weakness as a kind of natural gathering together of men [*quasi congregatio*]: this species is not isolated or prone to wandering alone, but it is so created that not even in an abundance of everything <do men wish to live a solitary existence>...”^{74*}

Regrettably, the text breaks off at this point (with the words enclosed by < > being an editorial supplement) but let us consider what has come down to us. Although Scipio says this immediately after providing his definitions of *res publica* and *populus*, I agree with Asmis that this passage does not form any part of his definition; it is, rather, an argument which requires justification, and although we cannot know how Scipio justified it at this point, we have already seen some of Cicero's writings in other contexts concerning the natural sociability of human beings. It is of course up to the reader to deliberate and to arrive at their own judgments about this matter, but even as there are no 'final words' on it to be found anywhere, it feels to me to be intuitively correct that, even if all our wants and needs were to be met by the work of some magic wand, we would still flee our solitude to be in the company of other human beings. But to return to *De Re Publica*, Scipio speaks again of *prima causa cœundi* in Book IV:

“Consider furthermore how wisely [*sapienter*] all the rest has been foreseen [*provisa*] in order to promote the citizens' shared association in a happy and honorable way of life [*civium beate et honeste vivendi societatem*]. That is, indeed, the first cause of assembly [*prima causa cœundi*]...”^{75*}

It is unclear to me precisely what Scipio is saying he understands the first cause of assembly to be here, since the first sentence of this passage is so curiously constructed. Is it 'the citizens' shared association'? Or is it 'the citizens' shared

⁷⁴ *Rep.* 1.39.

⁷⁵ *Rep.* 4.3a.

association in a happy and honorable way of life'? Or is it 'how wisely all the rest has been foreseen in order to promote' it?⁷⁶ Or is it the activity of considering any or all of this? Or, *in-deed*, is it all of these together? I am inclined to think it is the latter, but let us consider 'how wisely all the rest has been foreseen...'. Scipio is speaking here of both *sapientia* and *providentia*, the latter of which Cicero elsewhere associates with *prudentia*.⁷⁷ And we saw Atkins' argument that, for Cicero, it is *sapientia* which comprehends the correct picture of things that allows *prudentia* to make the right choices (p.244). It seems to me that it is persons who are *sapiens* and *prudens* who are able *successfully* to *promote* the citizens' shared association (in what anyway would have been "a kind of natural gathering together"), or in Arendt's terms, understanding persons "able to communicate between the citizens and their opinions so that the commonness of this world becomes apparent" to the citizens (pp.166-167), and the type to which such persons belong is the topic of the final section of this chapter. Arendt's argument about 'the one outstanding virtue of the statesman' in the second chapter, it seems to me, was that without the help of such persons, citizens would need to become such persons themselves; and we have seen many scholars promoting *education* towards this in previous chapters. The inclusion of 'happy' in the above passage, as Zetzel says, modifies in a more Aristotelian direction what Scipio had said at *Rep.* 1.39 as regards the first cause of assembly, and although he goes on immediately at this point to express some scepticism about *Greek* plans to have what we would call today 'education for citizenship', I think it not insignificant that Scipio modifies the first cause of assembly in a more Aristotelian direction only at the beginning of Book IV, the subject of which is *instituta* at *Rome*, which includes the education of citizens—Jed Atkins describes *instituta* as "customary standards of social behaviour"—and we shall consider what both Scipio and Cicero have to say about *instituta* in more detail in the next section.⁷⁸

⁷⁶ In context, I am unsure if 'all the rest' here definitely takes off from *Rep.* 4.2, where Scipio is praising specific aspects of Rome's institutions, or if *Rep.* 4.3a is a fragment placed at the beginning of Book IV by the editor, no doubt authoritatively, but nevertheless not entirely free from doubt.

⁷⁷ *Leg.* 1.60.

⁷⁸ *Rep.* 4.3a, with note 4; Atkins, *Cicero on Politics*. p.155.

Having looked at what Scipio says about *prima causa cœundi*, let us now consider his claim that ‘every *populus*, every *civitas*, every *res publica*’ needs to be directed by some sort of *consilium* in order to be long-lived:

“That *consilium* ... must always be connected to the original cause which engendered the *civitas*; and it must also either be assigned to one person or to selected individuals or be taken up by the entire population. And so, when everything is in the hands of one person, we call that one person a king [*rex*] and that type of *res publica* a monarchy [*regnum*]. When it is in that of chosen [*delectos*] men, then a *civitas* is said to be directed by the judgment and decision of the aristocracy [*civitas optimatum*]. And that in which everything is in the hands of the *populus* is a ‘popular’ *civitas* [*civitas popularis*]*—*that is what they call it. And of these three types any one, even though it may not be perfect or in my opinion the best possible, still is supportable [*tolerabile*] as long as it holds to the bond which first bound men together in the *societas* of *res publica*; and any one might be better than another.”^{79*}

The first thing for us to note here is that the organisation of citizens, for Scipio, reflects where *consilium* is located: that which Zetzel describes as “the necessary intelligence needed to guide a commonwealth.”⁸⁰ The second thing for us to note is that the three basic types of organisation—monarchy, aristocracy and democracy—can all very well preserve and maintain *res publica* (and the *populus* and the *civitas*) so long as the directing *consilium* is holding to the bond which first bound those persons together. As Zetzel comments here:

“C. is not concerned with universal causes for the formation of all states, but with the practical concerns of particular states. Every state must have some direction (*consilium*) in order to last; and that direction must always be *related* to the *particular* reason for which the state came into being.”⁸¹

We saw Devetak say in the first chapter that what is prudent in one particular situation may not be prudent in another (p.78). Unlike in rigorist interpretations of Kant’s principle of right, e.g. interpreting the principle as one which “establishes how a juridico-civil order can come into existence that would be in compliance with the moral law” (p.48), there can be no deductive moves from any ‘universal first cause’ of the formation of all states to decide right actions in

⁷⁹ *Rep.* 1.41–42.

⁸⁰ *Rep.* p.xxxviii.

⁸¹ Zetzel, *Selections*. p.131. Emphasis added.

particular contexts, and as we have seen, what Scipio says regarding *prima causa cœundi* in the *De Re Publica* has been articulated in such a way that, while it is certainly informed by the arguments of philosophers, is also set in a conversation about Rome in particular, even as he is still providing watchwords about the basic types of organisation a *res publica* might take.⁸² Without containing any ‘universalisms’, this I think is what Arendt nevertheless found “astounding” about this age-old distinction (a distinction that stretches much further back in time than Cicero): its adequacy to the rich diversity of human beings living together all over the planet, or what Zetzel calls here the practical concerns of particular states. Any one of the basic types may be better than any of the others at maintaining *res publica*, even if in Scipio’s opinion none of them are the best possible. And as I hope to have shown in the second chapter through Arendt’s writings, being *connected* or *related* to the past—the task of tradition as such—does not mean being *ruled* by it; in the civic republican tradition, the faculty of judgment in all concerned remains intact. But to return to the three basic types of organisation as set out in the above passage by Scipio, we saw in the previous sub-section that Zetzel did not want to translate *res publica* as ‘republic’ because it begged the organisational questions Scipio was careful to leave open in his definition. This is the final thing for us to note from this passage: accretions of meaning across the centuries have led to the terms ‘republic’ and ‘monarchy’ being understood as mutually exclusive, and I think it is useful for us to bracket this understanding whilst getting to grips with the *De Re Publica*.⁸³

Through both the political theory as set out in Book I and the account of Rome’s history given in Book II, Scipio shows ways in which constitutional change may occur that do not necessarily follow the rigid cycle as set out in Polybius’ political theory (unlike in Polybius’ *anakulōsis*, *conversio* in the *De Re Publica* is being used metaphorically rather than literally).⁸⁴ As we shall see in the final section of this chapter, it is the job of a *sapiens* and *prudens* to recognise this course and provide the steering and guidance that preserves and maintains *res publica*, whereas in Polybius’ political theory, “pretty much any competent

⁸² Cf. *Rep.* 2.64–65; Atkins, *Cicero on Politics*. pp.155–156.

⁸³ Cf. Skinner, *Visions of Politics Vol. II: Renaissance Virtues*. p.118n2.

⁸⁴ Atkins, *Cicero on Politics*. p.99.

person who follows his principles could accurately predict the future”.⁸⁵ Scipio says that the change from monarchy to tyranny “is the first and most certain”, happening when a king begins to act unjustly, becoming a tyrant.⁸⁶ Sometimes the aristocracy gets rid of the tyrant, sometimes the people, both sometimes perfectly capable of preserving *res publica*, but in practice both, of course, just like the king, being not incorruptible. It is sometimes the case in an aristocracy that “the wealth of a few replaces virtue in control of *res publica*”, thus degenerating into oligarchy (“there is no uglier form of *civitas*”), whereas it is sometimes the case that a democracy degenerates into ochlocracy, or ‘mob rule’.⁸⁷ Scipio warns against when the people:

“bring force to bear on a just king ... or have tasted the blood of the aristocracy ... do not make the mistake of thinking that any huge ocean or fire is harder to calm than the violence of a mob out of control.”⁸⁸

Whence “the stock from which tyrants grow”.⁸⁹ Leaders in each of the three basic types of organisation—government by the one, the few, or the many—“snatch the government from one another as if it were a ball: tyrants from kings, aristocrats or the people from them, and from them oligarchies or tyrants. No form of *res publica* is ever maintained for very long”, and it is at this point we find in the *De Re Publica* what Arendt called “the age-old notion of a mixed form of government which, combining the monarchic, aristocratic, and the democratic elements in the same body politic, would be capable of arresting the cycle of sempiternal change” (p.170).⁹⁰

Scipio’s account, as Atkins says, “restores political culture to its central position in constitutional analysis”; all virtue has a social orientation, instilling a concern in citizens to preserve and maintain *res publica* through upholding the institutional and constitutional arrangements which guarantee it.⁹¹ During his

⁸⁵ Atkins, *Cicero on Politics*. p.100.

⁸⁶ *Rep.* 1.65.

⁸⁷ *Rep.* 1.51.

⁸⁸ *Rep.* 1.65.

⁸⁹ *Rep.* 1.68.

⁹⁰ *Rep.* 1.68.

⁹¹ Atkins, *Cicero on Politics*. p.106.

account of Rome's history, Scipio provides his interlocutors with a key statement about its mixed constitution which had developed there over generations:

“... if there is not an equitable [*aequabilis*] balance in the *civitas* of rights [*iuris*] and duties [*officii*] and responsibilities [*muneris*], so that there is enough power [*potestas*] in the hands of the magistrates and enough authority [*auctoritas*] in the judgment [*consilio*] of the aristocrats and enough freedom [*libertas*] in the people, then the conditions of the *res publica* cannot be preserved unchanged.”⁹²

Here we see “the combination or integration of three fundamental traits which characterise men in so far as they live with each other and exist in plurality” (p.170)—*potestas*, *auctoritas* and *libertas*—given institutional expression. I have latched on a few times in this project to Arendt's phrasing about two ‘parts’ of politics: that which deals with the citizen and that which deals with institutions, and I said that we know, whether through the language of individual-collective or agent-structure or any other, that each is always somehow dependent on the other.⁹³ This issue it seems to me has always been salient and a definitive answer continues to elude us.⁹⁴ As with the disciplinary disputes between philosophers and historians, although Cicero deals with both ‘parts’ of politics in the *De Re Publica*, those hoping to find in it a ‘solution’ to this issue will be disappointed. But whatever the case may be, what the *De Re Publica* does provide, I argue, are important civic republican watchwords, and those in the above passage I think are especially important.

Although Scipio's account is given in the context of Rome in particular, his articulation is such that he provides no ‘final answers’ as to what is an ‘equitable balance’, what proportions of the different elements are ‘enough’. We have already seen that it may well be the case, i.e. in particular situations, that either a pure monarchy, a pure aristocracy, or a pure democracy, can

⁹² *Rep.* 2.57. Emphasis added.

⁹³ Cf. Colin Wight, 2006. *Agents, Structures and International Relations: Politics as Ontology*. Cambridge: Cambridge University Press.

⁹⁴ Zetzel articulates it in relation to the *De Re Publica* and some of the intellectual context in which it was written: “...what is the relationship between virtue on the individual level and virtue on a societal level: do good men make a good society, or does a good society create good men? [This] question ... was [not] novel in 54 BC: the relationship between individual morality and civic success is a fundamental question in Aristotle's *Politics*, and while Cicero knew that work only indirectly, he certainly knew the work of Aristotle's followers Theophrastus and Dicaearchus.” James G. Zetzel, 2013. ‘Political Philosophy’. Steel (ed.), *The Cambridge Companion to Cicero*. pp.181–182.

maintain *res publica*, and so in each case constitute an ‘equitable balance’: all of one and none of the others. In Scipio’s account, so long as the directing *consilium* remains connected to the past and sustains *iuris consensus* and *utilitatis communio* in the *societas* of *res publica*, all is well—although as we have seen, it is his opinion that the basic types are unstable, too easily degenerating into their vicious counterparts, and the judicious mixing or blending of the key qualities of each basic virtuous type is what he recommends.

This broad framework, it seems to me, is extraordinarily useful for organising our experiences, and indeed may well be adequate to the rich diversity of human beings living together in plurality—that is, in an untold variety of particular situations—all over the planet. It might be usefully encapsulated: ‘wherever there is *vis*, there ever should be republican institutions.’ And to underscore the point once more, it would be for neither Scipio, nor Cicero, nor myself, nor any political theorist or philosopher, to decide upon these matters; such decisions are up to those associating.

We saw in the second chapter that *potestas* was a fundamental part of Roman *legal* discourse, with the law “simultaneously limiting and guaranteeing its exercise”, and securing its legitimacy through *iuris consensus*, the right (*ius*) of a given public officeholder to give orders. As Gotter notes, assertions of *potestas* “should not require physical coercion; rather, it was expected that a command from someone holding a magistracy, or performing a social role that was endowed with *potestas*, was met with obedience”, and although we are all painfully aware of the excuses offered by many after the atrocities of the 20th Century that they were ‘only following orders’, we can see here, through the dependence of *potestas* on *iuris consensus*—which in itself we saw Canovan speak of in terms of constitutional arrangements upheld by the public commitments of citizens—why Arendt insisted that it was not obedience that was a “political virtue of the first order”, but rather *support*.⁹⁵ The Latin term for obey, *obædire*, means literally ‘to give a hearing’; what is also required of citizens, I am assuming in this project, is that we are exercising judgments in the world.

⁹⁵ Gotter, *Greek and Roman Concepts of Power*. p.200; *RJ*. pp.46–48.

Whereas *potestas* in Scipio's account is seen as the key quality of monarchy, he associates *auctoritas* and *consilium* with aristocracy, institutionalised at Rome as the senate. Romulus was the original *auctor* who established the senate, and with his successor Numa Pompilius curtailing the people's over-eagerness for war and developing in the citizens social virtues (*iustitia* and *fides*), provided a connection back to which the *auctoritas* of the senate held on as the *mos maiorum*, 'the ways of the ancestors', carrying out an educative role in stabilising the *res publica*.⁹⁶ I sought to show through Arendt's writings in the second chapter that such providing of counsel, the giving of advice or guidance, the exercising of *auctoritas*, provides a *check* on—or a regulation or moderation of—both *potestas* and *libertas*, without ever removing or abolishing them (which as Arendt says, would be a use of force rather than authority, and moreover, a tyrannical use of force). As the reader might expect in a project about Cicero, *auctoritas* is perhaps the single most important watchword to be taken from it. I have argued that we should understand it as an irreducibly and inalienably *personal* quality, with the person necessarily connected in the present to the past with a care for the future. *Auctoritas* provides an *indispensable* function in maintaining the *worldly* condition—public freedom, the *res publica*—in which it is possible for our inner freedom to find expression.

We saw in the second chapter that Cicero describes a mark of *libertas* as being 'to live just as one pleases', and Scipio identifies it as the key quality of democracy. In the first chapter, Walzer described this in terms of a people "claim[ing] a right to do what they think is right (literally, what pleases them)", and Dallmayr fully accepted this ideal as it was manifest in modernity, "but surely not [in] a space outside civil and legal bonds" (pp. 92 and 95). Taken to extremes, Scipio says that everybody 'living just as they please' runs the risk of degenerating into mob rule, 'the stock from which tyrants grow', and recommends that this is checked in some measure by *auctoritas* and *consilium* for *res publica* to be long-lived. We also saw in the second chapter that Arendt had much to say about this: she thought that authority had 'vanished' from the modern world; that modern liberals tend to ignore forms of government; that all forms of government, good or bad, in one way or another constrain the freewill of citizens; that the council system was a possibility in which authority may be

⁹⁶ *Rep.* 2.26.

generated to protect the worldly conditions in which citizens are able to exercise their freewill; and that the American founders in the act of foundation had been relying on the authority of testimonies handed down from Roman antiquity.⁹⁷ I sought to show through the examples given that the relation of authority and freedom was realised in an atmosphere of good faith and I sought to show in the previous chapter that a key Roman term in this respect is *societas*, a partnership, in which persons join through mutual agreement, contributing their resources towards a shared endeavour. As Arendt put it, ‘democracy’ and ‘aristocracy’ in a modern act of foundation were neither mutually exclusive opposites nor ideologies but “two sides of the same event”, the Roman republic rested upon “the perpetual alliance of patricians and plebeians”, and we saw in the previous sub-section that Scipio says such an alliance cannot exist without *iustitia*, some of the key moral and legal aspects of which we shall now move on to consider.⁹⁸

4.3 Laws and Institutions

4.3.1 A Carneadean Debate and a Refinement of Res Publica

After providing the analogy of musical harmony at the end of Book II, Scipio says that the conversation “can go no further without establishing not only the falseness of the statement that *res publica* cannot function without injustice but also the profound truth of the idea that *res publica* cannot possibly function without justice”, setting the scene for the next day’s debate between Philus, who plays devil’s advocate arguing the former, and Laelius, advocating the

⁹⁷ Freewill in this context is Arendt’s term, is of course closely associated with Kant, and an investigation of which is beyond the scope of my project. For our purposes, what matters here is not willing but judging, which also requires freedom. Cf. *Tusc.* 4.7.

⁹⁸ What Arendt (p.178n143) called ‘solidified ideologies’ and “attempt[s] at thinking together and combining meaningfully what our present vocabulary presents to us in terms of opposition and contradiction” also continue amongst classicists in their understanding of this matter. Whereas Jed Atkins speaks of “a cloud of ideological conflict hover[ing] over the conversation of Scipio and his companions”, and Valentina Arena refers to the debates between *optimates* and *populares* in the late Roman republic as “competing ideolog[ies]”, Catherine Steel suggests that “though [these] strands of thought ... were undeniably present, it remains to be debated the extent to which they were regarded as incompatible with, or in opposition to, each other.” Atkins, *Cicero on Politics*. pp.108–115; Valentina Arena, 2012. *Libertas and the Practice of Politics in the Late Roman Republic*. Cambridge: Cambridge University Press. p.6; Catherine Steel, 2014. ‘*Libertas* and the Practice of Politics in the Late Roman Republic.’ By Valentina Arena. Cambridge and New York: Cambridge University Press, 2012.’ Book Review. *Classical Philology* 109(1). pp.86–88.

latter, in Book III.⁹⁹ Their debate recalls a Greek embassy to Rome in 155 BCE when sceptical philosopher and head of the Academy, Carneades, set out before the Roman people the latter argument on one day (to their delight) and the former argument on the next (to their dismay). The real Scipio, Laelius and Philus were all present to hear Carneades' speeches, and Cicero in the *De Re Publica* reverses the order in which the philosopher had set out both sides of this argument, giving justice rather than self-interest the last word (as Plato had done originally in his *Republic*). Regrettably, Books III-VI of *De Re Publica* are highly fragmentary, making it impossible to know the detail of this debate and how it influenced the conversation in the second half of the book in which institutions and the best kind of citizen are discussed, but enough remains for us to see (amongst other things) that its outcome produced a refinement of *res publica*. Enough also remains for us to see that Philus and Laelius discuss justice in both the domestic and 'international' spheres at the same time; we consider the former in this sub-section and the latter in the next.

Many of the fragments of Book III have been preserved in the work of Lactantius (c. 250-325 CE), Christian author and adviser to the Roman emperor Constantine, who provides us with a useful summary of the argument Philus puts forward:

“...men ordain laws for themselves in accordance with utility, that is to say they vary in accordance with customs and have frequently been altered by the same people in accordance with the times; there is no such thing as natural law. All men and other animate creatures are drawn to their own utility under the guidance of nature; and furthermore, either there is no justice at all, or if there is any, it is the highest stupidity [i.e. the opposite of *sapientia*], since it would harm itself in looking after the interests of others.”¹⁰⁰

We saw Cicero say in the previous chapter that each person is indeed drawn to their own utility—“nature does not oppose it”—and that for him the supreme *utile* is that which comprehends the particular interests of each person *and* all persons; what Long called “the right of all to retain what they happen to own” (p.235). And we saw in the previous section that Scipio had built *utilitatis communitio* into his definition of a people, which I argued was just as necessary an aspect of the definition as *iuris consensus*. There are certain elements of

⁹⁹ *Rep.* 2.70.

¹⁰⁰ *Rep.* 3.21a.

Philus' argument here that we see converging with Cicero's own in the *De Officiis* and with Scipio's definition of a people, but the obvious difference is the view Philus is putting forward about justice: either it does not exist, or it is extremely stupid and self-harming. This is plainly not Cicero's own view. He regards *sapientia* as including "the sociability and fellowship of gods and men with each other" and understands *utile* at this level; it is part of the *utile* of individuals that communal utility is upheld, and that can only be upheld through *iustitia* (which we have seen also includes *beneficentia* and *liberalitas*).

Philus also links the position he is putting forward back to the constitutional debates of the previous day:

"... all those who have the power of life and death over a people are tyrants, but they prefer themselves to be called kings ... Furthermore, when certain individuals because of their wealth or family or other resources control *res publica*, it is a faction, but they call themselves 'the best people' [*optimates*]. And if the people has the greatest power and everything is done by its decision, that is called *libertas* but is in fact *licentia*. But when each fears [*timet*] another, both individuals and classes [*homo hominem et ordo ordinem*], then because no one is sure of himself, there is a kind of bargain made between the people and magnates, and out of this arises that combined form of *civitas* which Scipio praised; and indeed neither nature nor our wishes is the mother of *iustitia*; weakness is."¹⁰¹

With the (cynically) assumed non-existence or stupidity of justice, Philus re-describes the constitutions discussed on the previous day according to their vicious manifestations and offers a 'contractarian' account familiar to readers of Polybius, the Epicureans, and some of the modern social contract theorists. Again, this plainly is not Cicero's view, who sees wisdom (*sapientia*) rather than weakness as the mother of *iustitia* (p.240) and to be feared (*timeri*) rather than loved (*diligi*) as ruinous of a *civitas* (p.270). We saw in the second chapter that Arendt understood the Roman term *lex* as meaning 'lasting tie', that the Roman republic consisted of a 'war-born partnership' between patricians and plebeians, and that through *lex* was created 'an in-between space between formerly hostile partners' (p.199). She made no mention of fear or bargain in this connection, and we saw in the example of the council system that she was closer to Cicero than Philus here in seeing an atmosphere of good faith in the participants, a

¹⁰¹ *Rep.* 3.23.

societas, “a cooperative community that fosters relationships between partners” (p.185).

The discussion in Book III of *De Re Publica* is rather loftier than that of the previous day’s discussion—Physics is in the foreground—and notwithstanding the fact that none of them are dogmatists of any sort, in borrowing some modern philosophical turns of phrase in getting to grips with this part of the text, we might say that Philus is putting forward an argument which is holding on to an ‘individualist ontology’ (‘justice harms itself’), whereas both Cicero and Arendt are holding on to a ‘social ontology’ along with Laelius. Regrettably, we have much more of Philus’ speech than Laelius’ in the extant fragments, but some of what we do have of the latter has echoed very loudly down the history of political thought. Here is his account of natural law, preserved by Lactantius:

“True law is right reason [*vera lex recta ratio*], consonant with nature, spread through all people [*diffusa in omnes*]. It is constant and eternal; it summons to *officium* by its orders [*iubendo*], it deters from crime by its prohibitions [*vetando*]. Its orders and prohibitions to good people are never given in vain; but it does not move the wicked by these orders and prohibitions. It is wrong to pass laws obviating this law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter like Sextus Aelius. There will not be one law at Rome and another at Athens, one now and another later; but all nations [*gentes*] at all times will be bound by this one eternal and unchangeable law, and the god will be the one common master and general (so to speak) of all people. He is the author, expounder, and mover of this law; and the person who does not obey [*parebit*] it will be in exile from himself. Insofar as he scorns his nature as a human being, by this very fact he will pay the greatest penalty, even if he escapes all the other things that are generally recognised as punishments.”¹⁰²

As Zetzel understates, “this is a noble statement that deserves frequent reading”, putting forward a position that some things are just naturally right; “if equity [*aequitas*], faith [*fides*] and justice [*iustitia*] do not derive from nature, and if all these things are measured by utility, then it is impossible to find any good man”.¹⁰³ Even as some may disagree that these things derive from nature,

¹⁰² *Rep.* 3.33. *Parere*: to appear before the eyes or mind, be evident; to be clearly known; to obey, be obedient to; to give way to, yield to.

¹⁰³ *Rep.* 3.38a = *Fin.* 2.59.

wheresoever they derive from, what Cicero supposes here to be an ‘impossibility’ it seems to me does not fit with common sense the world over (see for example Dallmayr’s *In Search of the Good Life*), and one Cicero refutes in his own voice as the character Marcus in the *De Legibus*.¹⁰⁴ We shall be discussing some of Marcus’ arguments about natural law later in this section, but here, it suffices to note some more of Zetzel’s commentary on the above passage:

“...from the general statement of the doctrine in the present tense, Laelius turns to a future in which this law will be universally recognised on earth. As it is now, the law has no effect on those who disobey it, because knowledge of it is obedience to it; the punishment for disobedience that Laelius envisages is the counterpart of virtue’s self-reward: disobedience to natural law is a violation of one’s humanity, and by disobeying it one ceases to be fully human ... [Philus and Laelius], as one might expect, define ‘natural’ and ‘justice’ very differently. Philus assumes that any natural standard of justice must reflect the actual behaviour of all beings; Laelius argues from the abstract existence of metaphysical universals to an absolute standard embedded in the universe itself, whether or not terrestrial beings in fact abide by that standard ... Laelius, accepting the absence of absolute justice within this world, can only invoke a higher standard in order to promote an ideal of just behaviour.”¹⁰⁵

Whether anybody yet ‘knows’ and ‘obeys’ natural law or not, Laelius has put forward a Stoic argument that *iustitia* exists by nature, it is something natural, to oppose the argument put forward by Philus (usually made at this time by the Epicureans) that it only ever exists by convention, if it can be said to exist at all. In the terms given in the previous section, this is the Stoics’ (meta-)Physical approach to justice in which they find it embedded in the *cosmos*, whereas their arguments about *oikeiōsis* form part of their Ethical approach, in which they find it on the planet amongst human beings. With reference to both Chrysippus (the ‘second founder’ of the Stoic school) and Cicero, Schofield provides us with some good commentary on this:

“What is envisaged is not as in Plato or Aristotle a movement to and from first principles, but rather a convergence on something

¹⁰⁴ James G. Zetzel, 1996. ‘Natural Law and Poetic Justice: A Carneadean Debate in Cicero and Virgil’. *Classical Philology* 91(4). pp.297–319. “Even if this has often been said, it ought to be said still more often”. (p.267), *Off.* 3.69; Cf. Michael Ignatieff, 2017. *The Ordinary Virtues: Moral Order in a Divided World*. Cambridge: Harvard University Press.

¹⁰⁵ Zetzel, *Natural Law and Poetic Justice*. p.307–308.

intermediate (human justice) from above (god) and below (animals) ... a story about justice which left out *either oikeiōsis* or the conception of law as right reason in Zeus and humans alike would be incomplete ... The [Stoic] discussion of justice suggests that we learn different—and in different ways indispensable—things from the two approaches ... [However,] it is in the end [the Stoics'] empiricism which dictates that for progress in understanding [Ethics] must, and [Physics] cannot, come first."¹⁰⁶

I provided some of the Stoics' Ethical arguments in the previous chapter, and here we are considering some of their Physical arguments. Laelius' argument is that a human being not allowing our innate reason will be "in exile from himself", which I think is strongly connected to what Arendt said about those who refused to fall into line with the Nazis' new 'values', that is, when they thought to themselves that if they 'obeyed' the new 'laws', which she summed up as basically 'Thou shalt kill', they thought 'I could not live with myself'; they could not, in *conscientia*, which Arendt describes as 'knowing with and by myself', act that way. It is 'self-evident knowledge' to good persons that they could not act that way and still live with themselves, which it seems to me need not be identical to knowledge reached by demonstration (and the metaphysical argument for natural law in the Stoics is a demonstrative one)—what Aristotle described in terms of exercising the intellectual virtue of *episteme*—for it to be rooted in our innate reason.¹⁰⁷

Following Laelius' speech, Scipio "seemed positively ecstatic [*gaudio elatus*]", and with account given that *res publica* cannot possibly function without *iustitia*, what was discussed on the previous day about constitutions is now refined:

"SCIPIO: So who would call that *civitas* a 'concern of the people' [*res populi*], that is *res publica*, at the time when everyone was crushed by the cruelty of one man and there was no single bond of law or agreement or association of the group, which is what is meant by 'people'? ... [In Syracuse at the time when Dionysius controlled it] nothing belonged to the people, and the people itself belonged to a single man. And so where there is a tyrant, then it is wrong to say, as I did yesterday, that there is a flawed *res publica*: the logic of the argument compels me to say that it is no *res publica* at all.

¹⁰⁶ Schofield, *Two Stoic Approaches to Justice*. pp.210–211. Emphasis in original.

¹⁰⁷ Cf. *RJ*. pp.44, 76–79, 88–91, 186–188, and 280–281.

LAELIUS: You're completely right, and I see the direction of your argument.

SCIPIO: So you see that a *civitas* that is completely controlled by an oligarchy also cannot truly be called *res publica*.

LAELIUS: That is my opinion.

...

SCIPIO: I come now to the third type, where there may seem to be difficulties. When everything is said to be done through the people and everything is said to be in the people's power, when the crowd punishes anyone it wants, when they snatch and seize and hold and scatter whatever they want: can you deny, Laelius, that that is *res publica*? Everything belongs to the people, and we want *res publica* to be the 'concern of the people'.

LAELIUS: But there is no *civitas* that I would more quickly deny to be *res publica* than the one that is completely in the power of the crowd ... there is no 'people' unless it is bound by *iuris consensus*, and that mob is as much a tyrant as if it were one person ..."¹⁰⁸

As Asmis says, what has changed since the previous day's discussion is "the philosophical dissection of the concept of justice", which through Laelius' argument is seen to entail "an other-concern" that does not permit one person to abuse or rob another.¹⁰⁹ Without getting into an esoteric debate about the concept of justice, the supreme other-regarding virtue, we saw Cicero in the previous chapter providing a *formula* to this effect in the *De Officiis*, so that one watching his words would never fall away from *officium*, the thing to which Laelius says natural law summons us (although perhaps for the Stoics it is only the sage who 'knows' and 'obeys' it so completely that 'his' actions are perfect rather than middle *officia*). And along with a philosophical dissection of the concept of justice, there appears also to have been an enrichment to the meaning of the term *ius* during the discussion of Book III. Scholars have interpreted this enrichment differently. Asmis argues that "along with a rejection of the earlier claim about [flawed *res publicae*], the initial definition [of *populus*] needs to be revised by a new understanding of *ius*, 'law', as 'just

¹⁰⁸ *Rep.* 3.43–45.

¹⁰⁹ Asmis, *State as Partnership*. pp.588–589.

law’.”¹¹⁰ Zetzel understands the *iuris consensus* which goes into making up a *populus a consensus* “with” natural law after Laelius’ argument, and Straumann understands the *consensus* about *ius* to be *consensus* about constitutional law, which we shall be discussing later in this section.¹¹¹ But I see no reason for these different interpretations to be mutually exclusive; so long as we are understanding *iuris consensus* to be ongoing, it seems to me that they are compatible. In any case, Schofield again provides us with a good summary of what has happened in the text after *iustitia* has been embedded in *res publica*:

“Where there is a set-up [*constitutio*] such that the people’s affairs are conducted as though they were not *its* affairs but those of the [governor] or [governing] party [whether that is ‘the one’, ‘the few’, or ‘the many’], or its interests are not adequately consulted by the [governor(s)], then there *is* no *res populi*, and therefore no *res publica*.”¹¹²

In concluding this sub-section, we can say that, according to (at least) Scipio and Laelius, each of the basic types of organisation discussed in Books I and II of the *De Re Publica*—monarchy, aristocracy and democracy—is just, so long as the directing *consilium* “holds to the bond which first bound men together in the *societas* of *res publica*”.¹¹³ When it does not, when “a master [*dominus*] arises in place of a king, a faction [*factio*] in place of aristocracy, a confused mob [*populo turba et confusio*] in the place of a people”, the basic types have degenerated into tyranny, oligarchy and mob rule, respectively. The actors have broken faith in the *societas* of *res publica*, and having brought about a vicious type of *civitas*, the *res publica* has passed out of existence. But “that does not occur in [a] combined and moderately blended form [*iuncta moderateque permixta conformatione*] of *res publica* unless there are great flaws in its leaders”, in a *civitas* which has institutionalised *potestas*, *auctoritas* and *libertas* in whatever proportions are fitting, and while we shall be discussing the qualities of leaders in more detail in the final section of this chapter, our next

¹¹⁰ Asmis, *State as Partnership*. p.589.

¹¹¹ Zetzel, *Natural Law and Poetic Justice*. p.311; Straumann, *Crisis and Constitutionalism*. p.171.

¹¹² Schofield, *Cicero’s Definition of Res Publica*. p.74. I have replaced Schofield’s use of ‘rule’ here with ‘govern’. Cf. p.312n56.

¹¹³ *Rep.* 1.42.

topic of discussion concerns the relations between different people and peoples and how these relations are not identical to natural law.

4.3.2 Cicero on *Ius Gentium*

In the first chapter (sub-section 1.4.2), we saw that Dallmayr provided a history of the term *ius gentium* in Roman law, which “from the very beginning harbored a mixture of contextually ‘ethical’, abstractly ‘moral’, and practical-political considerations, as well as a blending of ‘positive’ law and philosophy”, and which was irreducible to “the edicts of a select group of philosophers”. Dallmayr might well be harbouring an appraisal of Cicero here, in whose writings we see “the phrase” *ius gentium* appearing for the first time in the historical record, but whatever the case may be, the phrase itself it seems to me is picking out something of which we know nothing about its ‘very beginning’. In his own study of it, and indeed not unlike Dallmayr, Henry Nettleship identifies *ius gentium* as both a popular and a legal rather than a philosophical phrase; pre-Ciceronian with no essential change taking place to its meaning under Cicero’s pen; and having certain points of agreement with and points of difference from both *ius commune* (“the law or usage acknowledged by the speaker or writer in common with certain other persons whom he is addressing, mentioning, or thinking of”) and *lex* or *ius naturae* (‘natural law’). It is worth quoting Nettleship here at some length:

“In all these passages [from Cicero and others where it is used in a non-legal sense], *ius gentium* has the meaning of an usage *quod semper, quod ubique, quod ab omnibus* [‘that always, that everywhere, that found in all people’]: an usage universal, and which no one would think of impugning who was not prepared to do what is unnatural, or without moral precedent ... [In the four passages from Cicero where it is used in a legal sense,] *ius gentium* is universal and unwritten, while *ius civile* and the laws of particular states are special and written ... I believe that *ius gentium* meant *the usage of the world, of all mankind* ... [Roman jurists of the Second Century BCE] intended to express by it such customs or usages as the Romans found, in the experience which they would pick up away from Italy in war or commerce or travel, or in their intercourse with *peregrini* in Italy itself, to be universally observed. These usages would naturally be connected in the main with war and commerce, and thus *ius gentium*, when the term is applied to the dealings of Romans with foreigners, is used mostly of the laws of war and of transactions involved in a state of war, or of commerce and transactions connected with it, such as *obligationes* of various kinds ... *Ius gentium* is usage actually existing

everywhere: *ius* or *lex naturae* is an ideal law, a law that may or may not exist in universal practice, but which is in any case to be wished for. Thus it may often coincide with *ius gentium*, but may sometimes differ from it.”¹¹⁴

This seems right to me and provides an appropriate context for understanding Dallmayr’s history of the term, as well as everything else that has been said about *ius gentium* thus far in my project. It picks out *actual human conduct*, observed always and everywhere as right (*ius*) amongst different peoples; conduct, moreover, as Dallmayr says, which cannot be changed purely through the edicts of philosophers such as those set out by Laelius in the previous subsection around natural law. And we saw in the previous chapter that *ius gentium* could apply not only to relations between Romans and foreigners; it could also apply to those between Romans and Romans. When they had joined together in some form of *societas* through *nudo consensu*, for example, Romans were legally responsible for behaving towards one another according to the *ius gentium*, i.e. ‘fairly’, as ‘good conduct among good men’. Nettleship finds the phrase used for “transactions between one state and another ... transactions between individuals ... and [he also considers the case] of institutions or usages which are said to be *iuris gentium*”, i.e. ‘an universal usage’, humanly and planetarily speaking.¹¹⁵ Cicero said “everything in the *ius civile* need not be in the *ius gentium*, but everything in the *ius gentium* ought also to be a part of the *ius civile*”, and was referring specifically at this point to good faith and equity in transacting, both features of the *ius gentium*. We have already considered *fides* in Cicero’s writings (pp.232-233); let us look at what he has to say about equity:

“...we have to expound the entire *ratio* of *ius*. It divides into two primary sections, *natura* and *lex*, and the force of each category is separated into divine *ius* and human *ius*, one being the field of equity

¹¹⁴ Henry Nettleship, 1885. ‘*Ius Gentium*’. *The Journal of Philology* 13(26). pp.169–181. For an account of Cicero’s legal uses of *ius gentium* in the context of his political thought more generally, Cf. William E. Conklin, 2010. ‘The Myth of Primordialism in Cicero’s Theory of *Ius Gentium*’. *Leiden Journal of International Law* 23(3). pp.479–506. The four passages where Cicero uses *ius gentium* in a legal sense are *Rep.* 1.2, *Part. Or.* 37.130, and *Off.* 3.23 and 3.69.

¹¹⁵ In the examples Nettleship finds regarding relations between one state and another, the phrase is used with reference to the treatment of ambassadors, and in the case of institutions or usages, he finds that the sea is *iuris gentium* (“at sea only such usages are considered binding as all states are agreed upon”). He finds no evidence that the phrase was necessarily connected with the *ius fetiale*, but T.R.S. Broughton argues that the *fetiales* “were especially concerned, as part of the *ius gentium*, with the sanctity of envoys”, perhaps offering their advice and judgment to the Senate on specific cases as to whether the *ius gentium* had been broken or not. T.R.S. Broughton, 1987. ‘Mistreatment of Foreign Legates and the Fetial Priests: Three Roman Cases’. *Phoenix* 41(1). pp.50–62.

and the other of religion. The force of equity [*aequitatis*] is twofold, one of which rests on the straightforward principle of truth and rightfulness [*veri et iusti*], of the ‘fair and good’, as the phrase is [*et ut dicitur aequi et boni ratione defenditur*], while the other concerns the requiting of things done, which in the case of a kindness is called gratitude [*in beneficio gratia*] and in the case of an injury retaliation [*in iniuria ultio*]. These things belong in common to nature and to law [*communia sunt naturae atque legis*]; but peculiar to law are those things which are written and those which without writing are upheld by the *ius gentium* or the customs of our ancestors [*sed propria legis et ea quae scripta sunt et ea quae sine litteris aut gentium iure aut maiorum more retinentur*]. ... Those laws which are unwritten are kept firm either by custom or by the agreements and, as it were, common consent of humans [*scripta non sunt, ea aut consuetudine aut conventis hominum et quasi consensu obtinentur*], and, this also a point of primary importance, it is prescribed by *ius naturale* such that we shall preserve our laws and *mores* [*Atque etiam hoc in primis, ut nostros mores legesque tueamur quodam modo naturali iure praescriptum est*].”^{116*}

Robert N. Gaines says in relation to this section of Cicero’s *Partitiones Oratoriae* that “cases founded on equity admit an action that is ordinarily censurable, but claim the actor was right in doing the deed” which, along with *fides* (keeping faith), it seems to me makes the *ius* of warfare and its association with the *ius gentium* more easily understandable; they govern actions of human beings which preserve international political *society* in an imperfect world.¹¹⁷ As Peter Stein says, each of the parts of law which Cicero sets out here, *natura* and *lex*, is concerned with human law and divine law, but only human law involves equity, which suggests to me that *ius gentium* is human law, whereas *lex naturae* is human-and-divine-law.¹¹⁸ As well as an account of equity and a partition of *natura* and *lex*, Cicero provides a further partition in this passage of human law into written and unwritten law. That laws are unwritten does not mean that they are not upheld; rather, they are held in place either by customs which have developed over centuries or by a kind of common consent of humans (what Arendt called in this connection ‘the customs of history’ and ‘the silent

¹¹⁶ *Off.* 3.69; *Part. Or.* 37.129–130. Conklin’s translation of the final words in this passage read: “Indeed, it is prescribed above all that we enforce our customs and laws (*leges*) in accord with the law of nature (*jus naturae*).” Conklin, *The Myth of Primordialism*. p.484.

¹¹⁷ Robert N. Gaines, 2002. ‘Cicero’s *Partitiones Oratoriae* and *Topica*: Rhetorical Philosophy and Philosophical Rhetoric’. James M. May (ed.), 2002. *Brill’s Companion to Cicero: Oratory and Rhetoric*. London: Brill. Ch.15.

¹¹⁸ Peter Stein, 2015 (1976). ‘The Sources of Law in Cicero’. *Ciceroniana Online*. Vol.3. Available at: <https://www.ojs.unito.it/index.php/COL/article/view/1143/968> Accessed 27th January 2021. Cf. *Leg.* 2.13.

acknowledgement of common interests’). Stein provides us with a very useful account which helps us make sense of Cicero’s writings on the law across the *De Inventione*, *Partitiones Oratoriae* and *Topica*, which is worth quoting at some length:

“For Cicero [in the *De Inventione*], *natura* is not merely the basis for certain rules; it is the foundation on which all law ultimately rests (cf. *Off.* 3.72). For him law arises out of the facts of life; it is rooted in the nature of man and his surroundings. However the obligations which nature imposes are much wider than those which come within the scope of law. They include religious and social as well as legal obligations. Legal duties, like the others, are rooted in nature but nature merely indicates their general tenor; it does not specify their precise limits. Since law has to be more specific than nature allows, it develops for practical reasons into custom [*consuetudo*] ... Many rules of law, which ultimately derive from nature, are in fact indicated more specifically in custom or in other ways. Consequently, there are few legal duties which are based directly on nature and they are relatively unimportant in practice ... *Consuetudo* itself is understood to be law by reason of the length of time for which it has been observed. It is unnecessary to have a *lex* in such a case, because with the passage of time (*propter vetustatem*) the limits of the rule have become fixed (*certa*) ... The *De Inventione* tended to explain custom as being based on immemorial usage ... emphasising that customary rules are old. The *Partitiones oratoriae* stress rather the element of recognition and approbation as the basis of custom. What most people recognise to be a useful rule can become a customary rule, even though it has not been observed in the past ... [In the *Topica*,] *Mos*, custom confirmed by long observance, is the third component of institutionalised equity. It had been developed to replace *consuetudo*, which was a wider and more general notion. *Consuetudo* was custom in the sense of convention and covered any law that was not formulated in *lex* including, for example, *ius gentium*. *Mos* was a set of traditional social practices, the heritage of a particular people. Much of its content fell outside the law, and as a *pars iuris* [a part of *ius*], its ambit was limited. In the disintegrating social values of the last century of the Republic there was a tendency to idealise the *mores maiorum* and conservative thinkers in particular stressed their importance.”¹¹⁹

Vitoria described *ius gentium* as ‘what natural reason has established among nations (or peoples)’, and as Nettleship says, this means that it sometimes, although not always, coincides with the Stoics’ arguments about natural law. Stein’s analysis here I think helps us to understand why Cicero treats in this passage from the *Partitiones Oratoriae* *ius gentium* and *ius naturale* as different

¹¹⁹ Stein, *The Sources of Law in Cicero*. pp.21–

things (and we shall revisit this passage as well as Stein's analysis later in the chapter); some scholars, however, argue for the equivalence of both, and often with reference to the following passage from the *De Officiis*:

“The same thing is established not only in nature, that is in the law of nations [*Neque vero hoc solum natura, id est iure gentium*], but also in the laws of individual peoples [*legibus populorum*], through which the *res publica* of individual *civitates* is maintained: one is not allowed to harm another for the sake of one's own advantage. For the laws have as their object and desire that bonds between citizens should be unharmed. If anyone tears them apart, they restrain him by death, by exile, by chains or by fine. Nature's reason [*naturae ratio*] itself, which is divine and human law [*lex divina et humana*], achieves this object to a far greater extent. Whoever is willing to obey [*parere*] it (everyone will obey [*parebunt*] it who wants to live in accordance with nature) will never act so as to seek what is another's, nor to appropriate for himself something that he has taken from someone else.”¹²⁰

Atkins argues that the above passage “suggests that [*ius gentium*] is equivalent to natural law”, and Straumann, though without specific reference to this passage, argues that Cicero in the *De Officiis* “throughout equates [natural law] with *ius gentium*, the latter being the empirical expression of natural law.”¹²¹ We may recall at this point Dallmayr's history, in which he distinguishes between philosophers' edicts on the one hand, and the agency and competence of concrete populations on the other, and points in the modern age to philosophers' almost entire reduction of *ius gentium* to ‘philosophers' law’. Whilst not of course ‘deniers of the actual *ius gentium*’, it does seem to me that both Atkins and Straumann, insofar as they are seeking to equate *ius gentium* with natural law in Cicero's writings, are in some sense engaged in prioritising the latter. With Nettleship's account, and if we choose with Cicero to speak the language of the Stoics, we can say instead that the *ius gentium* is an empirical expression of natural law, found in the actions of actual human beings, all over the world. It seems to me that Cicero here in the *De Officiis* is backing up his formula (pp.267-268) by saying that it *has been established in nature*, that is, in the *ius gentium*, although *nature's reason* which is divine and human law ‘achieves its object’ to a far greater extent than either *ius gentium* or *leges*

¹²⁰ *Off.* 3.23.

¹²¹ Atkins, *Cicero on Politics*. p.220; Straumann, *Crisis and Constitutionalism*. p.180.

populorum. Indeed, Atkins quotes P.E. Sigmund on this to say that natural law in Cicero's writings provides a "rational standard for all legal systems and *ius gentium* [is] ... an indication of its universal acceptance", although again, it seems to me that there is a very big and unsure step—a philosophical step—being taken between saying this and saying that *ius gentium* and natural law appear to be *identical*.¹²² Atkins supports his claim that they appear to be identical with a speech Cicero gave to the senate in 56 BCE:

"I may perhaps be speaking in an old-fashioned strain. Still, if this principle has not been prescribed by *ius civile*, nevertheless it has been ordained by the law of nature, the *ius* which is shared by all nations [*lege tamen naturae, communi iure gentium*]; mortals are able to claim by the right of usufruct nothing that belongs to the immortal gods."^{123*}

Natural law, Atkins argues, is here "glossed as 'the common law of nations'", which it seems to me is not quite the same as saying that the former appears to be identical to the latter. And indeed, Nettleship also argues that, in context, Cicero says here *lege naturae, communi iure gentium* "as if wishing to explain the less familiar by the more familiar term" to the Senate, *lex naturae* being a recent Greek import to Rome.¹²⁴

We have covered each of the four passages in Cicero's extant writings where he uses the term *ius gentium* in a legal sense. However, Straumann argues that we "find out ... in the third book of the [*De Re Publica*]" that it is the *ius gentium* which "provide[s] the norms Cicero is going to codify in books two and three of [*De Legibus*]" as Rome's 'constitutional law'.¹²⁵ As we have seen, Straumann regards the *ius gentium* as equivalent to natural law in Cicero's writings, and although it is certainly the case that Philus and Laelius discuss justice in the 'international' sphere in Book III of *De Re Publica*, as well as natural law, I think it is important to note that the term *ius gentium* itself is to be found neither in their discussion (in the fragments that have come down to us), nor anywhere in the *De Legibus*, in which natural law, *lex naturae*, is foregrounded and Marcus

¹²² Atkins, *Cicero on Politics*. p.220.

¹²³ *Har. resp.* 32. On usufruct, cf. Atkins, *Cicero on Politics*. p.124.

¹²⁴ Atkins, *Cicero on Politics*. p.220; Nettleship, *Ius Gentium*. p.181.

¹²⁵ Straumann, *Crisis and Constitutionalism*. p.172.

writes a law-code for Rome. It seems to me that Atkins is right in saying that we must exercise caution when it comes to speaking about Cicero's writings on the *ius gentium* and be mindful that he may not always have been using it with "the same philosophical precision"; it was a popular and legal phrase before philosophers started reflecting upon it.¹²⁶

The law-code for Rome as set out by Marcus in the *De Legibus* is the topic of the next sub-section, but in concluding this one, let me summarise what I have been trying to draw out in it. It seems to me in Cicero's writings that, unlike the natural law, the *ius gentium* is historically and socially contingent, and I accept Nettleship's argument that there was no essential change made to its meaning under Cicero's pen. We might say that the *ius gentium* emerges as different nations or peoples emerge from a primordial (non-written-legal) condition and develop certain customs in their relations with one another which, in the language of the Stoics, may be said to be *in accordance with* the natural law; such customs (and usages) as *ius gentium* picks out are unwritten and imperfect expressions of it, even as Cicero's writings on, for example, the *ius* of warfare can be understood as written expressions of it.¹²⁷ Within the Stoic philosophical framework, the customs developed in relations between nations or peoples can be understood to be based ultimately on right reason, with each nation's or people's internal development of this reason giving rise to virtue in their actions towards one another, whether in times of peace or in times of war. But it seems to me that the *ius gentium* does not *depend* on the Stoic framework of natural law, since, as in Nettleship's account, and as Vitoria said longer ago and Cicero longer ago again before him, it is what natural reason *has* established, in history, in actual human conduct, quite apart from the edicts of philosophers. As we saw from the fragments of the Preface to Books III and IV of the *De Re Publica* (sub-section 4.2.1), not all excellent *civitates* have been conversant with or even aware of Stoic philosophy, no matter how correct that philosophy may be. Whether in cultivating the principles of nature through words and learning, or through institutions and laws, *sapientia* is to be found all over the planet, and

¹²⁶ Atkins, *Cicero on Politics*. p.220n75.

¹²⁷ William E. Conklin, 2010. 'The Myth of Primordialism in Cicero's Theory of *Jus Gentium*'. *Leiden Journal of International Law* 23(3). pp.479–506.

our evidence that this is the case is not the Stoics' arguments about natural law, but the actual *ius gentium*.

4.3.3 Marcus's Law-Code for Rome

The *De Legibus* is a dialogue set in Cicero's own day, with the author as one of the characters (Marcus) discussing the best kind of laws for the best kind of *civitas* with his friend Atticus and brother Quintus.¹²⁸ It was left incomplete and most likely unpublished in his own lifetime, and what has come down to us are the first three Books of it (although not quite completely). In Book I, Marcus gives an account of natural law in discussion with Atticus and Quintus, and in Books II and III we find some of his law-code for Rome, together with some of his commentary upon it, and again some discussion between he, Atticus and Quintus, about his law-code. Not too unlike what we found with the mixed constitution across Books I and II of *De Re Publica*, Marcus's arguments about natural law in Book I of the *De Legibus* are connected very closely with the ancestral laws of Rome, although contrary to some interpretations in the secondary literature, it seems to me that Marcus's law-code for Rome and natural law are not identical; rather, the former is presented as being in accordance with—it is a written and imperfect expression of—the latter.¹²⁹

The dialogue begins with a discussion between Atticus and Quintus about whether an old oak tree in their sight is the very same one that Cicero mentions in one of his poems, with Quintus telling Atticus that “no farmer's cultivation can preserve a tree as long as one sown in a poet's verse”, and Marcus suggesting to Atticus that “you should not be too particular in your researches into things that are handed down in stories of this kind”.¹³⁰ The conversation

¹²⁸ I agree with Atkins that “even though Cicero's character [Marcus] may be taken to represent the author's own views, we must remember that [Marcus] is taking part in a fictitious conversation modelled on a Platonic dialogue. Cicero the author may communicate to the reader in other ways than by the explicit statements of [Marcus]”, hence the distinction here made between ‘Cicero’ and ‘Marcus’. Atkins, *Cicero on Politics*. p.157.

¹²⁹ Cf. *Leg.* 2.13. As above (p.339), I regard the *ius civile*, Marcus's law-code, and the *ius gentium*, all as coming under the category of what Marcus calls in this passage from the *De Legibus* ‘human laws’ (*leges hominum*), whereas true *lex*, the *lex naturae*, is an unwritten law that humans share with the gods as right reason. See also: Atkins, *Cicero on Politics*. Chs.3–6; Straumann, *Crisis and Constitutionalism*. Chs.1 and 4; Elizabeth Asmis, 2008. ‘Cicero on Natural Law and the Laws of the State’. *Classical Antiquity* 27(1). pp.1–33.

¹³⁰ *Leg.* 1.1–4.

then turns from poetry to history, with Atticus imploring Marcus to write one of Rome, which Marcus says he would do had he sufficient free time for such a large project, before it turns once more, from history to a request from Atticus that Marcus “write about civil law more subtly than” others had done before him, which he accepts, going beyond mere “pamphlets on the law about water running off roofs” and the like, and on to broader things, for:

“... you must understand that in no <other> type of discussion is *honesta* <more> clear: what has been given to a human being by nature, what power of excellence is contained in the human mind, what is the function [*muneris*] for whose cultivation and production we have been born and brought into the light, what connects humans [*coniunctio hominum*], and what natural *societas* there is among them. For by unfolding these things, the source of laws and *ius* [*fons legum et iuris*] can be discovered”.^{131*}

Doubtless with an understanding that it is “the most essential part of philosophy”, in writing a law-code for Rome, Marcus proposes that a consideration of “the whole field of ethics” is required, which he divides here into five topics: the gifts of nature to humans; the power of the human mind; the function of humans; the connection of humans to each other; and the natural *societas* of humans.¹³² Marcus provides an account of *lex* in line with some of the arguments of the Stoics, which allows *inter alia* his investigation of nature as the source of *ius* to proceed by covering these five topics of Ethics in the rest of Book I (picking up notes of Plato, Aristotle and Antiochus along the way) in a culmination of a depiction of the ‘wise man’.¹³³ But after giving his Stoicising account of *lex*, he secures the agreement of Atticus and Quintus to “go back” to the “source of *ius*” and reminds them of the whole point in their doing so:

... since we want to preserve and protect that form of *res publica* which Scipio showed was most excellent [*optumam*] in the six books of

¹³¹ *Leg.* 1.14–16. This passage closely follows the translation provided by Asmis, *Cicero on Natural Law*. p.4.

¹³² Asmis, *Cicero on Natural Law*. p.5.

¹³³ For differing interpretations of Marcus’s Stoicising account of *lex*, see *Leg.* 1.18–19; Atkins, *Cicero on Politics*. pp.161–200; Jean-Louis Ferrary, 1995. ‘The statesman and the law in the political philosophy of Cicero’. Laks and Schofield (eds.), *Justice and Generosity*. pp.66–73. Straumann, *Crisis and Constitutionalism*. p.45; Asmis, *Cicero on Natural Law*. pp.6–8; Andrew R. Dyck, 2004. *A Commentary on Cicero, De Legibus*. Ann Arbor: The University of Michigan Press. pp.108–115. For Cicero’s account of how the Stoics viewed reason as embedded in the universe itself, see Book II of the *De Natura Deorum*.

De Re Publica, and since all the laws [*leges*] must be fitted to that type of *civitas*, and since morals [*mores*] must be sown [*serendi*] and we should not rely on the sanctions of written laws [*nec scriptis omnia sancienda*], I will seek the roots of *ius* in nature, under whose leadership our entire discussion must unfold.”^{134*}

Dyck comments on this passage that “the point *nec scriptis omnia sancienda* confirms the implication [of *Leg. 1.19*] that written form is not a *proprium* of true *lex*”, and indeed there was no mention of written form in Laelius’s account of true *lex* in the *De Re Publica* either.¹³⁵ What Cicero said in the *Partitiones Oratoriae* was that *propria legis* were “those things which are written and those which without writing are upheld by the *ius gentium* or the *mos maiorum*”, and that it is prescribed by (unwritten) *ius naturale* such that (unwritten) *mores* and (written) *leges* are preserved. What all of this suggests to me is that, for Cicero, laws written in any form are necessary but insufficient for preserving and protecting *res publica*; what is also required are *mores*, one of the themes of Books IV-VI of the *De Re Publica* which is discussed in subsequent sub-sections of this chapter.¹³⁶

But let us return here to the discussion going on in Book I of the *De Legibus*. Having informed Atticus and Quintus that he will be seeking the roots of *ius* in nature, Marcus goes on to provide an account of *human* nature according to the five topics of Ethics that he has set out, again along the lines of the Stoics, such that we all have a share in reason, and so right reason, and so *lex* and *ius*. I agree with Asmis here that what Marcus is saying is that all human beings have been given right reason, *lex* and *ius* as that towards which we are striving, even as we are not (or not yet) Stoic sages.¹³⁷ In Marcus’s own words, “reason is shared by all, and though it differs in the particulars of knowledge, it is the same in the capacity to learn”, which I think also comports with the interpretation of the *ius gentium* provided in the previous sub-section.¹³⁸ After staying his fellow Academic sceptics in the field of truth and knowledge (as

¹³⁴ *Leg. 1.20*.

¹³⁵ Dyck, *A Commentary on Cicero, De Legibus*. p.115.

¹³⁶ The reader may recall in this connection Griffin and Atkins description of the civil law as being “an imperfect instrument for enforcing morality” (p.266).

¹³⁷ Asmis, *Cicero on Natural Law*. pp.9–10.

¹³⁸ *Leg. 1.30*.

Atkins says, sceptics' exercises contribute nothing to the practical project underway in the *De Legibus*), Marcus discusses *conscientia*, some of the problems with calling the laws of tyrants 'laws', and touches upon the philosophical controversies around moral ends about which "a judgment must be made ... eventually", before "very wise [*prudētissime*]" Quintus calls him back to the discussion about the best kind of laws for the best kind of *civitas*, instead of getting hung up on issues in ethical theory (a subject, as we have seen, which Cicero takes up a decade or so later in the *De Finibus*).¹³⁹ It is at this point the Book concludes with an encomium to *sapientia*, "the mother of all good things", beginning (as one might expect) with Ethics, moving on to Physics, and then Logic, and then back to Ethics again:

"And when [the person who knows himself] realises that he is born for civil society [*civilem societatem*], he will realise that he must use not just that refined type of argument [*subtili disputatione*] but also a more expansive style of speaking [*sed etiam fusa latius perpetua oratione*], through which to guide peoples, to establish laws, to chastise the wicked and protect the good, to praise famous men and to issue instructions for safety and glory suited to persuading his fellow citizens, to exhort people to honour, to call them back from crime, to be able to comfort the afflicted, to enshrine in eternal memorials the deeds and opinions of brave and wise [*fortium et sapientium*] men together with the disgrace of the wicked. And of all these great and numerous things which are recognised as present in man by those who wish to know themselves, the parent and the teacher of them all is *sapientia*."¹⁴⁰

Although I think the classicists I have been reading are certainly right that he is singing the praises of philosophy at the end of Book I of the *De Legibus*—Dyck, for example, says that "*studium sapientiae*, like *amor sapientiae*, is equivalent to *philosophia*"—it seems to me that, by choosing the term *sapientia* rather than *philosophia*, Marcus is including the achievements of philosophers in his praise but also extending his praise beyond them at the same time, and we may fruitfully compare this encomium, and more specifically for our purposes, the

¹³⁹ *Leg.* 1.39–57. Some scholars take Marcus's staying of the sceptics as evidence that Cicero has changed philosophical school-affiliation from the Academic Sceptics to the Stoics, but in the context of his writings considered in the round, this strikes me as wrong. Cf. Atkins, *Cicero on Politics*. pp.176–179; Straumann, *The laws are in charge of the magistrates*. pp.274–275; John Glucker, 1988. 'Cicero's Philosophical Affiliations'. Dillon and Long (eds.), *The Question of Eclecticism*. pp.34–69; Görler, 1995. 'Silencing the Troublemaker: *De Legibus* 1.39 and the Continuity of Cicero's Scepticism.' Powell (ed.), *Cicero the Philosopher*. pp.85–114; Dyck, *A Commentary on Cicero, De Legibus*. pp.172–173.

¹⁴⁰ *Leg.* 1.58–63.

above passage within it, to the discussions of *sapientia* Cicero gave in his own voice in the *Tusculanae Disputationes*, the *De Officiis* and in the Prefaces of the *De Re Publica*.¹⁴¹ We saw in the previous chapter that Cicero associated *sapientia* with the Seven Sages of Greece, who were not ‘philosophers’ in the sense we normally understand, and whose *sapientia* seems to have been of a more practical sort (excepting Thales). It is the virtue that delivers the *honestas in the world*, and this worldly concern it seems to me is as evident in the encomium at the end of Book I of the *De Legibus* as it is in the *De Officiis* (where we saw Cicero placing some limits so that one’s devotion to the pursuit of truth is not made at the expense of *iustitia*). Indeed, as Atkins argued, Cicero understands it to be a part of *sapientia* to realise (through knowledge of things human and divine) the priority of *iustitia*; unlike many philosophers in the tradition of Plato, he orients *sapientia* to the world. And in the Preface to Books I and II of the *De Re Publica*, we saw him favour those who manifest *sapientia* in the establishment of excellent *civitates* over those with no experience in public life, although in the Preface to Books III and IV we find him recognising and appreciating the virtue developed in both *otium* and *negotium*: that *sapientia* which cultivates the principles of nature through words and learning and that which does so through establishing and working through laws and institutions. It is in the context of the Preface to Books III and IV especially, where Cicero puts the persons who have excelled in cultivating the principles of nature through *both* words and learning *and* laws and institutions above persons who have excelled in either one of these approaches, which I think makes it easier to understand why it is *sapientia* rather than *philosophia* whose praises are sung at the end of Book I of the *De Legibus*.¹⁴² It is the most appropriate term of praise in a work in which Marcus is writing a law-code for Rome.

Book II begins with a beautiful exchange between Marcus and Atticus about nature and the natural setting of the conversation (in Arpinum), and in preparation for the law-code for Rome he is about to provide, Marcus reminds Atticus and Quintus of the meaning and nature of *lex* as they have discussed it thus far and refers back again to the “very learned men [*doctissimi viri*]” who have talked about these things (not unlike Scipio in the *De Re Publica*, who

¹⁴¹ Dyck, *A Commentary on Cicero, De Legibus*. p.236.

¹⁴² Cf. *Leg.* 3.14.

attributed the ‘new’ things he was saying to what others had said before him), and who have argued that “it is generally agreed that *leges* were invented for the well-being of *cives*, the safety of *civitates*, and the calm and happy life of humans [*vitamque hominum quietam et beatam*]”.¹⁴³ Again, it seems to me that Marcus is retaining an Ethical focus here upon human beings, virtue is very much on his mind, and I think he remains steadfast in the course of writing his law-code for Rome to what he said in Book I, i.e. that it is the laws that should be fitted to a *civitas* rather than the other way about (pp.345-346). Again, this retains a full appreciation of the extraordinary diversity of human beings associating all over the planet, at the same time as it sets out within a Stoic framework what nevertheless connects us all, reason and speech (not unlike the first *persona* as described in the *De Officiis*):

“...reason, the one thing by which we stand above the beasts, through which we are capable of drawing inferences, making arguments, refuting others, conducting discussions and demonstrations—reason is shared by all, and though it differs in the particulars of knowledge, it is the same in the capacity to learn ... language, the interpreter of the mind, may differ in words [*verbis*] but is identical in ideas [*sententiis*]. There is no person of any nation [*gentis*] who cannot reach virtue with the aid of a guide.”¹⁴⁴

As Annas argues, Marcus, influenced by both Plato and the Stoics, regards laws as being part of that which guides human beings towards virtue; “Law based in nature ... is closely connected with a natural basis for justice and the other virtues: law directs us to activities which express and further the virtues”.¹⁴⁵ As mentioned above, there is much debate in the secondary literature as to the relation between natural law and the law-code that Marcus writes for Rome in Books II and III. Atkins, like Annas, considers the influence of Plato in the *De Legibus* and argues that the laws Marcus writes for Rome are the best approximation to natural law (“...what is best must yield to what is practicable. Given human nature, the implementation of utopia is not only impossible, but also dangerous”), and Straumann, with extraordinary intelligence and a very careful eye on the influence of Roman antiquity in modernity, focuses on the

¹⁴³ *Leg.* 1.18; *Leg.* 2.11. Again, it seems to me that the phrase *doctissimi viri* is used both to include philosophers and to include non-philosophers.

¹⁴⁴ *Leg.* 1.30.

¹⁴⁵ Julia Annas, 2017. *Virtue and Law in Plato and Beyond*. Oxford: Oxford University Press. p.176.

“inchoate constitutionalism” of the text, is inclined to view Marcus’s law-code as identical to natural law, personifies the mixed constitution as that which assumes the function of the *prudens* of whom Marcus speaks at *Leg.* 1.19, and describes the law-code Marcus writes for Rome as “natural constitutional law” (“Cicero’s solution to [what Atkins identifies as] the limits of reason is itself of an entirely rational nature”).¹⁴⁶ But it seems to me that Asmis gets closest to the mark in linking what is said in the *De Legibus* back to the less austere Stoicism of Panaetius in terms of developing middle *officia*:

“[Marcus] viewed his laws as sharing in the guiding power of natural law by prescribing [middle *officia*]. His laws are not the same as natural law [which prescribes perfect *officia*]. The actions that they prescribe can only be *part* of the perfectly virtuous actions that are commanded by natural law. Cicero turned to the Roman constitution, along with the imperfect wisdom of the Roman ancestors, as a means of filling in these [middle] duties. By testing his laws against natural law, as best he understands it, he hoped to produce a body of constitutional law that would be permanently valid.”¹⁴⁷

Use of ‘imperfect wisdom’ in this context of course helps us to distinguish it from the ‘perfect’ sort as expounded by Stoic philosophers, the ‘narrow’ sense of *sapientia*, but it seems to me that neither perfection nor imperfection are terms which Cicero himself would have used to describe the *sapientia* or *prudencia* of his ancestors. It may even be the case that one of the insights of persons who had what Laelius in the *De Amicitia* called Rome’s “homespun” *sapientia* is that we are “doing splendidly” insofar as we are making moral progress towards such ‘perfect wisdom’ as the Stoics describe in their philosophical system.¹⁴⁸ How “splendidly” Marcus “did” in writing his law-code for Rome we might judge for ourselves, as both Quintus and Atticus do in the *De Legibus*, since a *res publica* can never not be ongoing so long as it exists, even if its constitutional law did turn out to be permanently valid.

By way of concluding this sub-section, I think it is useful to remind the reader again of the whole point of Marcus’s writing a law-code for Rome: to protect and preserve *res publica*. And leading us into the next sub-section, I leave the reader

¹⁴⁶ Atkins, *Cicero on Politics*. p.231; Straumann, *Crisis and Constitutionalism*. pp.44–47 and 179.

¹⁴⁷ Asmis, *Cicero on Natural Law*. p.31. Emphasis added.

¹⁴⁸ *Amic.* 19; *Off.* 1.46.

to consider for themselves what Scipio says at the beginning of Book IV of *De Re Publica*:

“Consider furthermore how wisely all the rest has been foreseen in order to promote the citizens’ shared association in a happy and honorable way of life. That is, indeed, the first cause of assembly, and it ought to be accomplished on the authority of the commonwealth [*et id hominibus effici ex re publica debet*] in part through institutions [*institutis*] and in part through laws [*legibus*].”¹⁴⁹

4.3.4 Cicero on Institutions

In the second chapter (sub-section 2.4.1), we saw Arendt say that government is “essentially organised and institutionalised power”, that a court of law remains an “institution” of fundamental importance in political societies (2.3.1), that one of the implicit conditions for freedom is that human spontaneity is exercised within “lasting institutions”, is “injected into the stream of things already initiated” (2.4.1), and we saw on p.319 that Atkins described the Latin term *instituta* as meaning ‘customary standards of social behaviour’. Modern liberal writers are wont to speak of ‘mere’ customs, even as custom (*consuetudo*) has always been a fundamentally important source of law (“*consuetudo* is law because although there is no *lex* on the matter, a rule is observed as if it were in a *lex* ... *Lex* itself is the third stage in the evolution of law from nature through custom”).¹⁵⁰ We also saw, on p.337, Stein’s analysis that *mos* for Cicero is a component of “institutionalised equity” which refers to “traditional social practices, the heritage of a particular people”. *Instituta* are things which have been firmly *established* across generations. In his investigation of what has been established in Western history—and the history of political thought—after the “inchoate constitutionalism” of the late Roman republic as seen especially in Cicero’s writings, Straumann says that:

“Constitutionalism as investigated here is ... not just one institution among many; rather, it is the basis and fundamental framework on

¹⁴⁹ *Rep.* 4.3a.

¹⁵⁰ Stein, *Cicero on the Sources of Law*. pp.22–23. Stein is referring here both to Cicero’s *De Inventione* and to the author of the anonymous *Rhetorica ad Herennium*. Cf. Straumann, *Crisis and Constitutionalism*. p.52.

which all other institutions rest. Institutions matter, but they presuppose constitutionalism.”¹⁵¹

Straumann realises that institutions matter and regards constitutionalism as one institution among many, albeit one of especial importance in the history of our world and both political and legal thought. He rightly says that constitutional thought, *constitutionalism* as distinguished from constitutional practice, “testifies to the historically powerful effect of ideas and to the large body of thought that is presupposed by the constitutional institutions we inhabit in the West”, but rather than ponder or fight fruitlessly over whether ‘thought’ or ‘practice’ comes first in bringing about institutions of any kind, it seems to me that we might better understand this phenomenon in terms of the two kinds of *sapientia* discussed by Cicero in the preface to Books III and IV of *De Re Publica*.¹⁵² Institutions, constitutional or otherwise, have developed over generations as the result of human beings cultivating the principles of nature through *both* words and learning *and* through establishing and working through them (as well as laws); great persons cultivating the watchwords and discoveries of great persons who have lived before them and in doing so accomplishing good things in the world.

Straumann’s identification of *constitutionalism* as an institution I think also helps us to understand why institutions and laws are so often distinguished in Cicero’s writings, even as they so often appear closely together in them; both relate directly to the actions of human beings, but institutions especially have a fundamentally customary aspect. It would make little sense to write laws for constitutionalism; constitutional thought is simply ‘what we do’, ‘the way things are’, an ‘established practice’, and with Straumann, I thank Cicero especially for this specific institution. Institutions, like our tradition of constitutional thought or the *ius gentium*, are customary things which need not find written legal expression, yet still carry significant normative weight. Henriette van der Blom, Christa Gray and Catherine Steel provide us with a good account of the

¹⁵¹ Straumann, *Crisis and Constitutionalism*. p.12–13.

¹⁵² Straumann, *Crisis and Constitutionalism*. p.13. As Dan Edelstein notes, there is a difference to be observed—and Straumann observes it—between “constitutional *practice*” and “constitutionalism”. Dan Edelstein, 2019. ‘The ancient constitution and the Roman law: on Benjamin Straumann’s *Crisis and Constitutionalism*’. *Global Intellectual History* 4(3). pp.261–270. Emphases in original.

institutional framework of the Roman republic, quite separately from Cicero's theoretical writings on politics:

“Political life took place in a framework of rules and conventions that, in the normal course of events, ensured the smooth transaction of business, and most aspects of social and family life were ordered by a wider web of the same type of rules, idealised as the *mos maiorum* (the ‘customs of the ancestors’). Yet innovation was frequent. In part the unsystematic nature of the constitution opened up disputed spaces with different and potentially conflicting sources of authority to which agents could appeal ... As a result of this institutional framework the possibility of conflict was always present and became itself a possible source of stability within the system ... The question to be posed is ... not simply one of conflict versus cooperation, whether over programmes or political prizes, but whether a particular instance of conflict operated within an accepted framework that offered the possibility of an orderly resolution.”¹⁵³

This neatly captures, I think, some of the paradoxes of the human condition I hope to have drawn out for the reader in discussing Arendt in the second chapter; paradoxes, moreover, of which I think Cicero was also keenly conscious in producing his theoretical writings on politics. It seems to me that it is *really* the case that rules *and* conventions, laws *and* morals, matter; old and new necessarily co-exist in the present, as do conflict and cooperation; and *mores* can but need not be ‘idealised’—as Arendt said, by themselves they may be more acceptable in quality for matters pertaining to ethics and morals (as distinguished from theories of ethics and morals) than some philosophers may have thought.¹⁵⁴ Innovation was frequent in the Roman republic because *libertas* had been established within the bounds of lasting institutions—that is, until individuals (‘great flaws in the leaders’ [p.333]) burst through those normative bounds and what Straumann calls constitutionalism emerged, a tradition of thought concerned with a body of law which is of a higher order than the *ius civile*, an ‘accepted framework’ of law which would make it much more difficult for *potestas* to degenerate into *vis*, *libertas* into *licentia*, and so the demise of *res publica*. Laws fix *potestas* and *libertas* into place, and *instituta*, customary

¹⁵³ Henriette van der Blom, Christa Gray and Catherine Steel (eds.), 2018. *Institutions and Ideology in Republican Rome: Speech, Audience and Decision*. Cambridge: Cambridge University Press. pp.5–6.

¹⁵⁴ Cf. *LM1*, p.216. Arendt says in this *postscriptum* to *Thinking* that her investigations into the faculty of judgment would be “of some relevance to a whole set of problems by which modern thought is haunted, especially to the problem of theory and practice and to all attempts to arrive at a halfway plausible theory of ethics.”

standards of social behaviour, strengthen *mores*, customary practices of human beings, which keep them there.

But we have already considered Marcus's 'inchoate constitutionalism' as seen in the law-code he wrote for Rome in the *De Legibus*; our concern here is with *instituta*, which Scipio says ought *also* to be accomplished in securing "the citizens' shared association in a happy and honorable way of life". In his reconstruction of the broad structure of the *De Re Publica*, which I think sounds very plausible, Zetzel argues that the conversation between Scipio and company on the first day (Books I and II) is concerned with the topic of administrative structure; on the second (Books III and IV), with institutional organisation; on the third (Books V and VI), with the individual citizen-statesman (*optimis civis*); and within each pair of Books, the first is a theoretical discussion, and the second inter-weaves the theoretical discussion with the specifics of the history of Rome.¹⁵⁵ We have already considered this in relation to Books I and II (subsection 4.2.2); unfortunately, the rest of the Books are very fragmentary, making it difficult to discern the general structure of the argument, but again, Zetzel is convincing on what remains of the text:

"That the framework of a true *res publica* must reflect the law of nature and eternal justice was demonstrated by Scipio at the end of Book 3; what Book 4 adds to that is the demonstration of the importance of individual and social moral values, derived from the natural law, in supporting and maintaining a structure that can in turn maintain a true and just *res publica*. The next stage of Cicero's argument, lost in the even more fragmentary final books [V and VI], concentrated on precisely those individuals and their role in the *res publica*, making full use, I have no doubt, of the structure of moral values established in Book 4."¹⁵⁶

The 'individual and social moral values' are *instituta* and *mores*; customary standards and practices of social behaviour that can, but need not, be written down or idealised for them to exist. The starting point for discussion of *instituta* in Book IV is the education of citizens, and as mentioned above, Scipio expresses some scepticism about the Greeks' efforts to regulate the education of citizens by written laws, although the text regrettably breaks off before we are given his

¹⁵⁵ Zetzel, *Selections*. pp.16–17.

¹⁵⁶ James E.G. Zetzel, 2001. 'Citizen and Commonwealth in *De Re Publica* Book 4'. Powell and North (eds.), *Cicero's Republic*. p.93.

account as to why.¹⁵⁷ Other *instituta* that are discussed in Book IV as evidenced in the fragments that remain include the regulation of adult male behaviour, particularly that of the senatorial order, the theatre as it relates to *mores*, and the office of the censor. *Instituta* and *mores* were transmitted and maintained as a matter of custom, as the (non-idealised) *mos maiorum*, and upholding them happened much less through the sanctions of law (“in general, the necessity for a new statute is a sign of the failure of *instituta*”) than through shame at the prospect of transgressing them, which as we have seen, involved a kind of social *self*-regulation that the Romans called *verecundia*, “a sort of fear of criticism that is not undeserved”, which Zetzel notes is a virtual translation of the Stoics’ account of *aidos*.¹⁵⁸ The specifics of Roman political society are set out in Book IV within a broadly Stoic framework, hence Zetzel also articulates *mos maiorum* as derived from natural law. Indeed, we saw that Cicero in the *Partitiones Oratoriae* also had linked both together; it is prescribed by (unwritten) *ius naturae* such that (unwritten) *mos maiorum* are preserved (pp.338-339), which seems to me converges quite significantly with Arendt’s writings and her concern to preserve the past, ‘the dimension of depth’, in all nations or peoples, even as she chose neither to use the language of natural law nor write a *Moralia*. Straumann, in a rationalist mode, describes this passage from Cicero in terms of the “validity” of *mores* being “based” on natural law, and argues that “the last word, then, rests with natural law; with a moral evaluation, not with custom”, but this formulation it seems to me leaves at least two things unclear: (i) *who* is providing ‘the last word ... a moral evaluation’; and (ii) in what way is a *moral* evaluation *not* derived from *mores*.¹⁵⁹ We saw Cicero in his own voice, in the Preface to Book I, give his opinion that *honestas* in citizens comes about not through the edicts of philosophers (Stoic or otherwise) but through another kind of *sapientia*:

“What is the source ... of justice, good faith and equity? of modesty and moderation, the avoidance of shame, and the desire for praise and honor? of courage in toil and danger? Surely they derive from the

¹⁵⁷ Cf. *Leg.* 2.23 and 3.30.

¹⁵⁸ Zetzel, *Citizen and Commonwealth*. pp.90 and 94.

¹⁵⁹ Straumann, *Crisis and Constitutionalism*. p.52.

men who established such things through education and strengthened some by custom [*moribus*] and ordained others by law [*legibus*”].¹⁶⁰

He also develops this point in the Preface to Book V. After quoting a line from the poet Ennius (‘The Roman state stands upon the morals and men of old’ [*Moribus antiquis res stat Romana virisque*]), he says:

“That verse, in its brevity and its truthfulness, he seems to me to have spoken as if from an oracle. For if the *civitas* had not had such morals [*morata*], then the men [*virii*] would not have existed; nor, if such men [*virii*] had not been in charge, would there have been such *mores* as to be able to establish or preserve for so long a *res publica* so great and commanding so widely. And so, before our time, ancestral *mores* provided outstanding men [*praestantes viros*], and great men [*excellentes virii*] preserved the *mores* of old and the *instituta* of our ancestors.”^{161*}

As Zetzel says, by this point in the dialogue, Cicero is concerned not with constitutions and individuals, but with institutions and individuals, with *mores* instead of *iura* or *leges*, even as the latter are as necessary as the former for preserving and protecting *res publica*.¹⁶² I mentioned a ‘virtuous circle’ earlier in the chapter (pp.300-301), and in this passage it seems to me that we can see it described counter-factually by Cicero in his account of Roman history; roughly speaking, no inherited *mores* in the *civitas*, no good conduct from men; no good conduct from the men in charge (whatever the form of government), no *mores* in the *civitas*. We saw Arendt describe in the second chapter some of the results of ‘no good conduct from the men in charge’, the wilfully corrupted *mores* of Court society in revolutionary France, and indeed this is also what Cicero goes on at this point to lament at Rome. In his own time, he says, they had inherited the *res publica* “like a wonderful picture that had faded over time” but whose colours they had failed to renew, “the *mores* themselves hav[ing] passed away through a shortage of *virtuous human beings* [*virii*]”*, and that it was “because of our own vices, not because of some bad luck, that we preserve the *res*

¹⁶⁰ *Rep.* 1.2.

¹⁶¹ *Rep.* 5.1

¹⁶² Zetzel, *Citizen and Commonwealth*. p.83. We might ponder at this point on Ricoeur’s curious (if not paradoxical) construction: ‘just institutions’ (p.72).

publica in name alone but have long ago lost its substance”.¹⁶³ Asmis provides us with a useful summary here:

“However much Cicero despairs of the present, he wants the Romans to assume responsibility for the current state of affairs. Each Roman is to give account of himself as though accused of complicity in the vices that have destroyed the state. What is at stake is each person’s own civic existence [*caput*].”¹⁶⁴

The reader may see in this summary of Cicero’s thoughts something which produced strong echoes in Arendt’s writings, who was also despairing of the present, very keen for citizens to recognise their civic responsibilities, and understood that a key aspect of this involved holding on to what she called ‘the virtues of the past’, the *mores* and *instituta*, which she had once took to be “a matter of course”.¹⁶⁵ These are the responsibilities of all citizens, but underscored here it seems to me is the importance of what Scipio had said earlier in the *De Re Publica*, i.e. that the directing *consilium*, those persons in charge, in whatever form of government, must be “hold[ing] to the bond which first bound men together in the *societas* of *res publica*”; it must be preserving and protecting, which as Cicero indicates in his metaphor of a faded picture and as we shall consider in some more detail shortly, is also to say *renewing* and *cultivating*, in accordance with the natural law, the *mores*, the *instituta* of that *societas*. Indeed, we find Marcus discussing this when he is setting out his law-code for Rome in Book III of the *De Legibus*:

“...if the senate is recognised as leader in public deliberation [*publici consili*], and if the remaining orders are willing to have the *res publica* guided [*gubernari*] by the deliberation of the leading order, then it is possible through the blending of rights, since the people have the power and the senate has authority [*potestas in populo auctoritas in senatu sit*], that that moderate and harmonious order of the *civitas* be maintained, especially if the following law is obeyed; for what follows is ‘Let the senatorial order be free from fault; let it be a model to others’ ... That is hard to accomplish without the proper education and training ... [but] if we can hold to that, we hold on to everything. For just as the whole *civitas* is habitually corrupted by the desires and faults of its leaders, so it is improved and reformed by self-restraint [*continentia*] on their part ... if you will turn your thoughts back to our

¹⁶³ *Rep.* 5.2a. Emphasis added.

¹⁶⁴ Elizabeth Asmis. 2005. ‘A New Kind of Model: Cicero’s Roman Constitution in *De Republica*.’ *American Journal of Philology* 126(3). pp.377–416.

¹⁶⁵ Cf. *RJ.* pp.22–23.

early history, you will see that the character of our leaders has been reproduced in the whole *civitas* ... Immoral [*vitiosi*] leaders are all the more damaging [*perniciosus*] to the *res publica* because they not only harbour their own vices but they instil them into the *civitas* ... they are more harmful as examples than for their failings ... there are relatively few men ... who can corrupt or reform the *mores* of the *civitas* ...”¹⁶⁶

As Arendt showed in her example of the council system, it is those whose *virtue* qualifies them for leadership, and a key responsibility such virtuous persons hold is the maintenance and development of the *mores* and *instituta* of the *civitas*. Van der Blom et al. mean by the ‘institutional context’ of the Roman republic “the rules and organisational structures by which political decisions were reached and implemented”, such as the assemblies of citizens, the magistrates, the senate, procedures of deliberation, and the law.¹⁶⁷ In the first chapter (p.95), we saw Walzer (before he raised serious questions about Rousseau’s notion of will as the fundament of political legitimacy) say that one might insist upon the “indestructability of those institutions and practices [*mores*] that *guarantee* the democratic character of the popular will: assembly, debate, elections and so on”.¹⁶⁸ The general point here, it seems to me, is that it is of fundamental importance that those *instituta* and *mores* which ensure the ongoingness of the *res publica*, of what Garsten calls a ‘politics of persuasion’, are carefully preserved and protected; some but not all of which may be written into law, constitutional or otherwise. In the context of Cicero’s political thought, Garsten has referred to these institutions as ‘institutions of controversy’:

“In Cicero’s view, a mob magnified popular sentiment and radicalized popular demands rather than evaluating them in light of more fundamental interests. Lacking deliberation, it was often unwilling to grant authority to the best citizens and more likely to splinter into parties led by popular demagogues ... Usually *consilium* of the sort described in *De Re Publica* emerged not from a lone orator but from some public deliberation in which orators played a role. ‘The people’ in [Scipio’s] special sense ... in being a ‘partnership’ ... would have the spirit of trust and fellow feeling that rhetoricians since Aristotle had declared necessary for effective persuasion ... [Cicero] emphasized ... the trust and independence of mind that would make deliberation

¹⁶⁶ *Leg.* 3.28–32.

¹⁶⁷ Van der Blom et al., *Institutions and Ideology*. p.1.

¹⁶⁸ Emphasis added.

about the specifics of justice possible ... The function of deliberative bodies was to preserve the spirit of justice among a people, and this in turn required distance from the narrower interests and temporary enthusiasms of public opinion ... Thus the political institutions that Cicero judged most legitimate were those most likely to preserve the possibility of some form of deliberation, most able to facilitate controversy in the way that the practice of oratory does at its best.”¹⁶⁹

We saw Walzer in the first chapter (p.96) observe that it is most often an ‘aristocratic’ sort of constraint on (pure) democratic decision-making which goes into a democracy’s (mixed) constitution (also known as constitutional democracy); an appeal from “popular consciousness, particular interests, selfish or shortsighted policies to the superior understanding of the few”, and although in context he was discussing judicial review of popular legislation by the Supreme Court in the US, it seems to me that what he said still holds some similarities to what Garsten is saying here in terms of checking or slowing ‘radicalised popular demands’ and ‘temporary enthusiasms of public opinion’.¹⁷⁰ It seems to me that what both Walzer and Garsten are considering here are constitutional and/or institutional limits upon *pure* democratic decision-making— from which even Rousseau pulled back—the legitimacy of which Benhabib also seemed to admit in setting out her theory of democratic iterations (p.52), and we saw in the previous section that Scipio gave no strictures in terms of what proportions the aristocratic element and the democratic element in a mixed form of government should take, other than that it should be an equitable balance, fitting to the particular circumstances. As regards the democratic element, in the second chapter (pp.187-188), and not unlike Walzer, we saw Arendt oppose the notion of a unanimous ‘public opinion’ in favour of freedom of opinion and a plurality of opinions, which, insofar as deliberation is going on in the exchanging and forming of different opinions through speech and persuasion, conduce public spirit, ‘a spirit of trust and fellow feeling’, in the *civitas*.¹⁷¹ We also saw her endorsement of the council system and the American founding in which the generation of authority occurred in an atmosphere of mutual trust through such deliberation, and as such, the ‘smooth transaction of business’ was assured; everything was decided through speech and persuasion

¹⁶⁹ Garsten, *Saving Persuasion*. pp.168–169; *Leg.* 3.40

¹⁷⁰ Walzer, *Philosophy and Democracy*. p.387.

¹⁷¹ *OR*. pp.227–228.

rather than force and violence. This, as Garsten argues in the above passage, is a very fundamental concern of Cicero's: to ensure the institutions which allow things to be decided through speech and persuasion rather than force and violence—institutions which facilitate controversy *and* mutual understanding (p.71)—prevail.

We saw in the previous section that Scipio named *auctoritas* and *consilium* as the aristocratic element that should go into a mixed form of government. *Consilium* is 'the necessary intelligence needed to guide a commonwealth'; that which, as Garsten says, can preserve the spirit of justice among a people, the very thing which ensures the ongoingness of the *res publica*. *Consilium* requires 'exerting one's reason coolly and freely' (p.187); a "space vacated" by 'public opinion' or the 'verdict' of critical reason; an independence of mind and *some* distance from the plurality of policies which are presented in the proceedings of politics ('in but not wholly in' [p.96]).¹⁷² It involves, or so it seems to me, a very careful consideration of those policies in relation to a variety of more fundamental, broader and longer-term issues which directly affect the ongoingness of the *res publica*. Construed in this way, *consilium* is no easy task, but it is certainly one I think towards which education should be oriented, and we often call this—supplementing specialist fields of education such as law, philosophy, politics, and so on—education for citizenship. Whether and how the council system (and the corollary principle of subsidiarity) as set out in the second chapter could develop citizens' deliberative capacities in this direction, and in doing so generate public spirit in citizens, is a matter of course very worthy of investigation, but if and while these capacities remain insufficiently developed in citizens, we expect, like Walzer, to find them institutionalised in some other way to ensure the ongoingness of *res publica*. As to *auctoritas*, I have argued that we should understand it as a personal quality, and I argue here that this should be the case howsoever it is institutionalised; it is that quality which, through the words and deeds of the person, the *auctor*, inspires confidence in his or her fellows, and the use of which takes the form of advice or guidance and never command. In his excellent investigation of both Cicero's and Sallust's writings in relation to Arendt's, Dean Hammer has provided an

¹⁷² Catherine Steel, 2015. 'Introduction: The Legacy of the Republican Roman Senate'. *Classical Receptions Journal* 7(1). pp.1–10.

account of *auctoritas* which ties together much of what I have already set out in relation to it so far. He is worth quoting here at some length:

“*Auctoritas*, for Cicero, answers to [the concern for truth and fidelity to promises and agreements], not by fixing something permanently in time, but by ensuring the bonds of trust and mutual accountability by which negotiations can occur. The assurance ... is oriented both to the past, as negotiations occur within a context of precedents, rules, and procedures, and to the future by ensuring that new promises are kept and protections assured ... *Auctoritas* is endangered, in Cicero’s analysis, by authorship without history, when either the populace or elites abrogate the trust by which the negotiation of power can occur. Cicero is referring in part to the attempt by individuals to remove themselves from these agreements by acquiring sovereign power ... With the breakdown of *auctoritas* is the loss of power to stabilize, or ... to ensure the validity of, negotiations of power. The alternative to *auctoritas* is either stalemate or violence as parties seek, or block, power so that negotiations do not have to occur ... For Cicero, the [inefficacy] of claims of *auctoritas* is tied to the loss of politics as a public thing. The Roman people are suppressed by violence, the voice of the people replaced by hired crowds and mercenary gangs, the senate ‘abolished’, the courts ‘closed’, and the sentiment of affection replaced by fear ... absent a partnership of power, and in particular the central role of *auctoritas* in giving context and continuity to those agreements, the public realm and the power of the people was unsustainable ... Sallust associates *auctoritas* with the *mos maiorum* ... *Auctoritas* is built on memory; a claim of both genealogy and conduct ... The past authorizes how one judges the present, rather than present circumstances affecting how one interprets and uses the past ... The danger of words losing their ability to orient action, of history having no claim, is that the Republic is reduced ‘to extremes’ because there is no longer a starting point, no longer a common ground, no longer trust ... no longer integrity to language by which discussion can maintain itself ... [For Sallust] what is required is a people imbued with a sense of history, in some sense identifying the role of the people in recalling and renewing the originating spirit of the community ... Both Cicero and Sallust are correct. The bond of participatory communities is trust, whether a trust in the possibility of negotiation or a trust in the meaning of words.”¹⁷³

Cicero in his account of the troubles of his time emphasises the dwindling *auctoritas* of the senate, and Sallust in his history emphasises the people as heirs to the founding of the *res publica* and as the agents, instead of the senate, capable of renewing its founding principles. But whatsoever the emphasis placed on the senate or the people, both authors emphasise the fundamental

¹⁷³ Dean Hammer, 2015. ‘Authoring within history: the legacy of Roman politics in Hannah Arendt’. *Classical Receptions Journal* 7(1). pp.129–139.

importance of being connected to the *mores* handed down from one generation to the next for the *res publica* to be ongoing. Although I have argued that *auctoritas* is a personal quality, what Hammer's account here should drive home to the reader, I argue, is that it is *necessary* for it to be institutionalised, insofar as we want to maintain *res publica*. The 'bonds of trust and mutual accountability' to which he refers are of course what Scipio was referring to when he said that the directing *consilium* of any *res publica* should be 'holding to the bond which first bound men together in the *societas* of *res publica*', a holding which it is exceedingly important to maintain *always* through the cut and thrust of everyday politics, and one which requires *connection to the past*, in the present, with a care for the future; it both maintains and relies upon *instituta* and *mores*.

It bears repeating, however, that even as authoring without history loses connection to the past, the 'dimension of depth' connection to which ensures the continuity of *res publica*, authoring within history involves a certain amount of paradox as well.¹⁷⁴ After linking his investigation of Cicero's and Sallust's work to Arendt's, Hammer construes the latter as turning:

"... on two seemingly contradictory concerns: the loss of a notion of beginning, as the distinctively human capability of bringing something new into being, on the one hand, and the loss of remembrance, as a continuity of tradition that gives stability and durability to community life, on the other."¹⁷⁵

I sought to show to the reader in the second chapter some of the ways in which Arendt held on to both seemingly contradictory concerns simultaneously ('on the one hand and on the other'), as well as the fact that neither our capabilities of bringing something new into being nor our capabilities of remembering the past have been lost in the modern world. Arendt captured the paradox highlighted by Hammer here very well indeed when she spoke of freedom as a worldly condition persisting *only* when 'new beginnings are constantly injected into the stream of things already initiated', i.e. institutions, including the constitutional

¹⁷⁴ It is worth pointing out here a good dictionary definition of the term, and the co-existence or conjunction in it of both 'Ethics' and 'Logic'. Paradox: "a seemingly absurd or contradictory statement or proposition which when investigated may prove to be well-founded or true". Oxford Dictionary Online, accessed 6th January 2021.

¹⁷⁵ Hammer, *Authoring within history*. p.136.

arrangements upheld by citizens, but also including various ‘unwritten rules’: customs, *mores*, traditions, the fruits of remembrance which I agree with Arendt may in a sense be more acceptable in quality for matters pertaining to ethics and morals than some philosophers may have thought, and upon which all human thought depends for *its* existence (pp.154 and 158) (‘every thought is an after-thought’ [p.23]). Maintaining the worldly condition of freedom necessarily requires authoring within rather than without history. Hammer goes on:

“*Auctoritas* ... is not just about protecting the sanctity of the past; the negotiation of this tension of authoring within history is actually critical to any orientation to the future as a touchstone of politics.”¹⁷⁶

The tension of which he speaks is between tradition and continuity on the one hand and authoring and augmenting on the other. As we saw in the second chapter, Arendt herself was authoring within history, her theoretical writings on politics being both ‘old’ and ‘new’ at the same time, and she was very concerned to preserve and protect the ‘coral’ and ‘pearls’ of the past. Young-Bruehl portrayed this as Arendt opening up our words and finding in them the surviving threads of our tradition; of gathering these threads ‘freely and in such a way as to protect freedom’. And Hammer says in connection with both Arendt’s and Cicero’s writings that “preserving and renovating appear as forms of political action that do not follow from foundation but are ongoing aspects of founding”.¹⁷⁷

This I think speaks to the historical account of the Roman *res publica* given by Scipio in Book II of the *De Re Publica* and the understanding of Rome’s development being not the result of a single lawgiver but of numerous *sapientes* across the generations. And Zetzel describes the Preface to Books III and IV of the *De Re Publica*—if only we could see it in its pre-fragmentary condition—as having “offered some insight into both how notions of justice (and morality in general) evolve and how leaders turn those notions into institutional practice”, and we have already seen that Cicero reserves higher praise for those who establish such things relative to those who cultivate them through words and

¹⁷⁶ Hammer, *Authoring within history*. p.137.

¹⁷⁷ Hammer, *Authoring within history*. p.137.

learning, and his highest praise for those practised and learned in both approaches.¹⁷⁸ But Zetzel, drawing upon Scipio's description of the *auctor* as *moderator rei publicae*, also points to the paradox of authoring within history which Cicero confronts in writing *de optimo statu civitatis et optimo cive*:

“... it needs to be recognized that strong individual initiatives within the framework of the *res publica* are problematic at best. The institutionalization of the *moderator* is in itself paradoxical: he must break with tradition in order to preserve it, he must revise the *instituta* in order to maintain them. Any theory of republicanism must take account of the fact that virtue is not universal: ‘Men begin to develop bad habits and to break the laws.’ That is not Cicero, but Machiavelli (*Discorsi* 3.1); and he, like Cicero, recognized the need for reformation and reconstitution, the continuing role of the statesman in maintaining and restoring the social fabric ... To bring the *res publica* back to its principles involves a discontinuity within the *res publica* itself ... and yet, as [Cicero] recognized, if that were not done then the *res publica* was lost in any case ... Cicero places an astonishing burden of both learning and virtue on his statesmen...”¹⁷⁹

This passage I think lends strong support to Straumann's arguments about constitutionalism, but Zetzel also recognises the paradox of authoring within history along with Cicero, Machiavelli, Arendt, Hammer and many others: even as ‘virtue is not universal’ and constitutional law is a formidably important bulwark against this fact, there is still the necessary and continuing role of statespersons in maintaining and protecting *res publica*; we continue to live under governments of laws *and* persons, or better, the rule of law and government of persons.¹⁸⁰ A common image used in antiquity is to understand the statesperson as like a gardener and the *res publica* as like a plant. It is the statesperson's job to tend to the plant: to look after it, to cultivate it, to renew it, to maintain it, to ensure that it flourishes.

All of this I think suggests (amongst many other things) that the *officia* of statespersons are of an extraordinary complexity; they shoulder “awesome responsibilities” (p.166). But I also think it is important to keep in mind that these are *officia* and responsibilities of *statespersons*, those persons holding

¹⁷⁸ Zetzel, *Cicero on the Origins of Civilization and Society*. pp.462–463.

¹⁷⁹ Zetzel, *Cicero and Commonwealth*. pp.95–97.

¹⁸⁰ Cf. James E.G. Zetzel, 2016. ‘Crisis and Constitutionalism: Roman Political Thought from the Fall of the Roman Republic to the Age of Revolution by Benjamin Straumann (review)’. *Classical World* 110(1). pp.147–148.

public office in a duly constituted *res publica*—which makes their *officia* and responsibilities legitimate, they are the *iura* of statespersons—and not, say, the *officia* and responsibilities of philosophers, political theorists, or private citizens. And given the extraordinary complexities and awesome responsibilities involved in maintaining *res publica*, it should come as no surprise to the reader that Cicero was very concerned indeed to consider carefully what the qualities of such statespersons, the ‘best citizens’, in whatever form of government, should be.

4.4 *Rector Rei Publicae*

4.4.1 An ‘Ideal-Type’

The first time we hear of Cicero’s ‘ideal statesperson’ is in the *De Oratore*. The character Antonius is making an argument that there is an art peculiar to the orator, just as there are arts peculiar to the general, lawyer (or jurisconsult), poet, musician, grammarian, philosopher, and so on, and before he reaches his account of the orator’s art, he offers (conditional) definitions of some of these other ones, including that which is peculiar to statespersons:

“...if we were inquiring about what sort of person it is who has brought to bear his experience [*usum*], knowledge [*scientiam*], and energy [*studium*] in the guidance [*moderandam*] of *res publica*, I would define him as follows: I would say that a man who understands the means by which the well-being of *res publica* is achieved and increased, and can make use of those things, is to be accounted a *rei publicae rector* and an author of public policy [*consili publici auctorem*]; and in this category I would mention Publius Lentulus ... Tiberius Gracchus senior, Quintus Metellus, Publius Africanus, Gaius Laelius and innumerable others both at home and abroad.”^{181*}

Although Antonius has not used the term, it seems to me that there are numerous parallels between his account and the more practical kind of *sapientia* Cicero describes in the Prefaces in the *De Re Publica*. In preparing the interlocutors for his definition, before all the other qualities Antonius lists, it is *experience* in the guidance of *res publica* which he mentions first; virtue consists *entirely* in its employment and its most important employment is in the governance of *civitates*. But it is not a competition; such a person has also

¹⁸¹ *De Or.* 1.211.

brought his or her knowledge and efforts together with their experience in the guidance of *res publica*, just as Cicero says that those persons who have added to both their natural abilities and their experience ‘scholarly learning and a richer knowledge of human affairs’ ought to be prized above all others. In the list of exemplary figures that Antonius provides to exercise the judgments of his interlocutors, we find the names of statespersons who appear in the *De Re Publica*, either as exemplary figures or as characters in the dialogue itself, and he ends the list by underscoring the fact that the art peculiar to statespersons is not specific to the culture of Rome, and nor are outstanding statespersons as such, just as Cicero had done in the Preface to Books III and IV of the *De Re Publica*.

Also worthy of note in Antonius’s account is that the art peculiar to statespersons is distinguished from that peculiar to other persons, such as generals, lawyers, music theorists, grammarians, poets and philosophers.¹⁸² Powell argues that “*rector rei publicae* is intended simply as the name of a profession, on all fours with that of general, lawyer, musician and the rest ... the only possible sense of *rector rei publicae* that fits this context is, quite simply, ‘politician’ or ‘statesman’.”¹⁸³ He also refers to it as naming a “professional occupation”, and earlier in this chapter, we saw that *res publica* was defined by Scipio as *res populi*, as a thing with which a given assemblage of persons, all of whom comprise a people, are *occupied*; it takes up (at least some of) the time of the people.¹⁸⁴ Bracketing capitalist connotations and understanding these terms in a broader sense, we can say that an occupation is *a way of spending time*, and a profession is *a way of spending time that requires skill*, skill being a good translation of the Latin term *ars* (‘art’). Again—and despite capitalist connotations of the term—it seems to me that this ‘art’ finds place today in

¹⁸² It is worth noting in this connection that Antonius’s definition of the art peculiar to the statesperson immediately follows his definition of the general’s art (whose occupations we usually associate with *vis*) and immediately precedes his definition of the lawyer’s (whose occupations we usually associate with *ius*), before moving on to ‘less important’ or ‘lighter’ (*leviora*) *artes*: music theory, grammar, poetry and philosophy; lighter, that is, relative to maintaining *res publica*.

¹⁸³ Powell, *The rector rei publicae of Cicero’s De Republica*. p.20.

¹⁸⁴ Powell, *The rector rei publicae of Cicero’s De Republica*. p.20.

education for citizenship; and in Cicero's writings *rector rei publicae* is *optimis civis*.

Antonius's (conditional) definition of *rector rei publicae*, however, is made only in passing, and the next time we encounter this type of person explicitly in Cicero's writings is in Book II of the *De Re Publica*. In providing his historical account, Scipio arrives at the sixth century BCE and Lucius Tarquinius Superbus, last king of Rome who, having begun acting unjustly, had transformed into a tyrant, and it is at this point Scipio introduces the *rector* as antithesis of the tyrant:

“Let there be opposed to this man another, who is good [*bonus*] and wise [*sapiens*] and experienced [*peritus*] about the interests and the worth of the *civitas*, almost a guardian [*tutor*] and manager [*procurator*] of *res publica*; for in that way let anyone be described who is a guide [*rector*] and helmsman [*gubernator*] of the *civitas*. Make sure you recognize this man; he is the one who can protect the *civitas* by his *consilium* and exertions. And since this conception [*nomen*] has not yet been treated in our conversation, and we will often have to consider the type to which this man belongs in our remaining discussion...”^{185*}

Regrettably, there is a gap in the text at this point; we can see from what remains, however, that Scipio is engaged in describing the type of statesperson who is the opposite of a tyrant, and again, it seems to me that that which helps one make sure one recognises such a person is education for citizenship. While the context may suggest that what Scipio is describing is a good monarch, the Latin term *rex* is nowhere to be seen here (Romans had some bad experiences with kings); what he is describing, rather, is a *type of person*. As Powell argues, the function of this passage:

“... is to establish the existence of a [category] of persons designated as *rectores* and helmsmen of the state, all entitled to be called guardians and [managers]: a category which includes the [sub-category] of good monarchs but also includes others as well. In other words, the argument is that kings can indeed be good *rectores*, but so can plenty of other people...”¹⁸⁶

¹⁸⁵ *Rep.* 2.51.

¹⁸⁶ Powell, *The Rector Rei Publicae of Cicero's De Republica*. p.22.

This comports, as Powell says, with the examples of *rectores* provided by Antonius in the *De Oratore*, none of whom were monarchs at Rome. But more than just pointing to specific persons to clarify what he means by *rector rei publicae*, Cicero is engaged both in the *De Oratore* and the *De Re Publica* in explicating a type of person. As Jonathan Zarecki notes, Cicero never uses the term *rector* in relation to a living Roman and all usages of the term itself appear in his *philosophica*. It is in this sense that I mean to say that *rector rei publicae* is an ‘ideal-type’; “Cicero’s *rector* exists only in theory, not in practice”, even as he points to examples to enrich the meaning of this new term.¹⁸⁷ I have placed ‘ideal-type’ in scare quotes because I have borrowed the term from Weber whilst leaving behind its philosophical or scientific underpinnings. Although similarities in meaning remain—for example, I regard the *rector rei publicae* in Cicero’s writings as providing, in Jackson’s words, a “specialized conceptual filter that focuses our scholarly attention on particular aspects of actually existing things to the detriment of other aspects of those same things”—I do not seek to provide, in Weber’s words, “a systematically correct scientific demonstration ... [or a] logical analysis of the content of an ideal and of its ultimate axioms”.¹⁸⁸

That said, let us return to a consideration of the qualities of the *rector*. We see from Scipio’s account that he or she is a good (*bonus*) and wise (*sapiens*) person who is experienced, that is to say, practised, in the interests of *res publica* (i.e. ‘including all interests of the community of the people’). It may well be the case that some Stoic elements are included in the meanings of *bonitas* and *sapientia* at this point, but here in Book II, when Scipio is giving an historical account of Rome as an *exemplum* of the best kind of *res publica*, I think it very likely indeed that the ‘homespun’ meanings of these terms as set out by Laelius in *De Amicitia* (p.303) are involved. But in returning to Scipio’s description, other terms are given in relation to *rector rei publicae* as well: such a person is like a *tutor* or *procurator* of *res publica*, and we saw in the previous chapter that, some years later, Cicero used both these terms again in providing advice to his son in the *De Officiis* concerning those who are about to take charge of public

¹⁸⁷ Jonathan Zarecki, 2009. ‘Cicero’s Definition of ΠΟΛΙΤΙΚΟΣ’. *Arethusa* 42(3). pp.251–270.

¹⁸⁸ Jackson, *The Conduct of Inquiry in International Relations*. pp.22 and 145.

affairs (p.250). *Rectores'* responsibilities for the *res publica* are like those of guardians and managers; educational and functional.¹⁸⁹

We find later in Book II that the *rector* is not only a *sapiens*, but also a *prudens*. As we saw in the second chapter, Arendt described the *phronimos* as the understanding person whose insights into the world of human affairs qualify them for leadership, and indeed this comports with Scipio's earlier description of the *rector* as *gubernator*, 'helmsman', which also suggests leadership.¹⁹⁰ We also saw, earlier in this chapter, that I suggested it is a person who is both *sapiens* and *prudens* able successfully to promote 'the citizens' shared association in a happy and honourable way of life'. In discussing the *prudens*, Scipio offers as a kind of image from nature at this point the mahout, a person who works with, tends to, and trains an elephant; a huge and potentially destructive creature, although familiar with the customs of human beings and directed by the mahout through gentle instruction and touch.¹⁹¹ The text is fragmentary here, making it difficult to interpret, but in tracing some of the influence of Plato in the text, Atkins argues that we can see in it something of Scipio's understanding of human nature:

"Echoing Socrates' account of tyranny in [Plato's] *Republic*, Scipio suggests [in this passage] that the beast that lurks within the human soul is composite rather than simple. Human beings are a complex mix of passions and reason; human nature lacks transparency. The Machiavellian and Polybian view of human beings as invariably rational and self-interested actors and hence predictable is jettisoned ... [and] the plasticity and unpredictability of human nature is affirmed."¹⁹²

Like Zetzel's (p.364), Atkin's argument here I think provides very strong support for the institutions of constitutionalism and constitutional law. But recalling that laws are necessary but insufficient for the maintenance of *res publica*, I think it also provides very strong support for maintaining *mores* and *instituta* in any given political society, responsibilities for which are held by all citizens but especially *rectores* of the *res publica*. And further evidence that the *rector* is

¹⁸⁹ Powell, *The Rector Rei Publicae of Cicero's De Republica*. p.22.

¹⁹⁰ Although I have already touched upon this, it is worth noting Zetzel on *prudenterem* here: "a term almost impossible to translate, as it incorporates both Aristotelian *phronesis*, 'practical wisdom', and its Latin etymological sense of foresight, from *provideo*." *Rep.* p.55n81.

¹⁹¹ *Rep.* 2.67.

¹⁹² Atkins, *Cicero on Politics*. p.104.

not restricted to the category of persons who are ‘good monarchs’ appears at this point when Laelius says to Scipio that, insofar as they are seeking the *prudens*, the person of practical wisdom, “there is a fine supply of them among those present”.¹⁹³

Turning from political psychology to political theory and tracing not only the influence of Plato but also the Stoics at this point in Scipio’s account, Jean-Louis Ferrary argues that “the image of the mahout illustrates the spirit of reason within the soul of the *prudens*, but implicitly also the role of the *prudens* or *rector* within the city”.¹⁹⁴ Much as the rational part of the soul (*mens*, ‘mind’) of the *prudens* successfully controls the irrational part, *rectores of res publicae* direct citizenries, although crucially, the manner in which they can do so depends itself upon the general character of the citizenry, hence the fundamental importance of not only education in general, the development of citizens’ rational capacities, but also the importance of the civic responsibilities of all concerned in maintaining *mores* and *instituta* which guarantee *both* the power of the people—power, we recall (p.171), which vanishes when the people crumbles apart, often pulverized by demagogues—and the authority of the senate. Scipio (again drawing upon Plato) had earlier given an account of some of the excesses which can occur in ‘laissez-faire’ ‘societies’, one of which being that citizens become unable to bear even the very least amount of authority without getting angry, resulting eventually in disregard for the authority of the laws themselves and the emergence of tyranny.¹⁹⁵ And Ferrary notes that “the opposite of a people which gives birth to tyranny is the people of the mixed constitution, accepting without resentment the [*auctoritas*] of the Senate”.¹⁹⁶ Not only does this speak to Canovan’s understanding of Arendt on freedom—that citizens uphold the constitutional arrangements which guarantee its condition in the world (p.174)—it also underscores the importance of Marcus’s law in the *De Legibus*, “Let the senatorial order be free from fault; let it be a model to others” (pp.357-358). Of those citizens taking the initiative in public affairs, freely choosing themselves into politics, it is those who are virtuous who

¹⁹³ *Rep.* 2.67.

¹⁹⁴ Ferrary, *The Statesman and the Law*. p.62.

¹⁹⁵ *Rep.* 1.66–68.

¹⁹⁶ Ferrary, *The Statesman and the Law*. p.63.

produce the ‘virtuous circle’ mentioned earlier. And in returning to the *De Re Publica* and Scipio’s image of the mahout, after a gap in the text, we find that the conversation is still focused on the *prudens*, and this virtuous circle is described in terms of a mirror:

“LAELIUS: Now I see what kind of responsibilities you are placing in the charge of that man I have been waiting for.

SCIPIO: There is really only one, because practically all the rest are contained in this one alone: that he never cease educating and observing himself, that he summon others to imitate him, that through the brilliance of his mind and life [*splendore animi et vitae*] he offer himself as a mirror to his fellow citizens. For just as in the music of harps and flutes, and of course in choral singing...”¹⁹⁷

In short, those who qualify for leadership—those who show virtue in their actions—set an example to their fellow-citizens. With the reader keeping in mind the Platonic and Stoic influences at this point, the citizens themselves, considering the character and life of the *prudens*, “see better the divine element which is the true self of every man and they recognise their soul in his—whence the idea of the mirror”, although at no point of course is it wholly ‘seen’ or ‘known’ by anybody; both the *prudens* and the citizens who are looking at he or she “never cease educating and observing” themselves.¹⁹⁸ From setting out this fundamental responsibility of *rectores*, Scipio goes on to provide the musical analogy we have already considered (p.317), in explicating how *concordia* is ensured, ‘the tightest and the best bond of safety in every *res publica*’. As Ferrary argues, “the musical analogy shows that out of diversity there may come harmony and concord, provided that there is something to join the elements together, not to assimilate them to each other: this is the role of the *prudens*”.¹⁹⁹ The *rector rei publicae* ensures that many voices remain many and are never reduced to one; ‘heaven’ is *res publica*, when the many voices are singing in harmony, when they are in concord with each other. ‘The question is never whether an individual is good but whether his singing is good for the choir in which he is singing’ (p.165).

¹⁹⁷ *Rep.* 2.69a. For what follows in this passage, see p.314.

¹⁹⁸ Ferrary, *The Statesman and the Law*. p.65.

¹⁹⁹ Ferrary, *The Statesman and the Law*. p.65.

In Gadamer's words, "developing this communal sense is of decisive importance for human life" (p.76); the *rector* is engaged in what Dallmayr called "an ethical quest for public virtue" (p.76). At a time when intemperate passions for power and glory amongst the leading men at Rome were bringing the *res publica* to its knees, Cicero wrote to Atticus, articulating his deep regret about the course of events and the abandoning of the quest, and recalling something he had written in Book V of the *De Re Publica*:

"As a helmsman aims at a good voyage, a doctor at saving his patient, a general at victory, so this *moderator rei publicae* aims at the happiness of the life of the citizens, that they should be secure in means of defence, rich in property, splendid in reputation, untarnished in virtue. I want him to be the person to perfect this task, which is the greatest and best among mankind [*operis maximi inter homines atque optimi*]." ^{200*}

As Arendt recognised, it is a very tall order indeed (even as she seemed to disdain the 'enormous enrichment of the private sphere through modern individualism' [p.189]), and Zetzel I think is correct that Cicero "places an astonishing burden of learning and virtue on his statesmen"; so astonishing that I think it right to call the *rector rei publicae* an 'ideal-type'.

4.4.2 Cicero Approaching Others

We digress in this sub-section from Cicero's theoretical writings on politics to consider some of his speeches and letters, specifically the *Pro Lege Manilia*, his speech to the Roman people delivered in 66 BCE in support of giving Pompey an extraordinary command against King Mithridates of Pontus; his letter to Pompey in 62 following conclusion of this command; and the *Pro Marcello*, his speech made in the senate in 46 regarding the pardon of the *optimates* senator Marcus Marcellus by Caesar (who by this point was dictator). The sub-section concludes with a consideration of Cicero's advice to his son in the *De Officiis* regarding appropriate action in particular circumstances (*ex tempore officium*); a topic often studied by the philosophers at this time. Although some of the historical and political contexts will be provided to the letters and speeches, our concern in this sub-section is not to pass judgment on Cicero, Pompey, and Caesar as statespersons, nor is to analyse any of Cicero's political or rhetorical skills in

²⁰⁰ *Rep.* 5.8a = *Att.* 8.11.1.

approaching others, but to consider whether the statements he makes about the qualities of a good statesperson in his communications might add anything to our ‘specialised conceptual filter’.

In 66 BCE, around a decade before he had his character Antonius in the *De Oratore* distinguish between the art peculiar to generals and that peculiar to statespersons, Cicero delivered the *Pro Lege Manilia*, ‘On the Manilian Law’ (known alternatively as *De Imperio Cn. Pompei*, ‘On the Extraordinary Command of Pompey’), his first deliberative speech before the Roman people, in support of giving Pompey extraordinary powers in Rome’s ongoing war against Mithridates.²⁰¹ Cicero lists in this speech four qualities he regards as being found in the perfect general—knowledge of military affairs (*scientiam militaris*), virtue (*virtus*), reputation (*auctoritas*) and luck (*felicitas*)—and argues that Pompey displays all of them. Our concern here is (mainly) with what he says about Pompey’s *virtus*:

“Good heavens above! Is it really possible that the astonishing, super-human virtue of a single mortal man has brought such a beacon of light to our *res publica* ... ?”²⁰²

With this question, as Gildenhard and Hodgson put it, Cicero “nudges Pompey skywards without explicitly claiming divinity for him”.²⁰³ Pompey is a mortal human being just like the rest of us, but as evidenced in his words and deeds over the years, outstandingly so. Cicero goes on at this point to set out some of the military virtues and speed with which Pompey concluded the extraordinary command he was granted the previous year in Rome’s battles against the pirates, before pointing out to his audience that they are not the only virtues one should seek in the ideal general:

“In an ideal, perfect general [*summo ac perfecto imperatore*], we should not look only for martial excellence [*bellandi virtus*]: there are many other excellent qualities which support [*administrae*] and go with [*comites*] them. In the first place, what integrity [*innocentia*]

²⁰¹ For analyses of this speech, see for example: Ingo Gildenhard and Louise Hodgson, 2013. *Cicero, On Pompey’s Command (De Imperio), 27–49: Latin Text, Study Aids with Vocabulary, Commentary, and Translation*. Open Book Publishers; Catherine Steel, 2001. *Cicero, Rhetoric and Empire*. Oxford: Oxford University Press. pp.114–135.

²⁰² *Man.* 33.

²⁰³ Gildenhard and Hodgson, *Cicero, On Pompey’s Command*. p.144.

generals should have; then what moderation [*temperantia*] in everything they do, what good faith [*fide*], what approachability [*facilitate*], what natural ability [*ingenio*], what humanity [*humanitas*]! ... He possesses them all, citizens, to the highest degree possible ...”.²⁰⁴

Although Cicero provides numerous examples demonstrating these virtues in Pompey, our concern here is with the virtues themselves. Once again, we can see that Cicero is engaged in ‘humanising’ warriors (it seems to me with his eye not only on Rome but on international political society as well); military virtues are obviously necessary in a general, but we should be looking for non-military ones in he or she as well which bolster them. *Innocentia*, ‘innocuousness’, has the sense here of ‘integrity of character’ or ‘moral uprightness’, “a quality of someone not liable to become corrupted by opportunities of wealth and power, and hence rather precious in public figures”; a refraining from damaging activities caused by moral weaknesses such as greed, avarice and so on.²⁰⁵ *Innocentia* picks out things which persons *do not* do because of their integrity of character. *Temperantia* is an important part of the fourth primary virtue, as we saw in the previous chapter, not named but I think still seen in Laelius’s ‘homespun’ definition of *bonitas* (p.303), and defined elsewhere by Cicero as “a firm and well-considered control exercised by the reason over desire [*libidineme*] and other improper impulses of the mind [*animi*]. Its parts are *continentia* [cf. pp.354-355], *clementia* [p.379] and *modestia* [pp.379-380].”^{206*} *Fides*, as we have seen, “underwrites socio-economic exchanges [and] defines political interactions”.²⁰⁷ *Facilitas* refers to “ease in interpersonal relations”, “an indulgent disposition willing to overlook or forgive faults in others”.²⁰⁸ Although not a virtue as such, *ingenio* seems to refer here to ‘natural ability’ or ‘innate talent’, “inherent potential rather than inherent moral excellence”, and the meaning of *humanitas* in this context Gildenhard and Hodgson argue is more ethical, denoting something like “general human decency” (it being “the sign of a brave man to spare the vanquished and consider them as fellow human

²⁰⁴ *Man.* 33–43.

²⁰⁵ Gildenhard and Hodgson, *Cicero, On Pompey’s Command*. p.156.

²⁰⁶ *Inv.* 2.164.

²⁰⁷ Gildenhard and Hodgson, *Cicero, On Pompey’s Command*. p.157.

²⁰⁸ Gildenhard and Hodgson, *Cicero, On Pompey’s Command*. pp.157–158.

beings”).²⁰⁹ In addition to these virtues, Cicero also praises Pompey’s *consilium in providendo* (‘strategic intelligence’ or ‘foresight in planning’) and *auctoritas*.²¹⁰

Cicero’s list here of qualities which go into making up the ideal general, although they may be broadly based on certain traditions of philosophy or rhetoric, are very much of his own choosing.²¹¹ Since the qualities of good generals and statespersons were often expected to be found in one and the same person at this time, and since he took care to divide the *virtutes imperatoriae* into ‘military’ and ‘non-military’ ones, might we be justified in carrying over any of the latter to the *rector rei publicae*? Taking the qualities in reverse order, we start with those not under Cicero’s heading of ‘virtues’ in this speech: *auctoritas* and *consilium*. We have already seen Antonius call the *rector* ‘*consili publici auctorem*’; both *auctoritas* and *consilium* are to be expected in such a person. It seems to me that we could also be justified in naming *humanitas* as one of the qualities of the *rector*, since he or she is the antithesis of a tyrant. Following his discussion of Tarquinius Superbus in the *De Re Publica*, Scipio says to his interlocutors:

“Although [a tyrant] has the appearance of a human, through the viciousness of his character he outdoes the most destructive beasts. Who could rightly call ‘human’ someone who desires no bond of shared law, no link of human nature with his fellow citizens or indeed with the whole human race [*Quis enim hunc hominem rite dixerit, qui sibi cum suis civibus, qui denique cum omni hominum genere nullam iuris communionem, nullam humanitatis societatem velit*]?”²¹²

A tyrant is the epitome of monstrousness and brutality; attributes which place them outside of not only the *res publica* but also the *societas generis humani*, standing as they do against all endeavours of civilisation in its broadest sense. We saw in the previous chapter that the entire basis of civilisation in Cicero’s view is human beings helping one another and that *humanitas* is closely

²⁰⁹ Gildenhard and Hodgson, *Cicero, On Pompey’s Command*. pp.158–159. Ingo Gildenhard, 2010. *Creative Eloquence: The Construction of Reality in Cicero’s Speeches*. Oxford: Oxford University Press. pp.203–204.

²¹⁰ *Man.* 29 and 43–46.

²¹¹ Steel, *Cicero, Rhetoric and Empire*. pp.131–133.

²¹² *Rep.* 2.48. Cf. *Rep.* 1.28, 2.27, and 2.35.

associated with *communitas* and *bonitas*; a quality we see not in the tyrant and very much in the *rector rei publicae*.

Ingenio, understood in terms of inherent talent and/or potential, I believe we may also consider as one of the qualities of the *rector rei publicae*. Although Scipio is not explicitly named as a *rector* in the *De Re Publica*, he is portrayed as one who very much approaches the ideal, and as we shall see in the next sub-section, his *ingenium* is referred to a few times in the text. We have also seen Cicero in his own voice, in the Preface to Books III and IV, refer to *bonis ingeniiis* who, with the help of the right institutions, may attain to “an unbelievable, superhuman virtue”. Although one might like to add *facilitas* to the *rector*’s qualities, I cannot find any support for this in the parts of the *De Re Publica* which have come down to us. One might wish to add *innocentia*, especially as the *rector* is an ‘ideal-type’, and even find support for doing so in Laelius’s inclusion of the virtue of *integritas* in describing a *boni*, but it seems to me that a *rector* is *not* the type of person citizens expect *not* to act on their behalf, and *innocentia* is an essentially ‘negative’ virtue only seen in not acting.²¹³ But we may be on some firmer ground with *temperantia* and *fides*. Both these qualities seem to fit with Laelius’s Roman descriptions of *bonitas* and *sapientia*, which themselves are the first qualities of the *rector* that Scipio sets out. In his commentary on Scipio’s dream (discussed in the next sub-section), Macrobius mentions the four primary virtues as attributes of the *rector*.²¹⁴ Powell, also, has provided a strong argument that Cicero’s account of the *rector* is structured around the four primary virtues, and considering that account in relation to the *Pro Lege Manilia*, I argue that, although the latter is of course steeped in its historical context far more than Cicero’s theoretical writings on politics, we might nevertheless be justified in adding the qualities of *temperantia*, *fides*, *ingenium* and *humanitas* to our ‘ideal-type’.²¹⁵

Pompey was granted an extraordinary command against Mithridates, which by 62 had successfully been brought to completion. Back at Rome, however, domestic

²¹³ Cf. Michael Walzer, 2007 (1973). ‘Political Action: The Problem of Dirty Hands’. Miller (ed.), *Thinking Politically: Michael Walzer, Essays in Political Theory*. Ch.17.

²¹⁴ Steel, *Cicero, Rhetoric and Empire*. p.132; *Rep.* 6.6.

²¹⁵ Powell, *Cicero’s De Re Publica and the Virtues of the Statesman*. Nicgorski (ed.), *Cicero’s Practical Philosophy*. Ch.1.

troubles had been brewing, with the Catilinarian conspiracy unfolding in 63 and Cicero that year as consul exposing it, being hailed *pater patriae*, ‘father of the fatherland’, for having saved the *res publica*. Two of the tribunes in 62 challenged Cicero’s actions in presiding over the execution of five of the conspirators without trial, and one of the tribunes, Metellus Nepos, proposed laws summoning Pompey back to Italy to deal with Catiline, which produced some political unrest, in turn resulting in his suspension from office and his leaving Rome to join Pompey’s armies. It seems Pompey was not best pleased with Nepos’s actions at Rome, and even though Rome’s success against Catiline’s army had removed the need for any of Pompey’s help, the latter made a point of sending a dispatch home reassuring everybody of his peaceful intentions upon his return, as well as a private letter to Cicero (not extant).²¹⁶ Cicero wrote to him in response:

“I hope all is well with you and the army, as it is with me. Like the rest of us I was immeasurably delighted with your dispatch, in which you have held out the bright prospect of a peaceful future; such a prospect as I have ever been promising to all and sundry in reliance on your single self ... Your personal letter to me evinces but little of your friendly sentiments towards me, but you may be sure it gave me pleasure all the same. My chief joy is apt to lie in the consciousness of my service to others [*meorum officiorum conscientia*]. If these fail of a like response, I am perfectly content that the balance of good *officia* should rest on my side. I have no doubt that if my own hearty goodwill towards you does not suffice to win your attachment, the public interest will bring us together and join us together [*res publica nos inter nos conciliatura coniuncturaque sit*].

Not to leave you in ignorance of the particular in which your letter has disappointed me, let me speak plainly, as becomes my character [*natura*] and our friendly relations. My achievements have been such that I expected to find a word of congratulation upon them in your letter, both for friendship’s sake and that of the *res publica*. I imagine you omitted anything of the sort for fear of giving offence in any quarter. But I must tell you that what I have done for the safety of the country stands approved in the judgment and testimony of the whole world [*orbis terrae iudicio ac testimonio comprobari*]. When you return you will find that I have acted with a measure of policy [*consilium*] and a lack of self-regard [*magnitudo animi*] which will make you well content to have me as your political ally [*facile in re*]

²¹⁶ Steel, *The End of the Roman Republic*. pp.159–161.

publica] and private friend—a not much lesser Laelius to a far greater Scipio.”^{217*}

Is there anything in this passage that we might add to our ‘ideal-type’? I suggest that there is, and all of it centres around the virtue of *magnitudo animi*. The first paragraph here I think illustrates a shared belief between (at least) Cicero and Pompey that a good statesperson is forgetful of their own advantage and mindful only of that of the *res publica*; peace, of course, being a very important one to all concerned. A fragment from Book V of the *De Re Publica* suggests that *magnitudo animi* was discussed in relation to the *rector*: “This virtue is called courage [*fortitudo*], and it includes greatness of spirit [*magnitudo animi*] and great scorn for death and pain.”²¹⁸ As Arendt also recognised, it is a virtue necessary in the statesperson, even as it is a risky one disconnected from other virtues. And we have already seen Cicero very concerned to connect it to them in the previous chapter. When it is joined with ‘great intellectual talent’ (*ingenii magni*) in a person, it relies on *prudentia* and *consilium* in holding fast to what is *honestum*. In that eloquent passage from the *De Officiis*, Cicero moves smoothly from speaking of one’s own *prudentia* and *consilium* acting as limits on one’s own *magnitudo animi* to speaking of the *prudentia* and *consilium* of others as doing the same (and he can move to speaking of others here because it is in *res publica*; it is *fides* which ensures that one can trust another’s counsel).²¹⁹ As Kelsay pointed out in the first chapter through Aquinas, taking counsel from others is a key aspect of being a good statesperson, and here we see Cicero offering his services (*ingenii magni*) to Pompey, much like Laelius had done with Scipio; he seeks to ‘go with’ (*comites*) him, and go well, for the sake of *res publica*.

Sixteen years later, however, Pompey was dead, and Caesar was dictator. On some accounts, Caesar had emerged victorious in the civil war because of the hubris of the much larger Pompeian side, but whatever the case, as one would expect, the war itself had wrought devastation.²²⁰ “Civil war”, as Steel says,

²¹⁷ *Fam.* 5.7.

²¹⁸ *Rep.* 5.9d. Here (in the late 50s BCE, and we do not know which character in the dialogue is speaking), *magnitudo animi* is a part of *fortitudo*, and in the *De Officiis* (in 44, and in Cicero’s own voice), it is the other way around.

²¹⁹ *Off.* 1.80–82.

²²⁰ Steel, *The End of the Roman Republic*. pp.199–200.

“emerged ... as an unexpected and unwelcome prospect, onto a stage occupied by men busy pursuing their own interests” before they stopped their pursuit and started slaughtering one another.²²¹ Cicero had eventually chosen the Pompeian side, without enthusiasm, and after the battle at Pharsalus in 48 (shortly after which Pompey had died in Egypt), refused (as the senior *imperium*-holder) to assume command of the Pompeian side of the war and returned to Rome with Caesar’s pardon in 47. While the Pompeian side began regrouping on the southern coast of the Mediterranean, Caesar himself returned to Rome in the summer of 46 for a few months, and to the great surprise of many, pardoned Marcus Marcellus (consul in 51), a Pompeian and one of his longstanding and outspoken enemies (and an ally of Cicero’s). Choosing the moment of Marcellus’s pardon to break his six-year silence in public affairs, Cicero, in the *Pro Marcello*, spoke in praise of Caesar as a statesperson:

“...such exceptional kindness [*mansuetudo*], such unprecedented and unheard of clemency [*clementia*], such extraordinary moderation [*modum*] in someone who has attained absolute power over everything, and such astonishing and, one might almost say, superhuman *sapientia*—these are things I cannot possibly pass over in silence ... Fortune does not offer herself as your partner in *this* glory ... For accident is never an element in *sapientia*, nor is chance a component of *consilium* ...”²²²

Although as Berry says, it is exceptionally difficult to interpret *any* speech (or poem) given under autocratic conditions, we can be reasonably sure of Cicero’s sincerity at this point; he wrote in a letter to one of his friends that Marcellus’s pardon—which he says in the letter also showed Caesar’s *magnitudo animi*—“seemed to me a beautiful day’s work; I thought I saw some appearance of a reviving *res publica*”.²²³ Although I find no support in the *De Re Publica* for adding *mansuetudo* to the qualities of the *rector*, and although we can note that Scipio says in Book II that Numa Pompilius had “restored two things that are most important to the long life of a *res publica*, religion [*religio*] and mildness of character [*clementia*]”, our concern here with the *Pro Marcello* is with what Cicero says about the virtue of *sapientia*.²²⁴ He associates it with Caesar’s pardon

²²¹ Steel, *The End of the Roman Republic*. p.193.

²²² *Mar.* 1–6.

²²³ Berry, *Cicero, Political Speeches*. pp.208–209; *Fam.* 4.4. Cf. *Fam.* 6.6.

²²⁴ *Rep.* 2.27. On *clementia* with *magnitudo animi*, Cf. *Off.* 1.88–89.

of Marcellus no less than nine times in this speech, and from the above passage, we can see that one of its features—unlike in so many of Caesar’s other great achievements—is that it is absolutely free of fortune; it comes only from he himself, as *homo sapiens*. It seems to me Cicero is saying here that, after exercising his judgment as a fully autonomous moral agent (in a non-Kantian sense), Caesar *employed* it in the world (p.297); it could only have been the *virtue* of *sapientia* through his actions, and thus through his *consilium*. As Cicero goes on to say:

“... whenever we hear or read of some act [*factum*] of clemency, kindness, justice, moderation, or *sapientia*—especially when it is performed at a moment of passion, which is the enemy of *consilium*, or in the hour of victory, which is by nature arrogant [*insolens*] and proud [*superba*]*—how we are set ablaze with loving approval* [*diligamus*], irrespective of whether the story is fact [*gestis*] or fiction [*fictis*]...”²²⁵

Such acts are exemplary (and fixed in time through the literary arts), strengthening the *mores* of the *res publica* and thus the *res publica* itself. Cicero seems to be implying here that, in pardoning Marcellus, Caesar was delivering the *honestas* in the world in very unpropitious circumstances (the height of passion and the hour of victory), and in doing so achieving *true* glory. Excepting clemency and kindness (and probably taking Caesar’s courage as needless to say), Cicero lists here the cardinal virtues as set out by Plato, but although both he and Caesar were well-versed in Greek philosophy, and this fact undoubtedly had some influence on the form and content of Cicero’s speech, it seems to me that the meaning of *sapientia* in it, as in the *De Re Publica*, nevertheless shades into that kind which is seen in the actions of ‘men who lead great and powerful cities through their *consilium* and *auctoritas*’; that *sapientia* which creates and works through laws and *institutions* as distinguished from words and learning (and to repeat: it is not a competition). Caesar’s action was of *ratio civilis*, as befits a statesperson who is *sapiens*; it was entirely unexpected and not an action usually seen under the conditions of civil war in which citizens were living and dying.

²²⁵ Mar. 9.

But nor, it seems, was it an ‘action’ of, or usually seen in, a philosopher who is *sapiens*. Philosophers are generally aiming at contemplation of the truth or, in some of the Hellenistic schools, *ataraxia*, ‘peace of mind’, whereas Caesar’s pardon was an eminently political action, oriented to human affairs and (through the virtue of *prudentia*) very conscious of consequences in the world, one of which of course being that Cicero, a senior statesperson of great reputation, broke his long silence in public life, bolstering the *res publica*. *Pro Marcello* is a somewhat misleading title; it is not a forensic speech (a defence of Marcellus in a court of law), but a speech delivered in the senate under autocratic conditions. As such, it is unsurprising that it has a strong epideictic element (praise of Caesar), and notable that it has a deliberative element (a speech seeking to persuade others [who strictly speaking should be their peers] about what actions to take for the future). Cicero’s eloquence is on full display in injecting *sapientia* into the latter:

“...I was disappointed when I heard you make that admirable remark, so full of *sapientia*, ‘I have lived long enough for nature, or for glory’. Long enough perhaps for nature, if you like; and, I will add, for glory, if that is what you want; but—and this is the crucial point—by no means long enough for your country. So please do not show the *prudentia* of philosophers in disdaining death; do not be *sapiens* at our peril! It is always being reported to me that you keep saying, much too often, that as far as you are concerned you have lived long enough. I do not doubt your sincerity, but I would approve the sentiment only if you were living for yourself alone, or had been born for yourself alone. But as it is your achievements [*gestae*] clasp [*complexae*] the safety of all the citizens and the entire *res publica*—and you are so far from completing your greatest labours [*operum*] that you have not yet even laid the groundwork [*fundamenta*] of what you are contemplating [*cogitas*] ... this act of the drama remains, this is what you must work at—to place the *res publica* on a sound footing [*constituas*], and, yourself above all others, to reap its benefits in peace and tranquillity. Then, and only then, when you have both discharged your obligations to your country and satisfied nature herself with your full fill of life, say, if you wish, that you have lived long enough ... you [should] now proceed to extinguish the flames of civil war by the rescue of your country, and thereby prove the former to have been the result of fate, but the latter the result of *consilium*.”^{226*}

Although Cicero is relying here upon both his own and Caesar’s understanding of philosophical literature (all the schools in one way or another treat of death as

²²⁶ *Mar.* 25–27.

little or nothing to worry about), is deftly playing upon philosophical senses of *sapientia* and *prudencia*, and there seems to be a sub-text presenting a challenge to Caesar's possible Epicurean leanings with an argument about our natural sociability, I think it is clear enough from this passage that the kind of *sapientia* towards which Cicero is guiding Caesar is the kind which is oriented fully to the *res publica* and is manifest through *consilium*; the kind from which he is guiding Caesar away is that which philosophers think may be reached through *cogito* 'turning in on itself' (pp.262-263).

As matters turned out, Marcellus's pardon did not amount to anything; on his way back to Rome, he was murdered by one of his friends (who then committed suicide), apparently over some financial disagreement.²²⁷ Foul play seems to have been unlikely, but Caesar's own actions over the next couple of years did become increasingly despotic, resulting in his assassination by a group of senators on the Ides of March 44. In the end, he proved himself not a *sapiens*—as Cicero put it in a letter which he wrote to his friend Paetus, “we are slaves to him, and he to the times”—but the *Pro Marcello* itself, I argue, provides us with a richer understanding of the *sapientia* held by the type of person who is *rector rei publicae*.²²⁸

And we might garner a yet richer understanding of this kind of *sapientia* from the *De Officiis*. Towards the end of Book I, which asks the question ‘what is *honestum*?’, Cicero makes the statement called right by Arendt that human beings are naturally sociable, and goes on to say that “every *officium* whose effect lies in preserving the bonding between men and their fellowship [*coniunctionem hominum et ad societatem*] must be preferred to the *officium* that is limited to learning and knowledge [*cognitione et scientia*]”.²²⁹ But then he goes on further to say that:

“It should perhaps be asked whether this sociability, which conforms so greatly to nature, should always be given precedence even over moderation and modesty [*moderatione modestiaque*]. I do not think so: for some things are so disgraceful, or so outrageous, that a *sapiens*

²²⁷ Cf. D.H. Berry's introduction to the *Pro Marcello* in Cicero, 2006. *Political Speeches*. Oxford: Oxford University Press. pp.210–211.

²²⁸ *Fam.* 9.17.

²²⁹ *Off.* 1.158.

would not do them even to protect his country. Posidonius has collected many such examples, but some are so repellent, so disgusting, that it seems dishonourable even to mention them. And so a *sapiens* will not undertake such things for the sake of the *res publica*, and indeed the *res publica* will not want him to undertake them for its sake. But in fact it turns out conveniently that a situation could not arise where it would benefit the *res publica* for such a man to perform any such deed.”²³⁰

Exercising, it seems to me, what Arendt called the two highest virtues of the statesman, moderation and insight, Cicero here spares us the obscenities which Posidonius set out in his own theoretical writings (no longer extant) about *ex tempore officia*; obscenities that doubtless would make one’s blood boil and render one speechless, and thereby drastically reduce if not eliminate the possibility of calm and considered reflection in most people.²³¹ Although he does not (and indeed cannot) tell us what the limit is, Cicero is emphatic in this passage that there *is* a limit to what a *sapiens* would do for the sake of the *res publica*, and it is placed by the virtues of *moderatione modestiaque*; there are some things which are beyond the pale.

Not beyond the pale for Cicero, however, and indeed for the Graeco-Roman tradition more generally, is tyrannicide. Walzer wisely and rightly said that ‘hard cases make bad law’, and tyrannicide, ever a hard case, is one of Cicero’s examples of *ex tempore officium*, and his response will be thought unsatisfactory from, say, certain Christian or Kantian perspectives.²³² Considering

²³⁰ *Off.* 1.159.

²³¹ Cf. *RJ.* p.23 (emphasis added): “For my generation and people of my origin, the lesson began in 1933 and it ended not when just German Jews but the whole world had been given notice of monstrosities no one believed possible at the beginning ... At the time the horror itself, in its naked monstrosity, seemed not only to me but to many others to transcend all moral categories and to explode all standards of jurisdiction; it was something men could neither punish nor forgive. And *in this speechless horror, I fear, we all tended to forget* the strictly moral and manageable lessons we had been taught before, and would be taught again, in innumerable discussions, both inside and outside the courtroom.” Relatedly, at the same conference cited on p.99n176, Walzer responds to Yitzhak Benbaji’s paper on supreme emergency by commending Benbaji’s account of evil to the audience’s attention (once it becomes available to them) and saying that “I thought it was enough just to point to the experience of Nazism, but he actually *tries* to explain why this experience gives us a very acute insight into the justification for what Winston Churchill called supreme emergency (the term is [Churchill’s] and it was first used in response to the Nazi threat)” (emphasis added). Cicero’s statement at the end of this passage that, conveniently, the *res publica* would never ask us to commit such obscenities as he had read about in Posidonius’s work, is far from complacent. Just as Arendt called Germany under Hitler a “criminal regime”, so Cicero would have called it “no *res publica* at all”.

²³² Cf. Michael Walzer, 2007. ‘Killing Tyrants’. *Dissent* 54(2). pp.7–8.

the egregious case of Phalaris (tyrant of Akragas, Sicily, c.570-554 BCE), Cicero advises his son that:

“...it is very easy to make a judgment in the case of Phalaris. For there can be no *societas* between us and tyrants—on the contrary there is complete estrangement [*distractio*—and it is not contrary to nature to rob a man, if you are able, to whom it is *honestum* to slay. Indeed, the whole destructive and wicked type ought to be expelled from the community of mankind [*hominum communitate*]. For just as some limbs are amputated, if they begin to lose their blood and their life, as it were, and are harming the other parts of the body, similarly if the wildness and monstrousness of a beast [*feritas et immanitas beluae*] appears in human form, it must be removed from the common humanity [*communi humanitatis*], so to speak, of the body. Of this sort are all those questions in which the issue is appropriate action in particular circumstances [*ex tempore officium*].”²³³

The case of Phalaris shows, it seems to me, what Walzer calls ‘the utilitarianism of extremity’; a terrible case where a terrible decision must be made, where what he calls ‘rights normality’ (or in the context of the conduct of persons, Cicero’s *formula* [pp.264-265]), as well as communal utility, themselves need protected against somebody whose dispositions and/or deeds have placed them outside the *societas generis humani*.²³⁴ Cicero is well aware of the danger involved in such actions—the killer of a tyrant “must ... do this in such a way that he does not, out of self-esteem or self-love, find a pretext for injustice”—and hence his ‘realism’, his recognition that ‘riskier, double-edged remedies’ may in certain rare and desperate situations be necessary for the sake of *res publica*, is embedded in a framework of *virtue* (and these should be rare situations because virtues are transmitted in *instituta*) that seeks to limit as far as possible, in the name of justice, such cases from even arising in the first place. Although the *De Officiis* is written as advice upon middle *officia*, i.e., it has ‘in view instruction for a life that is shared’ (p.221) and concerns the conduct of non-sages like you and me, it seems to me that Dyck is right when he says about the cases which

²³³ *Off.* 3.32. Cf. *Rep.* 2.48.

²³⁴ Walzer, *Emergency Ethics*. p.40.

test the limits of Cicero's *formula* at *Off.* 3.29-32 that "such a discrimination can surely be safely entrusted only to a *sapiens*", to a *rector rei publicae*.²³⁵

4.4.3 Approaching the Ideal?

In her investigation into trans-political things, Arendt quotes several times a line of the elder Cato's as it is articulated in Book I of the *De Re Publica*.²³⁶ As reported by Scipio, Cato had said to him that Scipio's grandfather, Scipio Africanus (hereinafter Africanus, and who died when Scipio was two years old), used to say that "he never did more than when he did nothing, that he was never less alone than when he was alone."²³⁷ Arendt used these words as a springboard for her investigation into thinking ("What are we 'doing' when we do nothing but think?"), and Cicero himself uses them again (slightly modified) in the *De Officiis*:

"Africanus was accustomed to say that he was never less at leisure than when he was at leisure, nor less alone than when he was alone [*numquam se minus otiosum esse, quam cum otiosus, nec minus solum, quam cum solum esset*] ... The words are magnificent, and worthy of a great and wise man [*magno vira ac sapiente*]; they testify that even in his leisure hours he reflected upon *negotium*, and that when he was by himself he used to talk with himself, so that he was never unoccupied, and sometimes did not even need another's conversation. Thus the two things that induce indolence [*languor*] in others used to sharpen him [*acuebant*], that is to say *otium* and *solitudo* ... there exist, entrusted to writing by him, no memorials of his *ingenium*, no achievement of his *otium*, no product of his *solitudo*. Consequently, we should understand that it was because his mind [*mens*] was active in investigating the objects of his reflection that he was never either at *otium* or alone."^{238*}

Less important here for our purposes than what Africanus historically 'did' in his *otium* is what Cicero says he 'did'; his thoughts, far from turning in on themselves or inducing *languor* as they do in others, honed him. In his *otium*, reflecting upon *negotium*, he was "eager ... to learn, considering that the

²³⁵ Dyck, *A Commentary on Cicero, De Officiis*. p.532. Cicero makes a point of mentioning three of the qualities of such persons at *Off.* 3.31: they are wise (*sapiens*), good (*bonis*) and brave (*fortis*).

²³⁶ *HC*. p.325; *LM1*. pp.8, 123, and 216.

²³⁷ *Rep.* 1.27. *Numquam se plus agere quam nihil cum ageret, numquam minus solum esse quam cum solus esset.*

²³⁸ *Off.* 3.1-4.

discovery of obscure or wonderful things is necessary for a happy life [*beate vivendum*].²³⁹ Africanus in his *otium* talks with and by himself (to the extent that he only *sometimes* does not even need another's conversation)—Arendt's 'two-in-one'—when he is not occupied with the business of *res publica*, yet remaining occupied with matters of relevance.²⁴⁰

We do not know what matters of relevance Africanus pondered in his *otium*, but in returning to Scipio's use of Cato's aphorism in Book I of the *De Re Publica*, it seems that at least some of the matters of relevance Scipio himself ponders are trans-political.²⁴¹ We saw in the first section (p.307) that both Tubero and Philus at this point in the text argue the case for cosmology's relevance to politics and Scipio rows back somewhat from his initial scepticism about this. In doing so, he recalls how Pericles had taught citizens not to fear "a sudden darkness" when "the sun disappeared" by drawing upon the achievements of *sapientes* such as Anaxagoras and Thales who had studied the heavens and demonstrated that eclipses necessarily must happen at specific times; there was nothing for citizens to be superstitiously fearful about.²⁴² But after a gap in the text, Scipio appears to have moved on from such limited ways in which cosmology has relevance for politics by extolling how such loftier perspectives as taken by the likes of Anaxagoras and Thales can provide persons, including statespersons, with a more sobering view of 'our empirical messiness'. For his part, Laelius seems to lose patience with all the Physics talk and reminds the interlocutors in their *otium* of the troubling times:

"Why, I ask you, is [Tubero] ... asking how two suns could have been seen and not asking why in one *res publica* there are two senates and almost two peoples? ... [E]ven if we knew all about [such things as two suns appearing in the sky] such knowledge would make us neither better [*meliores*] nor happier [*beatiores*]. But it is possible for us to have one senate and one people, and if we don't we are in very deep trouble; we know that things are not that way now, and we see that if

²³⁹ *Off.* 1.13.

²⁴⁰ Cf. *Att.* 9.4, where Cicero in the throes of civil war sets out a series of difficult questions that he is asking himself about living under a despotism and says to Atticus, "Practising myself upon these questions and setting out arguments on either side, now in Greek now in Latin, I take my mind for a while off my troubles and at the same time ponder matters of relevance".

²⁴¹ *Rep.* 1.26–29.

²⁴² *Rep.* 1.25.

it can be brought about, then we will live both better and happier lives.”²⁴³

It seems to me that the interlocutors (or at least some of them) see and understand Laelius’s Ethical argument; they are ‘men leading a city by their *consilium* and *auctoritas*’, albeit currently at leisure. Although Cicero in the Preface to Books III and IV praises Scipio, Laelius and Philus as statespersons who cultivated the principles of nature through two different kinds of *sapientia*, it is Scipio here in Book I who emerges from the conversation as the statesperson who has not ‘took a side’ between Physics and Ethics, and as Atkins says, this is appropriate, because it is Scipio who goes on to set out (almost) a political science in the rest of the Book, using some of the astronomical language Philus had used in explaining the appearance of two suns in the sky.²⁴⁴

We saw in the previous section that Physics also makes an appearance in Book III, with Philus playing devil’s advocate in providing a ‘conventionalist’ account of law, and Laelius providing the Stoics’ natural law argument. As far as we can tell, Scipio was not part of this debate, but he seemed ‘positively ecstatic’ once it had been demonstrated that a *res publica* could not possibly function without justice. This dual commitment of Scipio’s to both Physics and Ethics (and indeed Philus’s and Laelius’s as well), and to the two different kinds of *sapientia* discussed by Cicero in the Preface to Books III and IV, I think is very intriguing. There is another fragment of this Preface, in which Cicero is discussing “the origins of human societies and the relationship between theoretical and practical knowledge in the creation and maintenance of those societies”.²⁴⁵ As ever, Zetzel provides us with excellent commentary:

“Cicero ... has a particular narrative [in this fragment]: the discovery of technology [e.g., the wheel] is followed by the discovery of speech, which brings people together into communities ... the discovery of speech leads to the invention of writing, which gives the possibility of communication with people far away, expression of one’s wishes and memories of the past. And finally, the invention of number is not only important for daily life, it encourages people to look up to the sky and invent the reckoning of time ... humans, through the divine gift of *ingenium* and *mens*, raised themselves from nature and used nature as

²⁴³ *Rep.* 1.31–32.

²⁴⁴ Atkins, *Cicero on Politics*. p.54.

²⁴⁵ *Rep.* 3.3; Zetzel, *Cicero on the Origins of Civilisation*. p.462.

the basis on which to make something out of the wretched things that are humans ... [I]t is language that creates human society ... while mathematics, in addition to its utility in everyday life (for calendars and accounting), has the important effect of making us look up to the heavens. Language is of this world; mathematics leads out of it. And the contrast that develops [in two other fragments of the Preface, quoted on pp.295-297 above] is one that grows out of that, between the practical and the abstract, between the social and the philosophical. Both are varieties of wisdom, but they work in different ways.”²⁴⁶

Although both Physics and Ethics, two parts of philosophy, would come under that kind of *sapientia* that Cicero says is cultivated through words and learning, there seems to me to be a certain similarity here between what Zetzel says about the two kinds of *sapientia* and what Schofield says about the Ethical and Physical approaches to justice in Stoic philosophy (pp.333-334): we learn different, and in different ways indispensable, things from both the Ethical and Physical approaches to justice in the Stoic system, much as we do so by cultivating the principles of nature through words and learning on the one hand and cultivating the principles of nature through laws and institutions on the other.²⁴⁷ And again, for Cicero, it is those persons excelling in both who are deserving of the greatest praise.

Physics makes a significant return in Book VI of the *De Re Publica*. Scipio reports to his interlocutors a dream he had had twenty years earlier in 149 (a physiological occurrence), during the first year of the Third Punic War, in which Africanus appeared and foretold Scipio the events of his career up to the troubles Rome was facing at that point in 129, when “the whole *civitas* will turn to you alone and to your name ... you will have to place the *res publica* on a sound footing as dictator—if you escape the undutiful hands of those close to you”.^{248*} After his close friend Laelius shouted out at this point, and the rest let

²⁴⁶ Zetzel, *Cicero on the Origins of Civilisation*. pp.470–471. Cf. *BPF*. pp.260–274. The contrast between the two kinds of *sapientia* might also be seen in the *De Officiis* (cf. e.g., pp.220 and 241), where the ‘social’ kind takes precedence over the ‘philosophical’.

²⁴⁷ It also seems to me to recall the Aristotelian division between theoretical and practical sciences and the intellectual virtues associated with them, *episteme* and *phronesis*.

²⁴⁸ *Rep.* 6.12. As mentioned in the introduction to this chapter, Scipio died in uncertain circumstances before he could take on a dictatorship to save the *res publica*—had it even been a possibility. The office of dictator was obsolete in 129, with a special senatorial decree having developed, the *senatus ultimum consultum*, which largely took over its function. I agree with Zetzel that Cicero mentions the office of dictator here “not to advocate its resurrection in his own

out a large groan, Scipio, smiling gently and hushing them all, and bidding them to listen to the rest of the story, conveyed Africanus's next words:

“But so that you may be all the more eager, [Scipio], to protect the *res publica*, know this for certain [*sic habeto*]: for all those who have saved, helped, or augmented the country there is a specific place set aside in the sky where they may enjoy eternity in happiness [*beati aevo sempiterno*]. There is nothing that can happen on earth that is more pleasing to the leading god [*princeps deus*] who rules the whole world than those councils and assemblages of men associated through law [*concilia coetusque hominum iure sociati*] which are called *civitates*; the guides [*rectores*] and preservers [*conservatores*] of these have set out from here, and here they return.”^{249*}

At this point, Scipio's father Paullus appears to him as well, and after their embrace, he tells Scipio that their time for being together is not yet; his only way of returning to the place in which he finds himself is to fulfil his worldly *officia*, suggesting a connection between protection of the earth and contemplation of the heavens which Scipio had already implicitly made in Book I.²⁵⁰ It seems to me that there is a significant connection here between what Paullus is saying to Scipio and what Cicero says in the fragments of the Preface to Books III and IV about the origins of civilisation and the two kinds of *sapientia*, but to return to Scipio's dream, Paullus tells him that:

“... you should be like your grandfather here and like me your father in cultivating justice and a sense of duty [*iustitiam cole et pietatem*]; it is important in relation to your parents and family, but most important in relation to your country.”^{251*}

This passage underscores much of what I have set out in this chapter as well as in the previous chapter, although the setting here is cosmic; Scipio finds himself in the starry heavens speaking to his father and grandfather. And in this cosmic setting, he is conversing with previous generations who had cultivated the principles of nature—whether through “ancestral traditions”, “scholarly learning”, or both (p.300)—and who are advising him to do the same. Paullus tells him that it is such a way of life, fulfilling one's *officia*, which will lead him

day, but as a specific instance of the need for a single person of authority at moments of great crisis”, the subject under discussion being the *optimis civis*. Zetzel, *Selections*. p.229.

²⁴⁹ *Rep.* 6.13.

²⁵⁰ *Rep.* 1.26–29; Zetzel, *Selections*. p.232.

²⁵¹ *Rep.* 6.16.

back to where they are at this point. Scipio looks about him in the *cosmos* and everything seems to him “brilliant [*praeclara*] and marvellous [*mirabilia*]”; hitherto unseen stars easily surpassing the size of the earth, to which his eyes presently turn, and to Rome’s empire upon it, of which he now feels ashamed since it touches only a little speck on a planet which is itself only a little speck in the *cosmos*.

For our purposes, we can pass over the cosmologies of Plato and the Stoics, of the poetic cosmographies of Alexander of Ephesus and Eratosthenes, and of the astronomies of figures such as Eudoxus and Archimedes, all of which and more influenced Cicero’s ‘old-and-new’ account of the *cosmos* in Scipio’s dream, and instead focus upon its Ethical lesson.²⁵² As Scipio is gazing down ashamedly on the speck that is the Roman empire, Africanus bids him to soak in the pure rationality of the *cosmos* around him instead, in which everything is related and governed by the *princeps deus*. As Scipio looked up and was “staring dumbfounded” at it all, he heard the music of the spheres, the perfect harmony achieved in the *cosmos* which “corresponds to, and inspires, both literal and metaphorical harmony on earth”, to which his eyes are drawn back again.²⁵³ Africanus notices, and speaks to him about the ephemeral things that happen under the Moon:

“... even if you lose hope of returning to this place, where all things exist for great and outstanding men [*magnis et praestantibus viri*], still—what is that human glory [*hominum gloria*] really worth which can last scarcely a fraction of [nearly thirteen millennia]? Accordingly, look on high if you are minded [*si voles*]; behold this dwelling and eternal home; and do not abandon yourself to the discourse of the rabble, and do not place your hopes in human rewards: virtue itself by its own allurements should draw you towards true glory [*verum decus*].”^{254*}

Although what in remains of the text we find the virtue mentioned only twice, Sean McConnell it seems to me is right in identifying significant resonances of

²⁵² Zetzel, *Selections*. pp.235–243.

²⁵³ *Rep.* 6.18–20; Zetzel, *Selections*. p.239.

²⁵⁴ *Rep.* 6.25. Scipio speaks here of ‘scarcely a fraction of a single year’, the ‘perfect year’ in some Hellenistic cosmologies, in which all eight celestial spheres return to the relative position from which they started (c. 12,954 solar years). The senses of *gloria* given in the Perseus Digital Library are ‘glory, fame, renown, praise, honor’, and the senses of *decus* given are ‘grace, glory, honour, dignity, splendor, beauty’. Cf. *Tusc.* 3.3, *Off.* 2.43.

magnitudo animi in the *De Re Publica*, and I think we can see it in this passage especially.²⁵⁵ We saw in the previous chapter that part of *magnitudo animi* involves a disdain for earthly things, a conviction that one should pursue only what is *honestum*, and that that pursuit is produced by strength of spirit (*animi efficitur*), and in this passage from Scipio's dream it seems to me that amongst other things it is a strengthening of Scipio's spirit which Africanus is providing.²⁵⁶ McConnell argues that:

“...the Dream's grand cosmic imagery and the belittling of the ordinary are ... attempts to expand our souls, or rather, to test the *magnitudo animi* that we might already possess: are we exalted or unmoved by such visions, are we gripped or dismissive?”²⁵⁷

Africanus begins in the above passage by inviting even those who have lost hope to consider the fleeting nature of earthly rewards and the fact that, sooner or later, all is covered in oblivion, and in doing so, to look on high if they are so minded and to what he is saying. For his part, Scipio replies that, even if in following both his father's and grandfather's footsteps so far, he has not fallen short of their glory (*decus*), still with the prize he sees set before him he is going to strive even more energetically in guiding and protecting the *res publica*. This is strikingly different to the philosopher's retreat from and return to the cave in Plato's *Republic*; far from having no desire to engage in public life after 'seeing the light', Scipio's trip to the stars has instilled in him a resolve all the stronger to fulfil his *officia* on earth.²⁵⁸ Africanus excites him once more to the task:

“Keep at it [*tu vero enitere*]; and know this for certain [*sic habeto*]: it is not you that is mortal but your body. You are not what your physical shape reveals, but each person is his mind [*mens*], not the body that a finger can point at. Know then that you are a god [*Deum te igitur scito esse*], as surely as a god is someone who is alert [*viget*], who feels [*sentit*], who remembers [*meminit*], who looks ahead [*providet*], who controls and guides and moves the body of which he is in command just as that *princeps deus* does for the universe. And just as

²⁵⁵ *Rep.* 1.9, 5.1; Sean McConnell, 2017. 'Magnitudo Animi and Cosmic Politics in Cicero's *De Re Publica*'. *The Classical Journal* 113(1). pp.45–70.

²⁵⁶ *Off.* 1.66, 1.79.

²⁵⁷ McConnell, *Magnitudo Animi and Cosmic Politics*. p.55.

²⁵⁸ Atkins, *Cicero on Politics*. p.77.

the eternal god moves the universe, which is partly mortal, so too does the eternal soul move the fragile body.”^{259*}

He goes on to provide what is a close translation of Plato’s argument from the *Phaedrus* that the *mens* is immortal (as Zetzel points out, “this shows that the dream is a product more of reason than of revelation”), and his calling each person’s *mens* a god rather than divine recalls a line from Plato’s *Laws*, but what I wish to emphasise from this passage are not its Physical aspects, but its Ethical ones, specifically the qualities which Africanus lists.²⁶⁰ *Rectores of res publicae* are alert; they discern by sense; they *remember* the past; and they look to the future.²⁶¹ In other words, they are not only *sapientes*, but also *prudentes*: those who comprehend a correct picture of the world which allows them to make the right choices; those able successfully to promote the citizens’ shared association in a happy and *honestum* way of life; and those who establish and work through laws and institutions for the well-being of *cives*, the safety of *civitates*, and the calm and happy life of humans.

What are we to make of Scipio’s dream? Atkins argues that “it enables Cicero to introduce the divine, rational and eternal—in short the ideal—into a world that must otherwise yield before the forces of flux and degeneration”.²⁶² Scipio learns in his dream that not everything under the Moon is ephemeral; the *ingenium* and *mens* of human beings are divine sparks which allow us to raise ourselves from nature and, on the basis of nature, institute civilisation in its broadest sense through both words and learning on the one hand and through laws and institutions on the other. But Atkins also says that “The Dream provides the vision of the good to which the wise statesman must look, even if he knows it will never be realised” on earth as perfectly as it is realised in the *cosmos* by the

²⁵⁹ *Rep.* 6.26.

²⁶⁰ Zetzel, *Selections*. p.224.

²⁶¹ Cf. *RJ.* pp.94–95: “[The] connection of thinking and remembering is especially important in [the context of this set of lectures, Some Questions of Moral Philosophy]. No one can remember what he has not thought through in talking about it with himself ... If I refuse to remember, I am actually ready to do anything ... For human beings, thinking of past matters means moving in the dimension of depth, striking roots and thus stabilizing themselves, so as not to be swept away by whatever may occur—the Zeitgeist or [Hegelian] History or simple temptation.”

²⁶² Atkins, *Cicero on Politics*. p.79

princeps deus. Scipio's 'vision of the good' is certainly not the kind that results in those 'tyrannies of truth' of liberal nightmares:

"... ideals in Cicero's dialogues aid the enquirer into politics much like mountaintops help hikers. The ability of a hiker occasionally to catch sight of a majestic but unclimbable peak in the distance reminds him of why he has decided to hike to a lower, more accessible destination, serves as a point of reference as he makes his way through the surrounding forest, and provides inspiration for the journey."²⁶³

Although it is modelled in certain respects on many of Plato's writings (especially the Myth of Er), as McConnell says, "the Dream itself is not presented as having any sort of divine providence nor any guarantee of its truth ... [and] there is no real philosophical argument from first principles".²⁶⁴ Scipio has a dream that is food for thought; it nourishes the life of the mind. There is a fragment preserved of the conversation that took place between the interlocutors before Scipio reported his dream, and although we do not know who spoke the words, it is perhaps worth quoting here:

"...the things which are reported about the immortality of the soul and about heaven are neither the fictions of dreaming philosophers nor the incredible tales that the Epicureans laugh at, but are the reasonable inferences of men of judgment [*prudantium coniecturas*]."^{265*}

Thinking with and by themselves about "obscure or wonderful things" is not an activity restricted to philosophers; it is *in rerum natura*, including in statespersons. We all have "the other fellow" with whom we converse in our *otium*, with and by ourselves.²⁶⁶ Zetzel argues that "we are left knowing that the dream incorporates a great statesman's deepest beliefs; whether its source was the *princeps deus* or his own mind makes little difference"; what matters, as Scipio had said in Book II, is that *rectores* look after the *res publica*, keep learning and keep observing themselves—looking to the past, present and future, all around them on the earth and occasionally, in their *otium*, on high—and in

²⁶³ Atkins, *Cicero on Politics*. p.236.

²⁶⁴ McConnell, *Magnitudo Animi and Cosmic Politics*. p.54.

²⁶⁵ *Rep.* 6.3. Cf. *Nat. D.* and *Tusc.*, both of which Voltaire described in the *Dictionnaire Philosophique* as "the two most beautiful books ever produced by the wisdom of humanity"; *LM1*. p.10, *RJ*. pp.161–162.

²⁶⁶ *RJ*. p.186.

doing so, offer themselves as a mirror to their fellow-citizens.²⁶⁷ Arendt viewed Scipio's dream as "an example (and an eminent one, perhaps the first recorded in intellectual history) of how certain trains of thought actually aim at thinking oneself out of the world".²⁶⁸ There is certainly much mathematics and abstraction involved in the account of the *cosmos* provided by Africanus which aims out of the world, and while Arendt may well be right that, on Cicero's part, Scipio's vision of a hereafter is not an article of faith but a moral hypothesis, she does not mention what I think might well be the most essential lesson of all in Book VI, an Ethical one, which Cicero conveys to his readers: Scipio wakes up.

4.5 Conclusions

4.5.1 *Res Publica*

In the first sub-section of this chapter, we considered some of Cicero's arguments in favour of the practical life of the citizen and were immediately presented with a conception of that life which comprehended not only rights but also *officia*, duties, as well as the kinds of actions carried out by 'the best citizen', the *optimis civis*, which he held in a higher regard than those of philosophers with no experience in public life. Cicero challenges the arguments of philosophers who 'devalue civic responsibility', arguing for the moral and practical necessity of engaging in public life to prevent subjection by wicked persons. But we also saw in this sub-section, as we saw in the previous two chapters, that Cicero is extremely far indeed from holding philosophy itself in contempt. He recognises the *sapientia* in those who have cultivated the principles of nature through words and learning just as he recognises it in those who have done so through laws and institutions, even as he reserves his highest praise for those accomplished in both approaches. Yet as one might expect, it is always *sapientia* as finds *factum* in the world upon which his focus is fixed, whether in the teachings of philosophers or through the *consilium* and *auctoritas* of statespersons.²⁶⁹ As already highlighted in the previous chapter, what is of

²⁶⁷ Zetzel, *Selections*. p.224.

²⁶⁸ *LM1*. p.160.

²⁶⁹ Cf. Bernard Williams, 2007. *In the Beginning Was The Deed: Realism and Moralism in Political Argument*. New Jersey: Princeton University Press.

fundamental importance to Cicero in all of this is *education*— whether in statespersons, philosophers, or private citizens.

The second sub-section provided in (very) broad outline how history and philosophy appear in the *De Re Publica*. I set out for the reader at this point the ancient tripartition of philosophy into Ethics, Physics and Logic, believing with Ierodiakonou that, even as the three parts do not exactly correspond to the different branches of modern philosophy and science, we may still have much to learn, many deep insights to gain, from it.²⁷⁰ In any event, it helped contextualise philosophy in the *De Re Publica*, which is an Ethical text, in the form of a dialogue (Logic), with some Physical arguments (at times) appearing, either as metaphysical or cosmological arguments, or metaphorically.²⁷¹ The cosmological discussion of Book I provided a language employed by Scipio later in the text to describe the paths and turns that *res publicae* take, as well as a prefiguring of the grand cosmic account of Scipio's dream in Book VI, but as suggested by Cicero's Ethical orientation in his works more generally, these discussions were all geared, in this Ethical text, towards the *res publica*. We also saw in this sub-section that Cicero in the *De Re Publica* inter-weaves a historical account of Rome into its philosophical arguments, and/or *vice versa*, and I provided at this point one of the Elder Cato's *bon mots* which I think is important enough to repeat:

“... there never was a genius so great that he could miss nothing, nor could all the geniuses in the world brought together in one place at one time foresee all contingencies without the practical experience afforded by the passage of time.”²⁷²

Contrary to the arguments between some disciplinarians, it seems to me that Cicero sees no competition between philosophy and history, recognising and appreciating the indispensability of both in human affairs. What philosophy provides us with is (amongst other things) a healing of the *animus*, and what

²⁷⁰ Ierodiakonou, *The Stoic Division of Philosophy*. p.74.

²⁷¹ That cosmology may be relevant to politics is not lost in IR, although I believe engagement with Cicero's *De Re Publica* has yet to be made here. I hope to have shown in this project to IR scholars in this area of research some of Cicero's continuing relevance to their inquiries. Cf. Milja Kurki, 2020. *International Relations in a Relational Universe*. Oxford: Oxford University Press.

²⁷² *Rep.* 2.2.

history provides us with is a fount of practical wisdom that no amount of philosophy could ever replace. As he articulated it in the *Pro Archia*, “All literature [*libri*], all spoken wisdom [*sapientum voces*], all history [*exemplorum vetustas*], abounds with incentives to noble action, incentives which would be buried in sheer darkness were the light of the written word [*litterarum lumen*] not beamed upon them”; philosophy and history are both parts of the humanities that we need, for the world’s sake.

The third sub-section considered Scipio’s definition of *res publica* at *Rep.* 1.39. Heinz’s transliteration of the term, ‘including all interests of the community of the people’, gives an excellent account of its meaning, but there are several different parts of the definition, and it seems to me that IPT would benefit a great deal from closely considering them. A *res publica* is neither a city (*urbs*), a people (*populus*), nor even the organisation of a people (*civitas*, or *constitutio populi*), but the concern of a people (*res populi*), and a people is an assemblage of individuals associated (*sociatus*) with one another through agreement on *ius* (*iuris consensus*) and community of interest (*utilitatis communio*). I sought to show in this sub-section that built right into Scipio’s definition is the fact that a *res publica* is ongoing, it exists in time, it takes up (at least some of) the people’s time, and that it is plural by definition; it is a political society, a partnership in power which is held together not only by laws and institutions but also by the civic virtues of citizens.

This section of the chapter concluded with a consideration of what Scipio says about the different kinds of organisation a *populus* might take to maintain *res publica*. We saw that each of the three basic kinds, monarchy, aristocracy, and democracy, is perfectly capable of maintaining *res publica*; what matters, according to Scipio, is that the directing *consilium*, whether it is from one person, a few persons, or many persons, is connected to the original and particular cause which first bound *all* of those persons together in the *societas* of *res publica*. But Scipio saw certain qualities and certain deficiencies in each of the three basic kinds; each too easily degenerates into its vicious counterpart, the king turning into a tyrant, the aristocrats into oligarchs, and the people into a mob. What may halt the uncertain (and unfixed) cycle of sempiternal change is a non-basic kind of organisation, a judicious mixing or blending of the qualities of each of the three basic kinds: *potestas* (monarchy), *auctoritas* (aristocracy),

and *libertas* (democracy). What is required here, Scipio argues, is an equitable balance of rights, duties, and responsibilities, so that there is enough of each of these three qualities in the constitution, fitting to the specific circumstances of the people.

4.5.2 Laws and Institutions

We began the second section of this chapter with a consideration of the debate between Philus and Laelius in Book III of the *De Re Publica* regarding justice, with Philus playing devil's advocate arguing that the *res publica* cannot function without injustice, and Laelius arguing from the Stoic's account of natural law "the profound truth of the idea that *res publica* cannot possibly function without justice". Philus put forward the case that laws exist only by convention and that justice does not exist, or if it does, it is extremely stupid and self-harming, and that all the *res publicae* mentioned by Scipio earlier in their conversation are always vicious, comprising tyrants, factions, and/or licentious mobs, until through mutual fear and weakness the mixed form of organisation Scipio spoke of comes about as a kind of bargain. It is highly regrettable that most of Laelius's argument has not come down to us, but we do have his account of natural law which puts forward the case that justice exists by nature and that in the future this law will be universally recognised on earth. After account has been given by Laelius that *res publica* cannot exist without justice, the previous day's discussion is corrected, so that what Scipio had called flawed *res publicae* are understood to be no *res publicae* at all, since there is in none of them *res populi*.

We moved away from the *De Re Publica* in the second sub-section to consider Cicero's handling of the term *ius gentium*. I sought to show the reader here, through Nettleship's study, that it developed as a popular and a legal, rather than a philosophical, phrase, that no essential change to its meaning was made by Cicero, and that certain points of agreement and points of difference can be identified between it and the Stoic's account of natural law. *Ius gentium* refers to actual human conduct, observed everywhere on the planet by different peoples as right, whereas natural law is an ideal law, replete with metaphysical nuts and bolts, which may or may not pick out actual human conduct in the world but is in any case to be wished for. Cicero in the *Partitiones Oratoriae*

does in a sense bring the two strands of law close to each other when he says that it is prescribed by (unwritten) *ius naturale* such that (*quodam modo*) ‘our’ (written) laws and (unwritten) customs—the latter of which I take to include the *ius gentium*, the customs of history or *mos maiorum*—are preserved, indicating yet another inter-weaving of (Stoic) philosophy and history. I sought to articulate this within the Stoics’ framework by saying that these customs which have developed among different nations or peoples are based ultimately on right reason, with each nation’s or people’s internal development of this reason giving rise to virtue in their actions towards one another, whether in peacetime (commercial transactions) or wartime, but I also sought to show that the *ius gentium* itself is not *dependent* on the Stoic framework, since it is what natural reason *has* established in nature, across centuries, before and after the Stoics.

In the third sub-section, we considered some of Marcus’s arguments about natural law and his law-code for Rome as both are set out in the *De Legibus*. In Book I, Marcus frames his account of *lex* Ethically, and Ethics in turn is framed by a Stoicising account of *lex*, the *lex naturae*. Through this account, he provides an argument that all human beings share in reason, and so in right reason, and so in *lex* and *ius*, even as our reason “differs in the particulars of knowledge [and is] the same in the capacity to learn”; no person of any nation or people cannot attain to virtue with the aid of a guide. I sought to show in this section that laws for Cicero guide us towards virtue, that laws in turn are the result of *sapientes*, those delivering *honestas* in the world in their actions, and that Marcus’s law-code, in Asmis’s words, “shares in the guiding power of natural law”, prescribing middle *officia*, even as Marcus expected, drawing on the *sapientia* of his forebears as well as that of the philosophers, that what he had codified would have permanent validity for Roman citizens.

The fourth sub-section considered Cicero’s writings on *instituta*, on customary standards of social behaviour. *Instituta* differ from laws in always having a fundamentally customary aspect (even as custom is often a source of law), things which have been firmly established across generations and carry significant normative weight, whether written down or not; they often take the form of ‘unwritten rules.’ Regrettably, Book IV of the *De Re Publica* is very fragmentary, but we can see that the *instituta* discussed by Scipio and company included education, the regulation of adult male behaviour (especially of the

senatorial order), the theatre, and the office of the censor, all matters which directly bear upon the practices of human beings, practices which in turn affect the ongoingness of the *res publica*. Regulation of the senatorial order at Rome is an important institution because it is precisely those in charge who have the responsibilities for maintaining and developing the *instituta* and *mores* of the *civitas*, and I sought to show in this sub-section some of the difficulties, the paradoxical nature of these responsibilities, given that *libertas* itself is institutionalised. Innovation is frequent in a free society, and so whilst preserving the *instituta* and *mores* which keep that society free is essential, so is the *cultivation* and *renewal* of those *instituta* and *mores* to ensure that society keeps ‘going on’ in the world. But above all, I sought to show in this sub-section that it is those institutions which guarantee the possibility of deciding things through speech and persuasion rather than force and violence which should prevail, and that a key aspect of this involves institutionalising *auctoritas* and *consilium* which, as in Scipio’s account in the *De Re Publica*, are always connected to the original cause which brought all people together in the *societas* of *res publica*, and ensure the bonds of mutual trust and accountability are maintained in negotiations of power in political society.

4.5.3 Rector Rei Publicae

The final section of this chapter considered the ‘ideal’ qualities of the type of person who is entrusted by the people to bear and carry through the role of the *civitas*: what Cicero calls the *rector rei publicae*. In the first sub-section, we reviewed his explicit writings on this type of person, seen first of all in the voice of the character Antonius in the *De Oratore*, who was speaking about the sort of person who has brought his experience, knowledge, and energy to bear upon the guidance of *res publica*, and who defined this sort of person as one “who understands the means by which the well-being of *res publica* is achieved and increased, and can make use of those things”. Antonius also called such a person an “author of public policy”, showing that such a person holds and displays both *auctoritas* and *consilium*. Further qualities were seen in the *De Re Publica*, where Scipio said that this type of person is good (*boni*), wise (*sapiens*), and experienced about the interests and worth of the *civitas*, that they can be regarded as like a guardian (*tutor*) and manager (*procurator*) of the *res publica*, and should be called a guide (*rector*) and helmsman (*gubernator*) of the *civitas*.

This type of person is also a *prudens*, an understanding person able to guide citizens collectively through gentle instruction and touch, just like the mahout, and whose basic responsibility which encompasses virtually all his or her other responsibilities is that they never cease educating and observing themselves, offering themselves as a mirror to the citizens. The role of the *prudens*, as Ferrary argues, is to produce from the diversity and plurality of the citizens harmony and concord, “the best and tightest bond of safety in a *res publica*”, whilst of course retaining that diversity and plurality, since without it, there can be no harmony, only one note.

We moved on in the second sub-section to consider some of Cicero’s letters and speeches, as well as the *De Officiis*, in which he also sets out some of the qualities of a good statesperson, and my aim in this sub-section was twofold: to enrich our understanding of the ways in which the *rector* is *sapiens*, and to show that we may be justified, through these other writings of Cicero’s, in adding some more qualities to the *rector rei publicae*, understood as an ‘ideal-type’. Through a consideration of the *Pro Lege Manilia*, I argued that we might add to the *rector rei publicae* the following qualities: temperance (*temperantia*), faith (*fides*), inherent talent (*ingenium*) and general human decency (*humanitas*). Through a consideration of Cicero’s letter to Pompey following conclusion of the latter’s command against Mithridates, I argued that *magnitudo animi*, a lack of self-regard, a forgetfulness of one’s own advantage, is also a quality of the *rector rei publicae*, and that connected to this greatness of spirit in the *rector* is not only their own *prudencia* and *consilium*, but also the *prudencia* and *consilium* of others who share the *rector*’s concern for the *res publica*. Through a consideration of both the *Pro Marcello* and a couple of passages from the *De Officiis* on appropriate action in particular circumstances (*ex tempore officium*), I sought to enrich our understanding of the *sapientia* that Scipio says is a key quality of the *rector*. We saw in the *Pro Marcello* that it is a virtue completely free of fortune and residing in a human being, and Cicero spoke of Caesar’s *sapientia* in pardoning Marcellus in terms very reminiscent of the more practical sort as he had set out in the Prefaces to the *De Re Publica*: it is manifest through a human being establishing and working through laws and institutions, through *consilium*, not “somewhat truncated and incomplete” (pp.243-244) like the *sapientia* of philosophers in their cogitations or contemplations, and it works at

all times towards setting *res publica* on a sound footing, in full recognition “that we are not born for ourselves alone” (pp.232 and 381). In the *De Officiis*, we saw Cicero advising his son that protecting and nurturing this natural sociability, whilst of the very greatest importance, is nevertheless limited by moderation and modesty; there are some things simply beyond the pale which even a *sapiens* would not do to protect *res publica*, and indeed the *res publica* would not even ask the *sapiens* to do them for its sake. Killing tyrants, however, is not one of these things. Just like a doctor is occasionally forced to amputate a gangrenous limb to save the life of a human being, so the *rector* as *sapiens* applies riskier, double-edged remedies to save the life of the *res publica* when it is confronted with the dispositions and deeds of a tyrant. Again, the *rector* is always working to put the *res publica* on a sound footing, even in those rare and desperate situations when its survival is threatened. These are situations “from which we must seek an escape” back to *res publica*, to political society, and sober, honest recognition both of their reality on those rare occasions when they come about, as well as their theoretical possibility, it seems to me, should lead not only *rectores* (after acting appropriately on those occasions), but all of us, to ask, “how can our institutions make it less likely that [such moral] conflicts will happen to people”?²⁷³

The final sub-section of this chapter considered Scipio’s dream as he relayed it in Book VI of the *De Re Publica*, beginning with a consideration of the Elder Cato’s claim that Africanus used to say, ‘he was never less at leisure when he was at leisure, nor less alone than when he was alone’. We saw that Cicero took this to mean that, in his *otium*, Africanus’s thoughts were always occupied with *negotium*, with business, with matters of relevance, and we saw that Scipio in the *De Re Publica* took such loftier things in Physics as were investigated by the likes of Anaxagoras and Thales to be relevant for statespersons, providing a different, non-everyday view on public affairs—and this despite the impatience of Gaius Laelius Sapiens with such talk while the *res publica* was steeped in a crisis, there and then. Following a consideration of Zetzel’s commentary on a fascinating fragment from the Preface to Books III and IV of the *De Re Publica*

²⁷³ Walzer, *Arguing About War*. p.48; Martha Nussbaum, 1988. *The Fragility of Goodness*. Interview with Bill Moyers. Available online: <https://www.youtube.com/watch?v=tWfK1E4L--c&t=913s> Accessed 25th January 2021.

regarding the origins of civilisation, we turned to Scipio's dream, in which Africanus foretold him his career, that he would need to become dictator to save the *res publica* in 129 if he could escape the undutiful hands of those close to him, showed him the pure rationality of the *cosmos*, strengthening his spirit for the great tasks that lay ahead of him, spoke of the place where they were as that to which *rectores* return after fulfilling their *officia* on earth, and provided a (Platonic) rational demonstration of the immortality of the mind. But quite apart from the Physics of Scipio's dream, I sought to show in this sub-section the Ethical lessons it imparted: *rectores* are both *sapientes* and *prudentes*; they are alert, discern by sense, remember the past, are of and in the present, and have a care for the future; and whilst they make reasonable inferences about the obscure and wonderful things produced by academics, they are above all concerned with the *res publica*.

4.5.4 Concluding Remarks

What can Cicero's theoretical writings on res publica contribute to arguments in IPT related to exercising judgments in the world?

As in the previous chapter, I have sought to respond to this question by doing two things in the present one: developing some of the arguments made by scholars in the first two chapters at the same time as providing an account, necessarily incomplete, of Cicero's understanding of *res publica*, to show that it is of continuing relevance in IPT more broadly. As to the first matter, I argue that Cicero's theoretical writings on *res publica* contribute good reasons for and a deeper understanding of living the practical life of the citizen vis-à-vis the theoretical life of the philosopher, which we saw some scholars in the first chapter and Arendt in the second approaching and considering—and his account here is such that it contains no 'hierarchical structure' in terms of careers or ways of life and retains a deep appreciation of what philosophers contribute to humanity's endeavours. He also contributes a rich and fascinating account of the human condition in his theoretical writings on *res publica* which inter-weaves philosophy and history without collapsing them into each other, lending strong support to Devetak's and Arendt's historical modes of critique at the same time as holding on to philosophy and indeed "bringing [this] subject out from the shaded retreats of scholars not only into the sunlight and the dust of the real

world but right into the front lines of battle”, something that cannot be done well without eloquence, and which in turn requires education in the literary arts, the *studia humanitatis*.²⁷⁴ His constant focus upon ‘particulars’ rather than ‘universals’ whilst keeping ‘universals’ in mind, his rich account of *auctoritas* and *instituta*, his writings on both the natural law and *ius gentium*, and his account of the *rector rei publicae*, all, I argue, provide a necessary and important basis upon which not only to understand but also to develop the arguments about these same issues made by scholars highlighted in previous chapters such as Dallmayr, Walzer, Benhabib, Brown, Devetak and Arendt.

Arendt provided a necessary ground-clearing function in the second chapter in terms of clarifying the meaning of ‘tradition’ and some of the problems with ‘philosophy of history’. Her account of tradition as such has not been developed in chapters three and four because it is something Cicero took to be simply a matter of course; the testimonies of the ancestors—and especially the testimonies of *sapientes* of whatever kind—handed down from one generation to the next help us in exercising judgments in the world, and moreover, we need that help. Her account of philosophy of history has not been developed because it is something entirely absent from Cicero’s writings, and I argue that they are none the worse for it; his writings pave a way to a conception of politics as (partly) personal, without worrying about excavating ‘trends’ or ‘oppositions’ or ‘ideologies’ which are operating according to Hegelian dialectics behind the backs of actual human beings and only accessible to critical philosophers—in this I agree wholeheartedly with both Devetak and Arendt. Although my argument has been in this project that IP theorists would do well in holding a conception of politics which is (partly) personal, I hope to have shown in this chapter that politics is not *wholly* personal and indeed runs into some deep trouble when it is taken to be; that IP theorists also do well in considering its *institutional* aspects, and that republican institutions, an outstanding account of which we find in Cicero’s theoretical writings on politics, are incredibly important in maintaining public freedom, the *res publica*, in existence, where citizens are exercising judgments in the world and retain their own discretion in doing so. But I also hope to have shown in this chapter and the previous one that politics is not wholly institutional either, it is (partly) personal, and considering both these

²⁷⁴ *Leg.* 3.14.

chapters together, I cannot improve upon what Powell says as regards the *rector rei publicae*, the *optimis civis*, who is, *in potentia*, each one of us:

“Strive on.”²⁷⁵

²⁷⁵ Powell, ‘Cicero’s *De Re Publica* and the Virtues of the Statesman’. Nicgorski (ed.), *Cicero’s Practical Philosophy*. p.39.

Conclusions

Cicero Today: A Consideration through Benjamin Constant's *The Liberty of the Ancients Compared with That of the Moderns*.

It is customary in our time, when discussing the political thought of any figure from antiquity, to meet the challenge to its relevance posed by the oft-mentioned 'quarrel' between 'the ancients' and 'the moderns' at some point in the argument. It seems fitting to meet this challenge by way of concluding the project and to do so through a famous paper by a distinguished author, originally given as a lecture in 1819 at the Royal Athenaeum of Paris, which contributes much towards constructing the quarrel in the minds of many of its readers: Benjamin Constant's *The Liberty of the Ancients Compared with That of the Moderns*.¹ 'The liberty of the ancients' and 'the liberty of the moderns' is of course a very simple and striking dichotomy, and as we shall see, there are several of such dichotomies in Constant's paper which it seems he intends to fall into place behind it.² In relation to it, we may begin by noting the opinion of A.J. Carlyle in 1903 that Cicero's work is "the dividing line between the ancient Greek political ideas of Plato and Aristotle and modern political thought", as well as Charles H. McIlwain's in 1932 that "we are plainly in the presence of the beginnings of 'modern' political thought" in Cicero's treatises, with the influences of Stoic philosophy in them as well as the account of the *res publica* that he provides.³ One way of meeting the challenge, then, could be to argue that Cicero's work is of enduring relevance in IPT simply because he is a 'modern' political thinker (witness the presence he has in the work of so many

¹ Due to current restrictions, the two English translations of the paper that I have consulted are online: <https://oll.libertyfund.org/title/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819> (translator unknown, hereafter cited as Libertyfund) and <https://www.earlymoderntexts.com/assets/pdfs/constant1819.pdf> (translator: Jonathan Bennett, 2017, hereafter cited as Bennett). Accessed 24th June 2021. Differences in translation I regard as important enough to bring to the attention of the reader are either included in the main body of the text and separated by an oblique or mentioned in the footnotes (all in all, an awkward exercise which has stiffened my resolve to have better French).

² Wood, *Cicero's Social and Political Thought*. p.10. Here I go against the grain of, but still agree with, arguments such as Cartledge and Edge's that "Freedom is fundamentally a concept of degree, which is why [dichotomous] approaches such as Benjamin Constant's should be avoided." Paul Cartledge and Matt Edge, 2009. "Rights', Individuals, and Communities in Ancient Greece'. Ryan K. Balot (ed.), 2009. *A Companion to Greek and Roman Political Thought*. Wiley-Blackwell. p.158.

³ Wood, *Cicero's Social and Political Thought*. p.10.

political and legal thinkers in modernity, such as Grotius, Locke, Hume, Kant, and Vattel). But Neal Wood might be closer to the mark than Carlyle or McIlwain in arguing that Cicero's work "represents a new direction for social and political thought" when compared with that of his Greek predecessors, though it is perhaps better described as a "transition to" rather than 'the beginnings of' modern political thought as he is very much "ancient in values and viewpoint".⁴ If so, then we may still stand to benefit from considering how Cicero's treatises on politics hold up against Constant's arguments in *The Liberty of the Ancients Compared with That of the Moderns*.

As is widely known, distance between 'the ancients' and 'the moderns' increased in the seventeenth century in the works of figures such as Bacon, Descartes, Hobbes, Spinoza, and Locke. Ryan K. Balot argues that such thinkers:

"...aspired to create an utterly new, even utopian, vision of political order and human freedom. Their sanguine attitudes toward modern progress were based as much on faith in scientific and technological advancement as on the creation of new and supposedly more realistic political ideals. As noble as their ambitions may have been, however, the goal of 'routing the ancients', of eliminating classical political thought from the theoretical roadmap of modernity, is not a wise option. Whatever their shortcomings or mistakes, the ancient thinkers captured central truths about political psychology and about the social character of human beings."⁵

In this project, I have sought to show the reader the continuing relevance of Cicero's treatises on politics to International Political theorists holding a concern with real-world politics in late modernity, and that especially relevant in this regard is his use of the term *societas*. I have also sought to place a question mark in the reader's mind beside such notions as 'utter newness'. But whatever the aspirations, goals, and ambitions of early modern thinkers may have been, it seems to me that the question of whether Constant himself sought to 'rout the ancients' is an open one, and this is something I seek to show here in the conclusion to my project as I engage with the arguments in his paper as they relate to Cicero's treatises on politics.

⁴ Wood, *Cicero's Social and Political Thought*. p.10.

⁵ Ryan K. Balot (ed.), 2009. *A Companion to Greek and Roman Political Thought*. Wiley-Blackwell. p.5.

Constant gets to ‘the liberty of the ancients’ by first giving account of how moderns such as the English, French and Americans understand the word. ‘The liberty of the moderns’, he argues, consists in five *rights* that persons hold concerning (i) the rule of law; freedoms of (ii) speech, (iii) movement, and (iv) association; and (v) the “right to have/exercise some influence on the administration of the government”, later asserting that “the ancients had no notion of individual rights.”⁶ Such an outlook of course continues to be popular, but recent scholarship has questioned this latter claim. Atkins has carried out some interesting work in this respect:

“Why is it the case that, according to the prevailing accounts of the origin of the concept [of rights], when found in the writings of Hobbes or Ockham one can translate the word ‘*ius*’ as ‘a right’, whereas in Cicero or the Roman jurists such a rendering is forbidden? The key is the association of *ius* and *potestas*, of right and power, in the thought of the supposed innovators ... To have a power in this sense is to have the capacity to take some action or enjoy some good, which in turn entails the possession of a legitimate claim to this good or action ... Did the Romans possess the concept of rights outlined above? Despite the frequent assertions to the contrary, they did. In fact, there is an abundance of evidence to suggest that the concept of rights was an integral part of Roman law and politics.”⁷

We have already seen that every aspect of *potestas* was part of Rome’s *legal* discourse, and a good translation of the term is ‘the right [*ius*] to give orders’ (p.171); what makes it *ius* for any given public officeholder is the *consensus* of citizens. Moving from rights as powers to rights as claims, Atkins touches here upon the issue of legitimacy, which can be understood broadly as the conditions a government meets in possessing the *ius* to govern. Schofield argues that Scipio’s definition of *res publica* as *res populi* operates as “a criterion of legitimacy” of forms of government and that this is “a distinctively Roman and Ciceronian input into the theory of [*De Re Publica*]”, that is, distinctively Roman and Ciceronian if one is reading the text only as a source for the lost theories of his ancient (Greek) predecessors in political philosophy (not to mention for the

⁶ Bennett, 2017; Libertyfund. The assertion stands in some tension with another Constant makes later in the paper: “For ancient liberty, the danger was that men ... might under-value individual rights and benefits” (Bennett, 2017); “The danger of ancient liberty was that men ... might attach too little value to individual rights and enjoyments.” (Libertyfund)

⁷ Atkins, *Cicero on Politics*. Ch.4; Atkins, *Roman Political Thought*. Ch.2; see also Straumann, *Crisis and Constitutionalism*. For an argument that traces human rights back to figures such as Cicero and Seneca, see Richard A. Bauman, 1999. *Human Rights in Ancient Rome*. London: Routledge.

extant theories of his ancient and modern beneficiaries).⁸ For Schofield, the very notion of legitimacy presupposes “the ideas of (1) popular sovereignty and (2) government as something not necessarily undertaken by the people themselves. Otherwise, there is no body with rights relative to which the ruling power has to justify its legitimacy”.⁹ I agree with Schofield that it is with Scipio’s definition of *res publica* as *res populi*, the ‘property of a people’, and the associated understanding that a *populus* has rights over the management and use of its *res*, that we *first* find together in the historical record these two ideas. Cicero provides in the *De Re Publica*:

“...a lucid and original analysis of what makes government legitimate, and as simple and persuasive an explanation as one could hope to find of why an elected aristocracy of men of energy and judgment is the best way for a sovereign people to manage its affairs.”¹⁰

Supported by the analyses of scholars such as Schofield and Atkins, it seems very clear to me that Cicero’s treatises are of continuing relevance to researchers in IPT who are engaging in “the liberal discourse of rights” (p.47) and discourses of legitimacy more generally, though I have also argued in this project that it is a fundamental feature of the civic republican tradition that the power of a people (which is also to say of the assemblage of individuals who comprise it) is not *unlimited*, it is not without constraints on the political liberty of citizens—*potestas in populo auctoritas in senatu sit*—which ensure the ongoingness of its worldly condition. As Arendt recognised, this is an important issue—forms of government—to which modern liberals do not always pay sufficient attention. Constant speaks often in his paper as though authority in antiquity was always and everywhere held by an entire populace, and understood as such (“the authority of the group/community”; “the authority of the collective”; “the

⁸ Malcolm Schofield, 1995. ‘Cicero’s Definition of *Res Publica*’. Powell (ed.), *Cicero the Philosopher*. p.64. Emphases in original.

⁹ Malcolm Schofield, 1999. *Saving the City: Philosopher-kings and Other Classical Paradigms*. London: Routledge. p.193n5.

¹⁰ Schofield, *Cicero’s Definition of Res Publica*. p.82. This of course speaks to Cicero’s political theory of the mixed constitution (and as is well known, sovereignty is a term more fully conceptualised at later points in time by others). Historically speaking, the senatorial elite in the Roman republic was not a hereditary aristocracy “in the sense of a closed and legally defined group privileged by right of birth and descent”, Cicero being an obvious case in point. Even as there were some noble families in its ‘inner circle’, the senatorial elite at Rome was, as Holkeskamp says, an “aristocracy of office”: roughly speaking, statespersons competing for honours or prizes (often offices) conferred upon them by the people or their peers for virtuous actions taken in protecting *res publica*. Karl J. Holkeskamp, 2010. *Reconstructing the Roman Republic*. p.76.

authority of the social body”; “...the theory/assumption that society had complete authority over its members...”), but as I have shown in this project, the Roman understanding of *auctoritas* (authority, standing, influence, reputation) is as an inalienable quality of a *person*, the exercising of which takes the form of advice or guidance and certainly does not involve, as Constant argues, individuals’ “complete subjection”.¹¹ *Auctoritas* restricts or limits the political liberty (or as I have been calling it in this project, the public freedom) of citizens, if necessary, without ever removing or abolishing it. It is a quality which has a certain closeness to the virtue of *prudentia* (p.280n177), both involving a necessary connection in the present to the past with a care for the future, as well as *consilium*, ‘the necessary intelligence needed to guide a commonwealth’ (p.179n148), and I argued that it should be understood as a personal quality howsoever it is institutionalised in any polity. In a polity *auctoritas* slows or curbs, or better, *checks, potestas*, but equally, as Schofield points out, it is clear from the arguments in the *De Re Publica* that a people “*should have some such power [potestas], and that consequently a degree of political liberty is essential to a true res publica*”, it is a key aspect of its legitimacy.¹²

These are points of some import in relation to Constant’s paper. After emphasising rights in his account of the liberty of the moderns, he makes no mention of them at all in his initial description of the ancient understanding of liberty, which he says “consisted in carrying out collectively but directly many parts of the overall functions of government” (compare this with the fifth right of the moderns he lists), although later in the paper he does describe such benefits or enjoyments (*jouissances*), both in antiquity and modernity, in terms of “political rights”.¹³ Direct government and representative government is one of the dichotomies which seem to fall into place behind Constant’s ‘the liberty of the ancients’ and ‘the liberty of the moderns’. He argues that representative government was “totally unknown to the free nations of antiquity” and those

¹¹ Bennett, 2017; Libertyfund.

¹² Schofield, *Cicero’s Definition of Res Publica*. p.76. Emphasis added.

¹³ Bennett, 2017. Libertyfund translates the passage as “...exercising collectively, but directly, several parts of the complete sovereignty.” Atkins’ analysis of rights language in both ancient and early modern texts provides us with some clarity as to why Constant chooses often in his paper to speak not of the rights but of the *jouissances* of both the ancients and the moderns.

modern writers detecting traces of it amongst specific ancient peoples such as the Spartans or the Gauls are “wrong/mistaken.”¹⁴ But while he does go on to say that the role of the tribunes of the people in the Roman republic was representative “up to a point”, he claims that in general “ancient peoples couldn’t feel the need” for representative government, nor “appreciate its advantages.”¹⁵ With the *historical* inaccuracies of Constant’s generalisations about diverse and actual ancient peoples (unified as ‘the ancients’) we are not concerned here.¹⁶ Rather, the task at hand is to show through such generalisations the continuing relevance of Cicero’s treatises to IPT and to modern real-world politics. Regarding representative government, Constant argues that:

“[It] is a *modern* discovery, and you will see that the condition of the human race in antiquity made it impossible *then* for such an institution to be introduced or established ... [The representative system] is nothing but an organization by means of which a nation charges a few individuals to do what it can’t or doesn’t want to do itself. Poor men look after their own affairs; rich ones hire stewards. That is the story of ancient nations and modern nations. The representative system is a mandate/proxy given to a certain number of men by the mass of the people who want/wish their interests to be defended but don’t have the time to defend them constantly themselves. But, unless they are idiots, rich men who employ stewards keep a close and strict watch on whether they are doing their duty, making sure that they aren’t/lest they should prove negligent, corruptible, or incapable; and if they are prudent the landowners will judge how well their mandate/proxy is being carried out by staying well-informed about the affairs the stewards have been entrusted to carry out. In the same way, the people who resort to the representative system so as to enjoy the liberty that suits them, should/must exercise an active and constant surveillance over their representatives, and reserve for themselves the right—at times that aren’t too far apart—to discard them if they betray their trust, and to

¹⁴ Bennett, 2017; Libertyfund.

¹⁵ Bennett, 2017; Libertyfund.

¹⁶ For more detailed (and at times contending) historical accounts of government in the Roman republic, see for example: Fergus Millar, 1984. ‘The Political Character of the Classical Roman Republic, 200–151 BC’. *Journal of Roman Studies* 74. pp.1–19; Fergus Millar, 1986. ‘Politics, persuasion and the people before the Social War (150–90 BC)’. *Journal of Roman Studies* 76. pp.1–11; Robert Morstein-Marx, 2004. *Mass Oratory and Political Power in the Late Roman Republic*. Cambridge: Cambridge University Press; Karl J. Holkeskamp, 2010. *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research*. Princeton University Press; Valentina Arena, 2013. *Libertas and the Practice of Politics in the Late Roman Republic*. Cambridge: Cambridge University Press; van der Blom, Gray, and Steel (eds.), *Institutions and Ideology in Republican Rome*; Steel, *The End of the Roman Republic: Conquest and Crisis*.

revoke any powers they have abused/revoke the powers they might have abused.”¹⁷

With “the enormous enrichment of the private sphere through modern individualism” (p.189), it is perhaps understandable why Constant chooses to imply in this passage and elsewhere in the paper that ‘the ancients’ were poor and simple, whereas ‘the moderns’ are complex and rich. Perhaps less understandable is the assumption he seems to make here that *any* living person in their capacity as an agent can claim to be incorruptible (p.161). But putting these matters aside, it seems to me that Constant’s assertion that representative government is a ‘modern discovery’ is questionable. As Quentin Skinner has shown, the notion of representation in politics is present not only in Hobbes, but can be traced through the Renaissance, the Middle Ages and early Christianity, back to Cicero.¹⁸ And key here is his use of the term *persona*. In addition to the four-*personae* theory in the *De Officiis*, Cicero elsewhere observes that in certain situations an individual may take on the part—‘play the role’ or ‘bear the person’—of another, speaking and acting in their name.¹⁹ And we saw that it is the *officium* of a *magistrate* to bear and carry through (*gerere*) the role of the *civitas* itself.²⁰ All of which is to say that one can *represent* another person or entity, and that if Constant is correct that representative government is a ‘modern discovery’, then perhaps so is McIlwain (even if Wood’s articulation is better) about being in the presence of the beginnings of modern political thought in Cicero’s writings.

In his account of representative government, consider the verbs Constant uses in relating “the nation” or “mass of people” on the one hand to “a few individuals” or “certain number of men” on the other: the former *charges* or *entrusts* the latter with government as a duty or responsibility that it cannot or does not want to do (or meet or discharge or carry out) itself; “the representative system” is a mandate which the nation or people *gives* (i.e. freely transfers) to a

¹⁷ Bennett, 2017; Libertyfund. Emphases in original.

¹⁸ Skinner, *From Humanism to Hobbes*. Ch.2.

¹⁹ *Leg.* 2.48; *De Or.* 2.102.

²⁰ Schofield and Wood both translate the latter as the magistrate *representing* the *civitas*. Schofield, *Cicero’s Definition of Res Publica*. p.81; Wood, *Cicero’s Social and Political Thought*. p.135.

certain number of men in wanting their interests to be defended.²¹ Again, we can trace (nearly all of) this back to Cicero. Schofield comments on a relevant passage from the *De Re Publica*:

“...the *populus* may decide either to assume itself the direct management of its own affairs or to choose (*deligere*) others whom it will expect to manage them on its behalf and in its interest. If it takes the second option, it does not thereby throw away its rights and its freedom, since it is not *transferring* powers (although in the surviving portions of the text Cicero nowhere makes this point) but only *entrusting* itself to others.”²²

We have already seen the fundamental importance of mutual trust, *fides*, in Cicero’s treatises; it is a characteristic feature of Roman moral and political thought in general.²³ As E.M. Atkins says, it is the cement of the *res publica*, that which binds it together; “what matters is ... the strength of the relationships that enable individuals to cooperate in a common life” (p.233), whether those individuals are to be found in the people or the elite. As Scipio puts it (playing the role of a defender of aristocracy as an unmixed form of government), “if a free people chooses [*deliget*] the men to whom to entrust itself (and it will choose the best people if it wants to be safe), then surely the safety of the citizens is found in the *consilia* of the best men [*optimates*].”²⁴ Government Cicero says is like a guardianship and must be conducted in the interests not of those to whom management has been entrusted (*commissa*), but of those who have entrusted the management, and it is a special duty of magistrates to be “mindful of the things that have been entrusted to his good faith” (p.271). The legal connotations of *fides*, as Schofield argues, are absent in Cicero’s Greek predecessors in political philosophy.²⁵ But more to the point, they represent a very important link in the tradition that leads through Constant’s paper to the present and make Cicero’s treatises on politics of continuing relevance to researchers in IPT who are concerned with what Brown has called “the

²¹ Bennett, 2017.

²² Schofield, *Cicero’s Definition of Res Publica*. p.79, emphases in original; *Rep.* 1.42.

²³ Schofield, *Cicero’s Definition of Res Publica*. p.81.

²⁴ *Rep.* 1.51.

²⁵ Schofield, *Cicero’s Definition of Res Publica*. p.81; cf. Straumann, *Crisis and Constitutionalism*.

juridification of world politics”, at whatever level of analysis, and on whichever side of the debates.²⁶

The final dichotomy of Constant’s we shall consider concerns political participation. On his account, the ancients were engaged in “constant active participation in collective power”, whereas the moderns enjoy it only “momentarily”.²⁷ ‘The (poor and simple) ancients’ would have “languished under the weight of miserable/painful inaction if it hadn’t been for the constant exercise of political rights...”; exercise which would only bring about “trouble and fatigue” in the rich and complex moderns, not miserable inaction, their being “occupied” at all other moments with speculations, enterprises and other *jouissances* from which they desire to be “side-tracked/distracted” by politics “as seldom/little as possible”.²⁸ Again, the actual levels of political participation—and, for that matter, the other, non-political, *jouissances*—of citizens in ancient polities is a complex and controversial question of history which is unduly covered up if one sticks to Constant’s dichotomous arrangements.²⁹ And again, our concern is not with these activities in history but with how Cicero’s treatises on politics hold up against Constant’s claims. In the final chapter of this project, we considered Scipio’s definition of *res publica* as *res populi* and I construed it as a thing with which a given assemblage of individuals, all of whom comprise a people, are *occupied*; it takes up at least *some* of their time. *How much* time of course we are not told in the *De Re Publica* and I regard this as one of the great strengths of the treatise which makes it of enduring relevance; it is up to those associating, including those doing so within systems of representative government, to adjust the time they spend on political participation to “the liberty that suits” them.³⁰

In his paper, it seems that Constant sometimes understands “the liberty that suits the moderns” as being one which ‘sacralises’ individual independence; it is

²⁶ Chris Brown, 2019. *Understanding International Relations*. Fifth Edition. London: Palgrave MacMillan.

²⁷ Bennett, 2017; Libertyfund.

²⁸ Bennett, 2017; Libertyfund. This stands in some tension with Constant’s argument that the moderns “must exercise an active and constant surveillance over their representatives.”

²⁹ For the Roman republic, see references in note 16.

³⁰ Bennett, 2017; Libertyfund.

something which he says ‘the ancients’ “sacrificed ... in order to keep their political rights.”³¹ The moderns are “far more attached” to individual independence than the ancients, it is their “first need”, which entails that “they should never be asked to make sacrifices in order to establish political liberty”.³² I believe the language of sacrifice, although certainly powerful, is unhelpfully distracting in this context. And quite apart from its religious connotations, it unduly buttresses Constant’s dichotomous approach to liberty. To sacrifice something is to *give up* (relinquish, abandon) something valued for the sake of *other* considerations, whereas it is far from clear that individual independence or individual liberty can be so finally divorced from political rights or political liberty that ‘sacrifice’ could be an appropriate term in describing it. These qualities are mutually and intimately involved, as Constant himself makes clear enough elsewhere in his paper. I hope to have shown the reader in the third chapter of this project, in discussing the virtue of *decorum*, that one of the reasons why Cicero is of continuing relevance to IPT is precisely that he accounts for this mutual involvement in the four-*personae* theory. What Constant calls here individual independence, Gill referred to as personal individuality or personality, a quality the development of which Cicero places real value upon in the *De Officiis*—it is not ‘sacrificed’ or ‘given up’—*at the same time as* holding that there is no purely private virtue; infinitely diverse individuals are members of *societates* and all virtue has a social orientation.

Constant also argues that “none of the numerous and over-praised institutions which hindered individual liberty in the ancient republics is admissible in modern times.”³³ The two institutions he discusses in the paper which he regards as over-praised in his time are “Athenian ostracism” and “Roman censorship”, the latter

³¹ Bennett, 2017. Libertyfund translates: “...sacrificed ... to their political rights...”. Cf. Mill’s view that “In the ancient world ... there might be, and often was, great individual or local independence...”. R.B. McCallum (ed.), 1948. *On Liberty and Considerations on Representative Government*, by *J.S. Mill*. Oxford: Blackwell. p.113. Constant’s exception to the rule of the ancients sacrificing their individual independence to their political rights is the ancient Athenians, of whom, however, “Finally, we shall be struck by their *excessive* love of individual independence.” Bennett, 2017; Libertyfund. Emphasis added.

³² Bennett, 2017. Libertyfund translates: “...one must never require from them any sacrifices to establish political liberty”.

³³ Bennett, 2017.

of which is more relevant to the task at hand.³⁴ Even whilst many of the arguments he was opposing at the time would have been reactionary and so his own argument would have been shaped accordingly, I think it is still important for us to note that in this argument he appears to squeeze ‘the (poor and simple) ancients’ and ‘the (rich and complex) moderns’ into the history of the Roman republic. He describes two Roman republics: (i) “a republic that had very simple *moeurs* because that’s all they could afford”, in which the censors had greater influence than they had later on (yet were themselves subjected to “a kind of moral surveillance exercised over them”, although Constant does not say by whom); and (ii) a republic increased in “size, the complexity of social relations, and the refinements of civilization”, including prosperity, in which the office itself had degenerated. Constant concludes from his account that “censorship hadn’t created the good *moeurs*; rather, the simplicity of the *moeurs* gave censorship its power and effectiveness.”³⁵ Without getting into disputes about the history and the *mores* of the Roman republic—again, complex and controversial matters; the reader may wish to investigate them at their own leisure—I hope to have shown in the final chapter of this project through Cicero’s treatises on politics that *instituta* and *mores* are things *established* across generations. Regarding the office of censorship, in Zetzel’s words, it was “a public mechanism for the *reinforcement* of moral standards”, not their creation, and moreover, it was a mechanism which was inactive to the extent that citizens (and it is worth reminding the reader that it was mainly adult male citizens, especially those in the senatorial elite, who drew the “searching eye of the censors”) *self-regulated* through their *verecundia*.³⁶

Notwithstanding the shape of the arguments of his opponents which in turn shaped his own, it seems clear to me from Constant’s peroration in this paper that he is, in the final analysis, an advocate of political liberty, republican institutions, and the moral education of citizens:

³⁴ Bennett, 2017; Libertyfund. It is difficult to fault Constant’s reasoning as regards Athenian ostracism (roughly: it should happen in modern times only through the courts), except when he concludes that “the public good ... resides only in respect for the laws, in the observance of forms, and in the maintenance of safeguards.” It is unclear to me what is meant by observance of ‘forms’, if not *mores* which, as I argued in the final chapter of this project, can but need not be idealised.

³⁵ Bennett, 2017. Libertyfund: “...kept by poverty to an extremely simple moral code...”.

³⁶ Bennett, 2017; Zetzel, *Citizen and Commonwealth*. p.90. Emphasis added.

“...far from renouncing either of the two sorts of freedom I have described, it is necessary (I repeat) for us to learn to combine the two. As the famous author of *History of the Republics in the Middle Ages* [Sismondi] says, institutions must accomplish the destiny of the human race; they can best achieve their aim if they raise the largest possible number of citizens to the highest moral position. The work of the legislator is not complete when he has simply brought peace to the people. Even when the populace is satisfied, there is much left to do. Institutions must carry out the moral education of citizens. By respecting their individual rights, securing their independence, refraining from troubling their work, institutions must nevertheless dedicate themselves to influencing public affairs, calling on the people to contribute to the exercise of power through their decisions and their votes, guaranteeing their right of control and supervision through the expression of their opinions, and by shaping them up through the exercise of these high functions, give them both the desire and the power to perform them.”³⁷

Constant recognises that it is a key aspect of the legitimacy of the *res publica* that citizens have a degree of political liberty, as it is political liberty which *guarantees* individual liberty—what I have been calling in this project ‘public freedom’ and ‘inner freedom’, respectively—and he says the moderns may be led (by their private *jouissances*?) to neglect these guarantees, “sometimes too much, and always wrongly.”³⁸ He also understands that institutions, including those involved in the moral education of citizens, are fundamentally important in ensuring the successful performance of *officia*. As such, it seems to me that Constant himself, in no small part responsible for constructing the ‘quarrel’ between ‘the ancients’ and ‘the moderns’, provides strong evidence for the continuing relevance of Cicero’s treatises on politics to IPT and to modern real-world politics.

³⁷ Bennett, 2017. Libertyfund: “...far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together. Institutions, says the famous author of the history of the republics in the Middle Ages, must accomplish the destiny of the human race; they can best achieve their aim if they elevate the largest possible number of citizens to the highest moral position. The work of the legislator is not complete when he has simply brought peace to the people. Even when the people are satisfied, there is much left to do. Institutions must achieve the moral education of the citizens. By respecting their individual rights, securing their independence, refraining from troubling their work, they must nevertheless consecrate their influence over public affairs, call them to contribute by their votes to the exercise of power, grant them a right of control and supervision by expressing their opinions; and, by forming them through practice for these elevated functions, give them both the desire and the right to discharge these.”

³⁸ Bennett, 2017.

What can Cicero's theoretical writings on politics contribute to arguments in IPT related to exercising judgments in the world?

The Conduct of Persons

In conceiving of politics as (partly) personal in this project, I have provided an account of Cicero's framework of civic virtues which I hope encourages in the studies and research of International Political theorists a consideration of the conduct of persons in political societies, and I argue that this framework is well-suited to 'communitarians' and 'cosmopolitans', 'republicans' and 'liberals', alike, who hold such a conception of politics. Cicero has always been an important source for each of these strands of thought, whether they are construed as -isms or traditions; he provides an incredibly rich account of political life which is of great benefit to both 'sides' of the scholarly debates, at the same time as encouraging readers to keep thinking for themselves and keep exercising judgments in the world.

I began the first chapter with a review of some of the work of cosmopolitan theorist Richard Beardsworth, highlighting his account of critical philosophy as ethical—it is concerned in one way or another to promote better human relations. In his critique of Arendt (through Owens) and defence of Habermas, Beardsworth evinces a strong engagement with “the liberal discourse of rights”, but in holding critical philosophy as “the force of thought pitched against other more determined forces”, his ethical approach it seems to me remains somewhat unclear (there being no sustained engagement with the civic virtues elsewhere in his work) (pp.46-47). Another cosmopolitan theorist, Seyla Benhabib, stands in a Kantian morally constructivist tradition in which the cosmopolitan norms and principles she puts forward “create a universe of meaning, values and social relations that had not existed before”, evincing in her approach a concern for ontological or ‘meta-normative’ foundations. Drawing upon Derrida's work, Benhabib also provides a theory of democratic iterations which addresses how one might mediate between cosmopolitan norms and the will of democratic peoples or majorities through iterating and/or re-iterating that democracy's existing norms, but she acknowledges that such ‘jurisgenerative processes’ may be ‘jurispathic’ and, following both Habermas and Derrida, seems to have an aversion to any ethical approach which considers

the content of the capacities—the virtues—of those iterating which would prevent jurisprudential processes from occurring.

Richard Devetak's work suggests a trend in IPT towards historical rather than philosophical critique, holding a more contextualist outlook which is critical of universalist impositions made by critical philosophers. He recovers this mode of critique through some revisionist historiographies of the Enlightenment which emphasise a more civil and jurisprudential than 'metaphysical' movement in the eighteenth century, traceable to the development of the *studia humanitatis* and *ars historica* during the Renaissance which evinced "a practical engagement with public affairs guided by the ethical imperative of civility" (p.65). Devetak notes Cicero as the key figure in this revival, but as his focus is upon challenging the prevailing accounts of 'theory' and what counts as 'critical' in IPT, a close engagement with Cicero's treatises in this regard remains missing in the field and I hope this project goes some way towards addressing the lacuna.

Although still marginalised in favour of rules-based approaches, another trend in IPT identified in the first chapter is a move towards the person-centred approach often referred to as virtue ethics. Noting Kant's concern with the virtues and Cicero's influence upon his writings, I moved on to consider various accounts in IPT and neighbouring fields which are rooted in the philosophy of Aristotle who, whilst remaining a fundamental source for this ethical approach, did not have the benefit of reading the Hellenistic philosophers such as Antiochus or the Stoics, nor the practical experience of statesmanship, both of which Cicero had, and I argue that this makes the latter's treatises an excellent, distinctive and very useful contribution to ethics and politics both practical and theoretical, consideration of which International Political theorists holding a conception of politics as (partly) personal will derive huge benefit.

Pace Aristotle, and in line with the 'Roman turn' in political theory identified by Kapust and Remer (p.33), it is a Roman account of the virtues which I have set out in this project, providing *inter alia* a response to Norval's question of Habermas's account of civil society: "what are the virtues associated with these functions [of citizens]?" (p.74). Springing from Cicero's account is a fundamentally *sociable* outlook. Human beings are driven by the power of reason to seek out fellow humans and form natural communities. This gives rise to

officia, actions appropriate to being naturally sociable, duties to others, and Cicero provides in the *De Officiis* excellent advice on these duties to others which nurture and cultivate this sociability. The supreme and the most widespread virtue in this respect is justice, to which he fixes *fides*—keeping faith with fellows—as a *fundamentum* (the legal connotations of which we have seen is a distinctively Roman contribution) and connects *beneficentia* as well as *liberalitas*, acts of kindness which promote fellowship, and the latter of which we saw Dallmayr in the first chapter connecting to the political liberal’s principle of justice: tolerance (p.93). According to Cicero, the first office of ‘justice simply’ is that no person should harm another unless provoked by injustice, and the second that one should treat common goods as common and private ones as one’s own. Injustice is that which damages *societas* and works against our sociability; the positive type is inflicting injury without provocation and the negative type is failing to look out for those whom one ought to be protecting. *Beneficia* should accord with the two offices of justice, harming no one and treating common goods as common and private ones as one’s own. Diverse individuals with different talents and capacities mutually exchanging *officia* and contributing to communal utility—that which benefits all together—bind fast human society and connection. Cicero’s account of our natural sociability and the virtue of justice, I argue, answers Dallmayr’s concern about laissez-faire forms of liberalism, in which he acknowledged the wish of early liberals rebelling against absolutism and mercantilism to open a space for free initiative, “but surely not a space outside civil and legal bonds” (p.92).

Justice is the supreme social virtue for Cicero, but it is wisdom, *sapientia*, which delivers the *honestas* in the world, either through words and learning, or institutions and laws, or both. Entirely free of *fortuna*, it is the virtue of *sapientia* involved in the perception of truth and which provides a correct understanding of the world, allowing *prudentia* to make the right practical choices about what to pursue and what to avoid, at the same time as providing knowledge of the sociability and fellowship of gods and human beings with each other such that the *officia* deriving from justice are seen also to be of the greatest importance (for the Stoics, God is synonymous with reason and the universe). Kelsay in the first chapter touched upon how prudence is connected to the other virtues, and it is when discussing wisdom and prudence in the *De*

Officiis that Cicero says they are all bound together and inter-woven. Indeed, the whole text provides a very rich account of this binding and inter-weaving which I commend highly to international political theorists. A broader sense than certain Greek philosophical accounts of *sophia* is to be found in the *De Re Publica* and elsewhere in Cicero's writings of *sapientia*, such that he attributes it to both philosophers and non-philosophers. His account of this virtue, and of course *prudentia* as well, built into the very language with which he speaks, is always oriented to the world, bringing *honestas* into it and leery of those philosophers whose excessive devotion to contemplation leads to the negative type of injustice. Morgenthau called prudence "the supreme virtue in politics" (p.85) and Cicero's writings on it, including those linking it to justice in the *De Officiis*, are above all those of a statesman, and as such, are an invaluable resource for international political theorists. And I hope also to have shown in the final chapter that his writings on *sapientia* are worth their close consideration as well.

The third virtue, *magnitudo animi*, signifies greatness of spirit in a person; one who disdains external things and holds as true nothing except that which is *honestas* should be pursued. Such a person in taking charge of public affairs rises above partisan politics to take care of the whole *res publica*, is brave (*fortis*) in the face of adversity, undertakes with vigour perilous tasks which present themselves in public life and performs great deeds in the face of them, yielding neither to *fortuna*, any agitations of the spirit, nor indeed to any other human being. This latter suggests a certain risk inhering in *magnitudo animi* if it is disconnected from the other virtues; it could result in its holder slipping into a dangerous desire for pre-eminence and glory which is potentially ruinous of a *civitas*, so Cicero works in the *De Officiis* to connect it closely to virtues and qualities such as *sapientia*, *prudentia* and *consilium*, and emphasises the *libertas* to which end persons of *magnitudo animi* ought to be devoted. Kelsay does touch upon fortitude in relation to prudence, but I have seen no sustained discussion of the virtue of *magnitudo animi* in IPT more generally. It is a quality seen in citizens, soldiers, generals, and statespersons, and again, I argue that Cicero provides an excellent account of it in the *De Officiis* and elsewhere which deserves the attention of international political theorists.

A person of *magnitudo animi* does not yield to agitations of the spirit, and the virtue of *decorum* brings about their calming, with improper and unsociable impulses yielding to the power of reason which moderates them. Appearing under this virtue is also a socially sensitive kind of shame/respect or modesty, *verecundia*; a sense which looks both to the self and to the other, able to imagine how the other sees the self, managing impressions accordingly and thereby strengthening social cohesion. *Decorum* is associated with virtue in general ('what is *decorum* is *honestum*, and what is *honestum* is *decorum*'), is one of the four parts of *honestas* itself, and it includes the qualities of moderation, temperance, modesty, due measure in all things, and (one of its aesthetic aspects) giving the appearance of a free person; a style of freedom which sustains freedom's worldly condition, the building up of *societas*.

Included in Cicero's account of *decorum* is the four-*personae* theory, which identifies four roles that we unavoidably take on as ethical, social, and political beings. It has a simultaneous concern for the 'universal' and 'particular' aspects of being human, with the first *persona* being common to us all as sharers in reason and speech, and from which derives everything *honestum* and *decorum* and a way of figuring out our *officia*. We are also 'dressed' by nature with a second *persona* which is unique to us as individuals and the development and flourishing of which, whilst holding on to what is *honestum* and not what is vicious, Cicero positively encourages that we might more easily maintain *decorum*. The third *persona* is taken on by what *fortuna*, what changing circumstances bring, the virtuous person using such circumstances in which they find themselves in deciding how to act appropriately, and the fourth *persona* is that which is of our own design, the one arising from our own volition, our career, our way of life.

Arendt spoke of this virtue simply as moderation, and in pairing it with insight (prudence), she said together they were "the two highest virtues of the statesman" (p.166). I linked the discussion of *decorum* in the third chapter back to Dallmayr's comments about "the motivating force of human inclination"—it is the virtue which disciplines or controls the spirit (*animus*)—and again Kelsay referred to it as the virtue of temperance in his discussion of prudence. But with the honourable exception here and there in the field, the virtue of *decorum* I find is another one not discussed in IPT, and as above, I suggest here to the

reader that a change would be good.³⁹ As Daniel Deudney says in concluding the edited collection of essays, *Institutional Cosmopolitanism*, “the early cosmopolitan Stoic emphasis on self-discipline ... may be ripe for revival and relevance”, and what better place to start than with Cicero?⁴⁰

Res Publica

As with the civic virtues, I have provided in this project an account of Cicero’s framework concerning *res publica* which is very well-suited to international political theorists holding a conception of politics which is (partly) personal, whatever side of current scholarly debates they are standing. We began the final chapter still discussing the practical life of the citizen, but in a less personal and more institutional context: *res publica*. In the Prefaces to *De Re Publica*, Cicero provides a very strong defence of living the practical life of the citizen against philosophers such as the Epicureans who argued that retreating from the world was the key to happiness. Without those who are leading *res publicae* through their *consilium* and *auctoritas*, establishing and strengthening *ius* and virtue through education, *mores* and laws, the philosophers would have no corners at all, the Epicureans no garden, in which to talk through and through the things that interested them (including the things those persons are achieving in deeds rather than words). Benjamin Constant makes a similar defence of the practical life of the citizen in saying that when ‘the moderns’ neglect the *guarantees* of their individual liberty, it is *always wrongly* that they do so. As I sought at the start of these conclusions to question Constant’s dichotomous approach to liberty, so I have sought in this project through a consideration of Cicero’s writings to question the dichotomous arrangement that pitches ‘civic republicans’ against ‘liberals’.

In the first chapter, we saw Brown arguing that notions of civil society and republican virtue are opposed to one another in principle, and we also saw Norval’s work in seeking the development of civic virtues in civil society. In the

³⁹ Some discussion of the virtue can be found in Andrew Linklater, 2016. *Violence, Civilization, and the Western States-System*. Cambridge: Cambridge University Press.

⁴⁰ Daniel Deudney, 2018. ‘All Together Now: Geography, the Three Cosmopolitanisms, and Planetary Earth’. Luis Cabrera (ed.), 2018. *Institutional Cosmopolitanism*. Oxford: Oxford University Press. p.276.

third chapter, I quoted a passage from the *De Officiis* where Cicero distinguishes clearly between the *officia* of magistrates and the *officia* of private citizens and noted the similarities between the latter and some contemporary accounts of civil society. I maintain that Norval is indeed working along the right lines in seeking the development of civic virtues in civil society and that most modern liberals are not anarchists and have therefore not abandoned the idea of managed consensus. We also saw in the first chapter that both Dallmayr and Walzer support a managed consensus; they acknowledge the benefits of constitutional constraints on democratic decision-making.

In the final chapter, we considered the *De Re Publica* in this regard. *Res publica res populi* says Scipio, and a *populus* is an assemblage of individuals of some size associated with one another through *iuris consensus* and *utilitatis communio*. It is something different to a *polis*, which has senses of both *urbs* and *civitas*. *Civitas* Scipio described as *constitutio populi*, the organisation of the people, and we reviewed different forms of government in this regard as he set them out, unmixed and mixed. Again, none of these forms of government is *res publica*, which is *res populi*. Whilst Scipio and his interlocutors (and Cicero) seem not best disposed towards a purely democratic form of government, it is still very much included in the framework, and so radical democrats (such as Norval) I argue still have much to gain from a consideration of the text. As noted above, included in the definition is the term *sociatus*, ‘associated’, meaning that *res publica* is plural by definition; it is a partnership in power. I have provided in this project an account of the Latin term *societas* with the intention of questioning the modern tendency, evident in scholars’ arguments across the first two chapters, to conceive of society as ‘massifying’. With a deeper understanding of the term itself—in its broadest sense, it is simply an agreement between *persons* to contribute their resources towards a shared endeavour—we can see that a conception of self-reliance (something that Norval through Habermas sought to preserve in the concept of aversion to society) is wholly compatible with it.

Cicero’s writings on the civil and legal bonds of which Dallmayr spoke I sought to show in the final chapter through a discussion of laws and institutions. It is a fundamentally practical project that is underway in the *De Legibus*, and Ethics is very much in the foreground; the whole point of the law-code is to preserve and

protect *res publica*, to ensure the safety of citizens and further virtuous conduct. We also saw in the first chapter Dallmayr's history of the *ius gentium* and how in modernity it has been "increasingly strapped into the dilemmas of Cartesian and post-Cartesian thought" such that it is often reduced almost completely to natural law (p.99). Whilst scholars such as Atkins and Straumann appear to be quite close to regarding the *ius gentium* and natural law as equivalent, I argued in the final chapter that the natural law arguments upon which Marcus relied in writing his law-code are not identical to *ius gentium*; the former is an ideal law, it is right reason, whereas the latter is what natural reason has *established* across time, 'the usage of the world, of all mankind', a mixture of custom and a kind of common consent of human beings which is distinct from philosophical argument, even as both may sometimes overlap. But whatever the case, I hope to have made it clear across the third and fourth chapters of this project that Cicero's writings on the *ius gentium* are of continuing relevance to researchers in IPT focusing upon the just war tradition/just war theory and international law.

Instituta in Cicero's writings are customary standards of social behaviour which strengthen *mores*, customary practices, which ought to be accomplished, in addition to laws, on the authority of *res publica*. Preserving, maintaining, and renewing *instituta* is a key and complex responsibility of statespersons, those persons in a duly constituted *res publica* vested with the *potestas* to be making high-level decisions on behalf of peoples. Given the complexities of statespersons' responsibilities, I sought in the final section of the final chapter of this project to set out an account of Cicero's writings on *rector rei publicae*, an 'ideal-type'. The *rector* is antithesis of the tyrant: good, wise, prudent, experienced in the interests of *res publica*, and always aiming at the security and happiness of the lives of the citizens. Through Cicero's communications with Caesar, Pompey, the Roman people, and his son Marcus, I also sought to add some qualities to the *rector* and provide a deeper understanding of the *sapientia* already listed by Scipio. I argued that we might be justified in adding the qualities of temperance (*temperantia*), keeping faith with fellows (*fides*), inherent talent (*ingenium*), general human decency (*humanitas*), greatness of spirit (*magnitudo animi*), authority (*auctoritas*), and deliberative responsibility (*consilium*). Through the *Pro Marcello*, I sought to show that the *sapientia* of the

rector is entirely free of *fortuna*, of the kind that establishes and works through *instituta* (without thereby devaluing the kind that works through words and learning), which is also to say of the kind that works always at placing the *res publica* on a sound footing. And through the *De Officiis*, I sought to show that while *ex tempore officia* may lead the *rector* to take drastic actions in desperate situations, there is nevertheless a limit placed on these actions by *moderatio* and *modestia* (a limit the *rector* knows as *rector*). Acknowledging the foregrounding of Physics again in Scipio's dream at the end of the *De Re Publica*, I sought nevertheless to draw out for the reader the Ethical lessons contained in it: that the *rector* is a *sapiens* in the sense that they are of-and-in-the-world, and a *prudens* in the sense that they discern by sense, looking to the past, present and future in acting. Cicero's account of the *rector rei publicae* and his writings on the role of the statesperson more generally, I argue, is an invaluable resource for scholars in IPT who focus upon this aspect of world politics. For example, it provides a more rounded account of the statesperson than those realists mentioned in the first chapter who focus only upon *phronesis/prudentia*, placing it in a larger framework of (Roman) civic virtue.

The main theme of this project, exercising judgments in the world, I hope has held for the reader as they have passed through the different idioms used in the chapters. Bringing the language of virtue to a field in which it is currently marginalised is no easy task, and in addition to the arguments addressed in the chapters themselves, I hope the reader has also seen a transition to this different way of speaking about politics, a way which I maintain is still deeply meaningful, both in the academy and beyond. As one of his famous admirers put it:

“Reading [Cicero's] works elevates the heart no less than the mind ... He deserves the title of philosopher no less than Roman orator ... He is the first, among the Romans, who rescued philosophy from the hands of scholars, and freed it from the confusion of a foreign language. He made it common to all men, like reason, and, in the commendations that he received from them, men of letters found themselves in accord with the people ... One notices, in his moral works, an air of gaiety and a certain contentment of mind that mediocre philosophers

do not know. He does not give precepts; but he makes them felt. He does not exhort to virtue; but he attracts to it.”⁴¹

While I think Cicero certainly deserves the largest possible readership in this regard, my aim in this project has been somewhat closer than that. In summary, I argue that his theoretical writings on politics contribute to arguments in IPT related to exercising judgments in the world a sound and solid framework for scholars making these arguments holding a conception of politics as (partly) personal, a contribution which could even perhaps be articulated in a single word: *mores*. In venturing to respond to a question the editors of the Oxford Handbook asked of its contributors:

“...how does IPT connect with real-world politics? In particular, how does it engage with real-world problems, and position itself in relation to the practices of real-world politics?”⁴²

I argue that international political theorists should connect, engage, and position themselves in relation to the practices of real-world politics through Cicero’s treatises, supported by the large body of secondary literature awaiting their attention and consideration.

Epilogue

In the first chapter, Brown (p.80) rightly warned against the ever-present danger of *hubris*, and I tempted fate by saying that this danger should not and anyway cannot prevent *praxis* altogether. An investigation into Cicero’s careful handling of tragedy (both Greek and Roman) would have been a different project altogether and beyond my own capabilities, but I think Zetzel is certainly right that “it may not be a coincidence that both Crassus in the *De Oratore* and Scipio in *De Re Publica* die before achieving their goals”.⁴³

We have good reason to hesitate, I think, over Devetak’s suggestion (p.62) that “mastery” of the *studia humanitatis* is a possibility, and good reason to be doubtful of Arendt’s (p.154) that one may “achieve” *humanitas*. It seems to me

⁴¹ Montesquieu, 2002 (c.1717). ‘Discourse on Cicero’. Translated by David Fott. *Political Theory* 30(5). pp.733–737.

⁴² Brown and Eckersley, *Oxford Handbook of IPT*. p.4.

⁴³ Zetzel, *Citizen and Commonwealth*. p.97.

that avoiding *hubris*, insofar as it is possible, means always learning (so Arendt was much closer to the mark in saying that *humanitas* is something one *acquires*), and to this end, we could do a lot worse than take to heart the words of Prof. T.P. Wiseman:

“We need to read Cicero’s lesson; Caesar’s is all too familiar.”⁴⁴

⁴⁴ T.P. Wiseman, 1990. ‘The Necessary Lesson’. *Times Literary Supplement* (June 15th – 21st). p.647.

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