Rethinking Agency & Responsibility
In Contemporary International Political Theory

Thesis by

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SIGNED DECLARATION

I confirm that all of the work presented in this thesis is my own.

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ABSTRACT

The core argument of this work is that the individualist conceptions of agency and responsibility inherent in the contemporary ethical structure of international relations are highly problematic, serve political purposes which are often unacknowledged, and have led to the establishment of an international institutional regime which is limited in the kind of justice it can bring to international affairs. Cosmopolitan liberalism has led to the privileging of the discourse of rights over that of responsibility, through its emphasis on legality and the role of the individual as the agent and subject of ethics; this has culminated in the establishment of the International Criminal Court (ICC). The ICC, described by its supporters as the missing link in human rights enforcement, is a result of changing conceptions of agency and responsibility beyond borders – normative discourse has moved from state to individual, from politics and ethics to law, and from peace to justice, but I argue that it has not yet moved beyond the dichotomy of cosmopolitan and communitarian thinking. I contend that neither of these two positions can offer us a satisfactory way forward, so new thinking is required. The core of the thesis therefore explores alternative views of agency and responsibility – concepts which are central to international political theory, but not systematically theorized within the discipline. I outline models of agency as sociality and responsibility as a social practice, arguing that these models both better describe the way we talk about and experience our social lives, and also offer significant possibilities to broaden the scope of international justice and enable human flourishing. I end the research by considering the implications of these more nuanced accounts of agency and responsibility for ongoing theorising and practice.

CONTENTS

PART TWO

CHAPTER 1: AGENCY, RESPONSIBILITY AND INTERNATIONAL RELATIONS

The concept of responsibility is gaining political currency in contemporary international relations. After fifty years of focus on individual rights, politicians from left and right, international institutions, NGOs and powerful economic actors are starting to talk about social obligations and community. Bill Clinton, Tony Blair and George W Bush all fought their first election campaigns as party leaders on issues of responsibility. When Clinton launched his 1991-92 Presidential campaign he expressed his position as follows:

> The Reagan-Bush years have exalted private gain over public obligation, special interest over the common good, wealth and fame over work and family. The 1980s ushered in a gilded age of greed and selfishness, of irresponsibility and excess, and of neglect … To turn America around, we've got to have a new approach, founded on our most sacred principles as a nation, with a vision for the future. We need a new covenant, a solemn agreement between the people and their government to provide opportunity for everybody, inspire responsibility throughout our society and restore a sense of community to our great nation. (Clinton, 1991)

After winning the Presidency, he stated in his inaugural address that: '[w]e must do what America does best: offer more opportunity to all and demand responsibility from all. Let us all take more responsibility, not only for ourselves and our families but for our communities and our country' (Clinton, 1993). Fellow adherent to the 'Third Way', Tony Blair, has made responsibility a feature of his politics throughout his premiership. In his first speech as Prime Minister to the Labour Party conference, Blair declared: 'A decent society is not based on rights; it is based on duty....Our duty to one another...To all should be given opportunity; from all, responsibility demanded' (Blair, 1997). In 2000, he addressed the Global Ethics Foundation and argued that:

> … you can't build a community on opportunity or rights alone. They need to be matched by responsibility and duty. That is the bargain or covenant at the heart of modern civil society. Frankly, I don't think you can make the case for Government, for spending taxpayers' money on public

services or social exclusion – in other words for acting as a community – without this covenant of opportunities and responsibilities together. (Blair, 2000)

Five years later, he told a meeting of faith-based organizations:

The only society that works today is … one founded on mutual respect, on a recognition that we have a responsibility collectively and individually, to help each other on the basis of each other's equal worth. A selfish society is a contradiction in terms … At the heart of my politics has always been the value of community, the belief that we are not merely individuals struggling in isolation from each other, but members of a community who depend on each other, who benefit from each other's help, who owe obligations to each other. From that everything stems: solidarity, social justice, equality, freedom. (Blair, 2005)

Finally, in January 2006, Blair located responsibility and respect at the centre of his third term agenda:

Respect is a way of describing the very possibility of life in a community. It is about the consideration that others are due. It is about the duty I have to respect the rights that you hold dear. And vice-versa. It is about our reciprocal belonging to a society, the covenant that we have with one another … ultimately, the change [to bring about increased respect] has to come from within the community, from individuals exercising a sense of responsibility. Rights have to be paired with responsibilities. (Blair, 2006)

George W. Bush, who stood for President in 2000, also ran on a platform of responsibility. In his acceptance speech, he stated:

A hundred years from now, this must not be remembered as an age rich in possessions and poor in ideals. Instead, we must usher in an era of responsibility … In a responsibility era, each of us has important tasks -- work that only we can do. Each of us is responsible ... To love and guide our children, and help a neighbor in need. Synagogues, churches and mosques are responsible ... Not only to worship but to serve. Corporations are responsible ... To treat their workers fairly, and leave the air and waters clean. Our nation's leaders are responsible ... To confront problems, not pass them on to others. And to lead this nation to a responsibility era, a president himself must be responsible. (Bush, 2000)

Like Blair, Bush has returned to the theme of responsibility frequently during his time in office, and mentioned the concept seven times during the 2006 State of the Union speech, referring to Congressional, governmental, public and personal responsibilities. However, both Bush and Blair have faced questions about their own responsibility. Each has accepted responsibility for the mistaken intelligence they used to justify invading Iraq in 2003, see Blair (2004) and Bush (2005), but they have denied responsibility for atrocities which have happened on their watch. Expressing a view shared by many opponents of the Iraq War, in an article entitled 'Blair put us in the firing line: The war on Iraq made the attack on London inevitable', published in the *Guardian* newspaper on 9th July 2005, Faisal Bodi suggests that Tony Blair was in large part responsible for the 7/7 bombings in London: 'it should not be forgotten that the bloody trail of blame leads straight to 10 Downing Street'. Bush has been accused of having ultimate responsibility, as Commander-in-Chief, for the torture and murder of Iraqi prisoners by members of the US military and intelligence services at Abu Ghraib prison, and for the alleged torture of terror suspects who have been 'rendered' abroad by the CIA for questioning. Governmental responsibility for these acts has been extensively discussed (see, for instance, Hersh (2004); Hirsh et al (2005); Marty (2006)).

Responsibility is also gaining currency among non-governmental organizations (NGOs) and international institutions which are pushing to redefine state sovereignty as incorporating a notion of state responsibility. In 1994, we witnessed genocide in Rwanda despite widespread conviction after the Second World War that such acts would never again be allowed to happen. A significant amount of research has been done to establish who was responsible for what took place (see, as an exemplar of this research, the 1999 Human Rights Watch report 'Leave None to Tell the Story: Genocide in Rwanda') and shame at the failure of the international community to take action to prevent or put an end to the genocide led to the establishment of an international commission to investigate whether international consensus could be reached on who has the responsibility to intervene in situations of crisis. The report of

the commission is titled 'The Responsibility to Protect' (R2P) and the basic principles it endorses are:

> A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
> B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. (ICISS, 2001: xi)

The report argues that the international community of states has responsibilities to prevent conflict and crises that put people at risk; to react with measures such as sanctions, prosecution or military intervention in situations of compelling human need; and to rebuild once the crisis is over (ICISS, 2001: xi). The UN General Assembly voted to support a (somewhat watered down) version of these principles on 16th September 2005 (Resolution 60/1. 2005 World Summit Outcome).

Despite opposition from powerful states, including the US, China, India, and Russia, the Responsibility to Protect principles are working their way into international discourse. Debates on responsibility for the atrocities currently taking place in the Darfur region of Sudan are not, for the most part, about who is causing the suffering, but who has the responsibility to try to alleviate it. The US, opposed to the R2P as it favours analysis of each situation in context rather than the application of general rules, is pushing for action on the basis of international responsibility: 'I believe there's genocide taking place, and I believe we have a responsibility to work together to bring some security to the poor folks that are being harassed and raped and murdered in the far reaches of Darfur' (Bush, 2006).

Another innovation in international responsibility has come from the work of the InterAction council, an international organization formed in 1983 by Helmut Schmidt and Takeo Fukuda, to 'mobilize the experience, energy and international contacts of a group of statesmen who have held the highest office in their own countries' (Source: InterAction Council website, 2006). Members of the council 'jointly develop

recommendations on, and practical solutions for, the political, economic and social problems confronting humanity' (Source: InterAction Council website, 2006). In response to the growing dissatisfaction with the progress of the human rights regime, they published, in 1997, 'A Universal Declaration of Human Responsibilities' which states that:

> … recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and implies obligations or responsibilities … the exclusive insistence on rights can result in conflict, division, and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos … the rule of law and the promotion of human rights depend on the readiness of men and women to act justly … all people, to the best of their knowledge and ability, have a responsibility to foster a better social order, both at home and globally, a goal which cannot be achieved by laws, prescriptions, and conventions alone. (InterAction Council, 1997)

The Declaration also states that 'human aspirations for progress and improvement can only be realized by agreed values and standards applying to all people and institutions at all times' and 'global problems demand global solutions which can only be achieved through ideas, values, and norms respected by all cultures and societies' and the Council has been trying, with only limited success, to promote such universal values. Their Universal Declaration was accepted by many Asian countries, but the majority of Western governments remain reluctant to sign on to the ideals presented. Having failed to achieve universal support in the UN General Assembly for their universal proposals, Council members have since been engaging in public speeches and an educational campaign to 'promote the concept of responsibility to all groups' (InterAction Council website, 2006).

Responsibility is also a key theme of campaigns for global economic justice. The Annual Meeting of the World Economic Forum (WEF) at Davos in January 2005 was entitled: "Taking Responsibility for Tough Choices", and the Founder and Executive Chairman of the WEF, Professor Klaus Schwab, concluded the Meeting by urging participants to exercise "self responsibility, global responsibility … and responsibility

to the next generation. Then we will improve the state of the world." (Schwab, 2005). The business world has started to rise to this challenge by exercising 'Corporate Social Responsibility'. At 29th March 2006, more than 2500 firms from 90 countries, including 106 of the world's 500 largest companies had joined the Global Compact, a UN project set up in 2000 to 'promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalization … [to realize the vision of] a more sustainable and inclusive global economy' (Source: UN Global Compact website, 2006a).

This new interest in responsibility has arisen at the same time as concern over whether the human rights regime is sufficient to bring about domestic or international peace and justice. Although the NGO community continues to promote the protection of human rights, academic debate has exposed the weakness of the foundations of this regime and the political interests it may serve (this literature is discussed in Chapter 2), and many states have failed to live up to the human rights principles that they espouse. Amnesty International (2004) reported that human rights are under their most sustained attack in 50 years, due to violence by armed groups and to the responses to these groups by governments. The Amnesty Secretary-General, Irene Kahn, wrote in her Forward to the 2005 report that a 'lethal combination of indifference, erosion and impunity … marks the human rights landscape today. Human rights are not only a promise unfulfilled, they are a promise betrayed' (Amnesty International, 2005). The 2006 Human Rights Watch World Report singles out advanced liberal states such as the US, the UK, Canada, the member states of the European Union for special condemnation on their human rights record, alongside more usual suspects including Burma, China, North Korea, Saudi Arabia and Zimbabwe.

The idea of human rights is premised on a liberal idea, deeply rooted in Western philosophy, that people are by nature rational, autonomous individuals, who need protection from arbitrary state interference to give them sufficient freedom to decide on their own interests, desires and moral values (or their own 'idea of the Good' in

the vocabulary of liberal theory) and to design their lives in such a way as to achieve these. This position relies on people having 'agency' as individuals. Agency is a philosophical concept that describes a person's capacity not just to perform simple, involuntary acts such as blinking or sneezing, but to perform action which is directed at achieving some goal, such as selecting and reading a particular book, going for a run or writing a thesis. In performing such actions, the agent is seen as exercising her free will or volition and (frequently though not necessarily) her rationality by choosing between options, forming an intention or plan of action, then acting as she intends to. This capacity for agency – for control over ourselves and over our environment – is seen as separating us from animals, and it is the basis upon which we are held responsible. Conventional understandings of the idea of responsibility suggest that we can be held causally and morally responsible for our actions and their consequences as long as our actions were freely chosen – as long as we 'could have done otherwise'. As I question both the concept of causation and that of volition within this work, I use the broad term 'responsibility' to cover all that we may be held accountable or answerable for.

Ideas of agency and responsibility are central to ethics, yet not systematically theorized in normative International Relations (NB: following convention, I use 'International Relations', capital I & R, to signify the academic discipline and 'international relations', small i & r, to signify the practice). The main conflicts between international political theorists can be seen to concern agency – in terms of where the power to act lies in the international sphere: with individuals, communities, states or other actors such as firms, and how this power comes about – and responsibility. Are we responsible, and if so to what extent, for our blood relations, our fellow citizens, all of humanity? What are we responsible to – a set of universal principles, a God, our community, our conscience? What is the content of our responsibilities? Are we only responsible for outcomes we have intentionally caused, or for any situation our attitudes, action or inaction have helped to bring about? Are we responsible for guaranteeing physical security and political freedom to others, or also for ensuring that their economic and social needs are met? What responsibilities

do states and the international community have for the welfare of the individuals who inhabit them?

Rather than addressing these questions, much normative international theory and practice in the twentieth century has been concerned to justify an ethics based on rights. The liberalism of the nineteenth century combined with a resurgent cosmopolitanism in the twentieth century to put the individual and her human rights at the centre of our international ethical architecture. As the twenty-first century began, an International Criminal Court (ICC) took shape, charged with trying individuals for international crimes in order to defend the human rights of their victims. In a speech to accept the Nobel Peace Prize in 2001, Kofi Annan, Secretary-General of the UN, outlined his view of the importance of the individual:

> In the 21st Century I believe the mission of the United Nations will be defined by a new, more profound, awareness of the sanctity and dignity of every human life, regardless of race or religion. This will require us to look beyond the framework of States, and beneath the surface of nations or communities. We must focus, as never before, on improving the conditions of the individual men and women who give the state or nation its richness and character … What is not always recognized is that "we the peoples" are made up of individuals whose claims to the most fundamental rights have too often been sacrificed in the supposed interests of the state or the nation. (Annan, 2001)

However, as documented at the start of this chapter, the human rights regime has not achieved all that its supporters hoped that it could, and responsibility or social obligation is increasingly seen as a necessary correction to an excessive focus on the individual. But such a correction is in danger of being framed in 'communitarian' terms, a position which privileges the state over the individual, the unsavoury ethical implications of which led to the rise of cosmopolitan liberalism in the first place. These two principal positions in international political thought – cosmopolitanism and communitarianism (Brown, 1992) – do not offer a way to resolve the issues raised, so new thinking is required.

This work is a qualitative study of the concepts of agency and responsibility, responding to the lack of explicit consideration of these notions in contemporary international political theory (IPT). I aim to develop an original theoretical viewpoint by critically analysing assumptions about agency and responsibility within mainstream IPT, and supplementing my analysis with insights from select literature within the fields of philosophy, sociology and social psychology. The objective of the research is to provide a more nuanced account of agency and responsibility in the international sphere, and to think through the implications of such an account for ongoing theorising and practice.

1.1 Summary of the Argument

The core argument I advance is that the individualist conceptions of agency and responsibility inherent in liberal and cosmopolitan liberal thought are highly problematic, serve political purposes which are often unacknowledged, and have led to the establishment of an international institutional regime which is limited in the kind of justice it can bring to international affairs. I outline alternative views of agency and responsibility – agency as sociality and a social practice model of responsibility – which both better describe the way we talk about and experience our social lives, and offer significant possibilities to broaden the scope of international justice and, through this, enable human flourishing.

I begin my argument, in the three chapters which make up Part One, by critiquing the concept of the individual agent in cosmopolitan liberalism, and the impoverished view of responsibility which follows from this. **Chapter 2** focuses on the conception of agency in liberalism: a conception which sees agency as a natural property of individuals. Liberalism portrays the individual as an autonomous, rational and volitional being, who causes events in the world around her, for which she can be held responsible, but who is not herself caused. From this image of the individual as a sovereign being comes a normative commitment that sees the goal of human life to be the individual pursuit of our own projects and interests, free from the interference of

others. To protect individuals from interference, liberals developed the idea of rights – first natural, then human – as a device to prevent the state from impinging unnecessarily on the freedom of its citizens.

Liberal individualism and cosmopolitan universalism came together in the twentieth century as liberal theorists extended their philosophy beyond state borders. Cosmopolitanism adds to liberalism a concern with the welfare of all human beings, whereas liberalism previously had been mostly concerned with the welfare of the citizens within the liberal state. This brought about a drive for liberal international institutions and regulation, to protect human freedom where domestic liberal regimes were absent.

Cosmopolitan liberalism is opposed by communitarian thought, which emphasizes the role of the community in constituting the self. Communitarians argue that humans are social animals rather than autonomous beings, and that our values, ideas of the Good and identities are generated by society rather than being formed prior to it. Communitarians therefore see the community as having moral value independent of its members. They support the rights of groups to self-determine, and, in order to protect these rights, discourage intervention by the new liberal international regime into the affairs of sovereign states and the communities they are said to represent.

I criticize the ontology of the cosmopolitan liberal position (its conception of the nature of the individual) using insights from communitarianism, philosophy and social psychology, arguing that there is good reason to doubt that humans behave as autonomous agents, separable from their social contexts. It appears that being an individual in the liberal sense is not a natural status of human beings, but a political one, and I outline the history of the individual in Western political and economic practice. The rise of individualism accompanied the rise of the capitalist economy, and the separation of the individual from her communal support structures serves the interests of capital by making everyone vulnerable to the demands of the market. This link between individualism and economics is often ignored within cosmopolitan

liberal theory, but has significant effects, not least of which are the vast economic inequalities sanctioned by placing a priority on individual freedom.

I end the chapter by considering whether communitarianism can offer us a satisfactory alternative to cosmopolitan liberalism, given the drawbacks of that position. I conclude that it cannot. Communitarianism reifies and essentialises the community in the same way that cosmopolitan liberalism reifies and essentialises the individual: each views their central concept (the community or the individual) as sovereign and autonomous, so emphasizes the separateness of people and their societies. Communitarianism also implies a depressing determinism in contrast to the unrealistic voluntarism of liberals, and gives no clear account of how the cultures and societies which do the work in communitarian theory are themselves created and maintained. Both of these theoretical positions seek to generate ethics by making foundational claims, that is, by claiming to know the truth about the human condition. In fact, neither position describes our experience of the world very accurately, and neither can account for the appeal of the key insights of the other. Both positions tend towards a static view of the world, because they make claims to objective, unchanging truths. They are set up in structural opposition to each other, and neither can offer a convincing conception of human agency which incorporates both our intuitions about free will, and the inherent sociality and dynamism of human life.

Before exploring how the structural impasse can be overcome, which I do in Chapter 5, I use **Chapter 3** to critique the conception of responsibility that follows from cosmopolitan liberal individualist agency. Responsibility under liberalism is generally thought of in terms of ascribing blame for actions taken by intentional agents in the past. Forward-looking or *ex ante* responsibility on this account is mostly concerned with the protection of rights and tends to be institutionalised, in order to give the sovereign, independent individual maximal freedom to pursue her own conception of the Good, and, as such, is negative and relatively undemanding. All that is required is that we obey some simple rules in our public behaviour and do not trespass unnecessarily on the freedoms of others – we have no responsibility to make

positive contributions to their welfare. The tool used to regulate liberal systems of responsibility and provide rules of behaviour is the law, which is valued as a neutral, independent arbiter between interests and used to identify rights and enforce the conditions necessary to ensure the broadest possible freedom for the individual agent: limited state interference, property rights and freedom of contract. The law is also used to control individual behaviour via the criminal code, as the assumption of individualist agency (i.e. that individuals are the causal locus of behaviour) leads to the view that any socially problematic behaviour arises from the actions of (deviant) individuals: i.e. that individuals are responsible for suffering or harm.

I discuss the relationship between liberalism and the law at some length, and argue that the liberal conception of law as an apolitical expression of a universal moral code, coupled with liberal individualist ontology, has significant political and economic implications. Responsibility is generally backwards-looking or *ex post* and is equated with blame under a legal or liability conception, and free will or intentionality is required to be proven before responsibility is assigned. Much perceived harm does not result from the intentional and informed actions of individuals – for example, poverty, environmental damage and societal disadvantage due to gender or race structures – so responsibility either remains unassigned or is assumed to lie with the individuals who are suffering.

Despite the drawbacks of the use of exclusively legal means to regulate responsibility in liberalism, cosmopolitans have been keen to increase the legalization of obligation at an international level, and here too the focus is on rights. Since 1945, the individual has increased in importance significantly in international law and practice. Prior to the Second World War, international relations concerned the relationships between states. Now, individuals feature both as bearers of rights which are in need of protection, and as the agents responsible for international harms, defined as crimes. I document the development of international human rights and criminal law through the twentieth century, which culminated in the creation of an International Criminal Court (ICC), but argue that these changes, as may be expected given the difficult

relationship of liberalism and law to politics domestically, do not represent the improvement to the normative landscape of international relations that their advocates claim them to be. The shift in assumptions from state civil agency in the international sphere to individual criminal agency leads to an unjust conception of the international agent, and is founded on the idea of a universal moral code which is highly disputed. I argue that the new system of international law may in fact have pernicious effects: it does not succeed in separating law and responsibility from politics and economics, and, by legitimating violence in pursuit of supposedly universal goals, it allows for much greater suffering than it can prevent.

I conclude Chapter 3 by noting that the rights model of responsibility itself is also limiting: it is predicated on universal values which do not seem to exist, given the lack of respect for human rights shown by many states within the West as well as outside it, and the obligations it imposes on states are far from clear.

Nevertheless, the human rights regime remains the focus of international ethical innovation, and the ICC is seen as the missing link in the enforcement of these rights. In **Chapter 4**, I examine whether the problems of a liberal conception of responsibility, i.e. one limited to the neutral, legal enforcement of rights and the prosecution of individuals for harm, are evident in this new institution. I find that the conception of agency in the Rome Statute, which established the Court, is internally contradictory and that the ICC (inevitably) fails in its goal to separate law from politics.

The individual is held responsible for international crime by the ICC, with the perpetrators seen in classic cosmopolitan liberal terms. They are intentional and rational, and exercise sovereignty over their desires and actions – rarely, if ever, acting out of duress or necessity. They may be under the command of others, often within a military or political structure, but obedience to superior orders can only be offered as an excuse for their behaviour in very limited circumstances. Any official role they hold within state or organizational structures is judged to be irrelevant to

their individual responsibility for their actions. This model of the perpetrator as a pre-social criminal (i.e. an agent whose actions are not at all influenced by her social role or context) is entirely in contrast to the model victim of international crime. Victims are implied by the Rome Statute to be necessarily socially located. Genocide and crimes against humanity as defined in the Statute cannot be carried out against individuals – they must be aimed against groups or civilian populations. Something about the connections between people – their shared culture, history, religion or ethnicity – is seen as relevant to their status as victims; a seeming recognition of the importance of community to the individual. This confused conception of the person as both pre-social criminal and socially embedded victim shows that the ICC has not been able to overcome the impasse between cosmopolitan and communitarian positions on agency outlined in Chapter 2.

The ICC is founded on the assumption that there are universal standards which apply to human behaviour, yet little evidence of any such standards can be found when looking at the formation of the Court. The ICC and the law it applies are the result of negotiations between states and as such are inherently political. The politics of international criminal law can be seen in the positions taken on the crime of aggression, command responsibility and capital punishment by the parties present at the Rome Conference at which the Statute was written. There were very different views on these issues, and compromises were reached by bargaining and trade-off rather than through reference to universal moral standards. The politics of the Court can also be seen in the positioning of the Court in relation to the United Nations Security Council (the Council retains its role in determining aggression and can prevent the Court from exercising its jurisdiction by passing positive resolutions in specific cases) and in the opposition of the US to the Court.

The internally contradictory conception of agency and denial of politics in the Rome Statute have worrying implications in the context of the goals of the ICC. The Statute narrows our focus onto individual action and this serves to exclude consideration of the causes of much harm in international relations, and may even confer legitimacy

onto 'normal' international violence which is not framed as the intolerable or 'atrocious' action of deviant individuals. Pitting the pre-social criminal against the socially embedded victim tempts us to understand the conflicts in which atrocity takes place in simplistic terms of good and evil. Finally, the facilitating conditions for atrocity – be they attitudes within civilian populations, or practices such as nationalism and war – are not included within the legal discourse of liberal international responsibility.

The ICC has been set up to prosecute sovereign individuals for inherently social crimes, suggesting that the conception of agency within the doctrine is fundamentally flawed. The legalised and individualised conception of responsibility within its founding Statute limits the scope of international justice to exclude consideration of the most serious and widespread suffering in contemporary international relations. The foundational assumptions of cosmopolitan liberalism – individualist agency and privatised, legalised responsibility – neither fit with the way we experience the world, nor offer much hope of achieving justice in any substantial way. As communitarianism was shown in Chapters 2 and 3 to be similarly lacking in appeal, I endeavour, in Part Two of the thesis, to rethink agency and responsibility using theories which reject both cosmopolitan liberal and communitarian foundations, and to offer more appealing and functional accounts of both concepts.

Chapter 5 deals with the question of how far agency is possible if we admit that structures such as community and culture do have some effect upon individuals. The impasse between cosmopolitan liberal and communitarian thought can be seen in terms of the 'agency-structure' debate in sociology and International Relations. Cosmopolitan liberals argue that individual agents are largely free from the effects of social and material structures, whereas communitarians see structures as determining many aspects of individual lives. To explore how to get past this impasse, I look at how the relationship between agent and structure has been theorised outside IPT. I document the three ways in which these phenomena can be seen to relate causally: structures can be argued to cause agents, agents to cause structures, or structures and

agents to simultaneously cause each other. This last position has been the most influential in recent theorising, with the sociological concept of 'structuration' being imported into IR by constructivists. The main argument here is that ideational or normative structures shape interests and identities, which cause or condition the action of agents. However, these structures – composed of norms, beliefs and ideas – are themselves caused by the knowledgeable actions of agents.

Looking at agency and structure in this manner offers us a useful way to think about the individual and the community. However, it is not without drawbacks. The constructivist account still sees agents and structures as more static than dynamic. In fact, both agents and structures seem to vary across contexts, and some interesting arguments have been made recently suggesting that agency is becoming increasingly important in the contemporary world as the structures of the sovereign state system are being weakened by globalisation. The constructivist view also lacks sufficient consideration of the role of power: agents are not equal, and powerful agents tend to recreate the structures that benefit them. Post-structuralist theorists investigate the effects of power by looking at agency and discourse, and reject the ontological arguments and claims to firm foundations which lead us to stalemate when conceptualising individual and community in traditional approaches. I argue that these and other post-positivist approaches offer us significant possibilities when theorising in international ethics, and I look at post-structuralism, constitutive theory and pragmatism in turn.

Post-structuralist ethics rejects the idea that individuals are autonomous, but also rejects what it sees as the politically loaded and dangerous communitarian notion that our identities are necessarily tied to territorially located communities. The spatial location of identity leads us to see our responsibilities to each other in terms of 'insiders' and 'outsiders', and politics defined by national borders encourages the 'cleansing' from territories of those who are different from us.

Constitutive theory advances our understanding of agency by identifying the structural 'practices' which constitute it and arguing that ethical codes are embedded in each such practice. Agency, on this model, is not an attribute of individuals, but a condition which arises within social practices such as the family. Like post-structuralism, constitutive theory recognises that agency is created rather than discovered, and helps us understand how it is created by offering an account of the roles and practices through which we live our social lives.

Pragmatism explicitly rejects foundational ethics and asks which ethical practices are useful to us – which help us to understand and act in our world – rather than which are 'true'. It sees Western individualism as just a culture, and asserts that the best way to reduce cruelty and suffering is not to appeal to universal values but to encourage people to see strangers or enemies as 'human' (i.e. to afford them a moral status) via a process of education of the sentiments. Pragmatism also rejects territorial borders as contingent, and encourages us to use the agency afforded to us by our shared vocabularies and practices to critique our current societies and structures.

All of these theories offer a nuanced account of agency, but they also all imply that agents and structures are different or distinct entities. To bring the individual together with the collective and dissolve the dichotomy, I outline a view of 'agency as sociality'. This position concentrates not on the subjective or the objective but on the inter-subjective: on the relations we have with each other rather than the relations we have with independent structures. As such, it explains both our experiences of free will and the importance of collective life or sociality to agency. Individual agency is assigned through a collective practice whereby we discursively identify each other as autonomous, so that we can hold one another as accountable for our actions, and thereby enable and coordinate our complex social lives. However, these actions are not caused by sovereign individual agents, but by people who are profoundly mutually susceptible to each other. The 'agency as sociality' view recognises that humans seek status within their social relationships, so are sensitive to the reactions of others when acting. It overcomes the distinction between caused and free action by

seeing that those actions which we identify as free are precisely those actions which we feel could have been (causally) influenced by the evaluations of others (as opposed to actions we feel we could have had no influence over, such as actions 'caused' by a phobia). Our freedom is enabled not by our capabilities as individuals, but by the way others treat us: agency can only come about and be exercised within 'discourse-friendly' relationships (i.e. relationships in which we causally influence each other through discourse rather than through manipulation, threat, intimidation or coercion). The social structures spoken of in other approaches are creations of these relationships in the same way that individual agency is: both are inter-subjectively constituted by human interaction rather than really-existing ontological phenomena. This approach rejects the foundationalism, ontology and tendency to dichotomise and reify seen in traditional approaches, plus it can reconcile our experiences of free will and social influence within the same explanatory framework. It also moves beyond the territoriality of communitarianism: the collective action which brings about both agency and structure is not tied to any particular place. Relationships occur between people who share common activities and experiences, just as much as they do between people who live within particular sets of borders.

Once agency has been re-conceptualised as sociality, we can see responsibility in new ways. In **Chapter 6**, I set out a 'social practice' model of responsibility (SPM), which follows from the view of agency established in Chapter 5. Agency as sociality suggests that we discursively recognise each other as agents in order to hold one another accountable, or responsible, for our behaviour, as this is the best way to co-ordinate our actions, manage each other's expectations and live socially. Responsibility is therefore necessary and integral to agency, and ascriptions of agency are necessary and integral to social life. The discussion in this chapter is necessarily abstract, as the position needs to be set out in some detail before the implications for international political theory and international relations can be explored in the remainder of the thesis.

The social or inter-subjective nature of responsibility has been noted in recent work on the concept, and the theorists I use to build the SPM (Barry Barnes, Phillip Pettit and Marion Smiley) all recognise that responsibility ascriptions are not objective or neutral determinations of the causes of an action, but socially functional ways to express what we think of others within personal relationships. We use the discourse of responsibility to reflect our attitudes to others, and, through this, attempt to influence their behaviour. The influence comes about as we ask others to account for their behaviour – to justify it and make it intelligible to us with reference to collectively developed ethical standards. We signal whether they have been successful in doing so by approving or disapproving of their actions, so affecting their status within their relationship to us. The judge and the judged are both part of this process, and the idea of 'response' inherent in the concept of responsibility is brought to the fore. We only tend to hold people responsible when we perceive them to be responsive, or open to the non-coercive influence of others, and not because they are ruled entirely by their own independent wills.

The standards to which we hold each other within the practice of responsibility are not objective: they are internal to the group, arise from social interaction and are the subject of constant debate and potential revision. As such, the judgments we make within the practice – of causal contribution and of blame – are influenced by politics, by the configuration of social power facing the judge, judged and victim, and by our determination of where the boundaries of relevant moral communities lie. Our perceptions of all of these factors can alter as we participate in the practice of responsibility, which accounts for the dynamism and social change that neither cosmopolitan liberalism nor communitarianism can adequately explain.

The SPM differs markedly from the legalised and rights-based conception of responsibility in cosmopolitan liberalism. Instead of reducing the burden on individuals by making responsibility a matter of abiding by relatively simple moral rules which have been written into law, the SPM sees living with responsibility, or living ethically, as central to human social life. It asks that we consider whose lives

we affect and how, by virtue of the social processes in which we participate, including the increasing number of processes (such as international commerce) which reach across territorial borders. It also rejects the liberal notion of a harmony of interests, so broadens the concept of justice beyond responsibility for deviance, to include harms brought about by the effects of normal social and economic relationships. To do so, it rejects the idea that responsibility is necessarily connected to blame, and incorporates the prospective or *ex ante* responsibility that is assigned to social roles, assumed by agents or allocated on the basis of resources, as well as the *ex post* or 'liability' responsibility that the law is mainly concerned to regulate.

I argue that the social practice model has three significant advantages over traditional conceptions of responsibility. Firstly, it rejects the dichotomy between individual and community that led to the impasse described in Chapter 2. Both agency and structure arise within inter-subjective relationships, and both vary across contexts. The collectives that constitute agency and responsibility are not tied to particular territories, so religion, gender, race, interest, attitude, experience or activity based groups are all possible sources of our agency and responsibility alongside more traditional national or local groups. Also, the specific content of these practices, because it comes about through dynamic social interaction, is constantly evolving. The recognition of dynamism in the practice is the second strength of the model. Rather than being defined according to a universal moral code, responsibilities can change as situations change – something we observe happening in international relations all the time, as we rethink the ethical roles of the sovereign state, the UN, the multinational corporation, and so on. The third strength derives from the dynamism and flexibility of the model, as well as the rejection of the ideas that causes can always be found for harm and that responsibility equates to blame: the SPM opens up the possibilities for justice by allowing us to *create* responsibility for situations which trouble us. Situations which many judge to be ethically unacceptable (and I recognise that there may not be agreement over these judgments, as there is no universal standard of justice) do not always result from the failure of agents to obey the law or to respect each others rights, or from malicious intent, so *ex ante*

responsibility needs to be assumed by actors with the resources to assist instead of relying on an objective code to discover *ex post* responsibility linked to wrong-doing. As well as considering responsibility for deviant acts such as atrocity and war crimes within the SPM, we can also consider responsibility for the background conditions which facilitate these acts (by seeing responsibility as layered or shared), as well as for economic harm or social disadvantage which results from the normal workings of society.

There are two principal challenges to this model of responsibility. The first is that by dismissing an objective or metaphysical conception of responsibility, it collapses into relativism. It is certainly the case that the SPM does not allow us to label the actions of others as absolutely right or wrong, but we can judge actions in reference to their congruence to our collectively defined ethics. I also note that the universalist foundations of cosmopolitan liberalism are far from universally assented to, so of limited practical use. The second challenge to the SPM is that it abandons the notion that responsibility can be found that is equal to every harm. There is no natural harmony of interests or moral equilibrium, on this view, and bad things can happen to good people. I argue that the SPM can offer hope here – because responsibility is recognised to be created rather than discovered, so it can be created to cover those harms for which it seems to be lacking. I conclude that the model can answer its critics and offer us a more convincing explanation for how we use the concept of responsibility than either communitarianism or cosmopolitan liberalism.

In **Chapter 7**, I broaden the conception of agency to include collective agents or groups, and explore the implications of the SPM for collective responsibility. We often ascribe responsibility to groups in our everyday discourse: to the US and its coalition partners or to Al Qa'eda for civilian deaths in Iraq, to Nike for the working conditions of the people who manufacture its trainers, to the Janjaweed or the Sudanese government for atrocities in Darfur. We also talk about practices such as capitalism, nationalism and war as having responsibility for suffering or inequality that result from their exercise. These agents are very different from the sovereign

individual envisaged as the archetypal agent within cosmopolitan liberalism, yet their effects on individual welfare make them imperative to consider in any discussion of responsibility.

A great deal of work has been done on collective responsibility in political theory and International Relations recently, concentrating, for the most part, on the responsibility of formal organisations such as the UN. I argue that this work is valuable in taking us beyond a limited view of agency, but does not expand the debate far enough, because it accords responsibility to groups on the basis of their sharing characteristics such as deliberative capacities with individuals. The conception of agency as sociality, and the social practice model of responsibility that follows from it, suggest that agency is inherently collective (it is constructed and exercised inter-subjectively) and allow us to look to informal as well as formal groups when considering the location of responsibility.

Both the cosmopolitan liberal and communitarian conceptions of responsibility are focussed on the individual and her relationship to her state. The SPM suggests that we cast our net wider, and consider the impact of formal institutions such as NGOs and firms in international relations, as well as informal collectives such as ethnic groups and the international community. I work through the example of corporate social responsibility (CSR) to show the SPM in action. Transnational corporate power has increased significantly in recent decades, and judgments of the correct social role of the firm have also shifted. The concept of CSR has been developed, which requires that firms attempt not just to maximise profit, but also to care for the environment and promote social justice. I use statistics from a variety of sources to show that the attitudes of the public, governments and firms towards corporate responsibility have changed, along with the purchasing patterns of consumers and the behaviour of some of the world's largest companies. The discourse and practice of corporate responsibility is demonstrated to be dynamic and creative, in line with the conception of responsibility in the SPM.

I move on to look at the responsibility of informal groups, and use the violence which accompanied the breakdown of the former Yugoslavia through the 1990s to explore whether and how collectives such as ethnic groups and the international community should be held responsible. I argue that the SPM frees us from seeing direct and demonstrable causal contribution as a requirement of responsibility ascription, so encourages us to think about the facilitating conditions of harm. Attitudes held by individuals who do not take part in violence can still influence the process, as they structure the behavioural context faced by those who do act. Racist attitudes such as those displayed by the Serbs and Croats generated a context in which violence against the ethnic 'other' was more acceptable, and could even have been a way to gain status within the group. Those who committed violent acts did so in light of communicative support they received from other members of their groups, therefore, if we are interested in understanding the conflict, and in preventing similar atrocities in future, we must think about the contribution made by, and the responsibility of, many more actors than just the murderers, the rapists and the terrorists.

I also consider the responsibility of the international community, and the practices of nationalism and war, for the violence in the former Yugoslavia. I argue that the recent conceptualisation of the international community as an actor in its own right is another demonstration of the SPM in action. 'Coalitions of the willing' taking it upon themselves to enforce UN resolutions and the developing practice of humanitarian intervention show that responsibility in international relations is being reassessed. The persistence of the practices of nationalism and war in the community show that we still have some way to go before situations such as the ugly breakdown of Yugoslavia can be avoided.

I finish the chapter by looking at the main objections to the idea of holding informal groups responsible, and argue that, despite the criticisms which can be levelled at this approach, seeing responsibility in terms of the SPM enables us to bring all of the actors which impact upon individual welfare into the discourse and practice of

responsibility. It acknowledges that groups act as a force-multiplier of human agency – enabling greater harm and greater good than individuals could achieve alone.

Chapter 8 concludes the thesis, and in it I start to outline the broader implications of the rethinking of agency and responsibility which I undertook in Part Two. I note that my research lends considerable support to post-positivist approaches in IPT, but pushes these positions further by rejecting the dichotomy of agent and structure. I also note that, because agency and responsibility are internal to practices, we cannot make generalisations outside those practices in terms of holding specific agents responsible for particular acts or outcomes. However, if we are interested to know how the social practice model of responsibility can work best to co-ordinate our social lives, there are two general implications for our current practices which can be identified, one regarding agency and one responsibility. The key implication of the SPM for agency is that ethical agency is about much more than simply following rules or laws. Responsibility is a necessary component of our socially constructed agency – holding people to account is the reason why we identify each other as autonomous agents – so to best participate in the practice of responsibility, our ethical considerations should extend out to our whole lives. The SPM encourages this, but also makes it more difficult for individuals to do, by removing the foundationalism of cosmopolitan liberalism and communitarianism, leaving us with no universal morality or objective set of rules to use to guide our behaviour. The implication of this is that our agency needs to change: to better cope with the demands upon us, we need to develop ethical character in preference to searching for moral rules. I argue that the 'virtue ethics' approach best promotes the type of ethical agency best suite to sensitive participation in the social practice of responsibility. This normative tradition takes a 'whole person, whole life' approach to ethics instead of subordinating responsibility and separating it from the pursuit of self-interest. It encourages us to develop sophisticated ethical skills including the faculty of practical reason, to best meet the demands on us as inherently social agents.

The second implication of my research is to do with the nature of responsibility. In the current international ethical architecture, responsibility is legalised. Systems of obligation are governed by legal institutions such as the ICC, and cosmopolitan liberals support the increasing legalisation of the system in order to solve the 'problem' of politics (as politics, particularly the politics of sovereign statehood, is seen as having a tendency to turn violent). The SPM implies that this view of responsibility is limiting: legalising responsibility, conceiving of it principally in *ex post* terms (but transferring *ex ante* responsibility to institutions to 'free' the individual), and looking for deviant individuals to blame for discreet acts of harm narrows the opportunities we have for alleviating suffering. I argue that liberal institutions and the law can play important roles in society but that they cannot work alone. Without universal values to refer to, and in a world in which the causes of harm are ever more difficult to trace, I argue that politics and the idea of political responsibility need to be rehabilitated. Politics, or the negotiation between different views of responsibility and how to live socially, is necessary to ethics under the SPM. The model suggests that, because agency is necessarily social in character, and because acting together multiplies the effects of each person's agency, so responsibility (though not necessarily blame) should be accepted for the suffering that our communities facilitate, through attitudes, action or inaction. Collectives must act together to organise social relationships justly, and to do this they need to manage the relationships of power inherent within social life and engage in discourse with each other to persuade, compromise, develop common understandings of accountability and co-ordinate action. The law can structure our social relationships and our responsibilities, but political action enables a richer practice of responsibility which ultimately broadens the scope of harms that we are able to confront.

The social practice model of responsibility and the conceptualisation of agency as sociality challenge mainstream views of the individual and her relationship to her communities. They suggest that we may be responsible for, and able to influence, much more harm than we currently accept. However, these views also suggest imaginative ways to broaden our discourses of responsibility to approach problems

previously seen as structural and therefore not open to change. I end the thesis by arguing that the new focus on responsibility in international political life is having real and seemingly beneficial effects in international relations, and as such should be encouraged.

CHAPTER 2: COSMOPOLITAN LIBERALISM AND INDIVIDUAL AGENCY

This chapter and the next examine the theoretical background of cosmopolitan liberalism, an ethical position which has been ascendant in international political theory since 1945. While the position is relatively broad and encompassing, its core principles can be seen in the work of Brian Barry (1995; 1998; 1999; 2001), Charles Beitz (1999a; 1999b), Simon Caney (2001; 2005a; 2005b), Thomas Franck (1999), David Held (1995; 1999; 2002 [with Anthony McGrew]; 2003a; 2003b; 2004), Martha Nussbaum (1993; 1996; 2000), Onora O'Neill (1986; 1991; 1996; 2000), Thomas Pogge (1992; 1999; 2002; 2005), Peter Singer (1972) and Iris Marion Young (2000; 2004; 2006) to name some of the most well-known, as well as in the justification for innovations in international practice documented in Chapter 3. This chapter focuses on the conception of agency within the doctrine, and argues that this conception is highly problematic: the principal features of cosmopolitan liberal agency, which focus on the individual as sovereign, result in the position being caught in a structural opposition with opposing insights from communitarian theorists. The chapter concludes with the observation that neither cosmopolitan nor communitarian theories can provide a workable account of agency upon which to build conceptions of responsibility.

Two ideal-types of agent feature in international political theory: the state and the individual. In the first section of this chapter I outline the tenets of cosmopolitanism and liberalism, which have combined to privilege the individual as the main focus of moral concern and value in international theory and practice. The second section details the resurgence of theories which value the community or the state, and the final section critiques both positions to show that international political theory located in the 'cosmopolitan-communitarian' debate offers only dichotomous and unsatisfactory conceptions of human agency. The majority of the argument in the chapter concerns cosmopolitan liberalism, because cosmopolitan liberal principles seem to be driving much of the theory and, in particular, the practice in contemporary

IPT. The key values of this position: the individual, her freedom, democracy, human rights and the rule of law, are enshrined within post-1945 international society, with an ever increasing number of international institutions and NGOs being set up to support and promote them. Interrogating these principles and analyzing their effects therefore seems wise.

Before getting to the substance of the discussion, some qualification is necessary. Following Brown (1992), I characterise international political theory as susceptible to being subdivided under two approximate headings: 'cosmopolitan liberalism' ('cosmopolitanism' in Brown) and 'communitarianism'. The key difference between the two approaches concerns their conflicting views of the sources of moral value in the world, which stem from their opposing insights about the nature of the self (Brown, 1992: 12-13 and Cochran, 1999: 8-11)). Using these terms and organizing my initial discussion around a comparison between, and ultimately rejection of, these positions could be challenged on two grounds. Firstly, I could be said to be using a restrictive definition of IPT, and secondly, to be simplifying the two positions to the point where I can be accused of creating straw men.

International Relations is a discipline rich in theory and theorists, few of whom would recognize themselves as participating in a debate between cosmopolitan liberalism and communitarianism. Those whose focus is on trying to explain international relations – empirical theorists – are certainly not overtly engaged in the debate I concentrate on (although, following post-positivist reasoning, particularly Cox (1981), they cannot claim their type of theory to be entirely value-free), which is why I use the term international political theory rather than International Relations theory. The use of IPT indicates that my concern is with theorizing the political relationships between individuals and groups, and the assumptions and normative commitments which underlie them, both within and across existing territorial borders. However, even those theorists who share this concern – international ethicists, or normative international theorists – might object to being pigeon-holed into one or other box in the cosmopolitan liberal/ communitarian debate. Post-positivist ethical theorists,

whose work I draw on substantially in Chapter 5, are the group most difficult to fit into either box. If they acknowledge the debate at all, many are specifically working to find a way beyond the impasse that has been reached within it rather than endorsing one side or the other (see, for instance, Cochran (1999) and Hutchings (1999)).

I am not concerned, in this thesis, to prove or disprove the utility of dividing international political theories according to their views of the sources of moral worth and the nature of the self, or to argue that these views are central to the work of all international political theorists, but I do think that exploring IPT through this division (and through the agency-structure debate which it maps neatly onto) helps us to understand why theorists take such divergent positions on international ethical questions, and why we should look systematically at the different conceptions of agency and responsibility within IPT.

In order to explore IPT in this way, it is necessary to simplify the debate into two sides, and to simplify each side. In this chapter, I set out cosmopolitan liberalism and communitarianism using broad generalizations to explain and critique the key normative commitments on each side. In fact, the theorists I discuss as representing the two schools of thought often recognise the drawbacks to their positions that I outline through the thesis, and work explicitly to overcome them. The work of each theorist I reference is more nuanced and sophisticated than my brief sketch of their positions can do justice to. However, my aim is not to provide a comprehensive account of their work. I want instead to establish fairly swiftly that positions which tend towards privileging the individual, as well as those which favour the community, are highly problematic with regards to their inherent assumptions about agency, before going on to explore a new concept of agency in much more detail.

2:1 The Rise of the Individual

The rise of the individual as an international agent has characterized post 1945 international relations and international theory. In principle, individuals no longer need to rely on their state to protect their interests: a comprehensive system of human rights has been established which the individual can demand not due to their status as citizen of a particular state but due to their identity as a human being. Concern for individual suffering caused by grave human rights abuses has motivated wars – in Bosnia, Somalia, Kosovo and Iraq – as well as an abundance of law. Yet focus on the individual is relatively new. This section outlines the twin roots of such a focus: liberalism and cosmopolitanism.

Cosmopolitanism is the older of these two doctrines, derived from the Greek *kosmopolites* or 'citizen of the world'. The Stoics rejected the Aristotelian view that man's primary ethical identity was as a citizen of a particular polis, and saw instead all humans as belonging or potentially belonging to a single moral community. This rejection of the significance of particularistic attachments defines cosmopolitan thought, which has developed and divided in a variety of ways in the two thousand years since the Stoics began to write. All strands of cosmopolitanism see the individual as the agent of concern, but they do not concur on what the individual is or what it means to focus ethics upon the individual. Liberalism, which developed in the European Enlightenment alongside a resurgent cosmopolitanism, provides the dominant mainstream interpretation of the individual in contemporary IPT, seeing her as volitional, rational and autonomous. Conceptions of responsibility which follow from cosmopolitan liberal agency are the subject of Chapter 3.

Although cosmopolitanism can be traced back further than liberalism in terms of etymology, it makes sense to begin our analysis of the individual agent by looking at liberal theory. Modern cosmopolitan liberalism can be seen as a logical development of liberal ideology beyond the borders of political community, so I concentrate first upon liberalism within the polis.

'Liberalism' can indicate a political tradition (the most influential such tradition in the West, and the foundation of our political institutions), a political theory or a philosophical position. Philosophical liberalism provides the foundation for the political theories which take its name. A central and defining characteristic of liberal philosophy is a conception of the person as an autonomous, rational and volitional being: a sovereign individual, a moral agent. Standard liberal accounts of agency see the individual as 'possess[ing] internal powers and capacities, which, through their exercise, make her an *active* entity constantly intervening in the course of events ongoing around her' (Barnes, 2000: 25). An agent can cause changes in the world around her, but her actions are not themselves caused. She generates actions using the internal capacities of rationality and intentionality or will, and thus acts freely and without interference, as a sovereign body. Responsibility follows from free agency, as the agent is not forced to act in any particular way, and could by implication act otherwise if she chose to do so. As her actions were voluntary, she can be held not just causally responsible but also morally responsible (subject to ascriptions of moral praise or blame) for the consequences of her actions. Liberal notions of free agency owe a great deal to the work of Kant, who saw the possession of reason as the differentiator between human beings and the natural world. Through reason, humans could transcend the laws of cause and effect and effectively become 'uncaused causes'. 'Our blame is based on a law of reason whereby we regard reason as a cause that irrespective of all … empirical conditions could have determined the agent to act otherwise' (Kant, 1781: 477, cited in Barnes, 2000: 9).

The individual in liberalism is valued not just for her agency, but for her perfectibility. Liberal ethics follow Mill in seeing individuality as a normative good, because 'it is only the cultivation of individuality which produces, or can produce, well-developed human beings' (Mill, 1991: 71). The human ideal can only be achieved on this view by effort on the part of the individual: the individual must be self-determining, and human life a project. It follows that the central concept and primary good promoted within liberal political theory is liberty or freedom, as the

individual cannot hope to self-determine if her actions are constrained by a state: 'The a priori assumption is in favour of freedom' (Mill, 1991: 472). The principal task of liberalism as political theory becomes to justify authority, particularly the authority of the state and of law, because any exercise of authority limits freedom, and any limit on freedom limits the individual's ability to author her life and pursue her interests.

Conceptions of what freedom actually is vary within the liberal tradition. Theorists such as Isaiah Berlin (2002) saw liberty as negative – freedom was attained when a person was not prevented from doing something by someone else. By contrast, Kantian liberals such as Dworkin (1988) and Raz (1986) conceive of liberty as positive: they argue that we are only free if we are acting rationally and autonomously. 'Running throughout liberal political theory is an ideal of a free person as one whose actions are in some sense her *own*. Such a person is not subject to compulsions, critically reflects on her ideals and so does not unreflectively follow custom and does not ignore her long-term interests for short term pleasures' (Gaus and Courtland, 2003: 2). This view of liberty as positive links back into the philosophical idea of human perfectibility: Kant saw the self as valuable only if it was self determining in a specific way: 'not simply doing what one wills but what one should will' (Hutchings, 1999: 124), that is, progressing towards the human ideal.

The idea of rights, claimed to be grounded in natural law, arose in liberal political theory as a way to protect the individual from imposition by the state and to support the pursuit of her chosen ends by guaranteeing to her the widest possible range of freedoms. The primary role of the state in liberalism is to guarantee these rights to its citizens, and any obligation the individual has to the state rests on its success in doing this.

These three ideas: the individual, freedom and rights, have been tremendously influential in Western political practice. Gaus and Courtland see the dominant liberal ethic of the twentieth century as the view that 'the good life is necessarily a freely chosen one in which a person develops his unique capacities as part of a plan of life'

(Gaus and Courtland, 2003: 5). Support for such self-determining individuals can be seen in the commitment to democracy, civil and political rights and the rule of law within the domestic politics of European and North American states, evident since the European Enlightenment.

Despite the progress of liberalism as a domestic political philosophy in the eighteenth and nineteenth centuries, the international realm was still dominated by a 'morality of states', in which states were seen as the key actors (Beitz, 1999a: 63-66). This morality of states 'base[d] the principles of international ethics on the principle of state sovereignty' so supported non-intervention in the affairs of other states on the basis of states' rights to autonomy (Nardin, 1983, cited in Hutchings, 1999: 31). By the twentieth century, this view was being questioned, with its foundation on the principle of sovereignty found particularly problematic; it is in opposition to this view of international ethics that both liberal internationalism and cosmopolitan liberalism developed. A morality of states is based upon the institution, state sovereignty, which is seen as causing many of the problems that an international ethics should address, such as human rights violations and poverty, with the prohibition upon intervention simply supporting the status quo distribution of power.

The first significant extension of liberalism beyond state borders came when British and American political theorists responded to the carnage of the First World War by proposing a liberal internationalist order. This programme for peace was outlined most clearly within Wilson's 'Fourteen Points' speech, in which he advocated global support for sovereignty and national self-determination for all peoples under liberal, democratic, constitutional regimes, an international institutional structure which would manage international affairs through law rather than war, and the removal of all economic barriers to free trade. Wilson's position was not a wholesale rejection of the morality of states, but an updating of it in line with the principles of liberalism which had taken hold in domestic societies. The liberal faith in progress and human perfectibility led theorists to believe that war could be eliminated, particularly through democracy and free trade. War was seen as unnatural, as a belief in a

fundamental harmony of interests underlies both domestic and international liberalism. War was only started by unaccountable and unrepresentative governments, and was therefore preventable if the (naturally peace-loving) 'people' had direct control over government. This justified the normative value placed on national self-determination in liberal internationalism. War was also seen as unlikely if trade was free – as people became bound together in an international market, the cost of war would mean that fighting would be futile (see especially Angell, 1910).

Like free trade and democracy, human rights were also seen as linked to peace. Liberal internationalists thought that 'states which treat their own citizens ethically and allow them meaningful participation in the political process are … less likely to behave aggressively internationally' (Burchill, 2001a: 42). Where liberal internationalism differs from the cosmopolitan liberalism which followed it is in its conception of the rights of peoples rather than people. Liberal internationalists argued that the principal rights that we should be concerned with in international affairs are the rights of collectives – of peoples – to sovereignty and self-determination. They did support individual human rights, but held that freedom was best served by guaranteeing to groups the space to determine their own national projects.

The moral horror of the Second World War forced liberal theorists to reconsider their beliefs. Some, such as E. H. Carr (2001b), turned to realism. They saw the liberal internationalist project as too ambitious – as utopian. Others – mostly activists and politicians such as Eleanor Roosevelt, rather than the liberal internationalist academics whose principles were now under attack – believed that their previous position, based as it was on only a partial reworking of the morality of states, was not ambitious enough. They rejected the state as a moral agent of concern entirely, and drew up an ethics centred on the individual. This new position marks the coming together of the cosmopolitan rejection of particularistic attachments and the liberal commitment to the absolute priority of the individual, and it can be seen most clearly in the post Second World War focus on human rights. The concept of human rights was made concrete in the 1948 Universal Declaration and the Preamble to the

Declaration states that human rights should be protected by the rule of law. The human rights regime suggests that there may be some actions, such as torture, slavery and arbitrary detention, that are prohibited regardless of their status in domestic law, and regardless of the official status of the perpetrator. They are afforded to all human beings *qua* human beings, not due to their membership of any particular political community. The purpose of these rights is to guarantee to all individuals some basic protection from the actions of their states and, ideally, the freedom to formulate their own values and ideas of the Good.

Evident here is the liberal conception of the individual as a volitional and normatively valuable agent who must be protected from arbitrary action from the state in order to be able to live according to her own goals and values. What cosmopolitanism brings to the picture is a new conception of the ethical value of foreigners – those who live outside the boundaries of the liberal state. Brown (2006 forthcoming) distinguishes between pluralist liberals (analogous to pre-1945 liberal internationalists) and cosmopolitan liberals as follows: pluralist liberals regard the right to govern oneself – the right of self-determination – as one of the most basic and important rights, so argue that the duties we have to our fellow citizens are qualitatively different to those we have towards the rest of the world. Cosmopolitan liberals see the identity every individual has as a citizen of the world (or simply as a human being) as prior to any national identity, so argue that normative action should be concerned to increase the political and civil rights of all people.

Like liberalism, cosmopolitanism is a political tradition, a political theory and a philosophy, with great variety to be found in each strand. As a tradition, cosmopolitanism can simply mean: 'an attitude of open-mindedness and impartiality. A cosmopolitan [in the eighteenth century] was someone who was not subservient to a particular religion of political authority, someone who was not biased by particular loyalties or cultural prejudice' (Kleingeld & Brown, 2002: 4). This tradition of questioning the culture and framework of loyalties into which you were born tends to be premised on a view that such detachment is possible – a philosophical

cosmopolitanism. The philosophical or normative version of cosmopolitanism is associated with three different sorts of claims: 'First, the claim that all human beings share a common moral identity; secondly, the claim that there are universal (cosmopolitan) standards of normative judgment; thirdly, the claim that there should be a cosmopolitan political order' (Hutchings, 1999: 35). The third claim is the starting point for cosmopolitan political theorists, who range from those who promote the creation of a world state – the most important contemporary work here is that on cosmopolitan democracy by David Held (1995, 1999, 2002, 2003a, 2003b & 2004) – to Kantian-inspired proposals for limited global bodies, a federal system or an 'enlightened' sovereign state system (see Beitz (1999a); Pogge (2002); O'Neill (2000)).

The combination of liberal individualism and cosmopolitanism universalism has been very influential in contemporary international political theory and practice. In Chapter 3, I document how the conception of the individual as agent and source of moral value has significantly affected international relations practice, culminating in the establishment of the International Criminal Court. Despite the challenge from communitarianism detailed in the following section of this chapter (or perhaps because it does not offer a sufficient challenge), much debate in contemporary IPT is debate between different positions taken by cosmopolitan liberals.

2:2 The Resurgence of Community

The principal school of thought in international political theory that opposes cosmopolitanism or cosmopolitan liberalism is communitarianism (Brown, 1992). Modern communitarianism began as a reaction to liberalism in the domestic sphere, specifically to John Rawls' *Theory of Justice* (1971) and its central assertion that the proper role of government is to secure and distribute liberties to individuals to enable them to pursue their own ideas of the Good. This was seen by theorists such as Michael Walzer (1983; 1994), Alasdair MacIntyre (1981), Michael Sandel (1982) and

Charles Taylor (1989) as devaluing the role of the community in individual ethical life. Theorists in this tradition[1] differ significantly from cosmopolitans in their ontology, their methodology and their normative philosophy (Bell, 1993. See also Caney (1992) and Cochran (1999) for similar distinctions).

The key ontological impasse between cosmopolitan liberalism and communitarianism concerns the nature of the self. As discussed above, cosmopolitan liberals see the individual as a moral agent, as objectively morally valuable, and as sharing a moral identity with the rest of humanity. Great value is placed in the autonomy of the individual and her ability to choose her own ideas of the Good, unencumbered by social attachments (Cochran, 1999). Communitarians see this conception of the self as overly individualistic, as it suggests that individuals can have an identity (if not an existence) prior to society. By contrast, communitarian theorists see the self as substantially social, as constituted by the social matrix of which it is a part rather than in any way ontologically prior to society (Cochran, 1999). Communal attachments are not freely chosen but central to our identities, and our most meaningful and rewarding identities are as citizens rather than as men (Linklater, 1982). Our communities offer the institutions, decision-making procedures, benefits, obligations, historical narratives and, most importantly, conceptions of the Good necessary to a flourishing (political) life (Brown, 2000a). Man on this view is very much a social animal: he is 'not self-sufficient alone, and in an important sense is not self-sufficient outside a polis.' (Taylor, 1985: 190).

As discussed earlier in this chapter, there is a great deal of variation within cosmopolitanism and liberalism. Not all theorists in these traditions subscribe to the view that the self is ontologically prior to society, and indeed Rawls explicitly discusses the role of socialisation in forming the self in Part III of *Theory of Justice*. However, as the next section will discuss, cosmopolitan liberals do seem to assume a position of judgment exists prior to society or social attachments, even if that position

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[1] It should be noted that many of those whose work is described by others as communitarian do not recognise it as such themselves. Sandel (1982) sees himself as a republican and Walzer and Taylor both describe themselves as liberals (Guttman, 1992).

is only possible in a thought experiment such as Rawls' original position. This position would be literally unthinkable unless the self could be divorced from its social setting.

Communitarians and cosmopolitans differ in the method by which they see moral judgments as being made. For the communitarian, moral judgements can only be made within community, as tradition and social context are necessary for moral and political reasoning. The role of the community, or polis, extends beyond constituting the identity of agents – it also provides them with the space in which morality makes sense. Communitarians take issue with the liberal position that individuals are free to choose their moral outlook, as societal moral codes seem to assert a strong influence on most people, regardless of their preferences, which cannot be explained without reference to the communal space in which our moral judgments are made and interpreted. They argue that human beings need values in order to make moral judgments, and those values are grounded in culture. This cultural particularism contrasts with the universalism of cosmopolitan liberalism, which argues that cross-cultural standards of normative judgement and single, universal meanings of moral concepts such as justice can be identified – an Archimedean point can be found. See, for instance, the work of Brian Barry: 'I continue to believe in the possibility of putting forward a universally valid case in favour of liberal egalitarian principles' (Barry, 1995: 3); and Simon Caney, who sets out a General Argument for Moral Universalism to support the ideas that 'moral principles should apply to all if persons are similar in morally relevant ways and that persons throughout the world share common morally relevant properties' (Caney, 2005a: 57). For the cosmopolitan liberal, moral reasoning should be stripped of social context in order to approach truth, not buried within it. Of course, moral judgements can only be made across plural conceptions of the Good if moral identity precedes society, taking us back to the ontological individualism just outlined.

Cosmopolitanism is an absolutist doctrine, believing in single answers to moral questions across all human societies. Communitarianism is more relativist. It holds

that making moral judgements across communal boundaries is difficult if not impossible due to the lack of common culture and values. For the communitarian, 'the principles by which social, economic and political arrangements are legitimized are always grounded in concrete practices, traditions and communities' (Hutchings, 1999: 42), therefore cross-border critique, based on claims to universal or objective standards, is to be discouraged.

If the polis is indeed necessary to constitute the self, to enable moral agency, to provide the conditions for flourishing and to ground communal ethics, it follows that political arrangements, both domestic and international, should support not just individuals but also their communities. This is the normative position of the communitarian. In contrast to cosmopolitan liberalism, she sees the state as an institution necessary to the good life and intrinsically morally valuable rather than as a potential threat to individual freedom. This moral validity stems from the perceived link between state and culture, community or nation (Hutchings, 1999: 45) and as such provides a strong challenge to cosmopolitan positions which advocate the abolition of the sovereign state, or at the very least the recognition of it as valuable only in so far as it benefits individuals. Boundaries play very different roles in the philosophy of each position. For the cosmopolitan liberal, the bounded community is an obstacle to universal moral emancipation and the doctrines of state sovereignty and non-intervention prevent justice being achieved. For the communitarian, the bounded community is a guardian of common (sometimes liberal) values, and the guarantor of rights and responsibilities grounded in social contract.[2] State boundaries are politically and morally significant.

Despite supporting state sovereignty, communitarianism is not just a morality of states by another name. The morality of states view holds that states have rights of sovereignty and non-intervention for instrumental reasons – to enable order in the

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[2] There are distinct elements of liberal internationalism in much communitarianism, in particular that of Michael Walzer (2000)

system. Communitarians see these rights as attaching to states because of the intrinsic value of the state in constituting the identities and values of individuals within it.

The rise of the communitarian challenge in the 1980s has muddied the theoretical waters somewhat. Not all liberals are cosmopolitans, despite the shared Kantian roots and common assumptions of each position. Some remain convinced, with pre-1945 liberals, that freedom is best protected by supporting the liberal internationalist principles of sovereignty and national self-determination. Theorists such as Walzer (1992) describe themselves as liberal, but advocate distinctively communitarian positions. In fact, it seems that John Rawls, the theorist who inspired the resurgence of thinking about community, is a communitarian himself in his views on international ethics. Beitz argues that social liberalism, a 'progressive, internationalist descendant' of the morality of states view and closely resembling what I have described as communitarianism, is best represented by Rawls' 1999 *Law of Peoples* (Beitz, 1999b: 518). According to Beitz, Rawls and other social liberals take the position that 'state-level societies have the primary responsibility for the well-being of their own people, while the international community serves to establish and maintain background conditions in which just domestic societies can develop and flourish' (Beitz, 1999b: 518). The agents of international justice are therefore states. 'Social liberalism holds that the problem of international justice is one of fairness to societies (or peoples) whereas cosmopolitan liberalism holds that it is fairness to persons' (Beitz, 1999b: 515). The *Law of Peoples* does seem to be more a communitarian work than a cosmopolitan one, and Rawls has been heavily criticised for not following through on what theorists such as Beitz (1999b) and Allen Buchanan (2000) see as the logic of his own position. However, a judgment of the extent to which Walzer and Rawls are liberals rather than communitarians is not my concern here. I am focussing on the cosmopolitan liberal position as this seems to be the direction in which liberal political theory is moving, but I fully acknowledge that liberal theorists differ in their views of the international, with some being much closer to communitarianism than cosmopolitanism. In the next section, I will outline some of the problems with cosmopolitan liberalism, but note that communitarian positions

cannot offer us solutions to them. Both cosmopolitan liberalism and communitarianism rely on ultimately unsatisfactory conceptions of agency.

2:3 Challenges to Cosmopolitan Liberalism

This chapter concerns conceptions of agency within liberalism and cosmopolitanism, so, rather than documenting the whole range of the critiques of these doctrines from within political theory, I will examine only those challenges which relate to the individualist account of agency outlined in section 2:1 above. There are three principal challenges to such a view. The first deals with the ontology of the individual: do we have good reasons to believe that individuals have the characteristics and capacities upon which cosmopolitan liberals ground their ethics? I argue that we do not, leading to the second challenge, which disputes the portrayal of the individual as a natural category and traces its political and economic heritage and effects. This challenge exposes the tensions within cosmopolitan liberalism over the redistribution of wealth. The final challenge examines the epistemology of agency and argues that both cosmopolitan liberalism and communitarianism fail to generate workable accounts of agency from the foundations they rely upon.

2:3:1 The Ontology of Individualism

Cosmopolitan liberal ethics are grounded on a particular conception of agency: a supposedly neutral conception of the individual, sovereign or autonomous, rational and volitional by nature; an 'uncaused cause'. However, there are significant problems with this model. It requires that agents have preferences and identities which are formed prior to social interaction and that any social attachments they have are freely chosen rather than in any way constitutive: i.e., that the self is 'unencumbered' (Sandel, 1984). This position has been roundly criticised by the communitarian theorists discussed above (in particular, MacIntyre (1981); Sandel

(1982); Taylor (1985 & 1989)), who argue that there is no such thing as the pre-social agent – we achieve agency only through participation in social institutions and in the enactment of social roles. The individual, on this view, cannot exist before society: our identities stem from our embeddedness in social relations and our psychological attachments to those close to us, and are not established prior to them.

Mervyn Frost argues a similar point while setting out his 'constitutive theory' (Frost, 1996). According to Frost, we are constituted as free individuals only through participation in social institutions, which are grounded in certain norms. The individual is constituted through a variety of institutions, starting with the family. Within the family we are constituted by care – the love we have for our family and them for us – and by membership. Beyond the family, our individuality is more fully developed within civil society, through which we can realise our ends due to the institution of private property. Being able to own and sell goods gives us a way to differentiate ourselves from the group which is lacking within the family. At a higher level still, we are constituted as individuals within states. Citizenship is argued by Frost to be imperative to the sense of self (evidenced by the number of times through history it has been fought for by those denied it) so it is simply not possible to be a free individual without citizenship (Frost, 1996: 137-159). The individual cannot exist before society, for it is society that makes her.

The liberal model also requires a dualism which is difficult, if not impossible, to sustain. To accept it, we must see the 'natural world' as a deterministic arena of cause and effect, but the human world as non-natural, and characterised by volitional or intentional action outside the realm of causal laws. In some mysterious way, human beings must have the power to act, at times, outside the causal rules which govern the natural world.

The sovereign individuals of liberal theory behave independently, calculating costs and benefits in any situation and making decisions according to their personal preferences. However, we do not seem to behave as isolated individuals with any

frequency. Experiments in the field of social psychology show the effects of the influence of other actors and of social constructs such as role and authority upon individuals (Asch (1956); Crutchfield (1954); Milgram (1974); Zimbardo et al (1973)). Pressures to conform and to obey lead to individuals behaving in surprising and highly irrational ways, entirely contrary to the predictions of individualistic approaches such as rational choice theory. This behaviour, which conforms to social rules or norms such as obeying authority, suggests not just that individuals are substantially affected by outside forces, but that they possess some form of collective agency. There is nothing in the world that individuals can relate to independently as a norm or a rule, so no way to explain people interpreting and applying these rules in strikingly similar ways. The only way to explain this is to assume some sort of collective practice – a *shared* sense of what the rules mean. For these rules to endure (which they clearly do), we must be constantly aware of how others are interpreting and acting upon them and adjust our own behaviour accordingly – we must be *social* in our behaviour, not individual. Barnes argues that widespread behaviour in correspondence with norms can only be explained if agents have a 'prior non-rational inclination towards agreement and co-ordination' (Barnes, 2000: 56); and because of this possess the collective agency to form and maintain social practices: '… specific, visible instances of rule use, wherein fellow members, predisposed to act in co-ordination, sustain, through their collective agency in relation to rules, an ongoing agreement in their practice as they apply them.' (Barnes, 2000: 135) Some readers may be uncomfortable with talk of prior inclinations and predispositions, as it suggests biological explanations for aspects of behaviour. This is true – but then so does Kantian rationalism: rational capacity is judged to be a hard-wired element of the human being – part of our nature – by theories which are grounded upon it.

Instances of collective action such as demonstrations and strikes are particularly problematic for individualist theories. Perhaps the most well-known failure of hyper-individualist rational choice theory is its inability to explain why people vote. According to the theory, the costs of voting (such as taking time off from employment and spending money to get to the polling centre, as well as risking being

picked for jury duty) far outweigh any potential rewards (which would occur only if the individual cast the deciding vote). The theory must therefore predict that individuals will 'free ride' and let others decide the election. Calling collective actions irrational does not get us very far, and in fact many such actions seem to be highly rational if individuals are not calculating based on their own costs and benefits, but those of the group.

There is good reason therefore to doubt that we can exist as agents prior to interaction, or that we calculate actions or act independently in the majority of situations we find ourselves in. To what extent is this damaging to cosmopolitan liberalism? Opinions differ. Most liberal theorists do not subscribe to this ontological individualism. Rather, their theories are methodologically individualist, asserting that 'facts about society and social phenomena are to be explained solely in terms of facts about individuals' or normatively individualist, holding that individuals should be the referent objects of morality (Lukes, 1968: 120). Is this enough to avoid the criticisms outlined above? I argue that it is not, in either case.

Methodological individualism must be based on individualist ontology, and, because of this, has very limited explanatory power. Steven Lukes (1968) shows that methodological individualist arguments must assume that there are non-social facts about individuals available to use to explain social phenomena. Using social facts to explain social phenomena defeats the purpose of the approach. Lukes goes on to argue that the only facts available to explain social phenomena in a non-trivial way are actually social facts. Non-social facts about, for instance, the drives and appetites postulated by Thomas Hobbes and Sigmund Freud, or genetics, or the central nervous system, or the functions of the brain, cannot generate plausible theories for explaining social and historical phenomena. Only by introducing facts which presuppose social context, such as co-operation and power, can explanations become more convincing. The choice appears to be between a commitment to the ontological priority of individuals which can only generate implausible explanations for society, or a rejection of methodological individualism.

Normative or political individualism seems at first to stand on firmer ground, as liberals such as John Rawls (1993) have tried to move the debate away from presenting liberalism as a comprehensive moral or philosophical doctrine and back to seeing it as a political theory. Rawls argues that liberal political institutions founded on a conception of justice as fairness are the best practical way to mediate between different interests in modern societies, as they allow the maximum freedom to all citizens to live their own ways of life. Liberalism can therefore be supported by an 'overlapping consensus' between many different reasonable comprehensive doctrines, or belief systems. As this support is based on political interest rather than epistemology, Rawls believes it escapes the criticism detailed above. However, I disagree: liberal political theory, like liberal philosophy, must still justify the value it places on freedom, and this justification cannot (at least presently) be found in an overlapping consensus.

All liberals and cosmopolitans can agree that the individual is the referent point of ethics and therefore that social practices and institutions should be judged according to their effects on the individuals affected by them. To operationalise this position, its advocates need to present criteria for judgement. What we find is that the individual who is normatively valued is the unencumbered individual or self, and that judgement of practices and institutions is based on the effects that they have on liberty. Without a liberal philosophy it is difficult to justify liberalism as a normative or political theory – liberal philosophy, with its individualist ontology, tells us *why* freedom is important. And if freedom is to be valued, then the individual must exist prior to society in order that she can have the freedom to choose and pursue her own conception of the Good. It is necessary to normative individualism that the individual and society can be separated (demonstrated by Rawls' use of the metaphorical 'original position', where unencumbered selves are divided away from their communities – Rawls (1971 & 1999)) both to make freedom meaningful as a concept, and also to make the judgment of institutions a rational endeavour. The normative position assumes that social arrangements can be altered if found wanting, so

supposes that the arrangements are ontologically distinct from the individuals whose interests they must support.

It may be the case that cosmopolitan liberalism does not require a conception of self that is entirely prior to its ends and values, but it must see individuals as prior to communities or interaction, and it must retain a commitment to choice to support the commitment to freedom. Liberals cannot see 'individualised personalities as simply social artefacts of a particular, Western, culture' if their normative position is to have any force (Gaus & Courtland, 2003: 7). Some level of ontological individualism, with all its attendant criticisms, is a requirement.

Cosmopolitan liberalism is founded upon a supposedly neutral and universal conception of the individual agent, a conception that hides assumptions about which individuals are most valued. The idea of an individual prior to society implies a kind of universal human identity that transcends national, ethnic, gender and religious identities. However, feminist critics charge that the conception of the individual at the heart of the principal application of cosmopolitan liberal principles to international politics, the human rights regime, is gendered: the archetypal rights holder is male, head of his family, and the principal wage earner (see, in particular, Elshtain (1981 & 1987)). The roots of this characterization of the rights holder can be traced back to the Classical Greek distinction between the private and the public realm. The rights outlined in the 1948 Universal Declaration are designed to protect the individual from arbitrary state interference while he acts in his public capacity as a citizen of the polity or a unit of labour, without impinging upon his activities in the private sphere. As women traditionally have been confined to the private sphere, where the protection they need is from other individuals rather than the state, their experiences of violation (justified by family, religion or culture) are not covered by the human rights regime. Despite a great deal of work in recent years to 'correct' the regime and extend equal protections to women, critics such as MacKinnon (1993) and Coomaraswamy (1994) note that rights language has no resonance to many women as they are marginalized or excluded in the public sphere, or do not enjoy the social and

economic conditions and freedom from the threat of violence that make meaningful the status of citizen. That this can be the case even in liberal states suggests that those who fully enjoy status as an individual in the cosmopolitan liberal sense are disproportionately male.

2:3:2 Politics and Economics of the Individual

Cosmopolitan liberalism is a fundamentally Western way to view the world, developed in line with our historical experiences, which explains why many accept it as natural or self-evident. In fact, an examination of alternative political vocabularies shows that '[t]he idea that individuals have rights and that the government ought as far as possible to be based on the consent of the governed has great power, but it cannot be said to be self-evident, or to encapsulate a general truth about how the world necessarily is or should be' (Brown, 2000a: 206). The idea that human beings are 'individuals' rather than just individuated and the concept of human life as a project are similarly not universal – they are the products of particular political cultures. This section examines the how and why the individual has been produced.

Prior to a politics which valued the individual, social relations in the West tended to be ordered around feudalism, with little room for individual rights. The Westphalian system began to change this by emphasising a direct relationship between the monarch and the subject, although this change should not be overstated. Brownlie explains that even though Grotius and others conceived of a natural law of nations in which the ruled had certain protections from their rulers, these theories 'did not have much substance for their contemporaries' (Brownlie, 1964: 437).

During the eighteenth century, new social movements fought for the recognition of basic individual rights. This fight is seen in the American and French revolutions and the subsequently issued Bills of Rights. The French Declaration of the Rights of Man and of the Citizen was particularly important as it conceptualised individuals as

having rights stemming from something other than their citizenship, while also asserting the right of self-determination within a nation. These liberal concepts were quickly adopted into the rhetoric of Western states, even if not the practice, thus the formal equality of men (and it was only men) as members of the political community was established.

There was much to be said for this new view of human life: seeing intrinsic value in the individual made the class or group based oppression common in feudal times difficult to justify or enforce. Yet modern liberalism is a child not just of changing social sensibilities, but also of massive economic upheaval in the West during the eighteenth and nineteenth centuries and as such it has both destroyed social ties and made new kinds of oppression possible.

Karl Polanyi (2001) describes the effects of the 'Great Transformation' during which market economics replaced the feudal system that existed in most European states prior to the eighteenth century. Before the market came to dominate, economic relations were submerged within social relations. By the end of the eighteenth century the economic sphere had become separate from the political sphere and social relations were clearly subordinate to economic relations. A conception of people as individuals rather than community members is necessary for a capitalist economy to function, as such an economy requires that there are markets for each factor of production, one of which is labour. In order for a labour market to be generated, labour must be separated from land and the other activities of life to which it was previously tied: 'Traditionally, land and labour are not separates; labour forms part of life, land remains part of nature, life and nature form an articulate whole' (Polanyi, 2001: 187). The separation of the individual from her community and her land is also necessary to render her vulnerable to the market, for 'the individual … is not threatened by starvation unless the community as a whole is in a like predicament.' (Polanyi. 2001: 171). Only when social structures have been destroyed is the labourer 'reduced to the choice of being left without food or of offering his labour in the market for the price it would fetch' (Polanyi, 2001: 172).

To separate labour out, according to Polanyi, was to 'annihilate all organic forms of existence and to replace them by a different type of organization, an atomistic and individual one.' (Polanyi, 2001: 171). This annihilation was enacted through 'the application of the principal of freedom of contract … [which] meant that the non-contractual organizations of kinship, neighbourhood, profession, and creed were to be liquidated since they claimed the allegiance of the individual and thus restrained his freedom [to sell himself wherever he could attain the optimum price for his labour].' (Polanyi, 2001: 171) This effect of liberalism on law will be discussed in Chapter 3.

Haney has looked specifically at the United States and argues that the rise of liberal individualism took place in the time not just of laissez-faire capitalism, but also of the Protestant work ethic and when 'the cultural ethos was dominated by the 'myth of rugged individualism' (Haney, 1982: 193). He follows Weber in his view of Protestantism as supporting the new social relations necessitated by capitalism. Protestants in nineteenth century America preached that hard labour was necessary both to repent for original sin, and to bring about personal improvement. Weber noted that the commitment to work was a necessary condition for the rise of capitalism: 'One of the fundamental elements of the spirit of modern capitalism, and not only of that but of all modern culture: rational conduct on the basis of the idea of the calling, was born … from the spirit of Christian asceticism.' (Weber, 1958: 180) This ethic supported the individualism inherent in liberal economics by pitting each person against the others, seeing labour as the possession of individuals to sell to whoever would pay the highest price (thus breaking down social classes) and by making failure to do with personal effort and not position in a social system. Incidentally, Weber saw that while capitalism needed Protestantism to take hold, it quickly outgrew its religious foundations, leaving 'the idea of duty in one's calling [prowling] about in our lives like the ghost of dead religious beliefs.' (Weber, 1958: 181). The contemporary critique of Western hyper-consumerism and moral decline was foreshadowed by Weber:

> Where the fulfilment of the calling cannot directly be related to the highest spiritual and cultural values, or when, on the other hand, it need not be felt simply as economic compulsion, the individual generally abandons the attempt to justify it at all. In the field of its highest development, in the United States, the pursuit of wealth, stripped of its religious and ethical meaning, tends to become associated with purely mundane passions, which often actually give it the character of sport. (Weber, 1958: 182)

The belief that riches were available to all, with social status now irrelevant, provided incentive for the labour force to work harder, and the transfer of responsibility onto the individual for his own success or failure kept social unrest at bay in a time of huge societal turbulence. Individualism also provided some level of stability and purpose in changing times, as support from and identity in the collective was replaced by the veneration of individual character.

Cosmopolitanism is implicated alongside liberalism in the production of the individual. From the mid-nineteenth century, as the effects of economic globalisation began to be debated, cosmopolitanism was argued by theorists such as Marx and Engels to be an ideological reflection of capitalism; justifying and allowing the misery that capitalism caused. The cosmopolitan positions favoured in the twentieth century by libertarian economists such as Friedrich von Hayek and, later, Milton Friedman, which support a single global market, free trade and minimal political interference are still open to this challenge. Opponents contend, following Marx, that capitalism contains the seeds of its own destruction, either because of the poverty, exploitation and alienation it causes, or because it encourages hyper-consumerism which will lead to environmental destruction. Economic cosmopolitanism is rejected by the contemporary anti-globalisation movement for being complicit with global capitalism and for concealing the power politics behind its moral position. Burchill offers some evidence for this, arguing that the states which promote free trade developed behind protective barriers, and that states still do not practice what they preach (Burchill, 2001a: 51-54; 59). Rather than enhancing freedom, free trade works to further the interests of the powerful, with multinational corporations exploiting markets in developing countries and paying tax on the profits of this exploitation to

Western governments (though I argue in Chapter 7 that this may be changing). Burchill also notes the irony that 'the basic procedural freedoms and rights which citizens in liberal democracies take for granted, including freedom of association, the right to organize and collectively bargain, the prevention of forced labour, and so on, are being denied in a number of developing East Asian societies by policies of market liberalization which Western liberals are encouraging.' (Burchill, 2001a: 43).

Contemporary cosmopolitan liberals have difficulty accommodating the economic foundations and implications of the concept of the individual they rely on so strongly to ground their ethics. Some simply reject the association, defining economic liberalism and economic cosmopolitanism as distinct from the moral or political versions of these doctrines. Contemporary liberal theorists differ substantially over private property and the market. For some, property and liberty are fundamentally linked: libertarians such as Steiner (1994) see property as a form of freedom. From the eighteenth century onwards, most liberals have seen private property as necessary to freedom – we must be able to sell our labour and use our capital as we please, so must be able to make contracts, run businesses, spend or save money and so on. Only in the late nineteenth and early twentieth century was the role of the market and private property in granting freedom seriously questioned, and through the twentieth century optimism grew about the ability of the state to regulate the market, resulting in support for limited redistribution by the state in the work of the century's most celebrated liberal (Rawls, 1971). Liberal thinking also tends to vary geographically over the role of economics: Gaus and Courtland describe English liberalism as centring on 'religious toleration, government by consent, personal and, especially, economic freedom', French liberalism as more closely bound up with secularism and democracy and American liberalism as often combining 'a devotion to personal liberty with an antipathy to capitalism' (Gaus and Courtland, 2003: 1).

This difference in approach can be seen in discussion of economic rights. The human rights regime is grounded on ideas of substantive justice, but the role of economic man in liberalism leads to the elevation of civil and political rights above social and

economic rights. This has been criticised by American cosmopolitans such as Henry Shue (1980), Charles Beitz (1999a) and Thomas Pogge (1999 & 2002), who question the separation of global distributive justice from the broader goal of global justice, but identify as liberals. They argue that human freedom cannot be adequately promoted when so many of the world's people are desperately poor and therefore that the issue of global inequality should have a place alongside the promotion of freedom in any discussion of human rights. This notion has met with a great deal of resistance in the West, partly due to the concern that if economic rights prove very difficult to achieve, then the entire human rights regime may suffer, and partly due to the much less defensible fear that to admit the importance of economic rights in achieving human flourishing would mean giving up some of the resources the region has long enjoyed.

Cosmopolitan liberals cannot simply reject the economic implications of their doctrine. Economics was not only necessary to the founding of liberalism, but certain economic principles are held (implicitly or explicitly) to be normatively valuable. Free markets and free trade, for instance, seem to follow logically from placing value on choice. The fact they work against the material interests of many shows the instability within the doctrine. Burchill notes that there is a fundamental tension in liberalism over the role of economics that cannot be wished away and is far from being reconciled. He sets out the opposing positions as follows: 'the market view of human beings as consumers maximizing their utilities and the ethical view of humans as striving to realize their potential' (Burchill, 2001a: 29). The development of capitalism is intrinsic to the history of the liberal individual, but dismissed by many of liberalism's modern proponents.

2:3:3 The Epistemological Impasse

All of this is not to suggest that the ontology, politics or economics of communitarianism is to be preferred. Communitarians tend to reify and essentialise culture in the same way that cosmopolitan liberals reify and essentialise the individual. Cultures are often assumed, in the face of a great deal of evidence to the contrary, to be closed or bounded, and no position is available from which to criticise foreign traditions. Given that cultures have political and economic effects (they work to establish and justify sets of power relations, such as control over women by men (Moller Okin, 1999)), a normative theory which offers no possibility of critique for anyone outside a particular community is unsatisfactory.

The concept of agency in communitarianism is also left wanting. Where cosmopolitan liberalism assumes free will, communitarianism implies determinism. Neither cultural change nor individual agency (in the form of critically evaluating our ends and our social attachments) can be accommodated in this ontology. The self is created by culture, but no account is given of any agency in that creation: it is not at all clear what is doing the work here – how does culture create anything unless it has independent agency? Once we've been (mysteriously) created as selves, the majority of our behaviour follows socially conditioned routines and habits: we do not exercise agency, but act out social roles. Culture is a structural phenomenon from which identities and selves are generated, but little thought is given to how cultures are created and maintained. Culture also tends to be conflated with (or at least not adequately differentiated from) community, society and state, so the sovereign state system becomes both inevitable and normatively justified with reference to its apparent necessity in constructing the self. Much communitarian theorising seems perilously close to collapsing into a realist 'morality of states' (Hutchings, 1999: 44-46).

The most intractable problem faced by both cosmopolitan liberal and communitarian positions is to do with their epistemology. Both sets of theories are foundational: they

rely on a correspondence theory of truth, or the idea that truth is somehow 'out there', separate from our theorising and acting. The foundations of each position are assumed to be external to the theory itself, thus providing independent criteria to measure theoretical propositions against. The foundation of cosmopolitan liberalism is the pre-social individual and her needs, which supports a universalist ethics advocating a common set of rights and duties. The foundation of communitarianism is the reified community, grounding a particularist ethics which sees morality as culturally bounded and values as being generated through cultural traditions.

Molly Cochran argues that the foundational epistemology of each set of theories leads to a structural opposition between them, making any attempts at accommodation between the two sides futile (Cochran, 1999). The fundamental conflict over how moral claims are to be grounded is not possible to resolve within the epistemology employed by each side. Communitarians see the cosmopolitan account of the liberal individual as privileging a post-Enlightenment, Western view of the world, itself particularistic. Cosmopolitans argue that there is no justification for privileging the community, and to do so is to ignore the morally primary and common identity of people as human beings rather than members of communities. These positions are simply incompatible unless their foundations are up for question – they speak past, rather than to, each other.

Epistemological concerns do not just impact on theorising, but on practice. MacIntyre (1981) suggests that modern, liberal individualist moral discourse in and of itself is incapable of reconciling conflicting positions, because its foundations depend upon beliefs now rejected in Western culture. The concept of the pre-social individual only makes sense if we hold the teleological belief that man has a purpose or good which he strives to reach, and the Judeo-Christian belief that morality comes from divine law. These beliefs no longer hold sway in many Western cultures, yet we are left without new beliefs on which to base practice, as contemporary society has stripped away shared social norms. The individual has become the sole arbiter of values and

the author of her own identity. Without social norms to frame them, moral arguments are simply statements of individual preference: morality is just emotivism.

A range of theorists, Cochran included, have proposed anti-or non-foundational ethics in order to move beyond the epistemological problems faced by both cosmopolitan and communitarian theories. I will discuss some of these positions in Chapter 5, when I return to a consideration of agency. They all provide innovative ways of thinking about the issues raised in this chapter, but they remain outside the mainstream of theorising, which is my focus here.

The mainstream is monopolized by debates within and between cosmopolitan liberal and (to a lesser extent) communitarian positions. These debates cannot be resolved as the epistemological impasse between universalism and particularism is based on inadequate ontology. The sovereign individual and the essentialised community are set up in opposition to each other, but the foundations chosen by each side bear striking similarities. Each is idealised and treated as sovereign or autonomous, with ethics being 'read off' the ideal type. Either the asocial individual or the asocial state is elevated to being the 'independent loc[us] of moral authority', so each ethics highlights the separateness of its constituent units (Warner, 1991: 3). Identity exists prior to interaction in each case, with no real account offered in either view of how individual and communal identities develop and change – each theory is static. National self-determination is justified for communities using the same reasoning that individual self-determination is justified for persons: each must be left alone as far as possible to pursue its own projects. These projects are implied to be self contained and self referential: in terms of association with others, the path to human perfection apparently requires only that we do not impede our fellow travellers. Even the communitarian position has little to say about sociability; about the dynamism of collective life. Ethics in international relations has, to a large extent, become a choice between privileging an unrealistic individual or an undesirable state. Neither side can make convincing claims against the other, yet neither can accommodate the intuitions which render its opposite attractive. The cosmopolitan liberal can neither explain nor

understand the importance of community in shaping human identity and interests, or the psychological value of local or particularistic identifications. The communitarian has no basis from which to call for action when the community she so venerates attacks the individuals it is supposed to protect. As Hutchings argues, '[t]he idea of international ethics is premised on the acceptance of a gulf between politics (nature/ reality/ particularity) and morality (reason, ideality, universality)' (Hutchings, 1999: 47). Both sides take idealised and dichotomous positions on the individual and the collective, with no account of sociability or politics, and the drawbacks of each lead to impoverished accounts of human agency.

2.4 Conclusion

Liberalism and, more recently, cosmopolitanism have come to dominate Western thinking so successfully that the idea of the sovereign individual, who has rights by virtue of her humanity, is largely accepted. This chapter has called the ontology, history and epistemology of the doctrines into question, and shown that the sovereign individual is neither a universal nor an unproblematic concept.

Individualism developed both because of dissatisfaction with previous, communitarian, conceptions of the value of the person, and because the emerging economic system required people to be separated from their communal support systems and made vulnerable to the market. This second foundation of individualism is often forgotten, particularly by liberal and cosmopolitan thinkers. The next chapter will explore the conceptions of responsibility which follow from the view of agency within the dominant cosmopolitan liberal discourse and outline how these have influenced the practice of international relations through the twentieth century.

CHAPTER 3: LEGALITY, CRIMINALITY AND RESPONSIBILITY.

The discussion in the previous chapter highlights the links between agency and responsibility. Our ability to choose how to act, for the liberal, is the basis upon which we are held responsible for what we do. As long as we are not forced to take one action or another – as long as we could have done otherwise – then we can be held to account, and may be deserving of praise or blame, for our behaviour. Much of the debate between cosmopolitan/ liberal and communitarian positions in IPT concerns responsibility or obligation as well as the nature of agency: principally, the responsibility we have towards others in our political communities versus duties we have to outsiders. Responsibility is seen by cosmopolitans as being generated by our common membership of the human race, and by communitarians as being generated by our communal identity or by an implicit contract with our compatriots. Strict cosmopolitans such as Singer (1972) argue that any responsibilities we have are owed to all humankind, so those local to us cannot be favoured unless to do so is to the advantage of all. A more moderate cosmopolitanism (see, for instance, Barry (1995)) can allow for some special responsibilities to our compatriots while still holding that we have a universal responsibility to aid any individual who needs our help, regardless of where she is in the world. Communitarians argue that responsibility is generated by membership of the community, so minimal universal duties exist.

This chapter will focus on responsibility within cosmopolitan and liberal thought, and, in particular, the relationship within such thought of morality to law, which has led to the individualisation and legalisation of responsibility. I argue that this conception of responsibility is impoverished for three reasons: firstly, because the role of law is problematic within liberalism and cannot do the work that liberals rely on it to do, secondly, because the individual agency implied by a liberal, legal conception of responsibility is difficult to identify at the international level, and thirdly, because the focus on law as a neutral, objective arbiter within cosmopolitan liberalism denies the relevance of political and economic power in the formation and

execution of the law. Despite cosmopolitan law being touted by its supporters as providing more protection to the individual by combating the impunity inherent within the sovereign state system, these three factors actually serve to limit the possibilities for encouraging responsibility within contemporary international discourse.

Most discussion of responsibility within liberalism is concerned with identifying the agent responsible for outcomes which have already occurred: responsibility is retrospective or *ex post.* Consideration of prospective or *ex ante* responsibility is largely to do with the identification and protection of rights, and these responsibilities tend to be institutionalised. Freedom or liberty of the individual is the highest moral good, and that freedom is most threatened by arbitrary state action. To prevent the state from impinging upon the freedom of the individual, the individual is afforded 'natural' rights (i.e. grounded in natural law, or human nature). These rights structure moral relationships in liberal societies by outlining the obligations that political institutions have towards the individual, and these obligations tend to be negative, i.e. they require the state *not* to act in particular ways. Liberalism has little to say about prospective intra-societal responsibility, for three main reasons. Firstly, liberals are keen not to impinge on the freedom of the individual any more than is absolutely necessary, and secondly, they do not believe such responsibility to be necessary, given their belief in an underlying harmony of interests. The final reason is that moral concern within liberalism is focused upon the individual and her relationship to the state, because the state has the potential to do most damage to individual freedom. Rather than being implicated in the everyday practice of all individuals, responsibility is largely procedural and institutional: it is written into the workings of the liberal state. Rights are best protected by certain kinds of (liberal, democratic, constitutional) institutions, and through the application of law. Barry Barnes notes that responsibilities traditionally located in the family are transferred in modern liberal states to administrators, skilled professionals and technical experts: 'most of the responsibilities attendant upon birth and death are in their hands, as are those relating to the health, education and basic well-being of children; and they share responsibility

… for the basic economic provision in family units' (Barnes, 2000: 94). Where rights do impact on interpersonal relationships, they do so only as side constraints to the self-interested pursuit of the Good, valued as the principal goal of human life by liberal theorists. The state is morally and legally responsible to the individual to protect her freedom by not acting arbitrarily to limit it, and the individual is morally responsible to herself to develop and pursue her own idea of the good.

Cosmopolitanism has taken the liberal idea of natural rights within communities and expanded it beyond national borders. For the cosmopolitan, we have rights by virtue of our common humanity: 'human rights'. These rights should be protected by the states in which we live, but if our state fails to protect us, an international institutional regime now exists which establishes responsibilities to prevent and punish abuses of our rights. These responsibilities are established through an elaborate new system of international law, and are grounded on the assertion of the innate value of the individual discussed in Chapter 2. Sections 3.1 and 3.2 examine the importance of law to liberal conceptions of responsibility and document how that emphasis on law has translated, via cosmopolitanism, to conceptions of responsibility in the international realm.

3.1 Liberalism and the Law

The principal feature of the cosmopolitan liberal view of responsibility, beyond its focus on rights, is the legalisation of the concept. Law plays a central role in liberal theory. The rule of law is judged to be the best way to safeguard the individual from the arbitrary action of states, by requiring that government authority only be exercised in accordance with laws adopted through legitimate procedures. Liberalism in general sees law as an efficient and rational way to regulate relationships previously governed by violence – whether those relationships are between individuals, states and individuals, or states. Law is valued so highly by liberals because it is conceptualised as the apolitical expression of an objective moral code. Law is aligned with morality,

so moral responsibility is defined and discharged through law. This is true particularly of criminal law: criminal behaviour is seen as differing qualitatively from illegal behaviour to the extent that it breaches societal moral codes, though contract and civil law are also underpinned by normative claims. Obedience to the law is all that is needed to satisfactorily fulfil one's moral responsibilities in a liberal polis.

This legal approach to ethics can be seen in the expansion of liberalism in both domestic and international realms. Liberalism does not just value law, but particular types of law, and so has had significant effects upon legal frameworks and the construction of responsibility within them. Before I document the effect of liberalism on law beyond borders, this section will discuss the implications of the rise of liberalism on domestic law.

Haney argues that the principal effect of the rise of liberalism in domestic polities was a move away from doctrines of collective responsibility to doctrines where the primary responsibility lay with individuals, with a new emphasis on individual autonomy and personal character or disposition. A person's legal situation 'was no longer defined in terms of his place in a hierarchy of social status, but came to depend instead upon his personal efficiency and capability in a capitalist economy' (Haney, 1982: 194). As Polanyi noted, the principal of freedom of contract became paramount as relationships of social status were replaced by contractual relations. Parties to contracts were seen as free and autonomous under what became known as 'will theory'. 'Will theory assumed that parties were equally capable of knowing what they wanted, of freely choosing the circumstances under which they would get it, and of expressing contractual agreements whose 'fairness' was a matter for the autonomous parties to decide themselves' (Haney, 1982: 208). Contract law suggested both that all parties were equally able to contract with each other (thus writing out the effects of differences in power between parties, particularly important in, for instance, negotiations between employers and employees) and that there was moral value in the pursuit of self interest and individual wealth (giving lie to the assertion that liberalism does not privilege any particular idea of the Good).

The effect of economic transformation and individualism on the criminal law was also profound. The focus of such law changed from the punishment of sinners to the protection of property and of the rich from the poor. Criminal law in Western states came to reflect the three key assumptions about human behaviour implied by the individualism which grounds liberalism, namely that: '1) individuals are the causal locus of behaviour; 2) socially problematic and illegal behaviour therefore arises from some defect in the individual persons who perform it; and, 3) such behaviour can be changed or eliminated only by effecting changes in the nature or characteristics of those persons' (Haney, 1982: 195).

'The cardinal principle of criminal jurisprudence is that a crime is the act of a voluntary and responsible agent who chooses between the lawful and the unlawful' (Haney, 1982: 209). The doctrines of free will and individual responsibility are the foundations of contemporary Western criminal law and it makes sense to focus any response to criminal activity on punishing or reforming individuals if the individual is seen as the causal locus of criminal behaviour, the agent. Nineteenth century liberalism valued free will very highly, thus it conceived of deviance as a sickness rather than something determined by physical or psychological traits of criminals (a view which had been popular in the eighteenth century). This fitted both with the science of criminology, which, at the time, suggested that there were criminal 'types', and with liberal support for the doctrine of free will. This sickness was treated in prisons, which were used to change and reform individuals and to give an example to others of what would happen if they broke the law. Prisons also functioned to support the new market economy - state institutions took the 'burden' of caring for and rehabilitating defective individuals – prisoners, orphans, the disabled, and the insane – away from the community to ensure maximum labour productivity.

Haney concludes that, in the nineteenth century: '[t]he legal system, in harmony with widely held psychological theories about the causal primacy of individuals, acted to transform all structural problems into matters of moral depravity and personal shortcoming' (Haney, 1982: 226). This approach became institutionalised in the criminal justice and prison systems, and, despite great progress in social science and

fundamental challenges to methodological individualism, remains embedded in both domestic and international criminal law. Again, as highlighted in Chapter 2, the historical context of liberalism and the economic interests it serves should cause us to question claims of neutrality in its central concepts of agency and responsibility.

The epistemological status of law itself also changed through the nineteenth century as economic life was transformed: law was increasingly viewed in secular, instrumental and positivist terms. Laws were less about sin and more about controlling a constructed market place and protecting property – and as such, laws became divorced from social codes. Rather than being based on natural, or God's, law and expressing the moral values of the community, laws became seen by critics of liberalism as constructed to facilitate the realisation of individual desires and to support the distribution of economic and political power in society. This changing view of the foundations of law (from religious and natural to secular and contingent) caused a crisis of legitimacy for Western law, which was solved by re-founding law on the principal of (natural) reason and making the study of it a science. Law students were taught that law is objective and neutral, and should be seen as entirely separate from politics (which is subjective, arbitrary and value-laden). Recasting law as founded on reason also had the effect of privileging the status of the judiciary. Walzer argues that, as liberalism is founded on an idea of natural rights, liberals tend to see philosophers and judges as having some special understanding of the relevant issues, so assume that courts are the best places to define and protect rights (Walzer, 1984). This assumption and resultant institutional design and practice can be witnessed in the legalisation of both domestic and international rights questions.

The re-grounding of law on reason has not entirely solved the problem faced by liberalism, and the positivist view of law that began to gain credence in the nineteenth century remains a real threat to the doctrine. One of chief tenets of liberal ideology is that political, economic and social transactions are controlled by the rule of law. But if law is seen as positive or socially constructed, then the state can quite legitimately eliminate freedoms as long as it acts according to the rule of law, for instance by

giving 'fair notice' of its actions to restrict freedom, and generally by following the correct procedures of the law. Thus, 'liberalism must depend on a *natural* law of humans to guarantee from the rule of law a sizeable zone of freedom' (Gray Carlson, 1993: 266-267). This dependence on a theory of natural law in turn creates significant problems. Liberalism needs to separate law from politics to protect individuals from arbitrary political action. However, this is impossible, as the 'zones of freedom' necessary for individuals to flourish, though phrased as apparently determinate law, are necessarily constructed though language, using phrases such as 'due process' and 'good faith', and thus open to interpretation. Conflicting normative views and political positions find their way into law through this process of interpretation. Some see this as beneficial, as scope for interpretation allows legal norms to be adapted to fit new contexts. But a true liberal position must reject the imposition of politics into the law. Dworkin (1978, 1985b & 1986) exemplifies this position – he contends that there is only one right answer to any question of law, and that law and morality cannot be separated – the role of judges is to apply the law as it is to find the right answer, and if the existing law does not provide the answer, they must consult the moral code of society. The key idea that Dworkin's work provides is that of 'fit' – judges must not and do not make political decisions between equally viable answers, but rather search for the solution which best 'fits' legal practice and existing law. The Critical Legal Studies critique of liberal jurisprudence argues that there is no best fit – law is radically indeterminate as it reflects ideological struggles in society. Thus almost every decision judges make entails making subjective choices between equally compelling positions, therefore making new law, and each such decision is by its nature political. In terms of liberal democratic process this is unacceptable because the rule of law requires a separation of powers between the legislature and the judiciary, but more importantly it is unacceptable to liberalism because it blurs the line between power politics and neutral law.

Liberalism ends up, according to Gray Carlson, stuck in a serious dilemma: 'Naturality reduces liberalism to unproven dogma. Conventionality [i.e. positivism] reduces liberalism to politics.' (Gray Carlson, 1993: 277). There are great difficulties

for the ideology to be found on each side. If naturalism is claimed to justify the 'Right' (i.e. the structure of political institutions), it is very difficult to understand why it is not used (or at least not explicitly used) to justify a particular conception of the 'Good'. If there is such a thing as natural law – if there are naturally correct answers to how we should structure our societies and discharge our responsibilities, this does suggest, as many of liberalism's critics have pointed out, that liberalism entails a view that there are naturally correct answers to what we should value and how we should live.

This debate between liberalism and its critics over the epistemological status of law (as discovered or produced), is far from resolved. Yet, despite its problematic foundations, cosmopolitan liberalism has been successful in exporting its individualism and legalism into the international realm. The international responsibility of both states and individuals is now defined largely in terms of rights, with these rights being protected by an international legal regime of unprecedented scale.

3.2 Human Rights and the Development of International Law

The triumph of cosmopolitan liberalism since 1945 can be witnessed in the new importance of the individual in international law and practice. The appeal of liberalism in the West along with the failure of the international community to manage its affairs peacefully by ascribing agency and responsibility only to states has led to the increasing individualisation and legalisation of international relations. Cosmopolitan thinkers took the liberal focus on rights and law and wrote it large upon the global scene, which has resulted in significant changes to conceptions of responsibility in international relations. Gradually, through the twentieth century, individuals have gained both rights and responsibilities. They, rather than states, are now conceived as the causal locus of the behaviours which are of most concern in IR and these behaviours have therefore been written into international law as crimes.

There has been a double movement of, firstly, the criminalisation of international law, i.e. an increase in the amount of international law which is concerned with identifying and prosecuting criminal acts and, secondly, the internationalisation of criminal law, i.e. the prosecution of those responsible for criminal acts above the level of the sovereign state. Whereas the communitarian sees obligation as being generated within states, cosmopolitan liberals appeal to a universal code of right and wrong in order to establish responsibility beyond national borders. They use law, the favoured tool of liberalism, to establish and control these new structures of responsibility. This section briefly traces the development of international law designed both to protect and to prosecute the individual.

First, a caveat: much international legal practice remains constituted of cases assigning civil responsibility to states for breaches of international treaties. International law in the most part has been developed by states to regulate their relationships and most international law still concerns the actions of states. States are the primary subjects of this law and the International Court of Justice, as the principal judicial organ of the UN, is authorised to settle disputes between states and issue advisory opinions. States who the ICJ finds against are not judged to be *criminal* – rather they are seen as breaching legal codes they have freely acceded to as sovereign bodies – their acts are illegal rather than criminal, in a way analogous to domestic civil responsibility in contract law. The International Court of Justice has no jurisdiction over matters involving individual criminal responsibility.

However, through the twentieth century, there has been an increasing focus on the welfare of individuals in the form of the human rights regime, and also a trend towards holding individuals responsible for international crimes. I explained, in Chapter 2, the emergence of the human rights regime after the Second World War. The rhetoric of the regime may be very powerful, but progress has been slow towards assigning responsibility for human rights protection beyond the state. The Preamble to the 1948 Declaration of Human Rights asserts that human rights should be protected by the rule of law, but, due to the political stalemate that was the Cold War,

it is not until the 1990s that major shifts towards the emergence of a legal regime genuinely capable of protecting those rights took place. The emerging regime concentrates on protecting civilians from the gross breaches of rights involved in genocide, crimes against humanity and war crimes, and consists in a variety of treaties, ad hoc tribunals, regional courts and the new International Criminal Court.

War crimes prosecutions themselves are not new. There are records of such trials dating back as far as Ancient Greece, but, until the twentieth century, suspected war criminals were tried under domestic law in national courts (meaning, in practice, that the perpetrators were safe from prosecution if they held senior positions within the state). In 1872, Gustav Moynier, one of the founders of the International Committee of the Red Cross, called for the creation of a permanent international criminal court. The process of its creation took more than 100 years, and, understandably given the liberal belief that law is preferable to violence as a method of managing relationships, most moves towards it coincided with the end of major conflicts.

During both the First and Second World Wars there were calls for the international prosecution of leaders of belligerent states for acts of aggression and gross violations of the laws of war. The 1919 Treaty of Versailles provided for an *ad hoc* international court to try the Kaiser and German military officials. No prosecutions ever took place as the Netherlands granted asylum for the Kaiser, and Germany refused to hand over suspects, but the demand marked a shift in thinking in favour of holding individuals internationally responsible for war crimes. During the Second World War an international criminal court was proposed, but rejected by the Allies who instead established *ad hoc* International Military Tribunals at Nuremberg and Tokyo. These tribunals began the process of the international criminalisation of acts constituting serious human rights violations, rejected the principle of sovereign immunity and began to see *individuals* as the relevant actors (and therefore hold them responsible) instead of states or groups.

The Cold War led to deep divisions in the UN and its various bodies, and work on international criminal law lay almost dormant for more than thirty years. Only after 1989 did demands for a permanent, centralised system grow again. Perhaps surprisingly, given the charges made by various scholars that the international institutional system is a tool of Western liberal hegemony, it was not the West who instigated the campaign for an international criminal court, but Trinidad and Tobago, who were struggling to control activities related to the international drugs trade taking place on their soil and in 1989 requested that the UN reconvened the International Law Commission to establish a permanent institution.

Reports of ethnic cleansing in the former Yugoslavia overtook the work of the Commission: in 1993, the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to prosecute such acts. A year later, the International Criminal Tribunal for Rwanda (ICTR) was established, this time in response to the deaths of an estimated 800,000 Tutsis and moderate Hutus, also as a subsidiary organ of Security Council. Questions remain over whether the tribunals were an appropriate response to these atrocities or a more cynical, low-cost way of responding to the demand that 'something be done' Still, the tribunals have set a number of important precedents in terms of both the situations and the people over which the jurisdiction of international criminal law extends. Previous war crimes trials had all been concerned with acts which took place in the context of inter-state war, however the ICTY has jurisdiction to prosecute persons responsible for crimes against humanity whether committed in an international or an internal armed conflict, while the ICTR Statute makes no reference to armed conflict at all, implying that these crimes can take place in peacetime, within a state. This is a highly significant step in terms of enforcing human rights but also in its challenge to state sovereignty. The trial of Slobodan Milosevic at the ICTY, for 66 counts of war crimes, crimes against humanity and genocide, was the first time in history that a former head of state has been prosecuted for international crimes, and the conviction of Jean Kambanda, former Prime Minister of Rwanda, marked the first time that a head of government was convicted for the crime of genocide.

Despite the will of the international community to bring the perpetrators of atrocities in Rwanda and the former Yugoslavia to justice, the tribunals soon demonstrated major drawbacks. Principle among these is the enormous cost and slow speed of the proceedings. The monies paid to the ICTY between 1993 and 2006-07 total $1,243,157,722. The ICTR has received more than $550m between 1996 and 2005. Yet the number of trials completed is astonishingly low. These sums of money have paid for 62 trials in twelve years at the ICTY. Of these, at the time of writing (June 2006), 14 are at the appeal stage, 40 have received their final sentence, and 8 have been acquitted. A further 8 are on trial (this does not include Milosevic's trial, which was ongoing at the time of his death) and 43 are at the pre-trial stage. 6 accused are still at large, including Karadic (former political leader of the Bosnian Serbs) and Mladic (former military leader of the Bosnian Serbs), much to the embarrassment of the international community who have tried for 10 years to apprehend them. $550m has paid for 26 trials in eleven years at the ICTR. Of these, 7 are at the appeal stage, 16 have received their final sentence and 3 have been acquitted in the Trials Chamber. A further 28 people are on trial and 15 are awaiting trial. 19 indictees are still at large (sources: ICTR and ICTY websites, 2006).

The conflicts in former Yugoslavia and in Rwanda had two distinct contributions to make to the progress of the campaign for an ICC. They re-focused attention on large-scale human rights violations during times of conflict and they highlighted the significant practical difficulties encountered in setting up and running ad hoc tribunals, so showing the benefits which could be gained from a permanent international body dedicated to holding individuals responsible for human rights violations.

In 1998, delegates from 160 states plus 33 IGOs and a coalition of 236 NGOs met in Rome at the UN Diplomatic Conference of the Plenipotentiaries on the Establishment of an International Criminal Court. A draft Statute was drawn up which was adopted by majority vote at the final session. 120 states voted in favour of the Rome Statute,

21 abstained (including India and a range of Islamic, Arab and Caribbean states) and 7 voted against. The votes were not recorded, but the US, China, Israel, Libya, Iraq, Qatar and Yemen are widely reported to have voted against. After 60 states ratified the Statute, it entered into force on 1st July 2002. The Court is now up and running, with investigations taking place into crimes allegedly committed in the Democratic Republic of Congo, in Uganda and in the Darfur region of Sudan[3].

The ICC is phenomenally innovative in international relations. The Rome Statute established a Court with broad ranging powers to prosecute acts of genocide, crimes against humanity, war crimes and, potentially, aggression (although the Court will only have jurisdiction over crimes of aggression if a definition can be agreed upon, which looks unlikely). The Court is an independent organisation and not an arm of the UN. It is funded by State Parties (those States who have ratified the Rome Statute), voluntary contributions and the UN. The Court can prosecute for crimes committed after the Statute entered into force and committed either on the territory of a State Party, or by a National of a State Party. It follows the jurisprudence of the ICTY and ICTR in establishing that prosecutable genocide and crimes against humanity can take place in the context of internal armed conflict, and in times of peace. Prosecutable war crimes can also take place in internal armed conflict, but not in times of peace. Also following the tribunals, individuals are treated equally before the Court, and exceptions are not made for persons who hold positions in the government, bureaucracy, parliament or military.

Cases can be brought before the court in three ways. They can be referred by State Parties or the Security Council, or instigated by the Prosecutor (non-State Parties, NGOs and individuals have access to the process by petitioning the Prosecutor to start an investigation). When a matter is referred by the Security Council, the territory of the offence and the nationality of the offender are irrelevant: the Court has

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[3] For general background on and discussion of the ICC, see American Journal of International Law Special Issue (1999); Cassese (1999 & 2002); Economides (2001); Megret (2001); Ralph (2004); Robertson (2005); Schabas (2001). The websites of the Coalition for the ICC (2006), the ICC (2006) and the Rome Statute of the ICC (2006) contain many useful fact sheets and links to key documents, including the text of the Rome Statute itself.

jurisdiction due to the superior legal status of the Council. This final point is of particular concern to non-State Parties as it establishes automatic jurisdiction and no longer depends on state consent. Both non-State and State Parties do have the option to try cases in their domestic courts. Under the principle of complementarity, the Court will only exercise its jurisdiction when the states that would normally have national jurisdiction are either unable or unwilling to exercise it. If a national court is willing and able to exercise jurisdiction in a particular case, the ICC cannot intervene.

Within the ICC, the individual is of paramount importance. As well as the rights of individuals rather than 'peoples' receiving most attention since 1945, individuals are also being held responsible for international violence. International criminal law suggests that some acts or omissions in international relations are the direct responsibility of specific persons rather than states, and the ICC has been set up to prosecute those persons. Neither position nor action of state holds any relevance: the individual has replaced the state as the agent of concern in international criminal law.

The ICC is a significant achievement of cosmopolitan liberalism: the Court has the power to over-rule the domestic legal systems of State-Parties if it feels that offences have not been adequately investigated or tried, and it is concerned to punish severe breaches of human rights regardless of the nationality or official position of perpetrators or victims. The offences covered by the Rome Statute are judged to be wrong whether or not they are illegal within the domestic law that applies to the actors involved and little regard is paid to sovereignty and borders. Through international criminal and human rights law, in particular the ICC, cosmopolitan liberals are able to promote their particular view of the correct roles of individual, state and law. Frédéric Mégret notes that: 'probably no international legal institution better approximates the Kantian ideal-typical vision of a cosmopolitan-federation-of-states-in-the-making than the creation of a permanent international criminal court' (Mégret, 2001: 258).

This is not to say that its supporters are entirely satisfied with the system as it is. Fernando Tesón has set out the most comprehensive vision of a cosmopolitan future (Tesón, 1998). He argues that the legitimacy of international law rests on the normative foundation of respect for individual human rights: 'Morally legitimate international law is founded upon an *alliance of separate free nations, united by their moral commitment to individual freedom, by their allegiance to the international rule of law, and by the mutual advantages derived from peaceful intercourse'* (Tesón, 1998: 2, italics in original). He argues that all existing international law should be examined to ensure that it is consistent with human rights, and rejected if not, and supports this further imposition of liberal values by arguing, firstly, that it is irrational to support anything other that the Western conception of human nature and the rights which follow from that and, secondly, that liberal democracies are less likely to go to war with each other than other forms of government. This position follows Kant's assertion that the republic is the least aggressive form of government; a view which echoes the early liberal internationalists and has been revived in contemporary liberalism by Michael Doyle (1983) along with Russett (1993), Gleditch and Risse-Kappen (eds) (1995) and Brown, *et al.* (eds) (1996). Tesón's proposals are radical: he urges that diplomatic recognition is refused to any state which does not respect human rights, and that the UN should refuse membership to such states.

The work of Thomas Franck, another influential cosmopolitan lawyer working in this area, is equally radical. Franck has restated the liberal case for international law (see, especially, Franck (1995 & 1999)), proposing a non-foundational Rawlsian liberalism, committed to liberal procedures rather than liberal ends. Like Tesón, he calls into question the power of the contemporary state and documents the 'emerging triumph of individualism', as enabled by international law (Franck, 1999: 281). He declares that the 'burgeoning canon of individual rights has begun to crack open the previously encrusted Vattelian system, transforming formerly unchallenged concepts of state sovereignty and curbing the long-established powers of society to compel individuals to conform even to its most repressive practices.' (Franck, 1999: 281). Post-1945 changes in international law are breaking down the power of the state and

the group, so freeing the individual to define her own identity and realise her own goals. Both of these theorists see the correct role of international law to be underpinning the rights of the individual, and argue that the system is or should be expanded at the expense of state sovereignty.

Anne Marie Slaughter concurs that significant change has taken place: international law has been individualised; the 'principle of civilian inviolability' (Slaughter & Burke-White, 2002: 8) has displaced the principles of Westphalian sovereignty and a cosmopolitan 'new world order' has emerged as states have been replaced as the principal decision-makers on the world stage by transnational networks of judges, regulators and legislators (Slaughter, 2004a). Slaughter catalogues in particular the new lines of communication opened between national, regional and international legal professionals, whose collaboration has led to the globalisation of jurisprudence. Sovereign states, on this account, have been broken down into their component functions, and those functions, particularly that of sovereign legislator, are now being performed by cosmopolitan networks of enlightened professionals. The politicians have been ousted by lawyers and bureaucrats.

It is worth noting that as well as seeing progress in the promotion of human rights and their protection in international law, although perhaps not as much as that implied by Franck and Slaughter, the 1990s also saw the birth of a new, more violent, phenomenon of rights protection: 'humanitarian intervention'. The decade started and finished with innovative international action: in 1991, 'Safe Areas' were created for Kurds in Northern Iraq and in 1999, NATO intervened in Kosovo.

Humanitarian intervention is a more comprehensive cosmopolitan challenge to a morality of states or to communitarianism than either the idea of human rights or the expansion of international law, as it involves the invasion of the territory of a sovereign state using military force, motivated supposedly to alleviate suffering within that state. Such action appears to be entirely in contradiction to the principles of the sovereign state system. Its emergence can be linked to the increasing strength

of the liberal human rights regime, particularly the regime's conception of legitimate state sovereignty as flowing from the rights of individuals[4].

The growth of the human rights regime in the 1990s meant states were held to new standards of legitimacy, based on their observance of international human rights laws and norms. State sovereignty and non-intervention began to be seen as privileges, conditional upon responsible behaviour (an assertion of the liberal principle that a state is responsible for upholding the rights of its citizens, and, through this, their freedom) and the observance of international standards. A logical implication of the view that human rights rank higher than state rights to sovereignty is that intervention in support of human rights becomes legitimate and maybe even required (Beitz, 1999a; Tesón, 1998 & 2005a; Wheeler, 2000). This view can be traced back to the 1960s, or perhaps earlier, but fear of superpower involvement and commitment to traditional views of sovereignty meant that interventions in Bangladesh, Cambodia and Uganda in the 1970s which could have been seen as humanitarian were not (Wheeler, 2000). The end of the Cold War simultaneously removed the risk of superpower conflict, and created many more candidates for humanitarian action as protectorates collapsed and nationalism spread through ex-socialist states. During the 1990s, interventions in Bosnia, Somalia and East Timor took place as well as those mentioned in Iraq and Kosovo (though it must be noted that these interventions happened late in the conflicts and were undertaken with some reluctance). Attempts to redefine sovereignty and make it conditional upon responsibility, along with the new, albeit qualified, willingness to override the sovereign rights of states bears further witness to the influence of cosmopolitan thought on international practice.

The cosmopolitan liberal project to make the individual the focus of moral concern in international relations and support that position through new kinds of law and war is increasingly successful. The promotion of human rights and the view that conflict can

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[4] For general background on the development of the concept and practice of humanitarian intervention, see especially Wheeler (2000); also Chatterjee and Scheid (2004); Holzgrefe and Keohane (2003) Lang (2003b); Mayall (2004: Part IV) and Moore (1998). On the likely effect of the ICC on humanitarian intervention, see Smith (2002).

and should be managed through law were prevalent in international practice at least until the events of 11th September 2001, and even debates which concern the US response to the attack focus on human rights, the legitimacy of conflict and real or perceived breaches of international law. Cosmopolitan liberalism has brought about some of the most critical changes in the normative landscape of twentieth century international relations, including the challenge to absolute state sovereignty, and the establishment of the ICC. However, there are real questions over the legitimacy of the move from state civil to individual criminal responsibility that this position entails.

3.3 From State Civil to Individual Criminal Responsibility

Past efforts by international society to control violence with law have focussed on the state as agent. The League of Nations system conceived of governments as responsible for violent acts. However, the League did not prevent the onset of the Second World War, and the approach to controlling violence changed. Rather than structuring the relationships between states to deter conflict and suffering, cosmopolitan international lawyers turned their focus to the individual. This concentration on the role of the individual was accompanied by a move away from narrating international violence as civil wrong and towards conceptualising it as international crime. Both the moves from state to individual agency and from civil to criminal responsibility pose problems for the international political theorist which will be examined below.

Pace Franck and Tesón, the characteristic use of international law is to regulate the interactions between states, with breaches of the law being classed as illegal but not criminal acts – analogous to civil wrongs within domestic legal systems. States are the originators of international law and this law can be seen as a body of rules made freely between, and binding upon, equal and sovereign bodies (Tallgren, 2002: 562), or 'consenting sovereigns acting in private' (Mayall, 2000: 94). International criminal law is often justified in a similar way - international jurisdiction is seen as an

extension, by delegation, of state power to determine criminal law norms and to punish transgressors. Sovereign states remain the originators of law and individuals its subject. The behaviour proscribed by international criminal law, according to this argument, is proscribed within all or most national criminal codes, and is recognised universally as being heinous.

The analogy between domestic and international civil legal systems seems reasonable. Civil laws govern relationships between nominally equal bodies judged to be in contractual relations with each other. The move upwards from domestic to international sees the contracting bodies change from individuals or firms to states, and the guarantor of the contracts changes from state to confederation of states or international institution enabled by states. However, the domestic and international spheres are not so easily reconciled with respect to criminal law for two principal reasons: the cultural foundations of the domestic criminal system and the necessity of a particular type of agency.

Domestic criminal law sees a vertical relationship between the subject of the law and its enforcer, and concentrates on punishing individuals for breaching societal moral codes (which may be shared by the populace or imposed by the ruling elite). Criminal behaviour is an acute form of deviance, i.e. 'conduct which does not follow the normal, aggregate patterns of behaviour' (Denham, 1992: 119), judged to be so serious by the representatives of the society as to merit punishment. Criminal acts threaten the ability of the individual or the group to achieve their goals or projects. Punishment is needed to protect individuals or, for the communitarian theorist, the common life of the community, by deterring future criminal action. Domestic criminal law therefore, at least in theory, rests on a system of shared norms and values or an idea of natural law, and punishment is justified in terms of these norms.

The concept of international crime was until recently quite different from that of domestic crime. For centuries the term has been used to describe crimes such as piracy on the high seas which are 'offences whose repression compel[s] some

international dimension' (Schabas, 2001: 21) or which have taken place in the context of international armed conflict. However, the type of crime which prompted the establishment of the International Criminal Court is different in character and much more similar to the concept of crime just discussed. New international crime is international not because of the cross-border co-operation necessary to control it, but rather due to its apparently universal moral repugnancy. International crime is no longer limited to covering acts committed in times of international armed conflict. According to the Rome Statute, genocide, crimes against humanity and war crimes can take place in the context of internal armed conflict, and genocide and crimes against humanity can also take place in times of peace. A common or universal morality is therefore assumed to justify the criminalising of certain actions and the imposition of punishment by an international body. As will be discussed in Chapter 4, despite the grand statements of supporters of the regime, international society has neither the shared natural moral code that liberalism assumes nor a central authority to impose a constructed moral code, so it is difficult to see how it can be justified in the same way as its domestic counterpart.

Alongside this assumption of a shared cultural context, domestic criminal law envisages a particular type of agent. A traditional move from the domestic to international level would see states being punished for breaching the morality of the society of states. However, criminal law requires not just for certain actions to have taken place (*actus reus* or guilty action) but also for the perpetrator of the acts to have had a particular state of mind or intention (*mens rea* or guilty mind). This recalls the importance given in liberal individualism to voluntarism and the idea that individuals choose how to act. Nothing in domestic criminal law allows us to conceive of states as having *mens rea* as it is a psychological property that can only be held by an agent with a mind. Thus, to ensure that responsibility was assigned for atrocities, but limited to using legal methods to do so, the liberal model of the individual international agent was imported. I discuss the problems of the individual agency assumed within international criminal law, exemplified within the Rome Statute, in more detail in Chapter 4.

The problems inherent in making the move from state civil to individual criminal responsibility for violence in the international sphere can be seen in the history of the transition. The first significant codifications of the laws of war into international treaties - the Hague conventions of 1899 and 1907 – were intended to impose duties and responsibilities onto states, and not to create criminal liability for individuals. They do not mention sanctions for breaches of the conventions, and such breaches should properly therefore be regarded as 'illegal' rather than 'criminal'. By 1913, however, the Conventions were being presented as a source of the law of war *crimes*, and at Nuremberg *individuals* were prosecuted for the first time for breaches of the Hague Conventions (Schabas, 2001: 2). The Charter of the International Military Tribunal, which established the Nuremberg Tribunal, gave the Tribunal jurisdiction over three categories of offence: crimes against peace, war crimes and crimes against humanity. The legal bases relied on by the Tribunal for prosecution for these offences were and remain problematic. The 1907 Hague and 1929 Geneva Conventions were cited as the bases for war crimes prosecutions and the 1928 Kellogg-Briand pact served the same purpose for the prosecution of crimes against peace. These treaties were intended to apply to states as international agents, not individuals, and as such were dubious sources for international criminal law[5]. The basis for prosecution of crimes against humanity was (in a strict sense) even weaker. Neither the Charter nor the Tribunal addressed the question directly, so there is little evidence of the intentions of the framers and judges. During the preparatory work for the Charter, the clearest reference to the source of law on which to base these prosecutions came in a Memorandum dated 29th December 1949 sent from Assistant Attorney-General Wechsler to US Attorney General Biddle. Wechsler wrote:

> It may be [suggested] that any treaty definition which goes beyond the
> laws of war would have retroactive application in violation of the
> principle *nulla crimen sine lege* … I think it is a sufficient answer that the

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[5] Clark gives an alternative viewpoint, arguing that 'While there might have been some room for argument, it was fairly well established that ... breaches [of the Hague and Geneva Conventions] gave rise to individual criminal responsibility …' (Clark, 1997: 174). It may indeed have been fairly well established among those lawyers and politicians who favoured the Nuremberg prosecutions, but the wording of the treaties is clear that the Contracting Powers are the agents of concern.

crime charged involves so many elements of criminality under the accepted laws of war and the penal laws of all civilized States that the incorporation of the additional factors in question does not offer the type of threat to innocence which the prohibition of *ex post facto* laws is designed to prevent. (Smith, 1982: 84, 86, cited in Clark, 1997: 175)

The transition from a 'morality of states' system, where states were held responsible in international law, to a system where the individual is both principal rights-bearer and principal protagonist has not been at all straight-forward and is highly contested. The following section looks more critically at the historical context of the transition, to determine whose interests are served by a change in the conception of responsibility.

3.4 Politics, Economics and Law

Liberal cosmopolitans (e.g. Beitz (1999a); Téson (1998); Franck (1999); Barry (2001); Pogge (2002)) see international law as a solution to the problem of politics. Kahn summarises such a position as follows: '… the politics of vital national interests should be replaced by the managerial and technocratic sciences of the welfare state, on the one hand, and a regime of universal law, on the other.' (Kahn, 2003: 2) Politics, particularly the politics of sovereign nation-states, has a tendency to turn violent, evidenced throughout the twentieth century, and it must therefore be controlled by law. A system of responsibilities, phrased in terms of rights protections, is safer managed by judges than left to politicians or publics.

Carl Schmitt (1996 & 2003) argues precisely the opposite. He sees the collapse of the *Jus Publicum Europaeum* (the territorially bounded legal order in which European states recognised each others' sovereignty and rights to non-intervention) between 1890 and 1918 and its replacement with a universalist, liberal international order, founded on an elaborate scheme of international law, as a cause for great concern. Schmitt was particularly troubled by the rise of Anglo-American universalism manifested in US economic expansionism as a new, non-territorial, form of empire.

This expansion was presented as non-political – as progress for the benefit of all humanity – and was accepted as such because the tools of control wielded by the aspiring empirical power were mostly concerned with applying economic pressure to recalcitrant states (Schmitt, 2003: 255-7). 'Free' trade was trade supposedly free of the state, though in fact the (American) state had great influence, by virtue of its economic power, in both international trade policy and in decisions concerning inter-allied debts and German reparations – policies which had substantial political effects.

Schmitt (1996) argues that the liberalism used to justify American expansion did so by attempting to remove the political (in essence, the friend/ enemy distinction) from politics. For Schmitt, removing the political is impossible – politics is necessarily conflictual – and any attempt to do so is merely to try to disguise the pursuit of political interests by making economic, moral or technical/ legal claims. Attempts to do so can nonetheless be seen both in the presentation of policy as purely concerned with economics, and also in the rhetoric of morality, humanity and universal law which became common from 1890. The beginning of the twentieth century marked the end of international law as a 'concrete spatial order' and its transformation into 'nothing more than a series of generalisations of doubtful precedent, most based on transitory or heterogeneous situations, combined with more or less generally recognized norms, which, the more generally and spiritedly they were 'recognised,' the more contested was their application in a concretely disputed case' (Schmitt, 2003: 238-9). In the words of Martti Koskenniemi, '[a]n era of empty normativity began' (Koskenniemi, 2002: 417), and Europe slid into the First World War. Worse was to come: under the influence of American liberalism internationalism, war became criminalised in international law, transformed from the legitimate act of a sovereign state, to a crime against humanity (Schmitt, 2003: 259-280).

According to Schmitt (himself a potential defendant in the Nuremberg war crimes trials, who was arrested and interrogated but released without charge), wars claimed to be motivated by morality, for instance humanitarian interventions, are tremendously dangerous. Narrating one's opponent (the state which is breaching

human rights) as morally wrong and, in particular, as an enemy of all humanity, can justify extremes of violence towards them, as such enemies must be defeated at any cost: 'To confiscate the word humanity … probably has certain incalculable effects, such as denying the enemy the quality of being human and declaring him to be an outlaw of humanity; and war can thereby be driven to the most extreme inhumanity' (Schmitt, 1996: 54). This argument is echoed today by those who accuse the US of not respecting Iraqi lives in its action to discharge the responsibility it has assumed to bring freedom and democracy to the Iraqi people. Schmitt argues that conflict within Europe in the nineteenth century was less violent than the devastation of twentieth century warfare precisely because of the settled system of sovereignty. Each power respected the others and recognised them as legitimate enemies in war, so gross violence or attempts at annihilation were not seen as justified. While his view of conflict as civilised or 'humanised' in the nineteenth century is very much open to challenge (see Brown, 2004c: 8-9), Schmitt's analysis of the dangers of war as a moral crusade, and his recognition that such wars are still political ('When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent' (Schmitt, 1996: 54)), is an important juxtaposition to the enthusiastic interventionism of much cosmopolitan liberalism. The analysis of the Gulf War undertaken by Chris af Jochnick and Roger Normand (1994) underscores this point: more than 100,000 civilians were killed in the most legalistic war in history, fought for universal principles of justice, by an international community which saw itself as responsible for protecting Kuwaitis, and under the banner of humanity. Like Schmitt, they dispute the ability of liberalism and law to bring peace, and argue that 'the laws of war have facilitated rather than restrained wartime violence. Through law, violence has been legitimated' (Jochnick & Normand, 1994: 50).

Politics is also evident, though denied, in the development of the international criminal law used to try acts which do breach the laws of war. The regime is claimed to be universal and value free, however law and its application are always the subject

of political contestation. War crimes trials in particular are inevitably political: the decision over whether to hold a trial in any given situation is highly politically loaded. Power can prevent certain crimes ever being tried, as it did after the Second World War. The Nuremberg trials effectively legitimised the mass bombings of civilians carried out by Allied forces in WW2, as these bombings were not tried, so not defined as war crimes. War crimes trials also tend to be biased in favour of dominant groups, shown by the lenient treatment of technologically advanced versus primitive weaponry, and the exclusion of gendered crimes such as rape from the definition of crimes against humanity until very recently. Once established, Gerry Simpson (1997) argues that such trials are often used to legitimate current power arrangements or state actions. For instance, the prosecuting state can be narrated as good and the offender state (or the state the perpetrator originates from) as bad. This can serve to excuse or draw attention away from crimes committed by the prosecuting state as the crimes being tried are framed as being more serious. Thus on the 8th of August 1945, the Allies signed the London Charter which established the Nuremberg Tribunal to try German war criminals, apparently signalling their intention that international relations in the post war era would be run according to the demands of international justice and basic human rights. Yet two days prior to the signing, the US had dropped an atomic bomb on Hiroshima, killing an estimated 140,000 people (mostly civilians), and the day after the signing, they bombed Nagasaki, killing an estimated 74,000. Such was (and is) the power of the US that these acts have never been assessed in any war crimes trial.

The Nuremberg Tribunals have been the inspiration for many of the developments in international criminal law since 1945, but they serve a political purpose as much as a legal one:

> [a]s well as trying alleged war criminals, these trials serve as vindication of Western progress, they maintain the idea that National Socialism was an aberration in Western culture, they function as moral demarcations between the accused and the accuser, they avert attention from war crimes closer to home and, finally, they contain the message that the untried crimes are not of this magnitude or order. (Simpson, 1997: 9).

Hannah Arendt makes a similar argument with regards to the Eichmann trial: she argues that Ben-Gurion wanted to use the trial to establish a link in the popular mind between Nazis and Israel's contemporary enemies, Palestinian terrorists and anti-Zionist Arabs, and to re-legitimate the Israeli state (Arendt, 1963: 9-12, cited in Simpson, 1997: 22).

Rudolph (2001) has continued such analysis into the contemporary 'atrocities regime'. He concludes that 'although liberal humanitarian ideas have created the demand for political action, the process of dealing with brutality in war has been dominated by *realpolitik* – that is, furthering the strategic interests of the powerful' (Rudolph, 2001: 656). He argues that the ICTY was a compromise between the promotion of human rights and the political costs of intervention to stop the atrocities. The Tribunal has been narrated as the first step in challenging impunity for crimes against humanity, but was in fact the response to human rights abuse which had the lowest political cost for powerful states. For Rudolph, power and interest best explain why tribunals are, or are not, established in any given case: politics is an inevitable part of the legal process[6].

Schmitt's economic concerns also bear consideration. I discussed the economic foundations of liberal individual agency in Chapter 2 – here I consider economics in relation to responsibility. The human rights regime, central to liberal notions of responsibility, has little to say about economic abuse or hardship, or the extent to which economics influences war. The standard Western liberal governmental position, as identified by Schmitt, has been to claim that free trade brings peace, and so to impose neo-liberal international economic policies and institutions onto weaker states. As noted in Chapter 2, some cosmopolitan theorists (for instance Shue (1980); Beitz (1999a); Pogge (2002); Barry (2005)) are critical of liberals who deny the

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[6] For more on the politics of international law and war crimes trials see Beigbeder (1999); Koskenniemi (1990); McCormack and Simpson (1997); Reus Smit (2004); Simpson (2001); Tallgren (2002); Yasuaki (2003).

importance of economics to the realization and exercise of human rights. In general, however, Western liberal theorists have privileged civil and political rights above social and economic rights, and rejected the notion that the problem of global inequality should have a place in any discussion of human rights. This stems from the normative value placed on free trade and free markets within liberalism and is reflected in the Rome Statute of the ICC, the institution supposed to be the missing link in human rights enforcement: social and economic rights are barely covered. The Rome Statute states that it will prosecute the 'most serious crimes of concern to the international community as a whole' (Article 5), and as the operation of international capitalism is not a crime committed by individuals, its effects are ruled out of the rights discourse.

Schmitt's identification of the use of economic claims to hide politics has also been seen by contemporary critics. Cosmopolitan liberalism tends to disguise power within the rights discourse by claiming that politics, law and economics are separable. Walzer argues that the limited government necessary to protect private space from political power has opened the door to private government, or government by wealth. Modern markets are not separate from politics: great inequalities in wealth mean that many are forced to sell their products or services for unfair prices, and 'vast wealth and ownership or control of productive forces convert readily into government in the strict sense: capital regularly and successfully calls on the coercive power of the state' (Walzer, 1984: 321-322). Walzer notes that the individualist foundation of liberalism tends to disguise the power of wealth as 'what power takes by force, money merely purchases, and the purchase has the appearance of a voluntary agreement between individuals' (Walzer, 1984: 325). As such, Western liberal states retain their position in the system relatively unchallenged, while still purporting to be concerned with the most severe human suffering.

Polanyi makes a similar point. He sees that the idea of freedom inherent in the liberal ideology is only one possible understanding of the term:

No society is possible in which power and compulsion are absent, nor a world in which force has no function. It was an illusion to assume a society shaped by man's will and wish alone. Yet this was a result of a market view of society which equated economics with contractual relationships, and contractual relations with freedom. The radical illusion was fostered that there is nothing in human society that is not derived from the volition of individuals and that could not, therefore, be removed again by their volition. (Polanyi, 2001: 266)

Polanyi's explanation highlights the importance of individual agency to the liberal position (and its reliance on methodological individualism) and through this the consequences for responsibility are apparent. As life is fragmented under a market system, society becomes invisible. As the market works more freely, so state power, necessary to sustain the market according to Polanyi but denied by liberals, disappears from view. Thus:

Neither voters, nor owners, neither producers, nor consumers could be held responsible for such brutal restrictions of freedom as were involved in the occurrence of unemployment and destitution. Any decent individual could imagine himself free from all responsibility for acts of compulsion on the part of a state which he, personally, rejected; or for economic suffering in society from which he, personally, had not benefited. (Polanyi, 2001: 266)

The market economy, seen by many liberals as a milestone in the advance of human freedom, is argued by Polanyi to be the cause of a great deal of the death and destruction of the twentieth century, as well as the general misery of 'societies' in which all social relationships have been destroyed. There is no room here to evaluate Polanyi's thesis that the Second World War was caused by the failure of *laissez-faire* economic policy, followed by state overreaction and over-intervention. Suffice to note that, should this thesis be correct, liberalism may be implicated in (though clearly not entirely responsible for) the crimes that the ICC seeks to prosecute as well as the structure of the international criminal legal system, in so far as the policies pursued in its name provide conditions amenable to war crimes and crimes against humanity.

3.5 Liberalism and the Limits of Responsibility

The foregoing analysis suggests that the cosmopolitan liberal conception of responsibility both limits the scope of that responsibility and serves the interests of the powerful. The work of Schmitt and Polanyi implies that the scope of responsibility is narrowed by liberalism: the workings of the free market are used to disguise political interests, destroy society and so liberate powerful individuals from any sense of responsibility for the suffering which results from policies promoting 'freedom'. Responsibility is only increased for those who are suffering – liberal individualism, as documented in Chapter 2, transfers responsibility for any failure to flourish away from the collective and onto the individual.

Responsibility is also limited because the commitment to its realisation through law constrains the notion of responsibility that can be applied. Iris Marion Young argues that the most common contemporary conception of responsibility is the 'liability model', which 'derives from legal reasoning to find guilt or fault for a harm' (Young, 2006: 116-118). Under this view of responsibility, an agent is only responsible if her actions were both 'causally connected to the circumstances for which responsibility is sought' and 'voluntary and performed with adequate knowledge of the situation' (Young, 2006: 116). This standard of responsibility is necessary for the fair application of the law, given the severe penalties that can be imposed for acts found to contravene the criminal code and the general equation of responsibility with blame in liberal thought, but serves to limit the states of affairs which can be included in liberal discourses of responsibility. Few harms in the international sphere can accurately be traced back to the voluntary and informed actions of individual 'criminals', so much suffering is excluded from the discourse of responsibility. International law seeks to prosecute individuals for war crimes, but, despite a great deal of fanfare, only 56 individuals have been held responsible for their actions thus far at the two international criminal tribunals of the 1990s. The following chapter suggests that the ICC will not perform a great deal better.

Part of the reason for this limited responsibility for great harms is due to the difficult transition made within post 1945 international law from state civil responsibility to individual criminal responsibility. The *reason d'être* of much international law is now the protection of human rights. Cosmopolitan liberalism sees such rights as essential to human flourishing and deriving naturally from our status as human beings, therefore any breach of our rights is viewed as immoral. Immoral acts are the domain of the criminal law, yet the transition to international individual criminal agency is highly contested and grounded in very dubious readings of past laws.

There is an even bigger issue at the heart of all of this: the rights model of responsibility central to liberalism and cosmopolitanism. There are two main drawbacks to this model: the first is the lack of universal assent and the second is the lack of concrete obligation generated at the international level.

The status of rights as a Western liberal idea, based on ontological claims which do not resonate within all cultures, was touched upon in the last chapter. Rights proponents argue that the history of the idea does not matter – what matters is that it is widely assented to now. They point out that support for the regime has grown to be almost universal, particularly in the last twenty years. It is certainly the case that during the 1990s there was a dramatic increase in the number of states ratifying the six main human rights conventions and covenants. Ratifications of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights grew from around 90 to nearly 150 through the decade. Broad support for the goals of the regime was also demonstrated by the participation of over 170 countries in the 1993 World Conference on Human Rights, who met in Vienna to reaffirm their commitment to protect human rights. However, ratifying conventions does not prove assent. Actions speak a great deal louder than words with regard to human rights, and it is notable that Amnesty International reported in 2004 that human rights were under their most sustained attack in 50 years, due to violence by armed groups and to the responses to these groups by governments (Amnesty International, 2004). The 2006 Human Rights Watch World Report names some of

the most powerful states in the world as human rights abusers: the US, the UK, Canada, the member states of the European Union, Russia and China, as well as Burma, the Democratic Republic of Congo, North Korea, Turkmenistan, Saudi Arabia, Sudan, Syria, Uzbekistan, Vietnam and Zimbabwe.

As well as having to deal with a lack of universal assent, using human rights to ground international responsibility causes problems as it is not always clear what responsibility or responsibilities rights actually generate. Unlike the specific rights found within (some, liberal) domestic polities, which identify the state as responsible for enforcing them, human rights are broad statements of what all human beings deserve and are rarely backed up by accounts of correlative duties. Cosmopolitan international law has shifted responsibility for individual welfare from the sovereign state to an international institutional regime, but that regime seems incapable of agreeing upon and discharging its responsibilities. During the 1990s, when so many more states were signing up to human rights covenants, the international community was fiddling while, *inter alia*, Bosnia, Somalia, Rwanda, the Democratic Republic of Congo and Kosovo burned. Some form of international intervention happened eventually in these cases, but all had limited success. Even when the major players in the international community could agree that widespread human rights abuses were taking pace, there was no agreement over who had responsibility to halt these abuses, particularly when to do so would have meant breaching the borders of a sovereign state. The theoretical architecture of the debates centred on the contest between the priority of the sovereign individual and that of the sovereign state, and reached an impasse with irresolvable claims that neither should be violated. Responsibility was unclear, and its grounding on human rights was contested. Intervention policies were read by powers such as China and Russia as a ploy to further Western interests. The intervention in Iraq, begun in 2003 and justified principally now on human rights grounds by the US and the UK, seems to its opponents to bear out such suspicions. The lack of intervention in Darfur, with an estimated death toll now approaching 200,000 as well as the displacement of millions, tells a similarly grim story, though this time the international community is criticised for its inaction.

Cosmopolitan liberal notions of responsibility do not appear to be working to alleviate suffering to any significant extent. Can communitarianism offer us a more pleasing alternative? The answer is a qualified 'no'.

Communitarian notions of responsibility do appear to rest on firmer ground than those of cosmopolitan liberalism. For the communitarian, we owe duties to each other because of the benefits we gain from living in community (a share of the social surplus) or because the social roles we act out, such as friend, father or fellow citizen, have constitutive or inherent obligations. Communitarian theorists have also recognised the impoverished notion of responsibility within rights-based liberalism, which they see as threatening social cohesion. These concerns led Amitai Etzioni to set up the Responsive Community project in 1993. The project 'recognized the need for a social philosophy that at once protected individual rights and attended to corresponding responsibilities to the community' and set about to define these responsibilities (Communitarian Network website, 2006). Mary Ann Glendon (1991), a founding endorser of the Responsive Communitarian Platform, has written influentially on what she calls 'Rights Talk'. She argues that individualist liberal societies (her focus is on the US) turn every dispute into a clash of rights, with no reference to personal and civic responsibilities. This has the effect of shutting down possibilities for compromise and attempts to discover common ground or reach consensus – the very activities that sustain community. To assert a rights claim, according to Glendon, is to attempt to shut down a discussion and to invite a similarly confrontational response (Glendon, 1991: 14). Thus, framing everything in rights talk threatens the community that protects the rights, so threatening the rights themselves.

Although communitarianism offers more scope for responsibility within a state, it has little to offer us beyond state borders. Responsibility, for the communitarian, is politically generated and sustained within society. Beyond borders, only a morality of states is possible, with responsibility for the welfare of its citizens falling upon the sovereign state. If a state does not discharge that responsibility, it does not pass to any

other agent. Given the suffering caused by many sovereign states to their people (for instance in pre-2003 Iraq as well as in the states singled out by Human Rights Watch), and the highly interconnected nature of social life in the 21st century, the communitarian view that borders are impermeable seems both wrong and unethical.

3.6 Conclusion

Given the quietism of much communitarian theory in the face of intrastate violence, it is perhaps unsurprising that cosmopolitan liberalism has gained so much momentum in post 1945 IPT and international practice. I have argued that the conception of responsibility within such a view is highly limited, but its supporters believe that its limitations are gradually being overcome, with the establishment of institutions such as the ICC. In the following chapter I assess whether the limits identified here – principally the questionable international status of the individual agent and the denial of the effects of power upon law – have been overcome by the Court.

CHAPTER 4: THE INTERNATIONAL CRIMINAL COURT AND AGENCY AND RESPONSIBILITY BEYOND THE STATE

> In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished *(Kofi Annan, 1997).*

The International Criminal Court (ICC) is premised on the now familiar cosmopolitan liberal assumptions that there are universal moral standards which apply to human behaviour and that through the legal assignation of responsibility to individual human agents for human rights abuses and the meting out of punishment according to these universal standards, the international criminal justice system (ICJS) can deter crime, end conflict and bring about justice. The previous two chapters have identified problems with the theoretical foundations of this position. In this chapter I examine whether the drawbacks discussed can be seen within the construction of the institution which represents the most significant achievement for cosmopolitan liberalism so far: the ICC. I argue that two limits outlined in Chapter 3, regarding agency and the denial of power, are very much in evidence in the Court. The conception of agency within the Rome Statute is internally contradictory – locating the perpetrator of crime as a sovereign individual outside society and her victim as, first and foremost, the member of a social group – and the uneasy relationship between law and power within cosmopolitan liberalism is evident in the history of the Court. The final section of the chapter examines the implications of these limits in terms of the stated goals of the Court, noting both its role in assigning responsibility to specific agents in international relations, thus seeming to control it and bring about order, and its role in enabling state violence through the ascription of responsibility to individuals.

4.1 Characteristics of Individual Agency in the Rome Statute

What follows is a close examination of the Rome Statute which seeks to identify and critique the clauses that conceptualise the perpetrator and the victim of international crime. I argue that the Statute presents an internally inconsistent concept of the individual: at times seeing the person, in cosmopolitan liberal terms, as a free and rational actor, independent of social role and culture, but conversely requiring that some persons (the victims) are entirely defined by their social role or group membership. The implications of this confused conceptualisation will be explored towards the end of this chapter.

4.1.1 The Perpetrator of International Crime

The fact that the Rome Statute follows the Nuremberg philosophy that men, not abstract entities (e.g. states) exercise agency and commit crimes against international law is not in doubt. Article 25 (2) of the Statute, entitled 'Individual Criminal Responsibility' explicitly declares that the Court shall have jurisdiction over individuals ('natural persons') and that '[a] person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.' However, the nature of a person is not elaborated further, and it is necessary to look at the detail of the Statute, particularly at Part 3: General Principles of Criminal Law, to understand how the Court conceptualises the perpetrator of international crime. I will examine the requirement of *mens rea,* the defences allowed and the rules outlining mitigating or aggravating factors of crimes with regard to punishment to establish the qualities assumed to be held by the international criminal.

As outlined in Chapter 3, a crime involves both a certain action (*actus reus)* and a particular state of mind or intention (*mens rea).* Article 30 of the Rome Statute concerns *mens rea* and sets a high standard for the mental element of crimes. Article 30 (1) specifies the requirement as follows: 'Unless otherwise provided, a person

shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.' Intent is defined as having two necessary parts – one which relates to conduct and another to consequence. Thus, a person has intent according to Article 30 (2) where: '(a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.' Finally, to fulfil the mental requirement, the accused must have 'knowledge' of the material elements of the crime: 'For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events' (Article 30 (3)). Most Rome Statute crimes also have the necessary *mens rea* written into the definition of the crime. Genocide must be committed with "intent to destroy" and crimes against humanity with "knowledge of the attack." Many of the war crimes listed have "wantonly," "wilfully" or "treacherously" written into the definitions.

The requirements for *mens rea* are well specified within the Statute, and signal the high level of intent a person must be shown to have had in order to be convicted of an international crime. This intent is a quality closely bound up with the liberal conception of a person as a sovereign, bounded unit, whose actions and desires are under the control of her reason – a view of the person that appears throughout the Statute. Unfortunately, proving the intent a person had at the time of an action is, in practice, tremendously difficult to do, therefore inference and legal fictions tend to be used within domestic systems to satisfy the *mens rea* requirement. For instance, it is assumed that all agents know 'the law' – Barnes notes the irony of this situation, given the inability of lawyers to agree on what many given laws mean (Barnes, 2000: 12) – and that all agents know whatever a 'reasonable person' would know in their circumstances. This use of inference and fiction is likely to be a feature of prosecutions under the International Criminal Court, and may either allow the concept of the perpetrator as rational, intentional being to stand unchallenged or lead to an inability to prosecute on the basis that the intent required is too extensive and specific to be satisfactorily inferred. Given the complexity of the applicable law and

the lack of consensus over what a 'reasonable person' might know in a time of conflict, any use of inference is potentially unjust.

The defences which can be offered before the Court also give us significant clues to the type of individual agent the Court envisages as responsible for international atrocities. Articles 31, 32 and 33 of the Rome Statute cover defences which perpetrators can offer. Article 31, 'Grounds for Excluding Criminal Responsibility', outlines the defences of insanity, intoxication, self-defence, duress and necessity. The concept of the volitional, reasonable person is evident again very strongly here. Under the Statute, a person is not deemed to be criminally responsible if, at the time of her conduct, she suffered from a mental disease or defect that destroyed her capacity to appreciate the unlawfulness or nature of her conduct, or capacity to control her conduct to conform to the requirements of law. Equally, she is not criminally responsible if she was in a state of intoxication sufficient to destroy her capacity as above, unless she became 'voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court' (Article 31 (1) b). A 'normal' person's capacities to appreciate the kind and quality of her conduct, and to control that conduct, are taken for granted here, and the lack of these capacities is seen as being caused by either disease, defect or drugs. Thus the default setting for the notional international agent is one of contemplation and control. This element of rational capacity appears again in the following clause, which details the range of actions allowable in self-defence. Under the Article 31 (1) c of the Rome Statute, a person is not criminally responsible if she acts *reasonably* to defend herself or another person or, in the case of war crimes, essential property, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. Essential property is limited to that which is essential for the survival of the person in question or another person, or which is essential for accomplishing a military mission. The agent must therefore make judgments on the proximity and legitimacy of the force facing her, the degree of danger posed by that force, the

responses which would count as proportionate to the force, given the means available to her, and, in the case of defence of property, the importance of the property to be defended in terms of human survival or military tactics. There is no room in this clause for instinctive, intuitional or emotionally propelled action, even though the likelihood of finding time for all of the necessary rational calculations is small given the imminent nature of the danger required by the Statute.

The final clause of Article 31 (1) covers the defences of duress and necessity. Clause (d) excludes from criminal responsibility conduct which is 'caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, [where] the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.' Such a threat may either be made by other persons (duress) or constituted by other circumstances, e.g. natural occurrences, beyond that person's control (necessity). Assumptions within this clause are particularly problematic. In an effort to allow for action where an agent is seen as having no viable moral choice, the drafters of the Statute set up an impossible situation where the agent must act both necessarily (i.e. without choice, deterministically), but also reasonably (i.e. under rational control) and with specific intent (not to cause greater harm than they are attempting to avoid). There is no satisfactory account of individual agency that could reconcile these demands, thus the defences of duress and necessity seem impossible to apply.

Article 33 covers the defence of 'Superior Orders', a defence which was not allowed in the Nuremberg Charter, nor in the ICTY or ICTR statutes. The Rome Statute allows for the defence in a very limited and specific set of circumstances, and then only for War Crimes (and, arguably, Aggression). Article 33 states first that the presumption of the Court is in favour of holding the defendant criminally responsible ('The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless …') then sets out the three conditions which must be fulfilled for the defence to be considered:

(a)   The person was under a legal obligation to obey orders of the Government or the superior in question;

(b)   The person did not know that the order was unlawful; and

(c)   The order was not manifestly unlawful.

The Article then goes on to rule out the Superior Orders defence for two of the crimes covered in the Statute: 'For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful' (Article 33 (3)). The standard of action here is extremely high, and the wording suggests that Superior Orders will rarely be a successful defence before the Court. Many actors will fulfil condition (a), but few will be able to satisfy (b) and (c), except perhaps for the less heinous of war crimes listed.

The position an individual holds in relation to her state does not offer any possibility for a defence. Article 27 makes clear that official capacity is irrelevant both to criminal responsibility and to mitigation of sentence under the International Criminal Court, and that any special rules or immunities which traditionally attach to the official capacity of a person, under domestic or international law, will not prevent the Court exercising its jurisdiction. The drafting of this Article was uncontroversial at the Rome Conference.

The defences allowed within the Rome Statute reinforce the view of the individual gleaned from the requirements of *mens rea.* The 'ideal type' perpetrator of international crime is reasonable, rational, intentional and knowledgeable, and her actions are entirely under her volitional control. Her social origin and position, particular capabilities and personal circumstances are irrelevant. Only in the discussion of punishment are these issues considered, and it is to this I now turn.

The correct punishment for international criminality according to the Rome Statute is imprisonment: Article 77 (1) lists '[i]mprisonment for a specified number of years, which may not exceed a maximum of 30 years; or […] [a] term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person' as the two principal sentencing options open to the Court.

Article 78 (1) gives the following guidance on sentencing: 'In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence PCNICC/2000/1/Add.1 (hereafter 'Rules'), take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.' Rules outlines a range of possible mitigating or aggravating factors, additional to the gravity of the crime and the individual circumstances, many of which are relevant to our discussion of what constitutes an individual agent according to the Statute. Rule 145 states that the Court should give consideration to: 'the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.' Rule 145 goes on to list substantially diminished mental capacity or duress and the convicted person's conduct after the act as mitigating circumstances, and relevant prior convictions, abuse of power or official capacity, commission of the crime where the victim is particularly defenceless or there are multiple victims, commission of the crime using particular cruelty and commission of the crime for any motive involving discrimination[7] on the basis of generalized or social characteristics as aggravating circumstances.

It would seem, therefore, that social or group factors *are* relevant in the field of punishment for international crime (even though they are not seen as affecting individual agency in commission of the crime – the individual is still held to be responsible, but her punishment may vary depending on her personal characteristics and the social circumstances of the crime). The Court is instructed to take into account the degree of *participation* and the age, education, social and economic condition of the convicted person. Again, an 'ideal type' agent can be discerned – a sort of noble savage who treats her victims as equals, does not discriminate, does not

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[7] Discrimination here refers to discrimination on any of the grounds referred to in article 21, paragraph 3 of the Rome Statute, i.e. gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

abuse power, picks fair fights with victims who can defend themselves and does not have the age, education, class or money to know better.

The final point to note before examining the conception of the victim of international crime is the issue of layered responsibility. As mentioned at the outset of this section, Article 25 sets up the individual as responsible for international crimes. However, in an effort to capture all possibilities of agency, the Rome Statute envisages a complicated web of responsibility for the crimes it is concerned with. Article 25 goes on to state that a person shall be criminally responsible for a crime if she is involved in that crime at almost any level, regardless of whether other persons are also criminally responsible for the same crime. Under the Statute, a person can be responsible for a crime committed with or through another person, a crime she attempted, ordered, solicited, induced, facilitated, directly and publicly incited (in respect of genocide) or in any other way intentionally contributed to (Article 25 (3)). Article 28, entitled Responsibility of Commanders and Other Superiors, establishes that both military and civilian commanders can be criminally responsible for acts committed by any subordinates who were or should have been under their effective command and control. To establish the guilt of a military commander in this area, the Prosecutor must show that the commander either knew or should have known that her subordinate/s were committing or were about to commit a crime. A civilian commander can only be responsible if she 'either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes' (Article 28 (b) i). Unless they are successful with a defence of superior orders, subordinates can also be held responsible for the crimes commanded. Articles 25 and 28 therefore set up the possibility of multiple responsibilities for the same crime, but only in terms of individual perpetrators. The group membership or social role of the perpetrators is irrelevant, as responsibility cannot be shared but can only reside simultaneously within multiple separate individuals.

4.1.2 The Victim of International Crime

In the rhetoric of the ICJS, the victim of international crime is often conceived of as humanity as a whole, with humanity then being entitled (or even required) to prosecute the perpetrators. For our purposes in this chapter, it is more instructive to examine the victim as conceived within the descriptions of the Statute crimes, and in the sections on punishment. I argue that the victim of international crime is necessarily socially located, entirely in contrast to the perpetrator who is modelled as having no relevant social ties.

Prosecutions at the International Criminal Court will rely on evidence of harm to individual persons, yet genocide and crimes against humanity as defined in the Rome Statute *could not take place* if individuals do not have significant identities as members of groups. Individuals may be victims of murder or serious bodily or mental harm, but they cannot by themselves be victims of genocide or crimes against humanity. A genocide must by definition take place against a group: 'For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group …'(Article 6). Equally, crimes against humanity is defined by the Statute as meaning any of the qualifying acts 'when committed as part of a widespread or systematic attack *directed against any civilian population*, with knowledge of the attack' (Article 7, emphasis added).

This is not to say that all groups count as relevant victims under international law. As discussed in connection with *mens rea* requirements earlier in the chapter, the Statute has difficulty conceiving and defining relevant groups. A person has not committed genocide, for instance, unless the Court makes the political decision that the group the person intended to destroy was a 'proper' group. Political and social groups were explicitly rejected by the framers of the Rome Statute as possible targets of genocide, leaving a series of accepted groups that are assumed to be well bounded and stable over time, a lot like the individuals postulated as their attackers.

Group membership of the victim is also important in a more general sense: Article 17 (1) d declares that the Court must rule a case inadmissible if it is not of 'sufficient gravity', that is if the number of victims is not judged to be high enough. The definitions of the crimes all contain threshold statements to help focus prosecutions onto the most serious breaches of the Statute. For both genocide and crimes against humanity, the threshold is quantitative. For prosecutable genocide to have taken place there must have been a high level of special intent to destroy a group in whole or in part. Similarly, for a crime against humanity to fall within the scope of the court, the crime must have been part of a 'widespread or systematic attack'. Thus, genocide and crimes against humanity are only likely to be prosecuted by the Court if planned or committed on a large scale. The threshold for war crimes appears within the introductory paragraph of Article 8. This states that: 'The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.' Individual victims or small groups of victims will not be significant enough to trigger the Court.

Characteristics of the victim can also be discerned in a reading of Rule 145 of Rules, in which the Court is instructed to consider the degree of harm caused to victims *and their families,* and in assumptions about the relevance of motive to punishment. The Rome Statute does not cover motive in detail but is likely to follow the ruling made by the ICTY in Delalic:

> [Motive] is to some extent a necessary factor in the determination of sentence after guilt has been established. … The motive for committing an act which results in the offence charged may constitute aggravation or mitigation of the appropriate sentence. For instance, where the accused is found to have committed the offence charged with cold, calculated premeditation, suggestive of revenge against the individual victim or group to which the victim belongs, such circumstances necessitate the imposition of aggravated punishment. On the other hand, if the accused is found to have committed the offence charged reluctantly and under the influence of group pressure and, in addition, demonstrated compassion towards the victim or the group to which the victim belongs, these are certainly mitigating factors which the Trial Chamber will take into

consideration in the determination of the appropriate sentence (Prosecutor v Delalic et al, Judgement of the ICTY in case number IT 96-21-T (1998), para 1235)

If the International Criminal Court does follow this ruling, the group membership of the victim can be seen again to be of relevance. Aggravated punishment is required when the accused is seen to be taking revenge on an individual *or* the group to which she belongs, and lesser punishment is merited when the perpetrator showed compassion toward the victim *or* the group to which she belongs. The relationship of perpetrator to victim is somehow complicated by group membership: the actions of perpetrator towards the group that the victim belonged to are seen as possible to separate from the actions of the perpetrator towards the individual victim.[8]

Groups have complex roles in the Statute. 'Humanity' is the largest group allowed for, and, in a very idealised sense, humanity can be both victim and judge. National, ethnical, racial or religious groups (assumed to be well bounded and stable over time) can be the specific victims of crimes, and are in fact required to be the victim for the successful prosecution of genocide and crimes against humanity. These groups are of course comprised of individuals, yet something aside from the sum total of people, something shared between the current members of the group and their historical forebears, is seen as relevant to their victim status. The group membership of the individual victim is paramount in the prosecution of the two most important international crimes, and of relevance in the determination of punishment, yet the group membership of the individual perpetrator is formally irrelevant to the Court and judged to be irrelevant to the perpetrator when he plans his actions. This confused conception of the individual as both a pre-social criminal and simultaneously a socially embedded victim demonstrates that the institution of the ICC has not been able to overcome the impasse between cosmopolitan and communitarian positions discussed in Chapter 2.

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[8] It is noted that this ruling also allows group pressure as a mitigating factor. This type of pressure is not seen as mitigating within the Rome Statute.

4.2 Speaking Law to Power

Supporters of the ICC, such as the Coalition for the ICC, regard the Court as a step along the path to the global moral enlightenment: a genuine challenge to the dirty business of power politics. International criminal law on this view represents a universal declaration of right and wrong. The Court is seen as the missing link in international human rights enforcement and a natural progression in the fight to award and enforce basic human rights to all people. Yet there is nothing natural about the Court. International criminal law actually represents the results of negotiations between states rather than a universal moral code, and as such it is inherently political. The discourse may seek to deny a role to the political, but it is weakened by its inability to acknowledge the necessity of politics in the field of international justice.

The International Criminal Court is located in political time and geographical space. The idea for such a Court gained ground in the 1950s, but the configuration of the Cold War international system meant no real progress towards the Court was made for more than thirty years. Then, when the political context changed, new possibilities for international justice began to be pursued in earnest. Schabas argues that the situation in the former Yugoslavia in the early 1990s 'provided the laboratory for international justice that propelled the agenda [for the creation of an International Criminal Court] forward' (Schabas, 2001: vii). I will discuss briefly here the format of the Rome Conference from which the Rome Statute emerged, and highlight the political nature of the negotiations.

In June 1998 delegates from more than 160 states attended the Diplomatic Conference of the Plenipotentiaries on the Establishment of an International Criminal Court in Rome. They were joined by representatives from a range of international institutions and hundreds of non-governmental organisations. Driving the dynamism of the conference agenda was a group of states known as the 'Caucus of the Like-Minded', which contained delegates from more than 60 of the participating states and

from a well organised coalition of NGOs. The Caucus had been active since the early stages of the Preparatory Commission and was committed to a set of principles which were substantially in conflict with the view of an International Criminal Court held by the Permanent Members of the UNSC. These principles included an inherent jurisdiction of the Court over the 'core crimes' of genocide, crimes against humanity and war crimes; the elimination of any UNSC veto on prosecutions; the establishment of an independent prosecutor with power to initiate proceedings *proprio motu* and a prohibition of reservations to the statute establishing the Court. The Caucus of the Like-Minded had a great deal of success in negotiating its wishes at the Conference, largely because it was so geographically diverse that it cut across traditional regional divides. It also dominated the structure of the conference, holding most of the Working Group Chairs, but other groupings also played a part: the Non-Aligned Movement campaigned in particular to see aggression included as a crime, the Southern African Development Community took positions on human rights which counterweighted the Europeans, and the Caucus of Arab-Islamic States supported the prohibition of nuclear weapons and the inclusion of the death penalty.

The majority of the work of the Conference was done in working groups charged with looking at aspects of the formation of a Court such as General Principles, Procedures and Penalties. Provisions of the Statute were adopted 'by general agreement' in the working groups. In an example of the disdain for politics found within international law, voting was not allowed within the groups – provisions had to be accepted by consensus. This process, however, must still be seen to be political. Provisions were negotiated, and consensus was reached through bargaining and trade-off. Two examples of this process of compromise are the positions taken by the conference on command responsibility and on the death penalty. There was a good deal of support at the Conference for the proposal to extend the principle of command responsibility to civilian commanders, but China opposed this very strongly. The US negotiated a compromise position, with civilian command responsibility possible, but requiring a higher standard of disregard. The issue of whether or not the International Criminal Court should be able to sentence perpetrators to death was the cause of

much greater conflict. A group of Arab, Islamic and Caribbean states, along with Singapore, Rwanda, Ethiopia and Nigeria argued strongly in favour of its inclusion. After much negotiation, the final Statute does not allow for the death penalty to be imposed by the Court itself, but the principle of complementarity (whereby national courts take precedence in prosecuting crimes covered by the Rome Statute if they are willing and able to do so) means that the national courts of State Parties can impose death sentences if their domestic legal systems allow for it.

The history of the crime of aggression within the Court formation process is also illuminating. The Rome Conference agreed that aggression should be part of the Court's subject matter jurisdiction, but could not agree on a definition of the crime or on an appropriate mechanism for judicial determination of whether the crime had taken place. The Conference eventually agreed that the crime should remain in the statute, and that the Court should have jurisdiction over it when it is defined and its scope designated 'in a manner consistent with the purposes of the statute and the ideals of the UN' (Schabas, 2001: 26). Germany and Japan were particularly keen that aggression be included, and found it hard to comprehend the seeming demotion of a crime defined as the supreme international crime at Nuremberg, just fifty years before. As well as struggling to define aggression, the Rome Conference also had to contend with the right of the UNSC, under Article 39 of the UN Charter, to determine situations of aggression. This suggests that an international court could only prosecute in cases where the UNSC has stated that aggression has taken place. It is clearly very problematic that a court should have to leave the determination of a central factual issue in a case – i.e. whether the crime being prosecuted has actually taken place – to a political body, yet no way around this could be found at the conference.

These examples show that the Conference was a place of politics where law was made, rather than discovered through the illumination of a common moral code. The most difficult questions in the establishment of the Court, those concerning jurisdiction, the core crimes, the trigger mechanisms for prosecution and the role of

the UNSC, were not even publicly debated for the majority of the conference (although a good deal of informal negotiation took place). Instead, Phillipe Kirsch, Chair of the Committee as a Whole and former Chair of the Like-Minded Caucus, handled these issues personally. He drew up a proposal, but chose not to circulate it until the 17th July – scheduled to be the final day of the Conference. The gamble paid off to the extent that many supporting states were afraid that disagreement over more minor points may lead to an unravelling of the grand compromises already achieved. However, Kirsch's proposal was strongly opposed by the US, who forced a vote at the final session, thus preventing the hoped for consensual adoption of the Statute. 120 states voted in favour of the Rome Statute, 21 abstained and 7 voted against. A majority prevailed and the Statute was adopted but through a political rather than legal process[9].

The politics of the court can also be seen in the power and orientation of the states that support it. There are now, as of July 2006, 139 signatories to, and 100 ratifications of, the Statute, representing more than half of the 191 UN member states. However, only two of the UNSC Permanent Five have ratified: the UK and France, arguably the least powerful. None of the major nuclear powers has ratified the treaty: China, India, Israel, Pakistan, Russia or the United States. Only Jordan has ratified in the Middle East. The Court is dominated by European and Latin American states, showing that states still have very different ideas of what international justice consists of.

This has not stopped advocates of the Court from claiming a natural, universal grounding for the laws the Court will apply, expressed most clearly by Kofi Annan, who, quoting Francis Bacon, claims that the court is designed to ensure that even sovereign powers cannot make 'dispunishable' acts which are evil in themselves, 'as being against the Law of Nature' (Statement at the opening of the Preparatory Commission for the ICC, New York, 16 February 1999). The Preamble to the Rome

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[9] For more on the politics of the establishment of the ICC, see Megret (2002); Robinson (1999 & 2003); Wippman (2004) as well as the texts cited in fn 3. On the politics of international law and war crimes trials in general, see fn 6.

Statute also claims a universal agreement not in evidence at the Conference: the State Parties to the Statute are apparently 'Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, and Recogniz[e] that such grave crimes threaten the peace, security and well-being of the world'. This pair of statements is particularly illuminating as it claims that those acts which shock the conscience of humanity are crimes (a position which follows a cosmopolitan liberal natural law view of the world – transgressions of the moral code are crimes, whether or not they are currently prohibited by criminal law – and with the assumption of a harmony of interests which suggests that if liberal policies are instituted, all needs can be met and suffering will cease), and also claims that these crimes threaten the peace and security of the world – a classic liberal internationalist view. These claims to naturalism show one of the weaknesses of the Court: the politics of writing the law are very apparent in the history of the institution. There is no agreement on basic values, so a positivist approach is needed, but this is anathema to liberalism. Instead, universal moral standards are simply asserted, in the face of the evidence.

One of the most difficult questions the Conference had to face was the role of the UNSC and the relevant provisions in the Statute remain highly controversial. As noted above, the UNSC has a significant role in determining aggression. Another critical concern at the Conference was the ability of the Council to interfere with the work of the Court. States who were not Permanent Members of the Council did not want the international legal process to be politicised. Permanent Members argued that decisions over possible criminal prosecutions should not be taken at a time that negotiations to promote international peace and security were underway. The compromise reached allows the Council to prevent the Court from exercising jurisdiction by passing a positive resolution, renewable annually. This measure is called 'deferral' but it appears that it could be used to prevent permanently the International Criminal Court trying a particular case, through continued renewals. The scope of the UNSC to block the work of the Court is limited to some degree by the requirement that to prevent the Court from investigating or prosecuting a case, the

Council must be acting pursuant to Chapter VII of the UN Charter, i.e. they must determine the existence of a 'threat to the peace', a 'breach of the peace' or an 'act of aggression'. However, the success of the US in forcing the Council to pass in 2002, and renew in 2003, Resolution 1422 (which guaranteed that non-State Parties contributing to UN forces were exempt from the Court), by threatening to veto all future peacekeeping operations, demonstrates a genuine stalemate between Council and Court. The US failed to renew 1422 in 2004, but only because they lacked leverage due to the Abu Ghraib prisoner abuse scandal.

The position of the US is particularly important to consider in the context of the ICC because, given its power in the international system, the US offers the most damaging opposition to the Court. From 1995 through to 2000, the US government supported the establishment of an ICC, but always argued for a Court which could be controlled through the UN Security Council (UNSC), or that provided exemption from prosecution for U.S. officials and nationals. On the final day of the Clinton Administration, the US signed the Rome Statute, signalling its desire to stay in the debate. At the time, President Clinton stated the treaty was fundamentally flawed and would not be forwarded to the Senate for ratification. He also recommended that his successor not forward the treaty to the Senate. Certainly, the Bush administration has taken an altogether more aggressive approach, by renouncing the US signature on the Statute and any legal implications which followed from it, passing the American Servicemembers Protection Act (which authorizes the president to take 'all means necessary' to free Americans taken into custody by the court, presumably including invading the Netherlands), strong-arming states into signing Bilateral Immunity Agreements and threatening to veto all future peacekeeping operations in order to gain support for UNSC resolution 1422 which guaranteed that non-State Parties contributing to UN forces were exempt from the Court. But this increase in the ferocity of the response does not change its basic character: the US always has been opposed to a Court exercising universal jurisdiction which is not controlled by the UNSC.

So why is the US, a liberal state known for its long-standing support for human rights and commitment to promoting them throughout the world, so vehemently opposed to the Court? The main aspect of their opposition concerns doubts over the scope and nature of international law. The 'new sovereigntist' critique (see Rabkin (2005), Spiro (2000 & 2004) and Woolsey (2003)) argues that the Court is a grave threat to state sovereignty due to its potential jurisdiction over US nationals even if the US does not ratify the treaty, which is seen as fundamentally in breach of both customary treaty practice and UN Charter protections of national sovereignty. The threats stem from jurisdiction and new crimes provisions within the Rome Statute. The ICC purports to have jurisdiction over certain crimes committed in the territory of a State Party, including by nationals of a non-party. Thus the court would have jurisdiction for enumerated crimes alleged against US nationals, including US service members, in the territory of a State Party (Article 12), even though the US is not a Party. The Statute does require the Court to defer to national prosecution unless the Court finds that the state concerned is unwilling or unable to carry out the investigation or prosecution, but the Court itself makes this decision so the Statute would allow the ICC to review and possibly reject a sovereign state's decisions not to prosecute or a domestic court's decisions not to convict in specific cases. The new crimes provisions also cause problems: a State Party to the Statute can 'opt out' of crimes added by amendment to the Statute, thereby exempting its nationals from the ICC's jurisdiction for these crimes. A non-party cannot opt out (Article 121). The US is particularly concerned here over the crime of aggression, a crime which has been included within the court's jurisdiction, but has not been defined. The parties to the Statute will amend it to define this crime and specify the conditions for exercise of jurisdiction over it (Article 5). Only parties to the Statute can opt out of the jurisdiction of the court over the crime of aggression as per Article 121, leaving the US uniquely exposed to the Court (given its vastly disproportionate contribution to UN and independent peacekeeping operations and humanitarian interventions) but unable to opt out of the crime, however defined.

The US recognises the inevitability of power and politics in international law, and supports a hybrid system of international administration that includes a significant role for the Security Council, which should remain free to wage war or negotiate for peace as it sees fit to uphold international peace and security, alongside an international legal regime which can be brought to bear when the politics of a situation allow for it. Given the highly political nature of the adoption of the Rome Statute, the fears of the US that its application will also be political are certainly understandable. The desire for the UNSC to retain a key role keeps the politics of international law in view, given that they cannot and should not be banished. Had they been given an opportunity to influence the process, through the Security Council, the US position on the Court would have been very different[10].

The format of the Rome Conference attempted to factor politics out of the creation of international criminal law, but the resultant Court may be weakened by its inability to acknowledge the necessity of politics in the field of international justice. There is no shared moral code upon which to ground international criminal law and no central authority to enforce it, so politics is an inevitable feature of the system. It may also be a useful feature, as is only through politics that difference can be successfully negotiated (demonstrated at the Rome Conference, where an innovative Court was created through compromise and bargaining). There is a danger in the cosmopolitan liberal tendency to treat the legal rules that resulted from a political process as if they are expressions of a universal moral understanding, somehow above the world of politics, for doing this tempts one to overlook the very real difficulties of reconciling law with power in the international sphere.

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[10] For further discussion of the US position on the ICC, see Franck & Yuhan (2003); Kahn (2003); Ralph (2003 & 2005); Rodman (2006); Rosenthal (2004); Sands (2005); Weller (2002).

4.3 Implications of the Conceptualisation of Agency & the Denial of Politics within the Rome Statute

Customary international criminal law since 1945 does not seem to have had much effect in preventing genocide, stopping wars or ending injustice and impunity. As documented in Chapter 3, the ICTY has held 62 trials in twelve years and the ICTR has held 26 in eleven years. Considering the scale of the atrocities these tribunals were set up to confront, this number of trials suggests that justice is far from being done. The innovation of the International Criminal Court, with its confused conception of the agent of international violence, and its fear of politics and power, is unlikely to fare any better. In the final section of the chapter I will begin to explore the implications of the particular conceptions of agency within the Rome Statute and the political/ historical context of the Statute, as they impact on the goals of the Court.

The official website of the Rome Statute of the ICC lists the following as reasons for the establishment of an international criminal court: to achieve justice for all; to end impunity; to help end conflicts; to remedy the deficiencies of ad hoc tribunals; to take over when national criminal justice institutions are unwilling or unable to act; to deter future war criminals (Rome Statute website, 2006).

These are noble goals, but the problems highlighted in this chapter suggest that the International Criminal Court and its attendant international criminal law will not achieve the most critical of them. The Court may remedy some financial and practical deficiencies of ad hoc tribunals, and it may take over in a small number of cases where national criminal justice institutions are unwilling or unable to act. However, I argue below that it will not achieve justice for all: the vast majority of international suffering and violence will remain unpunished, and it will not deter future crime.

The possibility of the Court achieving justice for all is encouraged by the illusion that that Court has the causes and perpetrators of the most serious incidents of

international violence within its jurisdiction. In fact, the move from state civil to individual criminal agency described in Chapter 3 and concretised in the Rome Statute has narrowed the focus of concern to exclude considerations of responsibility for most suffering:

> By focussing on individual responsibility, criminal law reduces the perspective of the phenomenon to make it easier for the eye. Thereby it reduces the complexity and scale of multiple responsibilities to a mere background. We are not discussing state responsibility, we are discussing criminal law. We are not really discussing a crime of aggression, we are busy discussing a rape or murder. We are not really discussing nuclear weapons, we are discussing machete knives used in Rwanda. We are not much discussing the immense environmental catastrophes caused by wars and the responsibility for them, we are discussing the compensation to be paid by an individual criminal to individual victims. Thereby the exercise which international criminal law induces is that of monopolizing violence as a legitimate tool of politics, and privatizing the responsibility and duty to compensate for the damages caused (Tallgren, 2002: 594).

A consequence of the development of the ICJS has been to frame violence which is seen as intolerable or 'atrocious' as the action of individuals, conferring a level of legitimacy on violence which does not fall within the remit of the system, principally state violence or aggression (which is unlikely to ever be defined satisfactorily). Yet it is states which bring about the situations of conflict which facilitate the atrocities that the ICC seeks to prosecute. This echoes Schmitt's observation that criminalising war actually legitimises extreme violence on the part of those fighting for 'justice' or 'humanity' (Schmitt, 1996: 54).

The legalised, individualised conception of agency within the Statute limits the possibilities for responsibility so guarantees impunity for those who do not fit the model of the individual criminal. The focus of criminal law tends to be on liability for actions taken rather than on the contexts in which such actions became possible or acceptable. Many of the agents that enable atrocity (by, for instance, fostering or helping to sustain a climate of ethnic fear or hatred – responsibility for which is

considered in more detail in Chapter 7) are ruled out of consideration by the Court because their actions and attitudes were not intended directly to cause harm.

The focus on rights within the ICJS also limits the scope of responsibility. As discussed in Chapter 2, the rights outlined in the Declaration of Human Rights are designed to protect the individual from arbitrary state interference while he acts in a public capacity (as a citizen of the polity or a unit of labour) but not to interfere with his activities in the private sphere. Private sphere actors (who have traditionally been women) are not sufficiently protected by the human rights regime, as private sphere actions do not fall within the remit of the ICC. The Court seeks to punish actions which take place as part of systematic or widespread attacks, predominantly in times of war. The physical attacks and economic disadvantage suffered by women, such as rape within marriage, domestic violence and unequal property rights, remain legal within many states, are rarely seen as part of a systematic attack and certainly are not confined to times of conflict. Even in the context of war, the public/ private split seems to have had an effect. In wartime, sexual violence, enforced prostitution and trafficking in women have long been regarded as weapons, spoils or unavoidable consequences of conflict. The ICC has gone some way to tackling the gendered effects of conflict, but the question remains how much can be done if the conception of the individual at the heart of the human rights regime is itself gendered.

The privileging of political and civil rights at the expense of social and economic rights in the Rome Statute does not just impact on women. Because of liberalism's concentration on the individual and on crime, poverty and massive economic inequality are not considered suitable concerns for the institutions of the human rights regime. The Rome Statute states that it will prosecute the 'most serious crimes of concern to the international community as a whole' (Article 5), and as the operation of international capitalism cannot be viewed as a crime committed by individuals, its effects are seen as secondary in the rights discourse.

The Court is also severely limited by its founding Statute as to the number of cases it can try. Most of the accused who appear before the Court will not be the direct

perpetrators of crimes, but those who plan, organise and incite them. The Court will have to make judgments both between crimes, on the basis of gravity, and between persons, on the basis of the role they played in the crime, in order to manage its case load. The scale of the solution is far smaller than the scale of the problem.

This, however, is a backwards looking view. What of the final goal on the list – the deterrence of future crime? Deterrence is seen as the most critical ambition of the Court:

> Effective deterrence is a primary objective of those working to establish the international criminal court. Once it is clear that the international community will no longer tolerate such monstrous acts without assigning responsibility and meting out appropriate punishment -- to heads of State and commanding officers as well as to the lowliest soldiers in the field or militia recruits -- it is hoped that those who would incite a genocide; embark on a campaign of ethnic cleansing; murder, rape and brutalize civilians caught in an armed conflict; or use children for barbarous medical experiments will no longer find willing helpers. (Rome Statute website, 2006)

If the ICC is successful in deterring crime through assigning responsibility and punishing criminals then the size of the Court machinery may in time be irrelevant. Unfortunately, the unproblematised move from domestic to international criminal law suggests that international criminal law will not prevent future atrocities, as the necessary societal conditions are not present, and the nature of international crime differs so considerably from that of domestic crime.

Tallgren examines whether the consequentialist or utilitarian justification for punishment at a national level has bearing at an international level (Tallgren, 2002: 568-9). This justification for punishment concerns its ability to deter or prevent future wrongs, which it is said to do in three ways: through fear, through internalisation of moral values and through creation of coherence in a value system. Punishment prevents future wrongs through fear by a deterrent effect, i.e. the criminal law changes the motivational structure or cognitive profile of the offender, who fears the negative consequences of her actions so decides against committing a crime. The

second mechanism of prevention concerns the repressive and rhetorical apparatus of the criminal law shaping the value system of a society and thus encouraging the subjects of the law to come to believe that the actions the law prohibits are actually wrong. The final mechanism is subordinate to the first two and can be discerned when the subjects of the law behave according to the law out of habit or through imitation of others.

These mechanisms work best under particular conditions, many of which simply do not apply at the international level. The systemic and behavioural mechanisms rely on conditions in which the criminal legal system has a high level of legitimacy, when the criminalised acts are widely seen as deserving of condemnation and when the behaviour of the offender is open to change. *Pace* the cosmopolitan lawyers who promote the benefits of international criminal law, these conditions are very unlikely to be present in the international realm. The international criminal justice system does not enjoy a high level of legitimacy among states or peoples, and thus the norms it promotes are unlikely to be internalised in preference to domestic norms, where the two conflict. Also, rather than being a member of a society which abhors the criminalised behaviour, the international offender may be part of a group which actively promotes such behaviour. The offender must therefore choose between breaking a distant international criminal code which she feels has little bearing upon her life and breaking with the norms of a group with whom she identifies strongly. Finally, the behaviour of the offender may not be open to change as international criminality is not socially deviant in the way that domestic criminality is seen to be, so is unlikely to receive community censure. The only likely mechanism for prevention of crime at international level therefore appears to be the cognitive mechanism of the deterrent effect. This relies upon the potential offender being aware of and motivated by both the likelihood of negative consequences and the severity of the punishment. As the likelihood of being punished for an international crime is statistically minute, international criminal law can only deter through severity of punishment. However, the severity would need to be so extreme to balance out the low likelihood of ever having to suffer it that the punishments would surely count as

cruel and unusual and thus be ruled out by international human rights standards. The fact that atrocities were committed in Kosovo while the ICTY was already active seems to bear this analysis out: the perpetrators were not at all deterred by the prospect of being tried at an international tribunal (see Snyder and Vinjamuri (2004), for more discussion on the failure of tribunals to deter atrocity).

In further contrast to domestic crimes, international crimes tend to be committed by ordinary people in extraordinary times (as opposed to deviant people in ordinary times). In the conclusion to their study of the Holocaust, Kren and Rappoport state: 'Our judgment is that the overwhelming majority of SS men, leaders as well as rank and file, would have easily passed all the psychiatric tests ordinarily given to US recruits or Kansas City policemen' (Krenn & Rappoport, 1994: 70). International criminals cannot therefore be identified by their dysfunction or difference to their fellow citizens. Their behaviour cannot be explained with reference to their economic or societal marginalisation. It is the circumstances they act in which are unusual. War is as far from the 'ordinary course of events' as can be imagined. Extraordinary circumstances may mean there are no guidelines or norms for individuals to apply, or that the norms applied change, and norms which promote stability or the safety of the group become more relevant. For instance, following the trial of William Calley for the My Lai massacre during the Vietnam War, a survey of the American public found that 51 % would follow orders if commanded to shoot all inhabitants of a Vietnamese village. Kelman and Lawrence (1972) who conducted the survey concluded that a substantial proportion of Americans saw Calley's actions as 'normal, even desirable, because [they think] he performed them in obedience to legitimate authority'(cited in Gross, 1991: 325).

Finally, the International Criminal Court is unlikely to ensure that justice is done because it conceives of the individual as an international actor in a contradictory and unjust way. Victims and perpetrators of international crime are seen as different types of individual – one as socially embedded (which implies the absence of agency) and the other as pre-social. This false dichotomy constructs our understanding of

atrocities in a way that precludes us from seeing perpetrators as victims and vice versa. They are simply not constructed as the same types of human being, and this leads to conflict being viewed in dangerously simple terms: as the battle between innocence and evil.. Yet the perpetrators of international crime are invariably playing particular roles, be it state representative, organisation member, follower of a particular ideology or member of the formal or informal armed forces. The Rome Statute virtually requires that the individuals it prosecutes be located in relation to others as organisers, leaders or instigators of the crimes within its jurisdiction yet denies the relevance of social roles. The idea of international criminality within the Rome Statute therefore misses much of the significance of the societal nature of the person – the effect of social roles and the enabling function of groups – and omits to assign responsibility for actions carried out socially.

Why does this problem of social role or structure arise only to a limited extent when discussing domestic criminal law? Such law may be more stable because there is some assumption that all agents are framed by the same culture, and that the social roles played within the society are comprehensible to all members of that society: a jury can think their way into the roles and understand the perpetrator from within her own frame of reference. Also, the social pressures that apply to the defendants are likely to apply to others in the same community, so judgements can be made about how far these pressures can mitigate an offence. However, beyond the borders of the state the social aspects of the individual can be much less well understood. The pressures across societies and situations are diverse, and the construction of the individual takes place in different ways and with different results across time and place.

4.4 Conclusion

The ICC is an innovative addition to the institutional architecture of international society, and represents a historically unprecedented level of co-ordination between states, inter-governmental organisations and NGOs. This chapter has argued that the Court cannot achieve the goals set out for it, but this does not mean the institution has no merit. The Rome Statute has killed off the concept of sovereign immunity, and the Court itself has the potential to reduce the arbitrary power of the state to prosecute or pardon at will. The creation of the Court was motivated by a desire that those who inflict great suffering upon others should be held responsible for their actions: a position I support absolutely within this thesis. It is the method of holding responsible rather than the impulse to do so that is at fault. In order to prosecute the crimes envisaged by the Statute, the Court is built upon mutually contradictory foundations: the liberal conception of the free individual and the communitarian conception of the inherent value of community and the identity-constitutive nature of group membership.

The perpetrator is portrayed as a free and rational actor, propelled by intention, independent of social role and culture, whose actions are under her volitional control. Her social origin and position in social institutions such as governments or the armed forces, particular capabilities and personal circumstances are seen as irrelevant both to the Court, and more importantly, to the perpetrator. In other words, the perpetrator is the model of liberal individualist agency, unfettered by communal ties and so solely responsible for any action taken. This narrative of the international agent is seductive: if atrocity is described as the work of voluntary agents – individual perpetrators doing violence to innocent groups – then it can be punished and future atrocity deterred. Responsibility can be assigned to individuals for all acts which displease us, and no questions need to be asked about the effects of larger practices such as nationalism and war on the incidence of atrocity. Breaches of the universal moral code are just that: breaches or disruptions, certainly not consequences of the normal workings of the international system.

But the crimes that the ICC seeks to prosecute call into question the model of the individual supposed to be their perpetrator. Distress at genocide and crimes against humanity is about something more than just the injuries to individuals, and the definitions of these crimes recognise that they are crimes against peoples, groups or cultures which are judged to be of value in and of themselves. The ICC has been set up to prosecute sovereign individuals for inherently social crimes. This confusion suggests that the conception of agency within the statute is fundamentally flawed.

This view of agency also has a practical effect on policy. Agency is seen as residing with individuals and the conception of individuals as 'uncaused causes' makes atrocity impossible to predict. The ICC is a logical response to this liberal conception: if atrocity cannot be predicted, then it cannot be prevented. The way to respond to it must be after-the-fact legal prosecution and punishment. Acceptance of this highly problematic conception of the individual gives undue support to a legal rather than political response. Taking on the political task of preventing atrocity in the very early stages of violence, or the military task of intervening to forcibly bring it to a close are much more costly options, but may be normatively preferable if lives can be saved. The ICC does not just rely on an ideology which rules out the possibility of prevention, it also makes force more difficult to use, because states who send troops are risking prosecution by the Court. The US among others will be very reluctant to answer calls to intervene in future in situations of great crisis such as Kosovo. It is worth repeating that the ICTY was in place when the atrocities in Kosovo started and it does not seem to have had any deterrent effect.

The concept of responsibility within the ICJS is also problematic, as it tends to narrow the scope of agents and actions that can be included in any assessment of our obligations to each other. The liberal emphasis on intentionality of agency means that many of those people (as individuals or groups) who enabled crimes by creating the social conditions which made them possible will escape unpunished as they cannot be shown to have intended particular harms. More important still is that the legalised approach to responsibility disguises the interests of power: the effects of that violence

which is bracketed away from 'atrocity' because it is permissible under the laws of war or is carried out in the 'private sphere' are much greater on human beings and the environment than the effects of the small number of crimes that the ICC will prosecute. The liberal individualist focus of the Court means that the field of international justice is narrowed to exclude the most serious and widespread suffering in contemporary international relations. Suffering is not just caused by violence. The effects of liberal economic policy on global poverty and economic inequality in particular are obscured by the attention directed towards international crime. The scale of the solution offered by the Court is far smaller than the scale of the problem, and, as the discussion in Chapter 3 suggested, some of that problem may itself stem from the very ideology which gave us the ICC.

All of this suggests a need to go back to basics in international ethics and rethink the root assumptions that lie beneath the cosmopolitan liberalism which suffuses much contemporary theorising and practice. A great deal of such thinking has been started in the last decade, with the foundations of cosmopolitan liberalism challenged by essentialist, non-foundational and anti-foundational theorists. Some of the most challenging work has been on the 'Agency-Structure debate', which calls the very concept of agency into question. Before I can examine new theories of responsibility, I need to consider, in the following chapter, claims that structure so dominates our lives that our experiences of agency are merely illusions.

CHAPTER 5: STRUCTURE AND THE (IM)POSSIBILITY OF AGENCY

In Part One of the thesis, I explored the impasse that contemporary international political theory seems stuck within. Cosmopolitan liberalism defends the rights of a radically free, sovereign individual, unconstrained by social or material structures – the epitome of an agent. Communitarianism sees people as constructed by the social structures that surround them – their freedom in some sense not just limited by their reliance on community, but also extended by it, as the community provides meaning and direction to individual lives. The insights of each side are appealing, and each feature in the workings of the contemporary international system: human rights are promoted to protect the freedom of the individual and the concept of individual responsibility is the foundation of the ICC, yet states are afforded a high level of protection from external interference by the UN Charter and as a norm of the system, and crimes against groups are seen as more significant than crimes against individuals at the international level.

Can the impasse to be overcome? There have been a number of attempts to so in recent theorizing, which I will document below. Before I do, it is necessary to look more closely at the relationships perceived between agent and structure in the standard positions. The impasse reached may be a result of an understandable but unjustified desire on the part of cosmopolitan liberals to assert agency: a concept which, after all, is a necessary component of normative theory. Without some type of agency or freedom of action, all talk of right and wrong seems insignificant and meaningless. What will be, without agency, will be. There is no point discussing whether actions or states of affairs are good or bad, since they cannot be changed. Agency is therefore necessary to normative theory, but is the impasse reached because agency is to a large extent impossible? Is the world such that structures constrain or construct agency so totally that to theorise free action is quite literally wishful thinking?

Classical IR theory tends to be agent-centric, with the relevant agents seen to be states. Waltz, with his book *Man, the State and War* (first published in 1959), brought about something of a revolution in the discipline by suggesting that the nature of the international system (a structural variable) was the best – though not the only – explanation for war. Waltz's work was followed in the 1960s and 1970s by theories which were more unambiguously structuralist: dependency theory, core-periphery analysis and world-systems theory. This chapter will argue that to pit agency and structure against each other in a competition to find the most powerful is to continue the dichotomous thinking criticized in Chapter 2. I look at theories which perceive a more subtle relationship between the two phenomena, and argue that neither is prior. At the end of the chapter, I outline a conception of agency that is sensitive to the contemporary agency-structure debate, but presents a more innovative and persuasive account of each phenomena than either cosmopolitan liberalism, communitarianism, or the various post-positivist theories which have attempted to move IPT beyond the stalemate of the mainstream positions.

5.1 Free Will, Volition and Agency

Cosmopolitanism, liberalism and communitarianism are normative positions: they all have something to say about the way the world should be as well as the way the world is. These positions are engaged in ethical or moral theorizing, thus assume that facts about the world are not fixed – that situations they find troubling can be improved. They judge actions rather than simply describing them, and assign praise and blame to actors, that is, confer moral status upon them. But is this status justified? The relevant criteria for actors and actions to be assigned moral status centre on the idea of volition. Aristotle, the first philosopher to explicitly construct a theory of moral responsibility, argued that praise and blame can only appropriately be ascribed to voluntary actions or traits which are carried out or displayed by particular agents (Aristotle, 2000, Book III Chapters 1-5). Agents will not be morally responsible for all of the actions they take – they will only be deserving of praise or blame for those

they chose to perform. According to Aristotle, there are two conditions which determine whether an action is voluntary: i) the control condition, which requires that the action or trait must have it's origin in the agent, so must be done without compulsion and ii) the epistemic condition, which requires that the actor must be in full knowledge of the circumstances, so be aware of what she is causing or bringing about. Compulsory action is that caused by external circumstances, to which the agent contributes nothing. Involuntary action can also be the result of ignorance of any of the circumstances surrounding the action. In Aristotelian theory, actions done out of great fear or duress are likely still to be voluntary as there is an element of agential choice at the moment of action. A very high standard is imposed onto the moral behaviour of agents, and this thinking has been followed by Sartre, among others, who argues that in some situations where you must choose between life and death, choosing life will be the immoral choice. No matter how difficult the circumstances, if you have any choice at all (which you will, as suicide is always an option) then you are acting voluntarily and thus still morally responsible for your actions. This is why Sartre sees the absolute freedom of the individual as a burden: '[m]an is condemned to be free. Condemned, because he did not create himself, yet, in other respects is free; because, once thrown into the world, he is responsible for everything he does' (Sartre, 1947: 23).

The idea of volition is translated into law as intentionality, and only actions where the actor can be said to have had some choice are seen as suitable for legal consideration and punishment. It is not appropriate to blame or punish an agent for actions which were coerced, compelled or otherwise 'caused' entirely by factors external to the rational capacity of the actor, particularly if one of the objectives of punishment is to deter the actor from behaving that way again. Involuntary actions cannot be deterred. I noted in Chapter 4 that the ICC is premised on this model of responsibility, which sees intent and knowledge as necessary to guilt.

Any discussion of volition entails ideas of freedom. An intuition which flows through most philosophical work in this area is the fundamental injustice of holding someone

morally responsible for an action that they had no choice but to perform. However, the freedom of the agent cannot be easily established: if an action is caused then it is not free (as there were no other possible actions which the agent could have taken: the cause/s predetermined the action). Conversely, if an action is uncaused then surely it is random. It does not seem correct to assign moral responsibility in either of these cases – in the first the agent had no deliberative role and in the second they had no role at all.

There are three principal positions taken in the debate over the causes of action in philosophy. Determinists assert that all action is caused and as such is not free. The causes cited may be structural, psychological, biological or theological, but they all have the effect of falsifying the hypothesis that the human will is free. Conversely, some theorists deny all determinist claims and argue that human agents are genuinely free and capable of identifying, deliberating over and choosing between courses of action open to them (a view which I have argued, in Chapter 2, is necessary and foundational to cosmopolitan liberalism). These two positions are both classed as 'incompatibilist' as they deny that the will of the agent can be free if determinist theory is true. The third position taken is a 'compatibilist' position, which holds that both determinist theory and a theory of free will may be true simultaneously (i.e. that the theories are compatible with each other).

Ideas of legal responsibility, in both domestic and international law, tend to be compatibilist. The abilities of law and jurisprudence to command respect depend in large part on their telling stories about individual responsibility which are close to our everyday understandings of the notion, principally that the agent must be seen as being the cause of the outcome (Hart, 1968 and Feinberg, 1970). However, legal scholars have long noted the problem of agency and causal chains. To assign responsibility under law, the agent must be assumed to be an independent source of power, rather than a domino destined to fall. This invokes Kant's conception of the individual as the uncaused cause: 'Our blame is based on a law of reason whereby we regard reason as a cause that irrespective of all … empirical conditions could have

caused the agent to act otherwise' (Kant, 1782, quoted in Barnes, 2000: 9). Reason is seen as entirely free, so to locate responsibility for an action one must work back along the causal chain to find the first free act. The intuition here is that every event has a cause, but not every cause is an event: sometimes the cause is a rational agent.

I discussed in Chapter 2 some of the problems with this account of the sovereign, volitional agent. I also noted that communitarianism does not offer us an easy solution. Cosmopolitan liberalism requires a highly disputed notion of free will, but communitarianism implies an opposite, though equally controversial, causal force – the community. Communitarianism is deterministic: it regards individuals as constructed by culture, and action as caused by socially conditioned roles, routines and habits. Yet this position cannot account for change, and, more critically to the argument I wish to make in this piece, it does not accurately describe the world as we perceive it. Our experiences of free will and human agency are surely too powerful to simply be mistaken, but neither cosmopolitan liberalism nor communitarianism can adequately account for them. Both sets of theories reify and essentialise either agent or structure, leaving each open to valid criticism from its opponents. The following section looks at recent work on the relationship between agent and structure in International Relations to ascertain whether contemporary theorising can offer ways to get beyond this either/ or causal dichotomy to inspire new ways to think about the possibility of agency.

5.2 The 'Agency-Structure' Debate in International Relations

Consideration of the nature of agency and the extent to which it is free has appeared only recently in International Relations, yet the relationship between agent and structure is critical in justifying conceptions of agency. The debate over the influence structure exerts over agency originated in modern thought with the writings of Durkheim (see particularly Durkheim (1982)), who argued that long term structural factors were the most important determinants of individual behaviour. This is entirely

contrary to the view, prevalent in British social thought at the time and seen in contemporary cosmopolitan liberalism, that social phenomena can be explained by reference to the actions and motives of individuals. This view is well summed up by John Stuart Mill: 'Men are not, when brought together, converted into another kind of substance' (Mill, 1843, Book 6, Chapter VII: 1, quoted in Carr, 2001a: 25). On the contrary, for Durkheim, action can only be explained when the social environment of the actors is understood, in particular, individual exposure to phenomena he labelled 'social facts'. These 'facts' are external to the individual, coercive of her and not dependent upon her for their existence, and among the clearest examples of them are structures of law. This structural view of action is inherent in communitarian thought, as noted above, though neither cosmopolitan liberal nor communitarian theorists tend to engage explicitly in the 'agency-structure' debate.

We have seen in previous chapters that assumptions about agency follow from particular normative positions taken on the value of community and the role it plays in the life of the individual. The 'agency-structure' debate in International Relations has been less concerned with the roles of the individual and the community, and has focused more on the roles of the state and the international system, but there is much to be learned from it none-the-less.

The first question to ask when assessing agential possibilities in the face of structure is what precisely we mean by 'agent' and 'structure'. In mainstream (pre-constructivism) IR theory, states as agents are viewed as rational beings that are pre-social, that is, their interests and identities are formed prior to interaction and they are the source of their own conceptions of the Good. This is directly analogous to the model of the individual in cosmopolitan liberalism. Structures are largely conceived of in material terms, as the availability of resources across the system, or the security structure measured in terms of relative military capabilities. The interaction between these autonomous agents and material structures takes place only as states seek to attain their particular goals. Interaction or sociability itself is not a goal – it is a strategic activity for the purpose of pursing interests.

A number of theorists have found themselves to be dissatisfied with these conceptions and have sought to investigate the assumptions about agents and structures present in IR theories. Wendt (1991) argues that there are two ways to explain social phenomena: causally and constitutively. Causal explanations are those which use laws of cause and effect, and these explanations can show how rules and institutions change or are reproduced. Constitutive explanations use interpretation to understand the perspectives of the actors involved and the contexts in which they believe themselves to be. There are three ways to explain the agent-structure relationship using causal laws: structures may cause agents (as in communitarianism), agents may cause structures (as in cosmopolitan liberalism) or they may simultaneously cause each other.

The belief that structures determine agents, or that society is ontologically prior to the individual, can be seen initially in the sociological work of Durkheim, and subsequently in dependency theory, core-periphery analysis and world-systems theory in IR. This argument suggests that agency is unimportant as individuals are just the bearers of social relations. Social phenomena have an existence of their own and can be studied independently of the behaviour of the individuals whose actions they determine. Human autonomy and creativity are denied, which runs counter to our everyday intuitions on agency. This conflict with everyday discourse can be explained in a number of ways. Many structuralists argue that the conflict is culture specific. They see subjectivity as a mode of awareness historically specific to the Western culture; not an innate part of human nature but rather socially constructed in different ways in different societies. Carr contributes to this line by historicising the individual. He quotes Burckhardt's 'Civilisation of the Renaissance in Italy', in which Burckhardt argues that the cult of the individual began in the Renaissance as man 'became a spiritual individual and recognised himself as such', whereas previously he'd been 'conscious of himself only as a member of a race, party, people, family or corporation' (quoted in Carr, 2001a: 27). Marxists and critics such as Polanyi (see Chapter 2) argue that this change in the construction of agency is linked

to changing relations of production and that it is the function of ideology to constitute subjects as the occupants of roles and bearers of social structures appropriate to different stages of capitalist development.

Susan Strange (Strange, 1994) advanced the structuralist position in international political economy by challenging the view that power was a property of agents, used to pursue their interests. She argued that power resides in structure and is a feature of all structural relationships. Structural power is thus: 'the power to decide how things shall be done, the power to shape frameworks within which states relate to each other, relate to people or relate to corporate enterprises' (Strange, 1994: 25). Strange identified four primary structures in the international sphere: knowledge, financial, production and political. She was concentrating on the structures which constrain and enable state agency, but one may be able to make analogies across to individual agency and see political, economic, legal and cultural structures playing a similar role.

Structuralist arguments suggest that talk of responsibility in IPT is meaningless. If agency depends entirely upon structure, and there is no sense in which it is free – no sense in which an agent could have done otherwise – then the concept of responsibility is empty. We can talk about causes in a structuralist world, but we cannot talk about responsibility, as responsibility suggests a moral judgement of actions taken, which is pointless if the actions were inevitable. This represents a real difficulty for communitarian political theories. How can responsibility be possible in a world in which the identity and interests of individuals – those aspects of the self that direct action – are formed by the structures of the community? The answer to this has to be to transfer agency up to state level, as the state is the institutional representation of the community. Communitarians support the rights of state sovereignty and non-intervention because of the intrinsic value of the community in the life of the individual, and in doing so indicate that they regard the state as having agency (for only if it has agency does its freedom need protecting). This is an interesting, though flawed, line of argument: the determinism of communitarianism

does not allow for such an easy solution. If the actions of individuals are largely determined by interests and values transmitted through culture, some agent or causal force separate to it must create that culture. The state is staffed by individuals whose actions are (however distantly) caused by culture, so it is not at all clear how the state could be free of its determinative effects, i.e. could exercise agency and create culture.

The opposite argument to the structuralist view contends that agents (individuals or states) create their world and any structures which are in it. As discussed in Chapter 2, methodological individualists argue that all sociological and structuralist explanations are reducible to characteristics of individuals and rest on assumptions about individual behaviour. Individuals are thus ontologically prior to structures, even though they may act in response to structures, once created. This tends to be the working assumption made by legal systems, as without the possibility of free agency, criminal law would have no force and no meaning. Despite appearances to the contrary in *Theory of International Politics* (1979), there are elements of this view in the work of the most influential supposedly structuralist IR theorist of the late twentieth century, Kenneth Waltz. He argues that 'from the co-action of like units emerges a structure that affects and constrains all of them. Once formed, a market becomes a force in itself, and a force that the constitutive units acting singly or in small numbers cannot control' (Waltz, 1979: 90). This quotation demonstrates that those who place agents as prior to structure do not always hold that structures are created *intentionally* by agents, and indicates that even if it could be established that agents were ontologically prior, the individual agent may still be significantly constrained in given circumstances. There is then, more subtlety in agent-centric views – they can allow for some influence of structure upon agent. However, as outlined in detail in Chapter 2, methodological individualist views are unconvincing in their ontology and are lacking in explanatory power.

As neither agents nor structures can be convincingly presented as ontologically prior, the third way to explain the agent-structure relationship using causal laws is to argue

that agents and structures simultaneously cause each other. This position contends that structures and agents are ontologically equal and separate, but necessary to each other and mutually dependent rather than in opposition. It is effectively a compromise position between the first two outlined, and accords well with intuition. In the field of sociology, Talcott Parsons argued that social groups have 'emergent properties' (Parsons, 1949) that are produced when individuals interact, but that are not reducible to those individuals. He formed the concept of emergent properties from three notions. Firstly, social systems have a structure which emerges from the process of social interaction. Secondly, these emergent properties cannot be reduced to biological or psychological characteristics of social actors. Thirdly, the meaning of a social act cannot be understood in isolation from the total context of the social system in which it occurs.

Berger and Luckmann (1967) took up and expanded the argument made by Parsons. They argued that the meanings given by individuals to their world become institutionalised or turned into social structures via a dialectical process, and these structures then become part of the meaning system used by individuals, and so limit their actions. Giddens (1979 and 1984) has built further upon this idea and developed a theory of 'structuration' in which social structures are conceptualised not as barriers to action but rather as intimately bound up in the production of action. They are both the means by which people act and the product of those actions. However, while this type of theory is attractive in that it appears to accord well with our common sense understandings of the world, it is by no means universally accepted. Hollis and Smith define Giddens' contribution to the agent-structure debate merely to be to describe the relationship rather than to explain or understand it (Hollis and Smith, 1991: 406). They see structuration theory as an ambition rather than an established theory.

Never-the-less, structuration theory has been introduced into the field of IR, principally by constructivists (see for instance Wendt (1987, 1992 & 1999) and Dessler (1989)) who have used it to challenge the dichotomous conception of agent and structure set out in the first two causal explanations. Alexander Wendt identifies

two truisms about social life which give rise to the agent-structure problem: '1) human beings and their organisations are purposeful actors whose actions help reproduce or transform the society in which they live; and 2) society is made up of social relationships which structure the interactions of these purposeful actors' (Wendt, 1987: 337-338). His work goes on to examine how it is that both of these statements can appear to be true.

Wendt imports from sociology the concept of 'social structures', or patterned relationships between elements of society that are repeated across time and space (Giddens, 1989: 19). These structures are not observable entities, but rather abstract formulations whose effects can be perceived. Wendt (along with other constructivists) argues that systems of norms, beliefs and ideas are social structures which function as enablers and constraints in largely the same way that material structures do in international relations, and should be taken into account when trying to account for agency. Normative structures affect agency by shaping interests and identities, which then condition action. However, constructivism also recognises that these structures are the result of the knowledgeable (although not necessarily intentional) behaviour of agents. Thus, agents and structures are mutually caused.

Wendt has been most influential in advancing the agent-structure debate in IR, but E. H. Carr had identified the mutual dependence of agents and structures well prior to Wendt's ground-breaking 1987 article. Carr saw society and the individual as inseparable: 'necessary and complementary to each other, not opposites' (Carr, 2001a: 25). He argued that it was a fallacy to think that men had any existence before being brought together, as every human being is born into a society and is a social unit. Yet, Carr also held that 'great men' could create the social forces which change the world and shape the thoughts and environments of other agents. Wendt's work, along with that of David Dessler (1989), has moved this forward significantly and applied the model of mutually caused agents and structures to the international system.

Wendt and Dessler do not limit their analysis to causal explanation. They argue that the relations between agents and structures cannot be properly understood without also using constitutive explanation. Constitutive theory brings the concept of social rules to the fore. According to Wendt (1991: 390), constitutive theory explicates the rules governing social situations, showing *how* actors can engage in certain practices in certain contexts and how these practices instantiate the rules (or fail to do so). This theory attempts to understand the perspectives of the actors involved in social situations and the contexts that they believe themselves to be acting within. Constitutive theory thus shows that agents and structures are mutually constituting (whereas causal theory shows that they are co-determined).

But how, exactly, are agent and structure co-determined and mutually constituting? Dessler conceptualises structure as a means to action, following the Aristotelian tradition through the scientific realism of Roy Bhaskar. The Aristotelian argument is that structure is a material rather than efficient cause of behaviour. Structure creates the possibility of agency, but does not dictate it, in the same way language creates the possibility of speech, but cannot cause any particular conversation. For Aristotle, efficient causes of action can only come from the agent (as discussed in Section 5.1 of this chapter). For Bhaskar, agents and structures are ontologically distinct, with social agents being like 'a sculptor at work, fashioning a product out of the material and with the tools available to him' (Bhaskar, 1979: 43).

Social rules are given centre stage in Dessler's model, because he argues that rules as well as resources are necessary for action. Rules are structural rather than agential, resulting from action but not reducible to it, and serve two distinct functions: they either regulate behaviour in specific contexts, or they define and create (and thus make meaningful) new patterns of behaviour. Thus, actions can be judged to be legitimate with reference to regulative rules, but prior to a judgment of legitimacy, the behaviour must be meaningful. It is constitutive rules which render action meaningful or otherwise. Dessler feels that by emphasising the role of rules, the intentional action of agents upon structures can be considered. He argues that all actions either

reproduce or transform social structures, but that theory should be sensitive to the intentionality of the action. One can therefore argue, on this view, that innovations such as the International Criminal Court are the result of actors intentionally trying to change social structures, and these types of actions are of a different character to those which impact on structure in an unintended way.

Colin Wight (1999 & 2004) also uses Bhaskar to think through the agent-structure debate. He builds a three level model of agency in order to show that, while agency is 'embedded within, and dependent upon, structural contexts' (Wight, 1999: 109), agency is not reducible to structure. In fact, 'agents always bring their structures with them' (Wight, 1999: 110). The first level of the agency model Wight proposes, $agency_1$, or self, includes three necessary elements of agency: accountability, intentionality and subjectivity (Wight, 1999: 130). Subjectivity is the most important element on Wight's account – an assertion of self. He does not require that the self is autonomous, but does see some quantity of freedom of subjectivity as necessary to agency. $Agency_2$, the second level, is the way in which agency becomes agency 'of something' (Wight, 1999: 133) – it links agency to its social context. Agents are only agents of groups and collectivities with which they identify, so social practice is necessary to agency. $Agency_3$, the final level, is about roles or 'positioned-practice-places' (Wight, 1999: 133), which $agents_1$ inhabit on behalf of $agents_2$, for instance the roles of prime minister or teacher. These are structural properties which persist irrespective of the agents who occupy them, and both constrain and enable action from $agents_1$. Each of these levels of agency is necessary to describe agency accurately, and none are reducible to the others.

Friedman and Starr (1997) criticise constructivist theory, and Wendt and Dessler in particular, for reifying agents and structures rather than acknowledging them as dynamic. They note that, following Sartori's model of concept formation, causal explanations for the relationship between agent and structure must have two specific ontological criteria: both agent and structure must be conceptualised as autonomous and irreducible to the other, plus they must each be conceptualised as variables and

not constants. Friedman and Starr argue that Wendt's work does not satisfy the first of these criteria, as he conflates agency with social roles. This is how agency tends to appear within communitarianism – individuals are regarded as exercising agency if they act out social roles which have been defined by the social structure they find themselves within – but this lacks the aspect of freedom that we commonly understand as part of agency. Friedman and Starr also criticise the causal aspects of the models proposed by both Wendt and Dessler for being inattentive to the variability in the phenomena investigated. In contrast, they conceptualise agency as varying through the number of (sometimes conflicting) social roles that individual agents play at different times, and structure as varying through the concentric layers of structure that individuals are embedded in at each moment of agency. Structure in this view is agent-specific, if not agent-determined. Within international relations, as within domestic polities, this means it is unlikely that any agents will face the same set of structures under the same circumstances. Even if agents such as states understand the structure of the international system in the same way, they are likely to face differing regional or cultural structures which alter the character of their overall structure set.

The insight that agents and structures are dynamic rather than homogenous or static is a valuable one. On reflection, it seems highly likely that the relative power of agents and structures will vary in different contexts, as will the power of different agents or structures in the same contexts. The capability of an agent to act unhindered by structural constraint is likely to differ across situations depending on the social role or roles the agent is playing in these situations and the rules which apply. A uniformed police officer may have more freedom to act than the driver she has stopped for questioning. A father may have more freedom to act within his home than he does in his role of a subordinate in the hierarchical structure of a firm. However, some theoretical work, particularly neo-realism, seems insensitive to the possibility that agents and structures differ radically within themselves as categories and across different circumstances. Fortunately, much classical and contemporary IR theory is more subtle (though less parsimonious). Carr (2001a) argued that strong agents or

'great men' may have more substantial links to structures than less powerful agents. For him, what makes some individuals great is their ability to speak for and actualise the age they live in. Great men are at once 'a product and an agent of the historical process, at once the representative and the creator of social forces which change the shape of the world and the thoughts of men' (Carr, 2001a: 49). Within his structuration theory, Giddens (1984) also recognises that different agents have different effects. He argues that powerful agents recreate the structures that benefit them.

Some theorists have gone so far as to suggest that the relationship between agent and structure is undergoing a radical shift at the present time. James Rosenau (1990 & 1997) argues that the world is undergoing profound, probably epochal change. He contends that current IR theoretical paradigms are increasingly incongruous in the face of technological advancements, international regimes, powerful sub groups and weakening states, but feels that these anomalies mark distinct types of breaks with the past, or patterns. The patterns concern the structure of global politics, which he argues consists now of 'two interactive worlds with overlapping memberships: a multi-centric world of diverse, relatively equal actors, and a state-centric world in which national actors are still primary' (1990: 97), the emergence of new actors and a qualitatively different relation between space and time as the pace of politics and economics has accelerated, with events and reactions happening almost instantaneously across great distances. He documents these changes in a 'turbulence model' and lists three critical variables as causing contemporary instability. The first is the expansion of analytical skills across all micro actors. The second is an authority crisis at the intermediate level which links individuals at the micro level to collectivities at the macro level. The final variable is the bifurcation at the macro level which has led to the emergence of a multi-centric world of sovereignty-free actors alongside the state-centric world of sovereignty-bound national governments (1997: 43). The turbulence at the intermediate and systemic levels, according to Rosenau, has created more room for individual agency, and the uncertainty which

accompanies it motivates individuals to learn and adapt – to challenge their socialised responses to systemic stimuli.

Rosenau conceptualises individuals in a way that is sympathetic to the concept of the agent in constructivist thought, and, to an extent, in communitarian theory. He sees individuals as simultaneously empirical wholes and conceptual parts, with each being a composite of roles: 'there is no individual apart from the network of systems in which he or she is embedded' (1990: 117). A role is 'defined by the attitudinal and behavioural expectations that those who relate to its occupant have of the occupant, and the expectations that the occupant has of himself or herself in the role' (1990: 212). All individuals occupy a large number of roles – some ascribed (for instance social class, ethnicity, gender and culture) and some chosen – and all express needs, skills and desires dependent on the roles that they play in the network of systems. Rosenau does not deny that there may be some variance between human beings in the same role – some human spirit or uniqueness – but rather asserts that the role-composite conception accounts for most individual behaviour. The relevance of this definition to the contemporary world, and the mechanism whereby Rosenau theorises agency as increasingly important rather than static, is the observation that macro circumstances are currently so turbulent that individuals are experiencing an unprecedented level of uncertainty in their roles. In stable times, systems require appropriate performance in given roles, and individuals tend to behave according to habitual cognitive imaging or scenario construction, deeply engrained through political socialisation. However, as roles and expectations become more blurred and systems are placed under stress, individuals' interests as players of different roles begin to conflict, and their routine action-scripts seem less appropriate. They begin to exercise more, and more independent, agency, in the face of weakened structures, though the increase in agency is dependent upon the skill of the actors to respond to the new macro conditions they face. The first of Rosenau's critical variables – the expansion of analytical skills across all micro actors – suggests that there is greater potential for the exercise of agency in contemporary international relations both

because structures are breaking down and because individuals are developing a greater political skill base (via increased education, information and technology).

Rosenau is not alone in believing that micro level actors are impacting upon international structures in novel and powerful ways. Ronnie Lipschutz (1992 & 2000) argues that individual agency is becoming increasingly powerful through the emerging institutions of global civil society. These have come about, according to Lipschutz, for three reasons: firstly because states are losing sovereignty upwards to supranational institutions and downwards to sub-national groups as anarchy dies away as the organising principle of international relations, secondly as a functional response to the decreasing ability and willingness of governments to carry out welfare functions and the increasing competence of individuals in society, and thirdly because individuals are increasingly identifying with smaller, sub-state groups (1992: 399). Lipschutz explains that in order for Western states to ensure that their populations would support the workings of the economy after the Second World War, at a time when people were tremendously disillusioned with their state protectors (having seen that they were willing to risk the lives of enormous numbers of their population to preserve the institution of the state), governments needed to dramatically increase their welfare provision. To do this, they needed bigger bureaucracies, so had to expand higher education provision to generate enough capable bureaucrats. Vast numbers of people thus learned to use data as knowledge, facilitated by the technological revolution. They are now using their new skills and knowledge about the workings of the state to generate new ways of being political: global civil society.

The explanation Lipschutz gives for why individuals are increasingly identifying with sub-state groups is an interesting reflection of the economic criticism covered in Chapter 2 of this thesis and a significant challenge to both cosmopolitan liberal and communitarian views of the world. *Contra* communitarians, he argues that as the same ideas and modes of production have become the operating system in the West, South and now East, habitual identification of individuals to the nation state as their primary social grouping has declined. However, individualised identities based on

consumption and the market have proved insufficient to give people the sense of social belonging they crave (and that cosmopolitans are reluctant to acknowledge that they have), so they have looked for other collectivities (i.e. the groups and institutions of global civil society) in which to identify and invest their interests. 'Organic intellectuals' including the intelligentsia, the well educated and the most skilful or powerful people in societies recognise the threats to the structures of reproduction and legitimation (i.e. the sovereign state system) inherent in contemporary international conditions (Lipschutz, 2000: 87). They have therefore begun to challenge the social order by developing and articulating new ideas, bringing an authority and legitimation crisis very similar to that outlined by Rosenau.

The two analyses outlined above also concur in arguing that agents are becoming increasingly important in the international sphere, and use very similar evidence to back up their assertions. Rosenau argues that the macro system has entered a period of prolonged turbulence during which it is especially vulnerable to micro inputs. The authority crisis at the level of micro/macro interaction has led to a bifurcation of macro collectivities and the development of a multi-centric world through which the number and types of actors who play important roles in global politics has increased exponentially. These actors have both new opportunities to impact on global politics as old structures break down, and also the analytic and emotional skills to perceive possibilities for change and to shape macro outcomes.

Lipschutz notes very similar dynamics. Using Robert Cox's work (Cox, 1987) as a counterfoil, he argues that Cox is mistaken to assume that material structures, such as the means of production and the state, are the principal forces responsible for shaping and constraining individuals. Lipschutz believes that ideational structures and means of social reproduction are equally important in understanding a given society, and that in times of crisis it is these elements which first become threatened by individuals. As the material base of society is threatened, the contradictions in the relations of production become apparent to the social elite, and these agents begin to challenge and change the ideational structures on which society rests. With the new ideas

gained from exposure to new political forms and practices, agents begin to reform or reconstruct the social system and reconfigure their identifications and loyalties within it. In time, both authors agree, the crisis will pass, and a new equilibrium will be reached. The equilibrium will be marked by the development of new social and authority structures and habits of relations which will over time become entrenched, and at this stage agency may once again become causally less consequential than structure. Until this time, we should take agency seriously if we are to understand the dynamics of the contemporary world (dis)order.

These accounts of the increasing importance of individuals, while far from offering unconditional support to cosmopolitan liberal ontology, do endorse a view that agency is possible outside of or in the face of structure. This view can also be supported, though with significant qualifications, by post-structuralists. Roland Bleiker (2003) demonstrates that the constraints and possibilities for agency can be usefully investigated by using post-positivist insights to study the relationship between agency and discourse rather than agency and structure. Post-positivist theory generally does not deal with ontological questions of agent and structure, largely because of the difficulty of grounding ontological claims without recourse to objectivist, foundational assumptions. Bleiker approaches the issue in a similar way to Molly Cochran in her work on pragmatist theory (Cochran, 1999. See section 5.3 below). He asserts that foundations are necessary to conceptualise agency, but that those foundations should be held as contingent and recognised as fallible. He argues that an anti-essentialist stance is the most viable way to make sense of how people situate themselves as agents and have influence, and that the ambiguity which results is a necessary condition of the conceptualisation and practice of agency rather than an obstacle to it.

To build his theory of agency, Bleiker begins by disputing the view that if one accepts the Foucaultian concept of discourse then agency is impossible. Michel Foucault (1979) argued that we can only know the world through discourse: it frames our thinking and determines the socially acceptable limits of what we can say, write

143

and even imagine. In every society there is a hierarchy of discourse, ranging from dominant to excluded. Discourse gives rise to social rules and renders social practices rational. The implication of this is that there is no room for agency. Yet Bleiker argues that dominant discourse is often fragile and weak, and cracks can be found. He uses Martin Heidegger's idea of Being to explore the possibilities of agency under discourse. For Heidegger, Being is temporal: our existence in the present cannot be separated from the past discursive elements we have encountered (for instance education and language), but equally it cannot be divorced from the possibilities of the future. Being is constantly transforming through self reflection, and it is in this process that the weaknesses of discourse and the possibilities of agency can be encountered. Bleiker uses post-positivist feminist theory to demonstrate the consequences of this for agency in concrete circumstances, citing these theories' rejection of the idea that there is an single essential nature of 'woman', and their focus on the multiple and mobile subjectivities which give rise to agency. He argues that it is in the moves between multiple identities (or different social roles, within communitarian and constitutive theories) that agency is located, as it is this movement which exposes the weakness in discourse. In Bleiker's words: 'an exploration of the discursive struggles that surround the pluralistic nature of identity is the very pre-condition for human agency' (Bleiker, 2003: 32). Once the fragility of dominant discourse has been encountered, space can be re-appropriated and acts of subversion and resistance can take place. These acts, be they speaking, writing, acting or dwelling, help to change social values and encourage social transformation.

The concept of human agency which runs through Bleiker's work falls somewhere between the first and third causal position outlined above. The subject is constituted by discourse or specific regimes of power (which can be seen as analogous to structural constraint), but agency can be exercised by critically examining these regimes. There is ontological confusion here if the standard idea of causality is applied, as Bleiker indicates that the agent is both free and caused (a compatibilist position in the vocabulary of Section 5.2). However, post-positivism challenges the notions of agency traditionally used in philosophy. Bleiker argues, following Bubner

(1976), that philosophy has tended to frame the understanding of agency in terms of teleology (or means/ ends relations), causality (in the assumption that agency requires an identifiable agent and an identifiable outcome) and intentionality (agency is limited to acts which agents claim to intend). Post-positivist, anti-essentialist theory, by contrast, sees many happenings as the result of actions which may not have been intended, or as having come about through a process where causal consequence cannot be clearly assigned to individual agents. Bleiker gives the example of the consumer who refuses to buy goods which are not in recyclable packaging (Bleiker, 2003: 40-42). By herself, she makes no difference. If many others act in the same way, then manufacturers may change their packaging policy. This can happen regardless of the intentions of the consumers (some of whom may not have stopped buying the goods in question for environmental reasons) and the cause of the change cannot be ascribed to any of the individual agents.

These theories allow us to see a much more dynamic and nuanced relationship between agent and structure, individual and community, than underlies the two simplified positions on each side of the impasse outlined in Chapter 2. Post positivist theories in particular release us from the dictates of the ontological arguments and firm foundations which lead cosmopolitan liberalism and communitarianism to stalemate. The next section of the chapter explores the accounts of agency present in post-structuralist, constitutive and pragmatic ethical positions.

5.3 Agency, Structure and Ethics

Post-positivist theorists have, in the last twenty five years, brought new perspectives to the agent-structure debate, which can offer us possibilities to move beyond the impasse between cosmopolitan liberalism and communitarianism and conceive of agency and structure – individual and community - in more sophisticated ways. The object of this section is not so much to critique these approaches (which Cochran (1999) does particularly well) as to identify the possibilities they offer before going

on to explore a view of human action (in section 5.4) which incorporates these insights and offers the most convincing account of agency I have come across.

5.3.1 Post-Structuralism

The most challenging group of theories I will consider here can be broadly categorised as post-structuralist. All reject positivist forms of knowledge, such as the cosmopolitan liberal and communitarian positions discussed in Part One of this thesis, which claim to be straightforward representations of the world around us. Rather, post-structuralists follow Foucault in seeing a nexus or necessary connection between power and knowledge. For Foucault, knowledge is not discovered but created, with powerful elites and ideas dominating the discourses which produce truth, meaning and morality in any given age. This position is explicitly anti-foundationalist, arguing that objectivity is impossible; and anti-essentialist, seeing that identity and the definitions of the concepts we use to organise our lives cannot be fixed. Attempts to assert objectivity or deny ambiguity and fluidity are attempts to exclude. Given these characteristics, what does post-structuralism have to say about agency, structure and ethics?

Firstly, this set of theories calls for a radical reappraisal of the idea of agency, or subjectivity. Foucault (1979) rejects the idea of a transcendental subject, arguing instead that the subject or self is constructed in different ways by different discourses across space and time. Discourse is analogous to structure in the effect is has on the agent, suggesting that post-structuralism is deterministic and thus devoid of the possibility of morality. In fact, Foucault, along with many theorists who follow him, does see room for some kind of ethical or free action (see also the discussion of Bleiker's work in section 5.2 above). The subject is not bound to subjugation by structure – it can be created or performed in subversive ways. Foucault wants to see the performance of the self become political: 'we must hear the distant roar of battle' (Foucault, 1979: 308). Agency appears in resisting the dominant modes of

subjectivity and performing the role of the subject in new ways, thereby creating some freedom within power structures. What is not clear, nor can it be, is *how* we should resist the prevailing social structures and roles, and what structures we should seek to replace them with. Foucault is not prepared to answer these questions, as to propose a universal ethical narrative or prescription for resistance would be, on his account, to engage in a totalising discourse just as objectionable as the ones he wants to see resisted.

Subsequent post-structuralist theorists have not been so reticent to engage in discussion of ethics. They take Foucault's concern with dominant discourse and examine which discourses determine contemporary subjectivity. They find that the supposedly emancipatory discourse of the Enlightenment, upon which modern cosmopolitanism is based, privileges certain subjects: 'insiders' in the words of R. B. J. Walker (1993). These insiders are sovereign individuals: male, European and rationalist. Post-structuralists look to subvert the insider-outsider hierarchy, and so focus on difference and otherness. David Campbell (1998a & 1998b) is relevant here: he uses the work of Emmanuel Levinas to build a post-structuralist ethics. Levinas sees the condition of being, for humans, as a radically interdependent state. We only know we exist through encounter with the Other, and this, for Levinas (and Campbell) creates profound responsibility. This position turns the cosmopolitan liberal idea of agency on its head, conceiving of subjectivity not as an autonomous freedom, but as a relation of responsibility to other human beings. Ethics, for Campbell, should not be enacted in the form of grand moral meta-narratives (for all such narratives are suspect – necessarily involving power and exclusion), but should be lived, by all, continuously, as we attempt (and inevitably fail) to calculate our responsibility to the Other. Like Foucault, Campbell rejects rule-based approaches to ethics as being neither universal nor impartial. He also questions the ethical implications of nationalism (in *National Deconstruction*, 1998a) and shows that the concept of a unitary state, in which one nation or community resides, reinforces the communitarian idea that the political community is a single, territorial entity, so encouraging the kind of ethnic cleansing seen in Bosnia in the 1990s.

Walker also challenges the notion that identity is located within the spatial boundaries of the nation-state. He describes (in *Inside-Outside*, 1993) how the territorially defined self is constructed in opposition to the threatening 'Other' in contemporary international political theory. Spatiality is privileged in modern political thought and practice, but this privileging is historically contingent rather than necessary (and is threatened by our increasing experience of temporality as acceleration, speed and velocity rather than stability). Walker theorises new forms of political identity and community which do not rely on binary oppositions (universal/ particular, self/ other, subject/ object) so are less exclusionary than the sovereign state.

William Connolly (1991, 1995 & 2000), like Walker, sees the speed of the contemporary age as fundamentally challenging the notion that our identities can be fixed within territories. Our communities are no longer bounded (if they ever were) and we encounter difference every day. Individuals are not located within the single, thick morality envisaged by communitarians, but participate in a number of communities and belong to multiple groups. We are embedded in complex networks of identity and difference, but our contacts with alterity should help us to develop the ethos of mutual respect that Connolly proposes. The political implication of this is that the sovereign state, no longer being the focus of the allegiances and identifications of its members, is incompatible with democracy. Connolly asserts that democracy should be de-territorialized – freed from the boundaries of the sovereign state – with transnational groups mobilised around specific global issues. Difference should be embraced rather than denied or de-emphasized (as cosmopolitan liberals may seek to do), with space for difference between individuals and communities being created at the centre of politics rather than tolerated at the margins.

These theories have in common a desire to question all that is presented as natural in IPT. They reject the foundations of both cosmopolitan liberalism and communitarianism, seeing the sovereign individual and the sovereign state as contingent constructs which serve the interests of the powerful. Agency in post-

structuralism is far from free (though some form of free agency is surely assumed in any talk of resistance), with the subject being constructed through a contemporary discourse which links identity to territory. Post-structuralism shows this link to be unstable and imagines different forms of political subjectivities which could better serve human emancipation. But it also rejects both the cosmopolitan liberal conception of the individual, which locates the autonomous subject as spatially differentiated from the objective world, and the concept of humanity as a meaningful political category (Walker, 1993).

Post-structuralism may not at first glance have much to offer a project in international ethics, as it is concerned first and foremost to deconstruct and undermine the discourses upon which current conceptions rely. Theorists in this vein cannot offer universal ethical prescriptions, for they reject all attempts to determine truth about the human condition. Nor can they explain why we enjoy experiences of freedom or of solidarity: Cochran argues that post-structuralist theorists cannot 'adequately theorise the value individuals find, not only in individual autonomy, but in community tradition and membership as well' (Cochran, 1999: 143). Yet there are insights in the theories detailed above which are useful to take forward: the rejections of the autonomy of the subject and the spatial location of identity (and with it the idea that the domestic political arena is the place of progressive politics, with the international arena a place of only recurrence and repetition), the acknowledgment of the importance of power, and the view of agency (and therefore responsibility) as created rather than discovered.

5.3.2 Constitutive Theory

Mervyn Frost (1996, 2002, 2003a & 2003b) has developed an innovative approach to agency and responsibility which takes the constructivist idea of constitutive explanations for behaviour and applies it to study the ethical relationship between individuals and their communities. He uses constitutive theory to think through moral

agency and argues that we can only understand agents and actions in the context of the social frameworks within which they are constituted. However, he does not simply equate social frameworks with communities or cultures. Rather, he identifies the frameworks as 'practices' and describes them as having embedded within them ethical codes which define what it is to act ethically and to be responsible within each practice (Frost, 2003a: 89). These 'embedded ethics' are values which (at least some of) those who engage in the practice wish to realise. Ethics within some practices may be relatively settled, and in others highly contested (for instance, in contemporary media debates, what it is to be a true American or a good mother). Debates over values within practices are therefore common, but this does not detract from Frost's main argument that moral agency is not a single attribute possessed by individual humans of a given age and mental capability, but rather such agency arises only in the context of practices which have ethics embedded within them. The agency of individuals is both allowed and constrained by practice: if the agent does nothing to advance the values of the practice, they risk being ejected from it – having their status removed. This is similar to Wight's observation (see section 5.2 above) that agency can be affected positively and negatively by structure, though Frost takes the argument further to show why this happens.

For Frost, contrary to cosmopolitan liberalism, there is no such thing as the pre-social individual. As discussed in section 2.3.1, Frost sees that we are constituted as free individuals only through participation and mutual recognition within social institutions, which are grounded in certain norms (Frost, 1996: 137-159). Three institutions in particular influence our identities: firstly, the family, and the love we experience (or not) within it, secondly, civil society, which gives us a role in the market, and, thirdly, the state, through which we are joined together, as citizens, to form a society.

Frost also sees the constitutive process as operating in the opposite direction. The individual is constituted through practices, but these practices are created, maintained and advanced by the actions of the individuals constituted within them. Once

constituted, individuals do not act in an unthinking way. Rather they reflect upon and interpret themselves within practices, thus developing and changing the practices as they act. Cochran explains Frost's position as follows: 'To act is an expression of one's self-interpretation and those actions cumulatively articulate one's self-understanding within social institutions' (Cochran, 1999: 84). This position casts agent and structure in a relationship that can overcome one of the critical objections to communitarianism outlined in Chapter 2, namely that it cannot account for cultural change.

Like post-structuralism, constitutive theory captures some of the complexities and contradictions of the actual and ethical relationships between agent and structure. The idea of the autonomous individual is rejected, but so is that of the all-powerful community. Practices – social or structural phenomena – enable agency, but practices can and do conflict. There is no reason to think that the embedded ethics of all the different practices we act within will be consistent with one another. There is no guarantee of a moral 'harmony of interests' – in fact Frost sees the stuff of ethical debate as being precisely the arguments within and between practices on how best to behave.

However, constitutive theory is also a little too optimistic for my purposes here. Frost describes his 1996 book as an attempt to 'construct a background theory which justifies the list of goods [human rights, democracy, international law, state sovereignty] currently accepted as settled in international relations' (Frost, 1996: 137). In doing so, he paints a picture of the state which suggests that all such groupings are not just necessary to the construction of the individual, but also have a positive effect upon her. Rights are essential to the constitution of the individual, on Frost's account, and the ethical, sovereign state is necessary to guarantee those rights, thus justifying state rights to non-intervention. Individual rights and state rights are mutually constitutive and mutually required. However, many, if not most, states in the world cannot be said to fully provide or respect citizenship rights, yet these states still enjoy rights in the international system. Brown has taken up this point, arguing

that Frost threatens the plausibility of his position by assuming that 'the vast majority of states are actually at least trying to be ethical in their conduct' (Brown, 1997: 285). By identifying the sovereign state as critical to flourishing, Frost also ties agency to territory, which his concentration on practices rather than communities might suggest is unnecessary.

Despite my reservations about the role of the state within it, there are valuable insights to take forward from constitutive theory, most importantly the notion that individuals cannot have value before interaction with others: 'a person only has value *qua* individual in a relationship of mutual valuation with another person or other people, i.e. within a community' (Frost, 1996: 141); and the idea that social action has an in-built ethic, or that some conception of what is and is not acceptable can be found within all practices. These arguments reinforce the post-structuralist position that ethics is not self-referring, but other-referring.

5.3.3 Pragmatism

The final post-positivist theoretical position I will examine with a view to finding new thinking about agency in international ethics is pragmatism, particularly that of Richard Rorty (1989, 1991, 1993 & 1998).

Like constructivism and constitutive theory, pragmatism sees agency as created both socially and personally. It also follows these theories in rejecting the notion of firm foundations on which to build a theory. Rather, pragmatism explores the ethical issues arising from the communitarian/ cosmopolitan liberal impasse by assessing which ethical practices are useful to us, rather than which are grounded in any 'truth' about the relationship between individual and society. While pragmatism rejects claims to metaphysical truth, it does see that philosophical theories can be judged against each other (an activity which post-structuralists are hard pushed to support) by assessing how far they help us to live our lives by providing convincing stories

about how to make sense of other ideas, practices and experiences together. Barbara J. Thayer-Bacon explains the pragmatist position as follows: 'Truth means that ideas (which are themselves just parts of our experience) become true in so far as they help us get into satisfactory relation with other parts of our experience' (Thayer-Bacon, 2002: 95).

William James, one of the founders of American Pragmatism, succinctly explained the method this school of thought uses like this: 'The pragmatic method … is to try to interpret each notion by tracing its respective practical consequences. What difference would it practically make to any one if this notion rather than that notion were true?' (James, 1904, Lecture II). He saw the pursuit of absolute truth as a philosophical waste of time, explaining that, following FCS Schiller and John Dewey, '…"truth" in our ideas means their power to "work"' (James, 1907: 23). This method of assessing theoretical positions was taken up by Richard Rorty in the late twentieth century.

Rorty's principal contribution to the ethical debate this thesis is located within has been to provide a defence of the human rights regime supported by cosmopolitan liberals without relying on claims to know the truth about human nature. He argues that the West has created a human rights *culture*, no more and no less, and that this culture (and the tolerant liberal political philosophy that underpins it) is defensible in terms of being useful in reducing cruelty in the societies where the culture is present. Rorty thus rejects the Western meta-narrative of the sovereign individual used to justify the imposition of supposedly universal moral values identified by post-structuralists, but argues strongly in favour of the institutional features of contemporary cosmopolitan liberalism (Rorty 1989 & 1993). He argues that the concept of human rights acts to 'summarise our culturally influenced intuitions about the right thing to do in various situations', and in doing so increases 'the predictability, and thus the power and efficiency, of our institutions, thereby heightening the sense of shared moral identity which brings us together in a moral community' (Rorty, 1993: 117). This heightened sense of moral identity in the West has come about, according to Rorty, not because of any increase in moral knowledge,

but because people have heard 'sad and sentimental stories' (Rorty, 1993: 119), and so expanded their moral boundaries by identifying a wider number of people as being 'human'. This identification of others as human is important as cruelty and violence is made possible by degrading the standing of one's victim – seeing them as less than human, an Other. To further his goal of human solidarity, Rorty argues that we must spend less time engaging in pointless and irresolvable foundational battles, trying to persuade people that their position is objectively wrong or irrational, and devote our energies instead to manipulating the sentiments of others, through 'sentimental education'. Such education 'sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms "our kind of people" and "people like us"' (Rorty, 1993: 123).

Thus, Rorty is concerned that communities grow continuously to include more and more people within their moral spheres of reference. This suggests an interesting position in the agency-structure debate, as agents, who are judged by Rorty to be socially constituted, are being asked to forever expand the structural webs in which they find themselves. Indeed, Rorty's view of agency is complex. Cochran quotes him describing the self as 'a centreless web of historically conditioned beliefs and desires' (Rorty, 1990: 291, in Cochran, 1999: 152). Yet Rorty sees both human solidarity and self creation or invention as goals we should devote ourselves to achieving, with these projects being 'equally valid, yet forever incommensurable' (Rorty, 1989: xv). His position here rests on an elaborate argument about the dichotomy of the public and private worlds. He argues that the two worlds are distinct and their vocabularies are incommensurable. The private sphere is the realm of imagination and self creation where people are individuals, and use language to re-describe aspects of their existence in order to change their understanding of them. The public sphere, in contrast, is a place of political utility where people are part of a larger moral community in which solidarity and shared vocabularies and practices take precedence over individual interpretations. Liberalism is a feature of the public

world: contingent, but necessary to prevent private, autonomous actions of self creation from adversely affecting the shared public sphere.

Rorty's position here has been roundly criticised (Cochran (1999: 162-165) and Langlois (1998) are representative pieces). Cochran argues that the public/private dichotomy undermines Rorty's theory entirely, as it is an artificial split designed only to bolster his position. She contends that there is no neat distinction between the part of humans which is active in the practise of self creation and the part which interacts with shared intentions and other humans in the 'public' sphere. In fact, the public world provides the very resources necessary for self creation in the private world, i.e. language, vocabularies and social practices. Community change comes through both private and public acts of redescription – individual and collective creation of new language and vocabularies more adequate to deal with ethical issues we encounter in the world. Indeed, Rorty's modelling of action in the public and private spheres seems to fail the pragmatist's test of being a useful way to describe the world around us. Such rigid distinctions between our values and behaviours in different spheres just do not seem to exist. I return to this issue in section 5.4, when I discuss the principal drawback of all of the post-positivist theories reviewed here, namely, the conception of agent and structure, individual and community, as separate phenomena.

Rorty has been taken here to be representative of pragmatism, as his work is probably the most influential. However, it is necessary to broaden the discussion slightly before concluding, and consider the basic elements that unite all pragmatist ethical theory. Cochran (1999) cites Richard Bernstein (1995: 326-330), who identifies five themes of pragmatism: anti-foundationalism, fallibilism (recognising the 'situatedness of inquiry' (Cochran, 1999: 175) or seeing that all beliefs are situated within our current context and may turn out to be false), acceptance of contingency, a commitment to plurality necessitated by fallibilism, and an acknowledgement that each individual must rely on a 'community of inquirers – critical communities' (Cochran, 1999: 175) in order to investigate philosophical questions, as no one person is capable of finding answers alone. Matthew Festenstein (2002) identifies similar

concepts which he thinks define the school of thought: holism (or not abstracting elements from one another in philosophical thought), anti-scepticism, fallibilism, and the primacy of practice in making ethical assessments.

There is much here to enrich a conception of agency. As with all post-positivist theory, pragmatists reject the idea of an Archimedean point from which to discern a true ethics, so see our present location as the starting point for ethical criticism, but they, like Frost, place a great deal of emphasis on actually doing the criticising: contemplating the social contexts in which we find ourselves and trying out new kinds of ethical action within them. They view ethical agency as a significant force, both possible and desirable. This contrasts to post-structuralism, which, in general, is more pessimistic about the possibilities for ethical transformation under power-knowledge structures. Also appealing about this approach (along with the others considered in this section) is the epistemological freedom offered by its rejection of the correspondence theories of truth and appeals to foundational claims about human nature which underlie the mainstream cosmopolitan liberal and communitarian positions outlined in Part One. It is a refreshing challenge to judge a theory by its practical application and its ability to tell a convincing story about the way the world works, rather than by its metaphysical 'truth'. In keeping with this commitment to describing the world as we experience it, pragmatists emphasise the importance of sentimentality and the emotions rather than relying on rational justifications of ethics. That morality and ethical judgment involve feeling, intuition and the sentiments seems obvious, yet cosmopolitan liberalism in particular has little room for such considerations (a notable exception to this position is Martha Nussbaum (2001b & 2004)). Rorty's concept of sentimental education, and with it his focus on the emotional aspects of ethics, is long overdue.

Three final insights that I will take forward from this perspective: firstly, pragmatists do not regard borders as static or communities as fixed. They support critique within community or state boundaries, but also pushing beyond those groupings to expand moral inclusion and increase human solidarity. The second insight follows Frost in

recognising that status is valuable to human beings – here, the status of human itself is seen to confer a moral standing onto a person and to protect them from cruelty. Finally, pragmatism opens up the idea of agency beyond the individual, via the importance of critical communities in deliberating on ethical issues. The first two of these observations will be incorporated into the discussion of agency in the following section. A more detailed consideration of collective agency can be found in Chapter 7.

5.4 Beyond Individual and Community: Agency as Sociality

To recap, in Chapter 2 I outlined the dominant conception of agency in contemporary IPT and international practice: the cosmopolitan liberal model of the sovereign (autonomous, rational and volitional), rights-bearing individual. This individual has an identity and interests prior to social interaction, formulates her own idea of the Good, and is to be protected from arbitrary action of the state as far as possible in order that she might freely pursue her life projects. I showed the internal weaknesses of this model and the political purposes it serves, and also documented the opposition to it within communitarian theories. Communitarians see structure as dominating agency. The agent, in communitarianism, is a societal construct. The self is formed through social interaction, and interests, ideas of the Good and codes of ethics are deeply embedded within culture. The community is a necessary part of a flourishing human life on this view, so the state should be protected as intrinsically morally valuable in and of itself.

I argued that there are significant theoretical problems with both of these positions. Both make dubious claims to truth, and both are based on, largely discredited, foundational approaches to ethics. Cosmopolitan liberals tend to venerate the free individual so much that they cannot account for structural effects on human life, and communitarians tend to reify the community, so cannot account for action and change which challenges structural imperatives, i.e. for agency. Each set of theories sees

individual and community as separate and opposing phenomena. They also lack adequate accounts of change: each sees identity (of the individual for cosmopolitan liberals and of the community for communitarians) as existing prior to interaction, so each set of theories offers a static account of human social and ethical life. There is no role for sociability or for politics on either side, leading to two equally unattractive viewpoints, each of which takes idealised and dichotomous positions on individual and community, on agent and structure.

This chapter has returned to the debate about the relationship between agent and structure. I recognized that some idea of agency is necessary to normative theory, as, without it, there is no real purpose in contemplating what is right and wrong in the world, since it cannot be changed. I outlined the model of the volitional agent – possessed of a free will – which is assumed in much ethical theory, and criticised both cosmopolitan liberalism and communitarianism for being unable to account satisfactorily for our experiences of freedom and human agency. I examined the agent-structure debate in IR theory and identified new ways of thinking about the relationship between the phenomena that get us further than the either/or causal dichotomy found within cosmopolitan liberalism and communitarianism. Constructivists, the theorists who have done most work to rethink the debate, have imported Giddens' structuration theory from sociology, which conceptualises agents and structures as mutually caused and mutually constitutive. They have shown structures to be ideational as well as material (lending some support to the communitarian claim that individuals are constituted by ideational structures such as culture and communal values) but have called into question the idea that either agents/ individuals or structures/ communities could be ontologically prior.

While constructivism can help us to progress us some way beyond the stalemate of Chapter 2, it has limitations. Principally, constructivist theory, like cosmopolitan liberalism and communitarianism, conceptualises agents and structures as static. Again, there is little room for considerations of change (important given the arguments that contemporary life is seeing accelerating change and, with it, the

increased significance of agency), or of power differentials between agents, between structures and over time. Post-structuralism deals specifically with power, but offers little hope of change. Along with constructivism and the other post-positivist theories discussed in this chapter, post-structuralism shows us that theorising without resorting to strong foundational claims is a useful way to think beyond the mainstream. It also challenges the views that the subject or agent can ever be autonomous, and that identity is necessarily spatially located (for instance within a community); and suggests to us that agency, if it exists at all, is created rather than naturally occurring within humans.

Subsequent to the discussion of post-structuralism, I argued that the most important insights from constitutive theory to bring into any re-consideration of agency are the notion that individuals cannot have value before interaction with others, i.e. that valuing ourselves and each other is a social activity; and the idea that social action has an in-built ethic, or that some conception of what is and is not acceptable is evident within any practice. This view complements the position taken by pragmatists that morality is a function of the vocabularies we use to think through and discuss our experiences. Constitutive and pragmatist theorists also see agency as possible – they are keen to account for our experiences of being free, even if they cannot adequately explain these experiences – and encourage us to use it, via situated critique. Pragmatism further highlights the importance of emotion and status to ethics, the contingency of borders and the possibility of agency beyond the individual.

Despite being a great deal more subtle in tracing the relationship between agent and structure than positivist methodological individualism or methodological structuralism, and despite some protestations to the contrary, all of these theoretical positions imply that agency and structure are different entities. Post-structuralists search for space for autonomy or subjectivity within a powerful web of discourse: Cochran notes that they seem to value 'an illusive autonomy, available only to those divested of community and the power impositions it brings' (Cochran, 1999: 139). Frost follows Hegel in seeing individual self-interpretation as different from or

separate to her constitution within communities or practices. Rorty argues that self invention and human solidarity are 'forever incommensurable' (Rorty, 1989: xv). Actions of the individual and of the collective remain distinct.

The work of Barry Barnes (Barnes, 2000 and Loyal & Barnes, 2000) and of Philip Pettit (2001) offers a way to conceive of agency that both takes into account all of the post-positivist insights discussed above, and dissolves the dichotomy between agent and structure, incorporating both into the same explanatory framework. Barnes (2000) argues that the social sciences are too individualistic at the moment – they concentrate on the subjective and the objective, but would benefit, according to Barnes, from turning their focus to the inter-subjective. He argues that there is no good empirical way to identify actions as either chosen or determined, and rejects the philosophical and sociological preoccupation with establishing individual freedom. Theories which appear to prove that choice plays a role in human affairs actually rely on prior moral or political commitments to the value of choice (of the type we can see in liberalism, discussed in Chapter 2). Thus, according to Loyal and Barnes (2000), both Talcott Parsons and Anthony Giddens, perhaps the most influential sociological theorists of agency, fail to establish that individual action can be voluntary and brought about by a free will. Parsons (1949) argues that choice is exhibited when agents decide how to act by considering the relative pressures of individual desires and of social norms, and Giddens (1976) that choices are made as agents look to maximise their ontological security. However, neither provides sufficient argument to convince the sceptic that the weighing up of options or the need for ontological security do not have causal, rather than chosen, effects on action. Loyal and Barnes argue that Parsons and Giddens pursue the idea of choice or agency 'to produce a sociologically realistic yet politically optimistic picture of the human condition. But the evidence for such a picture, and in particular for the role of agency within it, is not supplied' (2000: 519). They conclude, however, that although actions cannot be empirically determined to be chosen, there is still utility in the language of choice: it allows us to map 'the susceptibility of actors to persuasion' (Loyal and Barnes, 2000:

523). This idea is at the heart of the more extended theory of agency that Barnes develops in *Understanding Agency* (2000).

The principal argument made by Barnes (2000) is that voluntaristic discourse, or the discursive identification of human beings as volitional, free and independent agents, is the 'highly functional collective practice of sociable, communicative human beings' and the 'crucial medium through which collective agency is (causally) engendered and mobilised' (Barnes, 2000: xi). Thus, we discursively identify each other as independent units, and assign rights and responsibilities to each other as autonomous beings, for inherently inter-subjective and social reasons. Only by understanding agency in this way can we account for our seemingly contradictory intuitions and experiences of free will and of communal attachment.

Barnes notes that the strict dichotomies of agent and structure, free will and determinism, are not apparent in everyday descriptions of action, which tend towards compatibilism. He argues that we commonly assign causes (such as upbringing or biological sex) to explain someone's actions while still seeing their actions as the exercise of free will. To take this position is to see actions as being simultaneously intentional and the result of cause and effect mechanisms. If agency is conceived as Barnes suggests, then this ceases to be an issue. He rejects entirely the cosmopolitan liberal model of the rational, independent individual, arguing that we very rarely behave either rationally (i.e. as rational choice theory would predict) or independently. Instead, we constantly take into account other people: 'Individuals are revealed [through psychological experiments and in life] to be profoundly mutually susceptible through communicative interaction' (Barnes, 2000: 51). They have a 'prior, non-rational inclination towards agreement and co-ordination' (Barnes, 2000: 56), but this inclination is not by itself enough to enable communities to live harmoniously together. To do this, something looking a lot like the liberal model of the individual, whose behaviour is determined by her own free will or volition, is invoked within what he calls the 'social practice of responsibility': 'Social life as we know it requires responsible agents who may be held accountable, and to whom it

makes a difference that they have been so held' (Barnes, 2000: 74). The collective or community constructs such agents through voluntaristic discourse, which is, according to Barnes, 'the medium through which social agents identify each other, communicate their expectations of each other and thereby (causally) affect each others' actions. For all that it appears to refer to the internal states of individuals, voluntaristic discourse is actually the vehicle for human sociability, through which its users co-ordinate their actions and cognition and thereby constitute every level of their amazingly elaborate social life' (Barnes, 2000: 74). The discourse of the individual agent is a tool necessary to communal living, not a truth.

This theory of agency can also account for our experiences of such internal states – of free will. Barnes hypothesises that: 'i) our sense of the free will of an agent derives from her susceptibility to others, the kind of susceptibility implied in accounts of the deference-emotion system' (Barnes, 2000: 69).[11] In this system, individuals monitor the evaluations others make of their behaviour, via the communication they receive from these evaluators, and thereby monitor the extent of deference others have to them. High deference brings feelings of pride, and low deference makes individuals feel shame. Action is thus determined not by the actors own preferences, but by that of her observers. The link to free will comes in the second hypothesis: 'ii) our characterisation of an action as chosen identifies it as the kind of action that is open to modification through use of the [deference-emotion] system, that is, through symbolic communications and the evaluations they convey' (Barnes, 2000: 69). Thus, we see actions as free (and agents as responsible – more of which in the next chapter) when we feel that they could have been influenced by the evaluations of others, but we see them as caused when others would have made little or no difference, for instance when an individual acts out of a phobia. In fact, actions called and experienced as free here have been to some extent caused – by the anticipated and actual reactions of others – so the problems of the seeming incompatibility of determinism and free will can be avoided. Actions are free not because they are

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[11] The deference-emotion system is suggested in the work of Scheff, (1988), cited in Barnes (2000: 68).

without external cause, but precisely because they can be influenced by external, societal factors.

This theory may appear at first glance to be a re-statement of communitarianism. Any possibility of agency depends on the community, and action is caused by something outside the agent. In fact, Barnes rejects the reification of structure as emphatically as that of the sovereign individual. He argues that social structures are not really-existing, ontologically independent phenomena, but 'intersubjectively constituted and wholly internal' to the collectives which create and sustain them (Barnes, 2000: 151). It is not an abstract community or culture which does the work in Barnes' theory: it is the individuals or people who collectively form any given community. It may make sense for individuals to treat social structures as external to themselves, as they alone could do very little to influence them, but we should not make the mistake of separating structures from the collective. This is why Barnes emphasises the importance of inter-subjectivity, or sociality: human beings are radically interdependent rather than sovereign, and exercise agency collectively rather than alone. They are influenced by and accountable to each other, not to the collective as a singular body, and the collective does not exist prior to action but is formed through interaction and debate.

Philip Pettit (2001) takes a similar approach to agency. In an attempt to construct a theory of freedom which incorporates the insights of both the study of free will within philosophy and the consideration of liberty within political theory, Pettit argues that freedom concerns the fitness of an agent to be held responsible for her actions: 'We engage with other human beings in a distinctive manner that involves the spontaneous attribution of responsibility, and we conceive of freedom as that property of human beings, and of the actions performed by human beings, that makes such an attribution appropriate under the rules of the practice' (Pettit, 2001: 13). He, like Barnes, rejects the idea that agency is about individual choice, as if so, it would require that humans are able to transcend the laws of cause and effect, or act as Kantian 'uncaused causes'. Also like Barnes, he recognizes that the concept of free will is impossible to

verify empirically, leaving no way to convince a sceptic of its existence unless they have a prior normative commitment to seeing individuals as capable of exercising choice.

Having dispensed with the standard liberal account of agency, Pettit develops a substantive account of freedom in itself, by reflecting on the capacities and contexts that are presupposed when we judge someone to be fit to be held responsible. He argues that when we describe people as free, we mean two things: 'First, we say that in their agency as persons – in the agency allowed to them by their relative standing to others – they are fit to be held responsible; they do not act under pressure or duress or coercion or whatever. And second, we may suggest that they are fit to be held responsible relative to an environment of choice that makes significantly numerous and distinct options available' (Pettit, 2001: 65-66). The only way these conditions can be met, according to Pettit, is if the agent has discursive control in their environment, through being located in discourse-friendly relationships (Pettit, 2001: 69). It is here that the links with Barnes' work are most apparent. Agency, for both theorists, is an inter-subjective and not simply a psychological property. It can only come about and be exercised within relationships. An agent is free, according to Pettit, to the extent that other agents relate to them in a discourse-friendly manner – authorising them as being someone worthy of address and refraining from interventions which restrict or threaten discourse, i.e. affording them discursive status: 'An agent will be a free person so far as they have the ability to discourse and they have the access to discourse that is provided within [discourse-friendly] relationships' (Pettit, 2001: 70). Discourse plays a key role in Pettit's work, and he defines it as 'a social exercise in which different parties take turns in exchange with one another' or the act of 'reason[ing] together with others' (Pettit, 2001: 67). All action is caused, to some extent, by aspects of our collective environment, but free action comes about as agents influence each other through discourse, rather than through manipulation, threat, intimidation or coercion. Through this conceptualisation, Pettit's theory allows us to recognise the effects of power more specifically than we could in the work of Barnes. Discursive control and therefore

freedom or agency can vary across situations as people find they have different relative amounts of relational or social power. Pettit discusses relations of domination (for instance as 'an employee may be dominated by an employer in a tough labour market, a wife by a husband in a sexist culture …' (Pettit, 2001: 78)) and argues that freedom can be jeopardised just as effectively by relationships of domination as by direct coercion. If a person does not have discursive control in a situation (though Pettit is not clear about whether there is an absolute level of control needed or whether the level of necessary control is relative to context), then they are not free – they have no agency.

The link between discourse and freedom is no accident: 'We conceive of ourselves and one another, not just as intentional systems with beliefs and desires, but as subjects who can conduct discourse with one another, and with ourselves, in the attempt to shape our beliefs and desires' (Pettit, 2001: 70). Just as for Barnes, free action is that which could be modified inter-subjectively – by the appraisal and reaction of others (though for Pettit, reason plays a more significant role):

> The judgment I express [of whether an action which is contrary to a shared understanding of reason is free, and therefore if the person in question merits the ongoing status of discursive partner] is likely to be grounded in two beliefs that my discursive experience of dealing with you will normally have supported. First, that had I been able to discourse with you at the moment of action, making reason's claims more salient and compelling, then I might have nudged you towards the right action. And second, that it is possible to make you aware of having acted contrary to reason and that this awareness will tend to elicit an apology and to reduce the likelihood of your doing that sort of thing again. (Pettit, 2001: 96)

Pettit acknowledges that rational control (a property analogous to intentionality in Colin Wight's model, discussed in section 5.2, and defined by Pettit as the requirement that agents are 'subjects of intentional states like beliefs and desires' (Pettit, 2001: 35)), and volitional control (analogous to Wight's subjectivity, and defined by Pettit as the requirement that 'there is nothing about the psychology of the agent in virtue of which they are distanced from what they want or think or do and

have to look on those attitudes and actions like a helpless bystander' (Pettit, 2001: 49)), are necessary for freedom, but neither are sufficient. Freedom or agency is not determined by our individual capacities, nor is it a function of our relationship to structure. It depends on our relationship to each other.

5.5 Conclusion

I have identified, within this chapter, insights from post-positivist theories which can be used to re-conceptualise agency in IPT. But all I have offered in the final section is a brief sketch of such a re-conceptualisation. This is because the idea of agency here is so closely tied up with a concept of responsibility – agency *is* responsibility, to a significant extent, for Barnes and Pettit – that much more needs to be said (and is said in Chapter 6) before their ideas can be assessed.

For now, I will conclude by pointing out the congruity of the conception of agency as sociality to the findings of post-positivist ethics. This view shows agency to be a genuine possibility, created within and exercised by collectives, without tying that agency to any given structures or territory. Collectives could as easily be psychological communities, defined by groups of people who 'participate in a common activity and experience a psychological sense of togetherness as shared ends are sought' (Bell, 2004: 11), as communities based in a geographical place. Agency as sociality can also account for the dynamism of collective life. Social structures are entirely internal to collectives, so susceptible to change by them at any time.

The relevance of agency as sociality for Frost's contention that every practice has an in-built ethic centres on the notion that agency itself can only exist within the social practice of responsibility (this will be explored at greater length in Chapter 6). Agency as sociality can explain how the ethics of practices are constituted and communicated, and how, via the mutual susceptibility of humans, they exercise causal force. This susceptibility also shows why achieving social status and being

valued by the collective are so important to supposedly autonomous individual agents, and why we must acknowledge that individuals are moved by emotion as well as reason. This conception rejects the dichotomous thinking of previous theories to offer an account of agency which can explain the relationship of agent to structure and individual to community in such a way as to transcend the impasse faced at the beginning of the chapter. The following chapter outlines the relationship between agency and responsibility if agency is seen as stemming from sociality, and contemplates the implications of this relationship for contemporary IPT.

CHAPTER 6: A SOCIAL PRACTICE MODEL OF RESPONSIBILITY

I concluded Chapter 5 with the observation that the view of 'agency as sociality' within the work of Barnes and Pettit sees responsibility as closely linked to agency. Within this chapter I will substantiate that claim, and outline what responsibility might mean, and what some of its implications are, if we are to take seriously this new conception of agency. Cosmopolitan liberals see individual agency and, with it, any private responsibilities individuals see fit to assume as part of their own pursuit of the Good, as existent prior to (optional) participation in collective life. Public or social obligation, for these theorists, is for the most part tied up with obedience to the law, which is the tool used to regulate liberal societies and ensure that individuals do not trespass unnecessarily on the freedom of others. Rights are assigned to mark out spheres of freedom, so the most critical type of obligation on this view is the obligation of states (and, increasingly, international institutions) to protect the human rights of their citizens. Agency and responsibility occur prior to community. Communitarians, conversely, see both agency and obligation as being generated within static, structural communities or cultures. The ethics of the community are transmitted to the individual, and she has responsibilities commensurate with these externally defined values. Here, agency and responsibility conceptually post-date the establishment of community. If, instead, agency, as suggested in Chapter 5, is a collective product of dynamic social interaction – produced at each moment the community is constituted rather than before or after such a construction – what does this mean for obligation or responsibility? Is responsibility possible under this model, given that the notion of the sovereign agent choosing to act according to her own free will is rejected entirely?

In Section 6.1 I outline a model of responsibility as a social practice, which follows from the conception of agency as sociality outlined in Chapter 5. I show that seeing responsibility in this way accords more closely to the way we live than seeing responsibility as the property of isolated individuals. In 6.2, I ask who we are

responsible for under this model, or the scope of our responsibility, and in 6.3, how we come by our responsibilities, their source. The final section of the chapter, 6.4, sums up the strengths of this new approach to responsibility and responds to some possible criticisms of it. Before launching into the new conception, however, a little background to more conventional understandings of responsibility would be useful.

What does it mean to ascribe responsibility? There is significant disagreement about this among philosophers. Feinberg (1968) identifies five possible meanings of the idea of ascribing responsibility, in philosophy and in everyday discourse. The <u>first</u> is a straightforward ascription of causality. Ascriptions of causality often use the language of responsibility, without intending to ascribe praise, blame or liability, for instance, the sentence 'Person *y* was responsible for state of affairs *a*' means here that *a* happened as a result of *y*'s actions. The <u>second</u> is an ascription of simple agency. Such an ascription describes the way a person has behaved, for instance in 'Person *y* smiled', or 'Person *y* moved her hand'. There is no causal component as the act being described is 'simple', that is, it is a singular act with no sub-acts (or separate cause and effect) concealed within the description. The <u>third</u> possible meaning of ascribing responsibility is to ascribe causal agency. Here, the agent is seen as the author of a causally complex outcome, regardless of how many sub-acts intervene between act and final outcome, or the author of the closest free act in the causal chain, in the language of Chapter 5. So in the case of '[h]e turned the key, he opened the door, he startled Paul', an ascription of causal agency would be 'he killed Paul' (Feinberg, 1970: 134). The death of Paul is credited to the action taken by the agent rather than the movement of the door or the state of being startled. The <u>fourth</u> is an imputation of fault in which agency, simple or causal, is ascribed for a defective or faulty action. The <u>final</u> possible meaning is an ascription of liability. In this case, liability is ascribed to an agent according to a set of rules or customs rather than according to the causal connection between agent and action (though there will often be a causal inference in ascriptions of liability). Ascriptions of legal responsibility tend to be ascriptions of liability – as outlined in Chapter 3, liberalism legalises responsibility, and ascriptions of liability under the doctrine assume causal connections between

actions and harm, and establish responsibility if actions were voluntary and performed with adequate knowledge of the likely consequences.

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To complicate matters further, these five ascription types can all be made in the language of morality, i.e. each can take the form of a judgment and communicate praise or blame, but the level of free agency assumed, thus the level of moral responsibility which is implied, differs among them. Moral responsibility tends only to be ascribed when an agent is judged to have acted freely to bring about an outcome (i.e. when she could have acted otherwise, so can be said to have chosen this particular course of action) rather than when she was somehow constrained. I discussed at the beginning of Chapter 5 the importance of the notion of volition or free agency to traditional conceptions of moral responsibility, but suggested that this conception was fundamentally flawed.

So, five possible meanings of responsibility according to Feinberg – causal assignability, simple or causal authorship, fault imputability, liability – but all are problematic with regards to assumptions of free will, and all are also linked by a mistaken focus on the relationship of the actor to the action. The focus on agent and action, according to recent work in this area, overlooks the social nature of responsibility ascriptions: someone has to make these ascriptions, and that someone is in a relationship to the person being held responsible and is not a neutral judge. This work, triggered by Peter Strawson's 1962 essay 'Freedom and Resentment', concentrates not on the agent judged to be responsible, but on the agent or agents making the judgments, and has started to explore the notion of *holding responsible*. Strawson argues that ascribing responsibility is not a process of theoretical or objective judgment but a practice which stems from the interpersonal nature of our social lives. The attitudes expressed in responsibility ascription according to Strawson are naturally occurring 'participant reactive attitudes' (1962: 9), which result from our participation in personal relationships, in the same way that attitudes such as resentment, anger, gratitude, reciprocal love and forgiveness result. The function of these attitudes is to express " … how much we actually mind, how much

it matters to us, whether the actions of other people – particularly *some* other people – reflect attitudes towards us of good will, affection or esteem on the one hand or contempt, indifference, or malevolence on the other" (Strawson, 1962: 5). This description highlights the interpersonal nature of responsibility ascription as it shows that the agent who is judging and the one who is being judged are in a relationship to each other, and demonstrates the fallacy of assuming an independent external standpoint from which to judge a person's actions.

Bernard Williams's (1993a) work supports this view. He argues that there are four elements in the construction of responsibility: cause, intention, state and response. These can be combined in different ways in different contexts, and all four are not necessary for responsibility to be assigned. For instance, responsibility is present without cause or intention in cases of legal strict liability, and intent may not be present in actions undertaken whilst drunk. These differences cause problems for legalised models of responsibility, such as the cosmopolitan liberal model, as these models ('liability models' in the terminology of Young, 2006: 116-118) rely heavily on applying supposedly objective standards in order to find responsible and punish intentional agents who caused harm. In fact, the response element of responsibility, absent from liberal notions of responsibility (necessarily so, as it threatens the desired objectivity of the concept), is the only element which appears to be implicit in all situations where responsibility is assigned and thus demonstrates that the concept of responsibility contains within it a social component: a recognition that we live communally and our actions impact on others.

Strawson's critique of theoretical conceptions of responsibility (i.e. those that concentrate on the objective conditions necessary for correct judgments of responsibility) and his argument that the practice of holding responsible is relational, have been tremendously influential, and his ideas continue to shape contemporary debate on the subject (Eshleman, 2004: 7). In section 6.1 below I explore how his ideas have been incorporated into what I, following Barnes (2000: 74), label a 'social practice' model of responsibility.

6.1 The Social Practice Model of Responsibility

The recognition that the concept of responsibility is necessarily social or inter-subjective follows from the idea of agency as sociality explored in Chapter 5. Barnes and Pettit, discussed in that Chapter, both refer to Strawson's work as they think through the implications that their models of agency have for ideas of responsibility. In this section I will outline the conclusions they reach, and extend the construction of a social practice model of responsibility by incorporating the work of Marion Smiley (1992).

The practice of responsibility, according to Barnes, is necessary for the smooth functioning of social life: 'Social life as we know it requires responsible agents who may be held accountable, and to whom it makes a difference that they have been so held' (Barnes, 2000: 74). The practice enables people to 'co-ordinate their understandings, sustain a shared sense of what they are likely to do in the future and hold each other to account for the mutually recognised outcomes of what they have done in the past' (Barnes, 2000: 74). However, an objective standard of responsibility from which to derive an absolute list of moral duties is neither desirable nor achievable. People are identified as agents in order that they may be held responsible, or held to account, for their actions in the context of social life. These actions, quite in contrast to the view of action held by liberal theorists, are not originated and performed according to the preferences of independent agents but are causally influenced by the expectations of others. Barnes, like Strawson, sees individuals as fundamentally vulnerable to each other, and argues that they seek deference or approval by monitoring the response of others to actions that they take. The practice of responsibility uses this vulnerability or susceptibility to ensure that social action is co-ordinated: being held responsible forces us to account to each other for our (to some extent socially caused) actions, and also accords to us a status which is desired.

It is these two aspects of Barnes' concept of responsibility to which I want to draw particular attention: the association of responsibility with accountability, and the identification of a status of 'responsible agent' that is offered to people within social practices, and valued highly by those who achieve it. Barnes argues that an important feature of voluntaristic discourse (the discursive identification of individuals as free and autonomous moral beings, discussed in Chapter 5) is that it involves members having to account to one another for their actions, and he identifies accountability as a common characteristic of cultures. Accounting, according to Barnes, must be mutually intelligible according to shared knowledge and cultural resources such as norms and rules, and tends to take the form of showing why the actions taken were reasonable or judicious (reasoning also being a social practice rather than an independent activity: to rationalise one's actions is to make them intelligible to others within the collective). It is here that ethics finds a place in Barnes' theory, despite his rejection of the idea of an external judge of what is right: to co-ordinate behaviour in pursuit of social and individual goals, people collectively develop rules and norms which are concerned with what is right and good within their collective. These standards are often adhered to, but also frequently debated and assessed. Individuals are accountable not to an autonomous or ontologically distinct collective that determines an idea of the Good viewed as objective within the community, but to each other and to their own, all-be-it socially influenced, ideas of the Good. Ethics is central to communal living, but is performative within social practices rather than externally given either by nature or by a community.

The second aspect of Barnes' theory which is worth exploring in more detail is the idea that being seen within the social group as a 'responsible agent' is important to people – they are usually keen to claim responsibility, at least for actions of which they are proud. To hold someone responsible, according to Barnes, is to confer upon her a dignity and standing within the community. This is why, having rejected standard views of sovereign individual agency and objective responsibility, assigning responsibility to individuals via voluntaristic discourse should not be seen as unjust or unfair. If we deny responsibility to an individual, even where there might be good

reasons (perhaps low skills, a disposition to violence, or a disadvantageous position within social practices compared to others also held responsible) to do so, we are diminishing her social status: 'responsibility, for all the stresses and difficulties to which it may give rise, is in the last analysis a privilege not a burden, and one that should be suspended with the very greatest reluctance' (Barnes, 2000: 120). To be treated as a responsible agent, and therefore of value to the collective, is part of living a good life. The practice of responsibility gives people a 'task' which can add structure to their lives and establishes a tangible connection between the individual and society. Taking or feeling responsibility can be a burden, but it can also be 'a source of meaning and orientation which satisfies deeply felt existential needs for identity and meaningfulness' (Birnbacher, 2001: 18).

For Barnes, agents are and should be held responsible for those actions which are collectively perceived to have been open to influence by the evaluations of others, that is, to actions seen as 'free' under the model of agency as sociality. To be held responsible means to be held to account – expected to be able to show why your actions were reasonable or judicious according to collectively developed ethical standards (standards which you, through the process of accounting, may reinforce, or cause to be re-assessed). To be held responsible in this way is to be afforded high deference within the group. The practice of responsibility thus serves both to co-ordinate cognition and action within social life, but also to offer a status to which (most) people aspire. Like the discourse of individual agency, the discourse of responsibility is a necessary narrative which enables societies to function rather than a claim to objective truth about the world.

Philip Pettit's view of responsibility is strikingly similar. He argues that '[w]e engage with other human beings in a distinctive manner that involves the spontaneous attribution of responsibility, and we conceive of freedom as that property of human beings, and of the actions performed by human beings, that makes such an attribution appropriate under the rules of the practice' (Pettit, 2001: 13). Following Strawson, like Barnes, he sees the practice of responsibility as 'deeply rooted in the architecture

of our psychology, engaging with some of our most robust emotions' (Pettit, 2001: 12): a practice 'written into' our basic reactions to the way others treat us, which is a matter of 'sensibility and affection as much as it is a matter of cognition and judgement' (2001: 12).

Pettit analyses the capacities a person must possess in order for us to be 'intuitively disposed' (Pettit, 2001: 33) towards viewing her as a responsible agent. The first such capacity he examines is rational control, asking whether it is sufficient for a person to be held responsible that her actions are caused by her beliefs and desires, i.e. carried out under the agent's rational control. He acknowledges that an appearance of such control is necessary to being held responsible, but not sufficient, for two reasons. First, in order to hold others responsible, we require that they have the capacity to reflect on their desires and beliefs in connection to their ideas of what is right. The agent needs to have and be able to exercise a sense of 'ought' in relation to her desires in order for us to hold her responsible. The second reason to reject rational control as the sole marker of responsibility is that rational control can be consistent with manipulation, coercion or intimidation. Hostile coercion does not take away choice or the ability to make a choice – it merely changes our incentive structures: 'when the robber says 'Your money or your life', you are still left with a decision; all that happens is that the option of keeping your money becomes extremely costly' (Pettit, 2001: 45). Using Barnes' work, we can say that when a person is threatened or coerced, though she may be very vulnerable to the person attacking her, her actions are not significantly open to influence by the ethical evaluation of others. This finding fits with the fact that people are rarely held fully responsible for their actions if they are seen to have been coerced.

The second capacity Pettit examines is volitional control. This view states that a person is fit to be held responsible if 'there is nothing about the psychology of the agent in virtue of which they are distanced from what they want, think or do, and have to look on those attitudes and actions like a helpless bystander' (Pettit, 2001: 49). This capacity concerns feeling ownership for our actions, or identifying with

them, through having volitional control over our desires. We are free (and so fit to be held responsible – demonstrating the mutual constitution of agency and responsibility) on this view as long as our first order desires are under the control of our second order volitions: as long as we act on desire A because we *want to be moved by* desire A, instead of acting on it because we cannot help ourselves. Here, a person who acts on her desire to take drugs because she is addicted to doing so, even though she does not want to take them, lacks volitional control, and thus is an unsuitable candidate to be held responsible for her consumption. Pettit again recognises that the appearance that a person identifies with or owns her actions is necessary to being held responsible, but not sufficient, also for two reasons. Firstly, there is no good reason to think that our second order volitions are any more authentic that our first order desires: 'If my first order desires, just as such, are phenomena that I can view as an onlooker or bystander, without being implicated as an author, why can't the same be true of my second order volitions?' (Pettit, 2001: 54). Prizing second order volitions above first order desires in judgements of responsibility is entirely arbitrary, as Pettit demonstrates using the example of desiring to keep his desk clean. He may have a second order volition to be moved by this desire, but it is entirely possible for this volition to feel as alien or inauthentic to him as the desire might, for instance if he feels that such a volition is an 'unwelcome inheritance from the past [caused, perhaps, by being taught in childhood that cleanliness is next to godliness] that I view with disapproval' (Pettit, 2001: 54). We may just as well be distanced from our second order volitions as our first order desires. The second reason to reject volitional control as sufficient for responsibility is that coercion does not preclude or reduce volitional control any more that it does rational control: 'my higher-order volition in regard to a situation where I am threatened with a physical beating unless I hand over my money may be that I don't get angry and defiant but rather give up my cash. And I will act under volitional control so far as I manage to bring my lower-level motivation, and my behaviour, in line with that volition' (Pettit, 2001: 61). Again, in this situation, we will not tend to hold an agent to be entirely responsible for her actions, given the constraints she faces.

This brings Pettit to the conclusion that discursive control is the only capacity both necessary and sufficient for being held responsible. Unlike rational and volitional control, which are concerned only with psychological aspects internal to the person, discursive control involves a social dimension. To be fit to be held responsible, a person must have a standing relative to others whereby she is susceptible to the influence of those others, but is not dominated, pressured, coerced or manipulated. Such a conception of responsibility fits, according to Pettit, with the way we conceive of ourselves: 'not just as intentional systems with beliefs and desires, but as subjects who can conduct discourse with one another, and with ourselves, in the attempt to shape our beliefs and desires' (Pettit, 2001: 70). To be open to the non-coercive influence of others through discourse is paradigmatically what responsibility is about: we only assign responsibility to those who we believe are *responsive*, quite in contrast to the liberal view that we are responsible only when we are ruled entirely by our own wills.

In order to achieve the relational capacity necessary to have discursive control, agents must be 'authorized as someone worthy of address' (Pettit, 2001: 73). This authorisation has two aspects. First, to be properly held responsible, a person must interact with others – she must be socially active. It is not possible to be authorised as worthy of address by an external arbiter or by oneself: authorisation can only come within relationships. While it is very difficult, in practice, to conceive of a person who has no social interaction, we should remember that liberal views do conceive of agency, and through it, responsibility, as possible prior to such interaction. Second, the person must be treated by those with whom she engages in a non-coercive, non-manipulative fashion. Pettit, like Barnes, sees the status of responsible agent as necessary to facilitate social interaction and as psychologically valuable. He argues that: 'To be fit to be held responsible for doing something … is to be the sort of agent that can be incorporated with others within the practice whereby people hold one another responsible, and to act in the manner of such an agent. It is to merit in

general, and to vindicate in this particular choice, perhaps the most basic form of recognition or authorization that others can offer' (Pettit, 2001: 24).

Pettit's account supplements that of Barnes by elaborating the capacities that we see as necessary to accord the status of responsible person to others: capacities of rational, volitional and, critically, discursive control. It also leads us to think about relationships of power between subjects. Pettit notes that domination, as well as coercion, manipulation and intimidation, reduces freedom: we are less fit to be held responsible if we are dominated within our social relationships, just as much as if we are directly coerced. Marion Smiley (1992) has looked at the effects of power within the practice of responsibility in more detail, and outlines how political and social judgments (rather than the neutral statements of fact) are integral to our ascriptions of responsibility.

Smiley, like both Barnes and Pettit, sees responsibility as a social practice – a way of judging actions and expressing approval or disapproval of them. She takes a pragmatic perspective, wishing to make explicit the social and political considerations incorporated into judgments of causal responsibility and moral blameworthiness. Smiley argues that to understand moral responsibility we need to see it as relying on two particular judgments that are made in any case: firstly, that the harm under consideration was a consequence of the individual's actions and secondly that the individual is worthy of blame. That these are judgments is critical here as ascriptions of moral responsibility under a liberal individualist view are presented as a discovery of fact. This simply cannot be, according to Smiley, as an individual cannot be fully metaphysically responsible or blameworthy for the consequences of her actions due to the inevitable intervention of moral and political considerations between act and consequence. She argues that the causes judged to be the 'real' causes of harm tend to be 'those forces that we might be able to control in the future so as to prevent the harm in question occurring again' (Smiley, 1992: 179), for instance, we may seek to hold individuals rather than states or larger practices responsible for war-time atrocities because we feel that by punishing these people we can prevent or deter

future violence. The causes chosen and judgments of extent of responsibility are also influenced by politics and the configuration of social roles and power affecting judge, judged and victim. In the US, for instance, the government blames urban drug pushers for drug addiction in the inner city, social workers blame the government for not funding drug rehabilitation centres, conservatives blame declining cultural standards and Marxists blame the capitalist system. Even if they agreed on the 'facts' of the situation they are still likely to disagree on who or what has causal responsibility. The ability an agent has to prevent harm and the social role we see them as playing influence our judgments: to continue with Smiley's drug addiction example, social workers see the government as very powerful and also as responsible for preventing social problems, thus hold it causally responsible for addiction. Free market economists, who believe the government should intervene as little as possible in society will not see the provision of drug centres (an element of a welfare state) as part of the proper role of such a body, even if they agree with the social workers that provision would alleviate the problem. These expectations of social roles result partly from relations of power within our community. If a group has the power to make expectations of a role stick, they probably will. This means as power shifts, so can expectations of roles. For instance, manufacturers are now expected in many states to rank the health and safety of their workers as equally or more important than their business interests. This change in role perception has come about, according to Smiley, because of the empowerment of labour unions – as they gained power, so they were able to make new expectations of the role of manufacturer stick.

Finally, our judgments of responsibility are influenced by our perceptions of where relevant communal boundaries lie and our position relative to those suffering or said to be causing suffering. If the victim is a member of the community of the individual judged to have caused harm (itself a subjective decision on the part of the judge) then the individual is more likely to be held morally responsible than if not, and the judge is more likely to believe that the interests of the victim should have been taken into account prior to action. Smiley cites the reason for this as the disproportionate value we place upon 'our' (national, local, employment- or interest-based) communities and

the people we judge to be part of them. She is more subtle than Barnes here, and sees that individuals within communities can differ in the values they hold and the relative loyalty they have to groups of which they are a part (so status may be more important to them in some than others). This argument has clear application in the realm of international relations, where borders and communal boundaries are frequently used to justify limiting the responsibility 'we' have to those outside our communities – witness the reluctance of the West to intervene in the Rwandan genocide in 1994, and now in the Sudanese massacres in Darfur.

The second type of judgment in the practice of moral responsibility, alongside that of causal responsibility, is the judgment of blame. Blame regulates social relations: 'blame both creates and sustains order between individuals by letting them know that if they do not comply, they will be hurt either by our admonishments or by the negative reputation which they develop in the rest of society' (Smiley, 1992: 242), and constructs relationships between individuals and external states of affairs, so connecting us to our environments. Again, blame is a judgment rather than a statement of fact. We have expectations, shaped by social rules and conventions, of what members of communities owe to each other, so blameworthiness is part of a relationship rather than the property of an individual, and, to work, the blamer and the blamed must see themselves as part of the same community and agree substantially on the standards of behaviour expected within it. According to Smiley, two types of excuses for action can lessen or avoid blame – ignorance and compulsion. The success of these volitional excuses is as influenced by social and political factors as the ascription of causal responsibility. No-one is ever possessed of all relevant knowledge, thus ignorance is held by all actors by degree, and no-one is ever entirely free. Expectations of the extent to which an actor should resist her environment and to which she should educate herself come into play here. The recent controversy in the US over remarks made by Bill Cosby concerning the blame that parents should accept for the underachievement of young African Americans is illustrative here.[12]

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[12] For a sample of Cosby's May 2004 remarks and the debate surrounding them, see http://www.washingtonpost.com/wp-dyn/articles/A46717-2004May21.html;

There is a great deal of disagreement over how much of their environment people should be able to resist. Those who disagree with Cosby argue that the structural racism and the resultant poverty faced by young blacks in the US should absolve them of blame for poor performance in education, early parenthood and disproportionate representation in the prison system. Cosby, by contrast, acknowledges the problems faced but feels they can and should be resisted. The success of blaming thus depends on our expectations of actors but also on the social status of the blamer. The more power such a person has within the community, the more likely it is that she can get her ascription of blame to stick, which is perhaps why Cosby's remarks have been the subject of more debate than would have been engendered if a less powerful figure had spoken out. This effect can also be seen in the success of the Drop the Debt campaign in pinning responsibility to the developed world for alleviating poverty through writing off large portions of debt owed by developing countries, despite protestations that the condition of the poor economies was caused by financial mismanagement and corruption within the indebted states rather than by the West. NGOs such as Oxfam have been pressuring governments and international institutions on this issue for decades, but only started to see significant results when celebrities such as Bob Geldof, Bono and Chris Martin drew attention to the issue and persuaded Western publics (and, through them, Western governments) that the responsibility of the lenders to cancel the debts outweighed any responsibility the indebted should assume for wasting the loaned money.

The practices of causal responsibility and of moral blaming are dynamic, and arguments about responsibility can cause us to change our expectations of social roles and our views of where communal boundaries lie, which, in turn, influence our judgments of responsibility. Smiley illustrates this argument using the example of American responsibility for apartheid. During the debate in the US in the 1980s and early 1990s about the correct social role of American firms who invested in South Africa during the apartheid era, evidence was produced (for instance concerning the

http://www.washingtonpost.com/wp-dyn/articles/A59055-2004May26.html;
http://www.washingtonpost.com/ac2/wp-dyn/A7323-2004Jun26;
http://www.washingtonpost.com/wp-dyn/articles/A24594-2004Jul2.html.

effect US business involvement had on the legitimacy of the regime, and, on the other hand, the effect it had on the employment of black people within the country) and arguments were made over whether South African blacks were properly a part of the community of concern of American business. Power played its part as well as morality, for the two, for Smiley, are intricately linked. She argues that others' views of our moral blameworthiness are influenced by how much we care about them blaming us and how much power they have within our community. The divestiture movement in state governments and universities therefore had a significant effect on the apartheid debate as these bodies has sufficient political power (alongside good but not conclusive factual evidence) to alter role and boundary perceptions. The blame issued was taken seriously, and served both to reinforce the values and expectations upon which the judgment of blame was made, and to cause perceptions of the relevant communal boundaries to be re-appraised.

There are clear similarities between the work of Barnes, Pettit and Smiley. All see that by holding others responsible we affect their status within the community, and all see status as valuable. A desire for recognition is the only way to make sense of the practice of responsibility – the practice could not work so would not persist if people did not desire the status of responsible agent.[13] All also see the ascription of responsibility as a functional practice within communities and not an exercise in metaphysical fact-finding, and the values, expectations, norms and rules used to hold others responsible as internal to the group rather than dictated by an external moral arbiter. Smiley argues that 'our modern notion of moral blameworthiness makes no sense in its own terms, [but] it does make sense as a conceptual mechanism for internalising judgments of social blameworthiness in the absence of external

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[13] While Barnes, Pettit and Smiley do not reference Hegel on recognition, it should be pointed out that Hegel's contention that recognition 'designates an ideal reciprocal relation between subjects' and is necessary to and constitutive of subjectivity (Fraser, 2000: 109) is the likely intellectual foundation for the importance all accord to status. Hegel's work has been resurrected recently in an unlikely cause: Francis Fukuyama (1992) uses the notion that humans have an innate need to gain recognition from others to support his contention that liberal democracy is now the only viable political system – the 'final form of human government' (1992: xi) – as it is the only system in which all citizens are seen as equal, so all are fully recognised. This use of Hegel – read through Kojeve – has been heavily criticised (see, for instance, Nayar (1992); Hall (1993)) but I return to the view that liberalism is the ideal political system in which to foster responsible agency in Chapter 8.

authority, whether that authority be the political community or God' (Smiley, 1992: 18). Like Barnes and Pettit, she also accounts for the persistence of the notion of free will, arguing that our idea of free will serves to disguise the social and political content of judgments of responsibility, which, if acknowledged, could prevent the judgments being internalised and acted upon. For Smiley, who explicitly factors power into the practice of responsibility, this means we must see morality as part of our political discourse and therefore recognise our views on responsibility should be up for debate. However, she does not conclude that power determines ethics – rather, that power and morality exist in a dialectical relationship. Our moral judgments are grounded in norms and rules and therefore influenced by the distribution of power in society, however it is through arguments over those judgments that the expectations of social roles and communal boundaries, and so by extension the distribution of power, can change. This process is not concerned with more closely approximating the norms and rules to an objective or external standard of responsibility, for no such standard is available. Rather it involves discoursing with others about the priority of our interests, the coherence of our value sets and the implications of our expectations. These will change as the contexts in which people act change, but the change is in no sense teleological – there is no expectation that the practice of responsibility can be perfected over time.

The concept of responsibility that emerges from the work of these three theorists – a concept I have labelled the 'social practice model' (SPM) – is very different from that found in liberalism. For liberals, responsibility is established first and foremost by law, with the law being used to structure relationships between individuals such that their actions do not unjustly interfere with the actions of others. As noted in Chapter 3, obedience to the law is all that is needed to fulfil one's public moral responsibilities in a liberal polis. Liberal responsibility, far from being central to social life, is legalized, privatized and marginalized. Living ethically (or not) beyond what is required by law is essentially a private choice, with the notion of rights providing limited public side constraints on what a person can do in order to realize her own interests. The contrast with the social practice model of responsibility is

pronounced. Under the SPM, responsibility is central to human life: the practice defines the way we interact with each other. The SPM conception of responsibility is at first glance much more similar to a communitarian conception, in that it accepts responsibility as being generated within the social practices from which our agency and identity extend, though it rejects the idea that these practices, cultures or communities are fixed or external to the actors. These differences will be explored at greater length in section 3.4. Before that, I will add some flesh to the bones of the SPM by considering the scope and substance of our responsibilities under the model.

6.2 Responsibility for whom? Responsibility and Social Connection

Traditional views on moral responsibility can give easy answers to the question 'for whom am I responsible?', or, phrased differently, 'whose interests should I take into account when acting?', which are generated directly from their conceptions of agency. Cosmopolitan liberals conceptualise agency as residing in the sovereign individual so see individuals as responsible to themselves to develop and pursue their own ideas of the Good and, because the individual is ontologically prior to any communal commitments and thus her agency is defined by her humanity rather than her community, she is also responsible to all other individuals by virtue of their shared humanity. Special responsibilities for those to whom a person is biologically, emotionally or geographically close to may be permitted, as a matter of efficiency (i.e. if such responsibilities are more likely to achieve justice for everyone than if responsibilities were diffused equally for all among all), as long as those responsibilities work to the advantage of everyone. Communitarians see our agency as arising within our communities, so conceptualise our relevant relationships of responsibility to be circumscribed by communal borders. We are responsible only for those within our political community: we may be permitted to be charitable to people living outside the boundaries of our community, but we are not required to be. I have rejected the conceptions of agency underlying both positions as epistemologically untenable (Chapter 2), but this leaves us struggling for an answer to the question

posed at the start of this section. If we are not responsible for everyone, and we are not responsible only for those with whom we share a territorially circumscribed community, who are we responsible for?

Iris Marion Young (2006) has attempted to answer this question in a way which fits well (though not perfectly) with the conception of agency as sociality described in Chapter 5 and the Social Practice Model of Responsibility which follows from it, and offers a position on responsibility that falls between the cosmopolitan liberal and the communitarian views. She argues that 'obligations of justice arise between persons by virtue of the social processes that connect them; political institutions are the response to these obligations rather than their basis' (Young, 2006: 102), i.e. communitarians are wrong to see responsibility as arising out of the political arrangements of bounded communities or nation states, but cosmopolitans are wrong to assume that responsibility can be generated merely from shared humanity. Young argues that we have obligations for those to whom we are connected by virtue of the social processes we engage in, but that these processes (increasingly) extend beyond the fixed borders of states. Offering some support to the cosmopolitan position, she argues that it is possible for the processes she is concerned with to have global reach, and looks at responsibility within the global apparel industry to illustrate her position. Young's conclusion, after examining the structure of contemporary responsibility within and outside communities, is that: 'all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices (Young, 2006: 102).

Young bases much of her argument on the observation that harm to persons is not just caused by other, deviant, individuals, but by the effects of normal social and economic processes in which many of us play a part. She describes these processes as structural, with structure, according to Young, 'consist[ing] in the connections among the positions [individuals occupy within the structure] and their relationships, and the way the attributes of positions internally constitute one another through those relationships' (Young, 2006: 112). The social and economic structures involved in

the global apparel industry are complex (as with most such structures in contemporary life). Retailers such as Gap and Nike rarely own the factories in which their goods are manufactured. Instead, they contract with long chains of suppliers, manufacturers and importers, all of whom are legally separate entities with no formal responsibility for the actions of the others. The structures she is concerned with are not fixed and immutable: she follows Giddens in arguing that we create and reproduce structures though our actions, for instance, within the practice of fashion, we feel that we 'need' new styles of clothing each season. The expectations (of frequent new styles) and consumption decisions (buying these new styles) of a, usually uncoordinated, mass of individuals put pressure on manufacturers, and through them, factory owners, to produce clothes quickly and at low cost. There is no necessity to buy new clothes so frequently, so the structures of the global apparel industry – and the resultant suffering of employees who are forced to work in appalling conditions – are reproduced by the actions of those who participate in them rather than being unavoidable. Young is not, however, claiming that participants *intend* the distant effects of their actions: '[s]tructured social action and interaction often have collective results that no-one intends, results that may even be counter to the best intentions of the actors' (Young, 2006: 114).

In making these claims, Young offers us a much more nuanced approach to responsibility than either the cosmopolitan liberal or the communitarian position. She does not subscribe to the view that the world is naturally well-ordered, or that there is an underlying harmony of interests, arguing instead that the processes or structures of everyday life can generate injustices: the normal operation of social structures can harm individuals even if many who participate in the structures do not intend this harm (a situation I return to in Chapter 7, in a discussion of the responsibility of ethnic groups and informal practices for suffering within conflict). However, she also recognises that to hold a person responsible for harm she did not intend, resulting from an action not widely seen as deviant and with only a loose or contested causal link between harm and action, is likely to itself be seen as unjust.

Using the idea of social connection, Young differentiates her view of responsibility from the more common 'liability' model, in which we are concerned to find causal contribution and to assign blame. She sees that if you only hold those who are directly causally connected to harm responsible (assuming that you can – something called into question by the discussion in section 6.1) then you exclude many actors from the discourse of responsibility. For Young, '[a]ll persons who participate by their actions in the ongoing schemes of co-operation that constitute these structures [i.e. structures that generate injustices] are responsible for them, in the sense that they are part of the process that causes them' (Young, 2006: 114). The discourse can therefore extend to include those people whose suffering cannot be proved to be caused by the deviant acts of specific individuals or firms, and those people who act in good faith but contribute to harm. Consumers who buy clothing manufactured in sweatshops, executives at MNCs who make sourcing decisions based on finding the lowest prices in competitive markets, investors who do not investigate the ethical standing of the firms whose shares they buy, factory owners who claim that the only way they can stay solvent given the structures of the industry is to impose sweatshop working conditions: all of these groups can be held responsible, but only if we divorce responsibility from the notion of blame or moral guilt. All of these groups stand in structural relationships to employees in the global apparel industry but they are not to blame for the conditions these employees work within in any direct sense. Young supports encouraging anyone involved in large scale social processes to consider the effects their actions, in the context of others acting the same way, have upon distant others and to *take* responsibility for bringing about change. She does not, however, dismiss the liability model completely. She argues that people should be held responsible when their individual (or collective) actions can be clearly linked to harm, so '[h]ired thugs who beat workers in horribly equipped factories' (Young, 2006: 120) remain individually criminally responsible and morally blameworthy, but responsibility extends outwards to all those connected to the process.

Young's conception of responsibility is an attractive one when viewed beside the social practice model outlined above. Although she conceptually separates structure

from agency, a position I criticized in Chapter 5, her view of social connections within structures is close enough to the idea of participation within social practices to enable us to use it to think through methods to identify relationships of responsibility. We can reject her dichotomous understanding of agent and structure but support her attempt to bring harms which do not have easily identifiable causes, or to which individual or criminal liability does not apply, into the discourse of responsibility. Young also makes a valuable connection between responsibility and justice, arguing that when we make judgments of injustice, we are implying that the suffering observed is socially caused as opposed to natural or unavoidable. From here, she argues that: 'to make the judgment that poor working conditions are unjust implies that somebody *bears responsibility* for their current condition and for their improvement' (Young, 2006: 115, emphasis in original). I am not sure that we are judging that someone *does* bear responsibility as much as that we feel someone *should* bear it, but this link nevertheless enables us to discern those situations in which responsibility should be identified and discharged.

Her position is more difficult to support when considering the substance of injustice. Young defines structural injustice as existing 'when social processes put large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as they enable others to dominate or have a wide range of opportunities for developing and exercising their capacities' (Young, 2006: 114). She does not define what domination consists in or what people should not be deprived of, seeming to assume that we will know injustice when we see it (although her 2006 piece is only short, and Young has developed more substantive accounts of justice elsewhere, especially Young (1990) and (2000)). Young does not acknowledge that the people who participate in any given global social or economic process are likely to have quite different notions of justice. Who is to say that Western notions of fair wages, working hours or factory conditions are the epitome of justice? Why cannot we accept that rapid economic development at the expense of civil and political rights may bring more opportunities – for justice as well as for improved living standards – in the future?

This implication that the same standard of justice applies to everyone connected by large scale processes or practices is where Young's model differs from the SPM. My claim is much narrower – that responsibility for injustice may well reach further than territorial borders, but that it has no content until it has been theorized or constructed within collectives. The collectives in which responsibility is engendered may not map onto the groups of actors involved in any one process, so different ideas of justice and responsibility are likely to exist among people who are socially connected to each other. Young cannot tell us how to recognize and agree on what constitutes injustice, whereas the SPM demonstrates how justices and injustices come to be understood as such: the communal structuring of such concepts, and the continual process of creating, challenging and reinforcing ideas of justice. The SPM can also acknowledge that definitions of justice are just as susceptible to being formed and maintained under the influence of power as are ascriptions of responsibility, thus that any universal claims of justice or injustice should be interrogated to understand whose interests they serve.

All this is not to say that we are only responsible for those with whom we are in broad agreement over the content of the notion of justice. Young's contention that obligations of justice or responsibility are grounded on social relations, and that our social relationships and connections extend (increasingly so) beyond territorial borders is very persuasive. She also highlights the number of transnational social and economic processes that we are implicated in, showing via a model of social connection that we are involved in many more ethically significant, extra-territorial practices than a communitarian position would tend to acknowledge. What we must guard against doing is assuming that all those we may be in a relationship of responsibility to have the same idea as us about how and to what end that responsibility should be discharged.

6.3 Sources of Responsibility: Causes, Choices, Roles and Resources.

The social practice model of responsibility may offer an intuitively appealing explanation of how and why we hold each other responsible, but it does little to inform us what our responsibilities actually are. Once the foundationalism of cosmopolitan liberal and communitarian positions is discarded, we are left without any objective way to determine who has what responsibility. Responsibility depends on context and on the participants in any given practice – it is generated within the collective and is always open to change and review, so it is simply not possible to list the specific responsibilities any given actor might have. However, this section will argue that we can make some general statements about responsibilities by looking at where responsibility can stem from, or the sources of responsibility under the SPM. Responsibility can be given and taken, before or after action, and can be connected to our causal contribution to events, to our roles and to our resources. Most innovatively, on this account of responsibility, responsibility can be chosen: the individual or the collective can actively take on or assume particular responsibilities.[14]

In any discussion of the sources of responsibility it should be remembered that, under the SPM, responsibility ascription is a dynamic process, as the discussion in section 6.2 above showed. Individuals engage in discourse with others, and through this their agency and responsibility is constructed: they attain the status of responsible agents. However, agency and responsibility are not bestowed upon them by forces external to themselves. Individuals must be active in the discourse in order to attain the status. The sources discussed below will not automatically bestow responsibility upon

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[14] The sources of responsibility discussed in this section differ from the types of responsibility, causal, role, liability and capacity, identified by HLA Hart (1968) but are similar enough to warrant acknowledgement of his list. Hart's causal and role responsibility map neatly onto the causal and role responsibility I describe in this section. His liability responsibility is not so much a source of responsibility as an extension of it: to be liability responsible is to be liable to punishment, praise or blame for a something which happened in the past – either due to your role, or due to your causal contribution. Finally, Hart's capacity responsibility refers to the capacity of a person to be held liability responsible: their understanding of what law or morality require, their ability to reason about these requirements and their control over their actions. I discussed capacity to be held responsible in Chapter 5.

actors: the discourse of responsibility will intervene so responsibility will be allocated differently depending on the norms and power distribution at play in different contexts.

Traditional conceptions of responsibility concentrate on the causal contribution of an agent to an outcome. The SPM questions whether such a contribution can ever be established, arguing instead that responsibility arises from inter-subjective discourse about norms and standards, and expectations of action within social roles, as well as judgements (rather than facts) about causality. However, the notion of causal contribution still plays an important part as the source of responsibility in law and in many everyday ascriptions of responsibility.

6.3.1 Causal or Connection Responsibility

Smiley argues that statements about the causes of actions are judgments rather than declarations of fact. Her argument is persuasive, but it highlights the point that cause still plays an important role in the discourse of responsibility. Everyday ascriptions of responsibility for simple acts which seem to link directly to consequences are commonplace. These ascriptions are seen most regularly in the practices of legal systems, and the ascription of responsibility here is almost always accompanied by blame. People or corporations (on which more in Chapter 7) are held responsible and punished for injuries to others, damage or loss which results from their acts of violence, theft, negligence or other deviance. There are also ascriptions of causal responsibility in international relations – for instance Iraq's invasion of Kuwait in 1990 and the US-led invasion of Iraq in 2003 are felt by many to have led to morally objectionable outcomes caused by the aggressor states. However, causal responsibility is very difficult to satisfactorily establish as acts and their consequences get more complex. Situations where causal responsibility is relatively uncontroversial tend to be small scale acts: individual criminal acts or individual instances of negligence (though we must still note the role of power in the ascription

of responsibility here: the process of ascribing causal responsibility is still a process or judgement rather than fact-finding, and most ascriptions are likely to be contested by someone, if only by the actor/s held responsible). These situations are rare in international relations as the number of agents and variables interacting in the sphere is so high, and the causal mechanisms so contested. Ascriptions of causal responsibility and blame are difficult to translate outwards beyond the borders of discrete communities and upwards to more powerful actors as the causal chains seem far too complex. They are also hard to sustain if the acts which are said to have caused the consequences are not widely judged to be deviant, as noted by Young (2006, discussed in section 6.2 above). Even though the law requires causal links, and our everyday ascriptions of responsibility tend to evoke them, the discourse of responsibility will be unnecessarily limited if responsibility can only arise for those outcomes which identifiable actors have directly and indisputably caused.

The SPM, because it questions our ability to prove direct causal contributions to any harm, can open up the discourse to include responsibility for acts or harms which we were in some way connected to, or facilitated. The intuition behind this type of 'connection responsibility' remains causal – the assumption is that we did contribute to the harm through our attitudes, actions or inactions (or that if we did not contribute, it was by accident rather than by design, for instance, because similar attitudes, actions or inactions on the part of others may have been enough to bring about the harm without our contribution), but that our causal contribution cannot be proven and may not be a result of deviance or disregard of social norms. I discuss responsibility for the facilitating conditions of harm again in Chapter 7.

Responsibility for outcomes on the basis of causal contribution is a type of retrospective or *ex post* responsibility. It is about answering for, or being accountable for, something you have or have not done in the past. By contrast, responsibility can also be ascribed prospectively, or *ex ante*. We can have responsibility for somebody or something in the future by virtue of our roles, our choices or our resources. I look at each source of *ex ante* responsibility in turn below.

6.3.2 Role Responsibility

Role responsibility arises from the roles we play within social practices. Those with roles within families, cultures, professions, nations and so on have responsibilities to those they are positioned in relationship to. Parents have responsibilities for children, teachers for students, employers for employees and so on. Young identifies that seeing someone as responsible according to her role is very different to seeing her as liable for harm: 'finding responsible [according to a social role or position] does not imply finding at fault or liable for a past wrong, but rather refers to agents carrying out activities in a morally appropriate way and aiming for certain outcomes' (Young, 2006: 119).

Role responsibility is incurred as people participate in social life, and is thus established, like causal responsibility, by the behaviour of the actors themselves. Thus, as a citizen, one may have responsibilities to pay taxes and to vote; as a parent, the responsibilities to feed and nurture your child; as a soldier to fight for your country; as a driver to ensure the safety of your passengers and so on. Collective agents can also have role responsibilities: for instance, fighting states have responsibilities to prisoners of war and to civilians in enemy territory, firms have responsibilities for the health and safety of their employees, communities have responsibilities for particularly vulnerable members.

As with causal responsibility, responsibilities within roles are often highly contested. There is a great deal of contemporary disagreement over, to name just a few, the responsibilities of mothers, particularly with regards to whether they should go back to work or stay at home to raise their children, the responsibility of food companies for the (generally poor) diets of their customers, the responsibility of the media to provide balanced coverage of stories such as the Middle East conflict, the responsibility of the UN to intervene in Darfur. Debate over the responsibilities which attach to any given role is influenced by power (as Smiley notes: those with more power are more likely to be able to make responsibilities 'stick') but also by

changing conceptions of the function of particular roles within society. In Chapter 7 I discuss the changing conception of the proper role of firms, which has led to the growth of 'corporate social responsibility'.

6.3.3 Assumed Responsibility

Claims of causal and role responsibility may be instigated or agreed to by an actor (we may, for instance, be keen to claim causal responsibility for outcomes of which we are proud), but they can also ascribed from the outside. Assumed responsibility, on the other hand, can only arise from actors themselves – these responsibilities are voluntarily adopted and are a creative response to others' expectations of them. Such responsibility may fit with particular roles the actor plays or interests she has, but it is not necessitated by them. Highly publicised recent examples of agents assuming responsibilities include chef Jamie Oliver, who has taken responsibility for improving the quality of school meals in the British state school system, ex-President Bill Clinton who has taken responsibility for reducing the global spread of AIDS via the Clinton Foundation, and rock singers Bob Geldof and Bono (along with a host of other celebrities) who have taken responsibility for 'making poverty history' and 'making trade fair'. Although their aims are not yet fully realised, each has brought about what many see to be improvements to the area of their concern. Oliver secured an extra £280m to be spent on school dinners by the British government over the next three years; the Clinton Foundation has achieved a drop in the price of AIDS medicines and diagnostics from $500 or more a year in 2003 to $150; Geldof, Bono and associates persuaded the G8 to cancel the debts of the world's poorest 18 countries, and to increase annual aid by $48 billion by 2010.

Other assumed responsibilities cannot claim such success. The UN labelling of certain areas in Bosnia as 'safe havens' is a poignant example of an institution assuming a responsibility (to protect those sheltering in the 'safe havens') which it failed to discharge. The US/ UK alliance assumed a responsibility to bring safety and

stability to the people of Iraq (as well as the responsibilities they incurred as occupying powers) – responsibilities which, at present, seem a long way from being delivered upon.

The notion of assumed responsibility reminds us that there may be no identifiable agent or agents causally responsible for particular harms, and no role responsibilities which would alleviate these harms. The working conditions of sweatshop employees, as discussed by Young, have complex causes and no clear responsibilities exist to improve them. Any change is likely to come from agents assuming responsibility, which may then gradually become incorporated into the expectations of particular roles. We can see such a process happening, for good or ill, in the changing expectations of the US and UK public regarding the role of celebrities in political and economic debate. Those with acting, singing or sporting skills are increasingly expected to have something profound to say on world issues (witness the presence at the World Economic Forum in Davos in January 2006 of Michael Douglas, Angelina Jolie, Brad Pitt, Pelé and Peter Gabriel, alongside the ubiquitous Bono), and to devote time to campaigning for charitable causes.

Assumed responsibility is a very powerful source of obligation because responsibilities are more likely to be discharged if the agent genuinely *feels* responsible for whatever it is she is to be held responsible for. In order to feel responsible, it helps if our responsibilities are commensurate with our identity. I suggest in Chapter 8 that a culture of taking responsibility commensurate with identity and interests is both desirable and discernable in the contemporary global system. Private sector moves towards corporate social responsibility, including the adoption by firms of mission statements which refer to specifically ethical standards, changes in organisational policy and the increased interest in joining bodies such as the Ethical Trading Initiative, suggest such a culture. In the field of International Relations, this trend can be seen in concerns over the ethics of foreign policy, in the increased tendencies of states in the 1990s to pursue 'humanitarian' goals and in the success of initiatives such as Jubilee 2000 which resulted in G7 states writing off

$110bn dollars of third world debt. These developments will be examined in more detail in Chapter 7.

6.3.4 Resource Responsibility

Causal, role and assumed responsibilities usually adhere to parties implicated in or benefiting from the situations to which they refer. The final source of responsibility concerns the resources of an agent, and can be invoked in situations in which the actor has little or no interest and does not seem to have substantially caused. To be held responsible in this situation is to be judged to have the special capacities, such as wealth, talent or opportunity, necessary to assist, regardless of your connection to the suffering you are being asked to alleviate. Responsibility here is linked directly to social power, and an assumption underlies the position that as the resources of an individual or institution increase, so does its responsibility. This idea has been discussed recently by a number of scholars (see, for instance, Barry, 2003; Brown, 2004b; Kroslak, 2003; Miller, 2001) and seems tremendously innovative as it starts to ask whether actors are *capable* of bearing moral responsibility in particular situations rather than whether they deserve to do so because of prior actions or duties. Links can also be seen to the idea of assumed responsibility, which captures the desirability of resource-based responsibility but acknowledges that it is easier to make such responsibility stick if the actor in question chooses the obligation and it reflects her primary interests and identity. The celebrities who take responsibility for social change are often both extremely wealthy, and highly capable of generating media attention. The resources that they have are useful in achieving the goals of the causes that they support. However, unless the responsibility is actively chosen, it is not clear how this type of resource-based responsibility arises in specific situations: many actors – particularly collective actors such as wealthy states and successful firms – have an abundance of resources, but none has sufficient surplus resources to alleviate all suffering, leaving us with further decisions to make on what counts as surplus and which actors should distribute how much and to whom. Assigning resource

responsibility, more than any other type of obligation, is about who has the power to make the ascriptions stick.

The sources of responsibility identified here show that the SPM has a much richer concept of responsibility than does the liability model focussed on within liberalism. In the final section of this chapter I reiterate the key features of the SPM, highlight its particular strengths, and respond to likely critiques of the model.

6.4 The Social Practice Model: A Review

The SPM sees the practice of responsibility as necessary to social life, because through the process of ascribing responsibility and accounting to one another, we co-ordinate our interactions and structure our expectations of each other. Responsibility here is social because of the necessary sociality of agency, established in Chapter 5. It is a practice, rather than a state of being, because responsibility is performative: it only arises as people interact with each other and makes no sense without a social context. It is also therefore, and given the nature of agency, an inevitable and central feature of human life.

The SPM introduces the notion of status to discussions of responsibility. The practice of responsibility is seen as offering actors approval or recognition from the collective, which all of the theorists analysed here view as valuable to living a fulfilling human life. Responsibility gives individuals an identity and a standing within their communities, and also threatens sanctions if they do not act responsibly. If individuals do not comply with societal rules and norms, they risk being hurt by the negative reputation they will gain, and the subsequent reduction in their status.

The idea that responsibility is about conforming to an external moral code or accounting to an objective judge is rejected by the SPM. The practice of responsibility is about being *responsive* to others – having the social standing and

personal characteristics necessary to being open to the non-coercive influence of others. As such, the judges of responsibility are just as socially embedded as the judged. The SPM theorises responsibility as inherently political: there is no neutral position outside of practice from which to judge the behaviour of others, and power will always be a factor in the ascription of responsibility.

There are a number of advantages to conceptualising responsibility in this way as opposed to accepting the constraints of more traditional concepts. I examine below the three strengths I believe to be most important.

6.4.1 Strengths of the Social Practice Model

6.4.1.1 Rejection of Dichotomies

This model of responsibility is a logical extension of the conception of agency as sociality outlined in Chapter 5. At the end of that Chapter, I noted that the once we see agency as necessarily social, we are free of the theoretical stalemate between agent and structure, and between individual and community. Neither agency nor structure exists prior to interaction, as both come about through human sociality. We are not sovereign, volitional creatures with agential powers as part of our pre-social nature, but instead are discursively identified as agents, and are mutually susceptible to social influence. That said, our agency is not fixed within any given collective. As we all inhabit different roles within different collectives, so responsibilities vary between actors. Neither agency nor responsibility is determined by a static, pre-existing community, and all actors take part in a wide range of (constantly evolving) social practices and collectives, each of which will bring their own (constantly evolving) responsibilities.

The collectives that individuals constitute within the SPM are not seen to be territorially bound: they are not 'communities' as the communitarian would usually

understand them (i.e. nation states). The SPM recognises that, as practices take place across as well as within national boundaries, responsibility cannot be contained within existing political units. This does not mean that it extends across all individuals, as the cosmopolitan would argue. Rather, particular responsibilities come about as we engage in common social (including political and economic) activities with others, though there is no guarantee that all participants in any practice will concur on what those responsibilities are. Consideration of what they may be, via attempts to ascribe responsibilities to actors within the practice, is a fundamental part of social life.

Using Young's vocabulary, the SPM is not 'isolating' (Young, 2006: 119). A liability model of responsibility seeks to isolate perpetrators: to separate out the guilty from the innocent. This model lets us see varying levels of responsibility. We can hold the 'hired thugs' individually criminally responsible while also seeing that responsibility for those who work in sweatshops might extend to the multinational companies who commission the goods and the consumers who buy them (actors who could previously hide behind claims that they were helpless in the face of economic or market structures). The absolute divide between innocent and guilty, seen as so problematic within the discussion of the ICC in Chapter 4, is dismissed, and the relationships between the actors in social processes are interrogated.

The final implication of the denial of the dichotomy between agent and structure and, in particular, the rejection of the liberal account of agency, is that agency is not limited to being a property of the individual. I explore the agency and responsibility of groups in Chapter 7.

The SPM offers a more convincing explanation of how responsibility works than either the liberal or communitarian positions. It can account for the persistence of the doctrine of free will and of the association of responsibility with judgments about the causes of outcomes, deviance and blame, but it can also encompass the flip side of responsibility: *ex ante* responsibility that arises within the roles we play. The SPM

demonstrates why some practice of responsibility features in all human interaction, but also why the substance of notions of responsibility differs among groups and over time. Finally, a move away from concentrating on the relationship between individual, intentional action and outcome (seen within liability models of responsibility) lets us see that the actions we do not take, the situations we stand by and allow to happen, and the outcomes we do not intend can all have significant effects upon the world and should all be included in the discourse of responsibility.

6.4.1.2 Recognition of the Dynamism of Responsibility

Cosmopolitan liberalism sees our moral agency and responsibility as pre-social facts about individuals, and therefore static over time (once maturity has been reached), and our moral obligations as fixed by an external, universal moral code or natural law (from which the concept of human rights is drawn). The SPM, in contrast, sees neither agency nor responsibility as pre-formed, and, given its understanding of ethics as originating in interaction, does not subscribe to the idea of absolute or universal moral rules. Agency and responsibility arise in social environments and can vary depending on circumstance and social role. They are context based, context sensitive and inescapably dynamic.

This does not mean that responsibilities are entirely fluid and impossible to identify. The discourse of any given collective (which might include families, civil society organisations, firms, territorially based groups such as the French or the Europeans, the international community) provides fixed points of reference to judge responsibility and action against. All views of responsibility are not equally valid and the SPM does offer us a way to judge between them, by referring to contemporary discourse, norms and shared understandings within collectives. But, unlike in the communitarian view, the practices of collectives which we use to judge responsibilities against are also themselves open to question and change. There is no assumption made that current social practices are inherently valuable or have

embedded ethics that are consistent with human flourishing. Young (2006: 120) identifies the tendency within liberalism to see the 'background conditions' of social structures as fair, or at least morally acceptable, with responsibility only arising when these background conditions are deviated from. This reflects the underlying belief in a 'harmony of interests' or naturally well-ordered world I discussed in Chapter 2. In fact, '[m]ost of us contribute to a greater or lesser degree to the production and reproduction of structural injustice precisely because we follow the accepted and expected rules and conventions of the communities and institutions in which we act' (Young, 2006: 120). Examples of the accepted norms that Young sees as contributing to sweatshop injustice are the fashion system, the trend towards firms spending more on advertising that on pay and working conditions, and the high levels of unemployment in the areas where sweatshops abound, which mean that there are always spare labourers who are willing to accept employment in appalling conditions. The SPM requires that existing practices, norms and roles are challenged rather than reified, with responsibility being extended to cover all social behaviour rather than just that judged to be deviant.

Responsibility for deviance is associated with blame and guilt, and is therefore something we try to avoid. Such ascriptions of responsibility promote only defensiveness or scapegoating rather than changes in behaviour. But extending responsibility to encompass all of our behaviour does not mean extending blame to everyone, or casting us all as sinners: '[t]he point is not to blame, punish, or seek redress from those who did it, but rather to enjoin those who participate by their actions in the process of collective action to change it' (Young, 2006: 122). Responsibility is a positive concept – to be afforded the status of responsible agent is something to be desired. As mentioned in section 6.3.1, responsibility can be forward looking as well as backward looking, and prospective responsibility seems to offer many more possibilities for progress than retrospective. It is less prescriptive than *ex post* responsibility, which focuses on specific acts, because *ex ante* responsibility is concerned with ongoing practices and bringing about certain states of affairs. The responsible agent, within her social context, has a great deal of scope to design her

responses to circumstances for which she is held responsible. Our responsibilities as consumers of clothing products may be discharged via campaigning, boycotting certain products or firms, spreading information, instigating public debate, donating money, persuading firms to change their practices, supporting poor workers and so on. Each actor's social roles, interests and resources will vary – some will have celebrity power to gain media attention, some will have financial power to donate money, some will have persuasive power to change minds, some will have business acumen to offer alternatives etc - so their responses *should* vary. The range of acceptable variance will be limited by the collective, as actors hold each other accountable for their choices in discharging responsibilities.

6.4.1.3 Expansion of the Possibilities for Justice

Once we acknowledge that responsibility is not an objective property to be discovered, and loosen its association with blame, we can see that responsibility can be *created* for situations which trouble us. Sometimes no-one is to blame for harm. Situations which many feel to be ethically unacceptable do not always result from the failure of individuals or institutions to obey the law or respect each others' rights, or from malicious intent. They can be the unintended consequence of multiple unconnected actions, all of which were morally acceptable according to dominant social codes – as Young's example of sweatshops shows. The SPM shows us that new responsibilities can arise in response to new harms, and explains the method by which they do so. It encourages the assumption of responsibility by actors – taking responsibility instead of waiting for it to be given – and gives a role to ethical imagination, allowing for new ethical practices such as corporate social responsibility, discussed in detail in Chapter 7, or humanitarian intervention to be created as norms and shared understandings about social roles (of firms and of sovereign states, in the examples here) develop.

The scope of harm is also opened up by the SPM. Liberalism focuses on deviant and illegal acts, so much of the debate about responsibility in international relations concerns acts of violence or atrocity against individuals. Seeing responsibility as part of a broader pattern of social interactions enables us to ask what our responsibilities might be for economic harm resulting from the normal workings of the market, or for harms of omission – to think about our ethical impact on the world more holistically.

Finally, the potential to deal with harm is increased by the social practice model because it takes power into account when examining the allocation of responsibility. Power (political, social and economic) is an inevitable component of the practice, fully acknowledged by the SPM (particularly in the work of Smiley (1992)), but the model can also show how power can be used constructively. The ideational or material resources an actor possesses can help to determine the responsibility it is ascribed by the collective, with powerful agents pressed to bear more responsibility. The inclusion of material resources is important as it emphasises the fact that to properly perform the role of responsible agent, we are likely to need material as well as discursive status: poverty can limit ethical agency by denying to the actor a range of possibilities to decide between. To use Young's sweatshop example again, it would be unfair to hold the people who volunteer to work in sweatshops responsible for supporting the system if such work was the only option open to them to generate an income. The greater our wealth, the greater are our opportunities to choose to act ethically. In terms of international relations and political power, we can see the attempt to generate new norms of resource responsibility (or, in the case of Great Powers, to revive old ones – see Brown (2004b)) in claims that the US or the Permanent Members of the Security Council have greater obligations to enforce peace, security or human rights norms than less powerful states.

In Chapter 3, I argued that the cosmopolitan liberal conception of responsibility both limits the scope of responsibility and serves the interests of the powerful. I used the work of Schmitt and Polanyi to explain how the workings of the free market can be used to disguise political interests, destroy society and so liberate powerful

individuals from any sense of responsibility for the suffering which results from policies promoting 'freedom'. I also criticized the rights model of responsibility central to liberalism and cosmopolitanism, as it lacks universal assent and cannot generate the obligations necessary to achieve its goals. Cosmopolitan international law has shifted responsibility for individual welfare from the sovereign state to an international institutional regime, but that regime is far from arriving at a common view of what its responsibilities are, let alone discharging them. Major human rights abuses are taking place in the Darfur region of Sudan as I write – abuses which have been identified as genocide by the US – yet the international community cannot agree who (if anyone) has the responsibility to halt these abuses. The supposedly universal standards on which the system is founded are of little help in determining where responsibility lies in times of crisis. I would add here that the rights model of responsibility seems very limited compared to the social practice model. Rights act only as side constraints on self-interested behaviour, and the rights model encourages agents to view themselves as recipients of justice rather than bearers of responsibility for bringing about justice (a Kantian version of this criticism is also made by O'Neill, 1996). Rights talk tends to be self-focused, legally phrased and about fixed entitlements; responsibility as a social practice is other-focused, locates responsibility at the centre of social life and encourages ethical entrepreneurship and imagination – a distinction I discuss again in Chapter 8.

6.4.2 Challenges to the Social Practice Model

The social practice model of responsibility refutes many assumptions within traditional moral philosophy and political theory. It sees responsibility as formed within relationships rather than as an objective quality of an actor which can be measured and judged. It also denies that free will or volition, conventionally understood, is necessary to responsibility. The key challenges to the SPM are likely to concern its questioning of the existence of a universal moral code, a neutral or external position from which to judge responsibility and a naturally occurring balance

between responsibility and harm. I argue below that the SPM can respond to each of the challenges likely to be made to it, beginning with the criticism that the model is just a version of relativism.

6.4.2.1 Rejection of Objective or Metaphysical Conception of Responsibility

This objection to the SPM concerns the status of ethics in general. Cosmopolitan liberalism argues that there are universal standards of normative judgement, founded on the innate value of the individual, so by implication there are absolute answers to questions of responsibility. The cosmopolitan is able to assert confidently that we are all in part responsible for every other human being (in the sense of having a duty to take their rights into account when we act) by virtue of our shared humanity. The SPM can offer no such universal claims. If responsibility is discursively created within numerous social practices rather than founded on claims to moral truth, it follows that conceptions of responsibility will vary within and between these practices. There will be disagreement over what our responsibilities are in the same way that there are cross-practice disagreements over which moral codes or religious teachings we should follow. There is also, under the SPM, no external standpoint from which to judge whether someone is responsible: the judge is always in a relationship to the judged and it is not possible to critique standards of holding responsible from the outside of the practices they arise within.

This lack of objectivity and universality does mean that we cannot categorically label the actions of others rights or wrong. But no theorist that I am aware of in any theoretical tradition has managed to find a moral code or value that all people in all cultures at all times could agree was universally valid and objective. Wishing for such security (and criticising those models which dispense with it) cannot bring it about, and asserting universal values in the face of disagreement seems to hamper rather than strengthen universalist ethics.

The lack of objectivity does not indicate a relativist or subjectivist position, with no grounds on which to compare or criticise practices of responsibility. The social practice model assumes that our values are formed in practice with others, and that we will actively debate ethical standards, consider the consistency of values across social practices that we participate in or roles that we act out, try to understand alternative viewpoints and seek to persuade others of our points of view. It is persuasion or influence (along with social power) which will determine which standards are accepted rather than conformity to an external moral standard. Given, this does not allow us to make easy decisions when we judge that responsibilities which we might regard as particularly basic and important (such as the responsibility of a state not to massacre its citizens) are not being properly discharged. It is hard to justify violent interference in the affairs of others (for instance, humanitarian intervention) on this model, but not impossible. The collectives in which we create responsibility are not necessarily territorially bounded, and there is no basis for any one culture to claim precedence in defining responsibility within any given territory. All of the practices that take place upon the territory have some claim to ethical significance, so the rejection of certain standards of responsibility by a government or other territorial power is not the end of the discussion. Also, through technology and globalization, national boundaries are losing their ethical significance, and one can make an argument that there is a nascent global ethical discourse, seen in activities such as the negotiation of the Rome Statute and the Responsibility to Protect doctrine. There may be common (though not objective) standards of individual and state responsibility in international relations emerging through such projects. If there are not, then at least we can ask whether those who we judge to be suffering agree with our assessment and would welcome our action.

Another aspect of this challenge is the complaint that the SPM takes a consequentialist view of responsibility, holding actors responsible because it is useful to do so rather than because it is correct. This seems to empty the idea of responsible agency of any content, as we are held responsible on the basis of some greater good instead of on the basis of something we have done or omitted to do. This is an

understandable concern, but impossible to satisfy. There is no metaphysical quality of being responsible: we are only responsible in practice. Of course responsibility works better to manage social life if actors feel that they deserve the praise or blame that they receive, but this feeling of desert comes from the correspondence of a particular instance of holding responsible to the larger practice rather than correspondence to a truth about the actor.

6.4.2.2 Rejection of Zero Sum Model of Responsibility

'"I suffer: someone must be to blame for it" – thus speaks every sickly sheep' (Nietzsche, 1887, III section 15, quoted in Williams, 2003: 440). Nietzsche is criticising here the idea that we can find a responsible party for all ills. Yet the view that responsibility is equal to harm is understandably popular. The assumed harmony of interests underlying liberalism suggests a belief in what Lerner (1980) calls a 'Just World'. Lerner's work suggests that we are biased towards believing that people are to blame for their misfortunes and deserve credit for their successes, and that the moral order is in harmony with the natural order. This 'moral accounting' view of the world protects those who assign blame 'from the possibility that wrong can randomly and arbitrarily enter into our world.' (Williams, 2003: 440). The SPM challenges this position as it recognises that there is no guarantee that all harms will be covered by practices of responsibility and no natural moral equilibrium. Causal contributions cannot be adequately established except for very simple action-outcome chains, if then, and harms themselves are constructed and experienced socially, so there is no reason to think that sufficient responsibility can be discovered to alleviate all suffering.

Yet the SPM is somewhat more optimistic on this score than it may initially appear. It recognises that responsibility will not naturally be equal to suffering or harm – but does not rule out (and could even encourage) the creation of responsibility much greater than harm. It is theoretically possible to have a surplus not just a deficit of

responsibility (even though we appear to have something of a deficit at present). The model also, by questioning the extent to which we can find the causes of actions – in the actions of volitional individuals or at all – and by rejecting the automatic connection of responsibility with blame, can support actors *taking* responsibility in areas where it is lacking. Garrath Williams notes that indeterminacy (as well as the political and moral considerations identified by Smiley) intervenes between intentions, acts and consequences, so '[p]recisely *because* the result of acts or omissions really is contingent – without necessary relation to the 'will' behind the deed – we need to *respond to,* and *for,* what we have helped to bring about'. Responsibility is expanded beyond harm directly caused, to include taking responsibility for those situations or outcomes we are implicated in or connected to.

All this is not to suggest that tragic situations cannot occur. Responsibilities are not objective and may not be co-ordinated, so can clash. Sometimes there is no right answer to a moral dilemma – any way of acting would be wrong or irresponsible, according to some practice that you are engaged in, or would result in suffering. Frost (2003b: 482) describes actors facing these dilemmas as in a 'lose-lose' predicament, and gives the example of a battlefield meeting of brothers fighting for opposing armies, responsible to their military codes, the causes they believe in and each other as brothers. There is no action either could take which would fulfil all of his responsibilities, but no clear way to decide between them. Frost sees the concept of an ethical *agon* (a duel or competition) between ethical choices as at the heart of our notion of tragedy, between which no compromise is possible as each has a valid claim on the actor. Frost's work concurs with the view that our responsibilities do not necessarily fit into some overall ethical architecture, but even here, there is some hope of progress. A study of such clashes between the ethics of different practices can prompt us to reassess the arrangements which gave rise to the tragic dilemma – to begin a process of what Catherine Lu (2004: 507) calls 'moral regeneration'. Responsibility can be reassessed, and, because it has no metaphysical properties, it can be recreated within practices to better enable social life.

6.5 Conclusion

The social practice model is imprecise and indeterminate. Studying the way that responsibility arises in a project such as this cannot tell us what our responsibilities are – only participation in specific practices can define responsibilities and standards for their discharge. Responsibility on this view is complicated, contextual and inter-subjective. It is located neither in the individual nor in the community, but in the social interactions of diverse actors. That presents some difficulties when theorising responsibility – it is hard to say anything concrete about the concept, as actual responsibilities differ in different contexts – but the social practice model is the most convincing way to explain how responsibility actually works. It seems to fit with how we behave across very different social groups: discursively identifying each other as agents, holding ourselves and others accountable according to shared, evolving social norms, and seeking status within our practices by showing others that we can be trusted to discharge the responsibilities ascribed to, or assumed by, us in our various roles and actions.

In the following chapter, I explore who the 'we' I have been referring to might be. Once agency is seen to arise socially rather than being the property of individuals, and the sovereignty of the individual herself is called into question, the discourse of responsibility opens up to include a new range of actors who potentially have ethical significance: collective actors, or formal and informal groups.

CHAPTER 7: COLLECTIVE RESPONSIBILITY

My argument so far has concentrated on individual agency and responsibility – the limits of a liberal individualist conception of agency and the elaboration of a social practice model of responsibility which explains how responsibility works through the individual being held accountable by the collective as if she was an autonomous agent, despite agency being inherently social. Yet everyday ascriptions of responsibility often concern groups - we speak as if institutions such as the UN and its member states, firms and NGOs are moral agents. The US and UK as collective, institutional actors are currently held responsible by many observers for the suffering experienced by Iraqis during the recent invasion. The UN is frequently cited as responsible for acting to prevent atrocity in the Darfur region of Sudan. Multinational corporations like Gap and Nike are held responsible for the welfare of the labourers who manufacture their garments. Al Qa'eda is blamed for acts of terrorism and Oxfam is praised for raising awareness about global poverty. We also ascribe agency to informal bodies such as nations or ethnic groups – the Hutus in the Rwandan genocide, the Serbs in the conflicts in Bosnia and Kosovo, the Germans in the Second World War – and hold them responsible for harm, and we call on the international community to alleviate poverty and global inequality. Most distant of all from the concept of the liberal individual as the archetypal agent, practices such as capitalism, nationalism and war are also blamed for the suffering that results from their exercise.

A prodigious amount of work on collective responsibility has been undertaken in political theory and International Relations recently, and I cannot hope to do justice to its findings in one chapter. My aim therefore is to consider the implications of the social practice model for the idea of collective responsibility, before discussing examples of the ascription of responsibility to particular groups. I will use the trend towards Corporate Social Responsibility (CSR) to demonstrate that conceptions of responsibility, in this case corporate responsibility, are evolving rather than static. I will then spend some time examining the responsibility of informal groups and societal practices, using the case study of the violence which accompanied the break-

up of the former Yugoslavia, to outline which agents may feasibly be held responsible for the resultant harm, and the benefits of doing so. CSR is a case in which a broad range of actors – the media, NGOs, publics, governments, international institutions and firms themselves – have participated in the discourse of responsibility, and the voluntary assumption of obligations has been accepted by many as a progressive way to promote the public good. In the case of informal institutions such as ethnic groups, the discourse has been much more limited. Academics have examined the issue, and the language of responsibility is used with reference to these groups in everyday discourse, but little has been done to confront the responsibility of informal institutions by other actors in international relations. I suggest that this is a mistake, and that acknowledging the role that groups play in the life of individuals is imperative to generating a more inclusive conception of responsibility. I do not attempt to define precisely under what circumstances certain groups should be held responsible because there is no external standard of 'holding responsible' to which I could refer. The responsibility of groups, as with the responsibility of individuals, is contextual and arises as individuals interact rather than being dictated from an Archimedean point. However, I believe that the importance of groups to our ethical life can be established in general terms, and I conclude by arguing that acknowledging groups as actors within the practice of responsibility opens up opportunities to alleviate harm that individuals alone could not hope to prevent.

7.1 Agency & Responsibility beyond the Individual

The subject of collective responsibility is enjoying something of a renaissance in International Relations at present (for a selection of recent thinking in this area see Erskine (2003)). Work has been undertaken to ascertain whether and how groups can be held responsible for harm, and the debate has focused on the characteristics of groups that might make them fit to be held responsible, and on how responsibility should be distributed across the members of a group.

Liberal individualism, as previously discussed, sees responsibility as residing with individuals, and rejects the idea that groups can be responsible on either methodological or normative grounds. Methodological individualists argue that agency is individual and that actions supposedly taken by groups can be disaggregated into the actions of individuals (who should be held individually responsible for them). Responsibility, for individualists, is necessarily linked to agency and intentionality, and they argue that groups cannot function as agents in themselves, and certainly cannot act intentionally. H. D. Lewis (1948), J. W. N. Watkins (1957), Anthony Quinton (1975), J. Angelo Corlett (2001) and Jan Narveson (2002) take this position, seeing intentional agency and voluntariness as essentially properties of individuals and therefore individuals as the site of responsibility: 'The basic bearer of responsibility is individuals, because that is all there is – nothing else can literally be the bearer of full responsibility' (Narveson, 2002: 179). Individualists such as H. D. Lewis (1948) and Steven Sverdlik (1987) also object to collective responsibility for normative reasons. They claim that to hold groups responsible is not fair on those individual group members who did not contribute directly to harm, as they associate responsibility with blame. On the other side of the coin, liberal international lawyers sometimes oppose collective responsibility as it dilutes individual responsibility or allows individuals to evade obligations.

Recent work has challenged the methodological individualist position by identifying agential characteristics in groups. Toni Erskine (2003) argues that the key attribute necessary for moral agency is deliberative capacity, or the ability to access and process information about causes of action and their likely consequences, then act on the basis of this deliberation. As long as institutions have this capacity, they can be regarded alongside individuals as having moral agency, or being 'vulnerable to the ascription of duties and the apportioning of moral praise and blame in the context of specific actions' (Erskine, 2003: 6). Erskine uses Peter French (1984) to discuss collective agency. French differentiates between an aggregate collectivity, which is effectively just a sum of its constituent parts, for instance a crowd or a mob, and a conglomerate collectivity. This type of group is more than a sum of its parts: it has an

identity and capacities separate to those of its members and its actions cannot be disaggregated into the actions of the individuals who constitute it. French sees the conglomerate collectivity as having 'internal organizations and/ or decision procedures', as well as a set of rigorous and enforced standards of conduct for its members and a set of defined roles which have organizational power attached to them (French, 1984: 13-14). These features of conglomerates make them capable of purposive action and therefore independent moral agency. French names 'the Democratic Party, the Congress, the Rolling Green Country Club, the faculty of Yale University, the Gulf Oil Corporation, the Honeywell Corporation, the U.S. Army [and] the Red Cross' (French, 1984: 13) as examples of conglomerate collectivities. Erskine adds to French's work by outlining the following characteristics that a institution must display to be considered as a candidate for moral agency: 'an identity that is more than the sum of its constituent parts and, therefore, does not rely on a determinate membership; a decision making structure; an identity over time; and a conception of itself as a unit' (Erskine, 2003: 24). She adds states, transnational corporations, transnational NGOs, the IRA, the PLO, the UN and the Catholic Church to French's examples of the type of organizations which qualify as conglomerate collectivities. Erskine notes that institutions can have more sophisticated capacities for information gathering and processing, deliberation and action than individuals, and therefore may be able to bear heavier burdens in terms of moral duties than their members.

This approach to moral agency is enterprising and important. It identifies the features of groups which lead us to regard them as capable of taking action, and rejects the liberal notion that agency can only be a property of individuals possessed of a 'free will' and intentionality. However, it does this by showing how groups can be analogous to individuals rather than by questioning the assumption of individual agency itself. The social practice model takes the challenge to methodological individualism further: it rejects the idea that we can disaggregate the actions which lead to harm and trace all harm back to intentional or purposive action and questions the ontological distinction between individual and group; agent and structure.

That agency is not restricted to individuals, and is in fact inherently collective, is one of the most critical implications of the SPM. Individual agency is a story told for social reasons: to enable and co-ordinate collective life by communicating our expectations of each other and thereby causally affecting each others' actions. There is nothing here to suggest that individual agency is the only story which can be told, and, as mentioned above, the language of agency and responsibility is often used to refer to groups. The SPM sees that collective agents can possess agency in the same was as individual agents: the status of agent, and the expectations of responsibility that accompany it, are discursively created through voluntaristic discourse. Members of groups leverage their own agency by acting together with others, sometimes through formal or conglomerate institutions, and sometimes in informal aggregates.

The second aspect of the collective responsibility debate concerns the correct distribution of responsibility. If a group is held responsible, should responsibility be distributed within the group, and if so how? Is it meaningful to talk about a group being responsible if we do not also regard its individual members as liable? Does responsibility differ between different members according to their causal contribution to harm? Joel Feinberg (1968) argues that group members can only be held collectively responsible if they contributed to harm or share a fault with those who caused harm (meaning that their lack of contribution to the harm was accidental rather than intentional), but is willing to admit that responsibility can exist at the group level in these cases. Larry May (1992: 37-40) distinguishes between collective and shared responsibility, arguing that: '[w]hen a group of people shares responsibility for a harm, responsibility distributes to each member of the group. When a group is collectively responsible for a harm, the group as such is responsible, but this does not mean that all, or even any, of the members are individually responsible for the harm' (1992: 38). This type of distinction is rejected by the SPM, as it suggests that the group is ontologically separable from its members. The theory of agency as sociality sees that agency is both derived from the collective, and often exercised collectively. There is no such thing as the really existing group, just as there

is no such thing as the really existing structure: both are the products of the inter-subjective interaction of (socially constructed) individuals. The model therefore sees responsibility within groups as shared, which means, according to Young, that each member of a group has 'a personal responsibility for outcomes or the risks of harmful outcomes, produced by a group of persons. Each is personally responsible for outcomes in a partial way, since he or she alone does not produce the outcomes; the specific part that each plays in producing the outcome cannot be isolated and identified, however, and thus the responsibility is essentially shared' (Young, 2006: 122). Responsibility is personal, rather than individual, as it arises from our participation in social life rather than our ontological characteristics as agents.

By opening up the discussion of responsibility we can respond to some of the criticisms of the cosmopolitan liberal conceptions of agency and responsibility, which see individuals as agents and responsibility as discharged through a legally enforced system of rights. This latter view concentrates on the relationship between the individual and the state, and on restraining the activities of the state, so overlooks our practice of ascribing responsibility to both formal and informal groups. It also focuses our attention on the small number of people who can be proved to have broken the law and caused suffering, instead of asking everyone who is connected to a harm to consider their contribution to it. The social practice model incorporates a wider conception of agency, plus it allows us to bring considerations of the facilitating conditions of harm into the discourse by dismissing direct and demonstrable causal connection as a necessary condition of responsibility.

7.2 Formal Organisations

If collective responsibility is seen as possible at all, it tends to be seen as a property of formal institutions. These institutions have decision-making structures, well-defined roles for their members, internal standards of conduct which discipline member behaviour, and identities which are both separate to the identities of their members

and persist over time. These characteristics make them analogous to sovereign individuals, as they suggest that formal institutions such as the Democratic Party, Microsoft and the Catholic Church can form intentions and pursue courses of action which are more than the sum of the intentions and actions of their members (see Pettit, 2001: 106-114 for an explanation of how this is possible). In previous chapters, however, I have argued that the appearance of sovereignty or freedom of the individual is actually a measure of the susceptibility of individuals to each other. Formal organisations are analogous to individuals in this way too, making them good candidates for agency and responsibility under the social practice model: they are susceptible to expectations, constrained by roles and practices, and act for reasons of status or reputation. English School and international society theorists (see, for instance, Bull (1995); Wheeler (2000)), along with constructivists (such as Finnemore & Sikkink (1998); Wendt (1999); Risse et al (1999)), describe how states act according to these pressures, and below I argue that firms are also susceptible to these concerns. I outline how corporate behaviour through the 1990s altered in line with changing expectations of the role of the firm in society.

Much recent work in this area has concentrated on formal organisations such as the UN and its member states, and asked whether they can be morally responsible for harm in the international sphere (for instance, Erskine (2003); Erskine (2004); Brown (2004b)). This takes us beyond a limited consideration of individuals, but there are other actors who also, and increasingly, impact on international relations. NGOs have begun to receive attention as actors in their own right, and their influence on the field is pronounced. The number of registered international NGOs grew through the 1990s to reach more than 37,000 by 2000 (UN Non-Governmental Liaison Service with Gretchen Sidhu, 2003: viii), many claiming to act as a kind of 'global conscience'. Organisations such as the International Committee of the Red Cross (ICRC), Médecins Sans Frontières (MSF) and Oxfam work directly in the field to relieve suffering, and also lobby governments and international organisations on behalf of those they treat to promote the observance of human rights treaties and humanitarian law. Organisations such as Human Rights Watch and Amnesty monitor the behaviour

of governments and businesses and apply pressure by gaining media coverage of alleged human rights abuses. NGOs like these have had a series of notable effects on the international scene: The International Campaign to Ban Land Mines, a coalition of more than 1,400 NGOs in 90 states that was awarded the Nobel Peace Prize in 1998, was instrumental in the Mine Ban Treaty of 1997. The Jubilee 2000 Campaign for developing world debt relief collected 25 million signatures across the world and influenced Western governments and international financial institutions so heavily that $30bn in debt was cancelled. The Coalition for an International Criminal Court was in large part responsible for the success of the 1998 Rome Conference and Treaty that established the International Criminal Court. Due to their success in galvanizing public opinion and applying pressure, human rights groups have won a leading role in influencing many inter-governmental organisation activities. They help to design and often to staff the human rights operations that now accompany UN missions, and monitor the implementation of peace agreements or UN Security Council resolutions in the field. Of course the term NGO can also cover criminal and terrorist groups, and these groups have had rather different effects on international relations, most notably, the actions of Al Qa'eda on September 11th 2001 instigated a war between 'terror' and the most powerful military in the world.

NGOs (of the Oxfam and Amnesty variety) tend to hold others to account rather than being the subject of ascriptions of responsibility themselves. Many support the promotion of individual criminal responsibility (the effects of which were criticised in Chapters 3 and 4), however NGOs have also recognised the importance of commercial actors to individual welfare. Prior to the 1990s, multinational corporations asserted that their correct role in global trade was to stay neutral and avoid getting involved in the politics of the regimes of the states they were operating within, and governments tended to support this. Western corporations sourced cheap raw materials and labour from states ruled by unpleasant regimes, with no real criticism from the governments who collected tax on the corporations' profits. In line with the liberal concentration on the relationship of the individual to her state, and the concept of the public/private divide, firms were able to avoid difficult questions about

their social impact at home and abroad. The section below catalogues the changing power, role and responsibility of firms in the last fifteen years, and shows, firstly, that the effects of firms on individual lives necessitate a role for them in any discussion of responsibility, and secondly, that conceptions of responsibility change, and specific new responsibilities are created, eliciting responses from agents (in this case firms) who are eager to retain their social status).

7.2.1 Business Power and Corporate Social Responsibility

Firms are increasingly consequential actors in international relations, and conceptions of agency and responsibility which focus on the individual and her relationship to the state risk overlooking the impact of business in both domestic and international arenas. To give a broad indication of the size of these firms, in 2005, the market capitalization (i.e. stock market value) of each of the top ten companies in the world exceeded the gross domestic product of 157 of the UN's 191 member states, including Hong Kong, Thailand, Malaysia, Israel and Singapore. Each of the top two companies on this measure – General Electric and ExxonMobil – were larger than 175 UN member states, including China, Turkey, Saudi Arabia and Indonesia. Looking only at revenue rather than market capitalization, the two largest corporations by turnover – Wal-Mart Stores and BP – each produced more revenue in 2005 than 166 member states produced as GDP, including Denmark, South Africa and Argentina (Financial Times Global 500 website, 2005, International Monetary Fund website, 2006; Fortune Global 500 website, 2005). These corporations have a significant effect on many aspects of many lives. Wal-Mart Stores, for example, employs over a million people in the US, dominates a network of 61,000 US suppliers, supporting a further three million supplier jobs, and has enormous impact on product pricing, labour practices and the communities it operates within (White, 2005a; Wal-Mart Stores website, 2006). The size and power of these firms is unprecedented, and as such they must be taken into account alongside states, let alone individuals, when considering agency in international relations.

Firms are not just increasing in power domestically. They have phenomenal transnational influence and interests. A relatively low percentage of the assets (32.4%), sales (16.7%) and employees (23.5%) of Wal-Mart Stores, the world's largest corporation in terms of revenue, are foreign (defined as residing or taking place outside the state in which the firm's headquarters are located), compared to their rivals in the Fortune Global 500. 79.3% of the assets of BP, the world's second largest corporation, are foreign, along with 81% of its sales and 81.3% of its employees. The story is similar with Exxon at number three: 64% of its assets are foreign; 70.3% of its sales and 65.1% of its employees. The Royal Dutch/ Shell Group is at number 4, and 64.9% of its assets are foreign; 63.7% of its sales and 62.4% of its employees. Of the top ten largest corporations in the world, DaimlerChrysler has the smallest percentage of foreign assets at 18.2%, and Wal-Mart has the smallest percentage of foreign sales at 16.7% and of foreign employees at 23.5%. (Fortune Global 500 website, 2005; Anheier, Kaldor et al, 2005/06: 318-322). Given the size of these firms, even percentage figures of under 25% make for tremendous global influence via their decisions over where to invest, where to manufacture or employ service personnel and where and at what price to sell their goods and services.

Concurrent with the growth of business power has been the birth of the concept of 'Corporate Social Responsibility', defined by the World Business Council for Sustainable Development (WBCSD) as 'business's commitment to contribute to sustainable economic development, working with employees, their families, the local community, and society at large to improve their quality of life' (WBCSD website, 2006). CSR requires that firms attempt not just to maximize profit, but also to care for the environment and promote social justice. Profit, People and Planet are talked about as a firm's new 'triple bottom line'. The principle behind the movement is that firms are not just accountable to their shareholders, but to all of their 'stakeholders', or the people and environments that they affect. The stakeholders of a business include its customers, suppliers, employees, the communities in which the firm

operates and the physical environment it affects, as well as its shareholders. The changes that firms make to display good corporate citizenship (a concept which has been developed by the CSR movement to encourage the view that firms have a social as well as profit-driven role) are for the most part voluntary: CSR seeks to control firms through public discourse and expectation rather than through formal regulatory mechanisms. This movement marks a fundamental reassessment of the role of the firm in social life and is a clear example of the social practice model of responsibility in action. As the size and impact of corporations has changed, so have societal views on their roles and responsibilities. The movement has been growing since the 1960s, but really took off in the 1990s, as people became disillusioned with the 'Greed is Good' corporate philosophy which seemed to lead to a decline in welfare for many of the victims of corporate raiders and capricious investors, and the attitudes and behaviour of both firms and publics towards corporate responsibility can be seen to have changed substantially. This change is not linear or teleological: the 1980s desire for profit at all costs was itself significantly different from the 'philanthropic capitalist' approach taken to business in the nineteenth century by the likes of Titus Salt and George Cadbury.

Changes in public opinion and behaviour can be observed in media, attitude and buying studies. There is an high and growing level of coverage of corporate ethics and responsibility in the American, European and Asian media (SustainAbility website, 2006). Media interest in Corporate Social Responsibility increased by 192% in the year immediately after the collapse of Enron (Echo Research analysing press in the US, UK, Germany, France, South Africa and China, September 2002, quoted on Business in the Community website, 2006). 35% of Americans thought, in 1999, that companies should focus on trying to exceed lawful requirements, set higher ethical standards and build a better society for all, with 90% agreeing that large companies should do more than just focus on making a profit (MORI website, 2006a). 80% of British adults believe that large companies have a moral responsibility to society, and 44% (up from 28% in 1998) say that the social responsibility of a firm is very important when they decide whether to buy a product or service (MORI website,

2006b). Attitudes seem to be similar outside the US and UK: 72% of those surveyed in 21 countries in 2005 believed that companies were completely responsible for not harming the environment, 71% thought they were completely responsible for ensuring a responsible supply chain, 47% for increasing global economic stability, 44% for helping to reduce the rich-poor divide, 43% for reducing human rights abuses, and 41% each for solving social problems and preventing the spread of disease/ AIDS (GlobeScan website, 2006). 78% of employees would rather work for an ethical and reputable company than receive a higher salary according to a 2001 study by The Cherenson Group (CSR Europe website, 2006).

Opinion on ethical purchasing is also clear: 66% of respondents from 22 countries in a global 2003 survey said that they would pay more for products that were socially and environmentally friendly, with figures tending to be even higher in advanced Western states (2003 CSM Monitor, cited in Anheier, Kaldor et al, 2005: 466). This opinion translates into consumer spending decisions. The Fair Trade Federation, an American association of fair trade wholesalers, retailers, and producers whose members are, according to its website, 'committed to providing fair wages and good employment opportunities to economically disadvantaged artisans and farmers worldwide', reported that the total retail value of fair trade products in North America in 2005 was predicted to reach $358.9m, from $125.2m in 2001 (Fair Trade Foundation website, 2006). In the UK, the Fairtrade Foundation – set up to provide certification to products sourced from producers in developing countries who receive a 'fair' financial return, i.e. a return which 'covers the cost of sustainable production and living but also gives a premium to [producers] to allow them to invest in business development, plus social or environmental projects' – reported that the total UK retail value of Fairtrade products has leapt from £16.7m in 1998 to £195m in 2005 (cited in 'How Consumer Power Sparked a Fair Trade Revolution on our High Streets' *The Guardian*, March 8th, 2006).

Public opinion has also been channelled into NGO activity. By the mid 1990s, major campaigns by Amnesty International in the UK and Human Rights Watch in the US

were underway to make human rights the 'business of business' and persuade corporations to assume economic and social responsibilities commensurate with their power and influence, especially in the field of human rights. These campaigns, and the consumer pressure which accompanied them, resulted in firms such as Gap, Nike, Reebok and Levi Strauss drastically improving the working conditions in their overseas factories and incorporating internationally recognised human rights standards into their business practices. Pressure was also exerted on oil firms, with high profile campaigns publicising the activities of British Petroleum in Colombia, Mobil Oil in Indonesia, Total and Unocal in Myanmar and Enron in India, all of which were said to be contributing to serious human rights abuses. In 1993 the Movement for the Survival of the Ogoni People in Nigeria mobilised tens of thousands of people against Shell and succeeded, through innovative use of the internet, in making the situation an international issue. They forced the world's leading oil company to temporarily stop production, though the Nigerian government responded by arresting, imprisoning and sometimes executing Ogoni activists. By the end of the 1990s, a group of multinationals, including Shell, BP-Amoco and the Norwegian state oil company Statoil, announced policies that included a focus on human rights.

Public discourse and NGO activity on corporate responsibility has led to changes in law and to the establishment of international initiatives to promote CSR. Countries including Denmark, France, Norway, the Netherlands, Sweden, Australia and South Africa have all passed laws to make some form of environmental or social reporting mandatory. The UK Government was the first to establish a Minister for CSR. In July 2005, Kofi Annan appointed Professor John G. Ruggie to be Special Representative of the UN Secretary-General on business and human rights, with a mandate which includes identifying and clarifying standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights; and developing materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises. The UN is also pressuring firms to take heed of the triple

bottom line by launching the Global Compact initiative in 2000, which aims to bring firms together with governments, UN agencies, labour and civil society to support global social and environmental principles. The Compact 'seeks to promote responsible corporate citizenship so that business can be part of the solution to the challenges of globalization … [to] help realize the Secretary-General's vision: a more sustainable and inclusive global economy' (UN Global Compact website, 2006a).

Firms have responded to this reassessment of their responsibilities and many have actively assumed self-defined obligations to society. At 29th March 2006, more than 2500 firms from 90 countries had joined the Global Compact. This includes 106 of the world's 500 largest companies (ranked by market capitalization in the Financial Times Global 500) which together employ close to 10 million people, have a market capitalization totalling around $4.9 trillion and account for approximately $3.5 trillion of global revenues (UN Global Compact website, 2006b). More than half of the Global 250 corporations issued corporate responsibility reports in 2005 (Entine, 2006). 94% of company executives surveyed by Ernst & Young in 2002 believed the development of a Corporate Social Responsibility strategy can deliver real business benefits (CSR Europe website, 2006).

While thousands of executives have responded to calls for increased responsibility and assumed obligations on behalf of their businesses, firms who have been most successful in implementing CSR seem to be those who have adopted initiatives which are closely aligned with the firm's identity and resources, supporting the argument made in Chapter 6 in favour of assumed responsibilities. For instance, Unilever, the 59th largest corporation in the world by market capitalisation, selling predominantly food and personal products, works with UNICEF to cut childhood mortality through nutrition and hygiene projects via the Partnership for Child Nutrition; aims to educate 200 million people in India about basic hygiene through the *Lifebuoy* 'Swasthya Chetna' ('Health Awakening') programme; and set up the Marine Stewardship Council with the World Wide Fund for Nature to ensure the long-term sustainability of global fish stocks. These projects are not about philanthropy – they serve business

interests (increasing sales of Unilever products or securing the supply of key raw materials into the future) as well as community interests. Similarly, Ben & Jerry's built a very successful business (bought by Unilever in 2000 for more than $325m) in large part through promoting an ethical brand image, achieved through initiatives such as the 'Caring Dairy' project in Europe which establishes user-friendly guidelines and tools for farmers to bring continuous improvement in the environmental, social and economic aspects of dairy production; through making grants of at least $1.1m per annum to projects which support their values and through sourcing 59% (by value, in 2004) of their ingredients and packaging from suppliers whose values are aligned with theirs, such as creameries who do not use milk from cows treated with Bovine Growth Hormone and carbon-neutral nut suppliers. Finally, Google, the 48th largest corporation in the world by market capitalization in December 2005, after going public the previous August, lists 'You can make money without being evil' as one of their operating principles. They run 'TechnoServe', a scheme to support young entrepreneurs in Africa and Latin America, and PlanetRead which aims to improve literacy in India. These businesses, and many others like them, have assumed responsibilities commensurate with their identities, expertise and material capabilities, and appear to be both benefiting the communities in which they work and the shareholders to whom they are more traditionally accountable – Unilever, for instance, paid 1.6 billion Euros to its investors in 2005. CSR Europe backs up this contention, stating that 68% of the empirical studies published between 1972 and 2000 show a positive relationship between corporate social performance and financial performance. These studies include an analysis in 2000 of 'stakeholder superstars' such as Coca Cola, Proctor & Gamble and Johnson & Johnson, which indicates that companies who consistently try to take their stakeholders (rather than just shareholders) into account outperformed the Standard & Poor 500 by more than twice the average between 1985 and 2000, giving total shareholder returns of 43% versus an average of 19% (CSR Europe website, 2006).

Support for the trend towards Corporate Social Responsibility is far from universal, and I am not making the categorical claim here that it is the right strategy for firms to

pursue. In 2004, Christian Aid, the organisation credited with inspiring much of the debate on CSR, published a report stating that 'CSR is a completely inadequate response to the sometimes devastating impact that multinational companies can have in an ever-more globalized world – and … it is actually used to mask that impact.' (Christian Aid, 2004: 2). Christian Aid therefore supports significantly more stringent regulation of corporate behaviour rather than the current reliance on the voluntary assumption of responsibility. The Economist magazine published a much-quoted and highly controversial survey of CSR, entitled 'The Good Company', in January 2005 that was extremely critical of both the principle of such responsibility (as it argues that a narrow focus on profit is the best way to serve the public interest; that firms are *accountable* to their shareholders alone, even if they should *take into account* the interests of stakeholders when making decisions; and that governments are best placed to structure and intervene in markets in the public interest rather than firms) and of the practice of CSR, asserting that many CSR initiatives fail to promote either public interest or profit. The anti-CSR position is supported (for very different reasons) by academics such as Joel Bakan, author of *The Corporation: The Pathological Pursuit of Profit and Power* (2004) who sees CSR as a way for corporations to disguise their relentless capitalist greed, and Elaine Sternberg, author of *Just Business: Business Ethics in Action* (2000) who argues that firms should respect the property rights of their owners by maximizing long term shareholder value, subject to ordinary decency (e.g. honesty in business dealings) and distributive justice (for instance, promoting employees on merit) rather than engaging in the fashionable practices of CSR.

This dissent shows that the responsibility of firms is the subject of active debate – in political, academic, business and public forums – which supports the conception of responsibility described in Chapter 6. Responsibility is dynamic and evolving rather than static and fixed by universal standards. Firms are increasingly being held responsible for their societal and environmental impacts, and they are responding by taking responsibility both for reporting these impacts and for attempting to change aspects of them. The rise of CSR in Anglo-Saxon countries may also be a response to

the mistaken focus on individualism and the separation of economics and society: Blowfield and Frynas argue that CSR may have been a necessary corrective in the US and UK as these states lack the kind of 'longstanding social contract whereby business has social obligations to employees or wider society' that is found in states across Asia, Africa and continental Europe (2005: 501). Whether or not the rise of CSR can be linked to the poverty of liberal individualism, the facts and figures in this section give a clear example of the creative, discursive practice of responsibility in contemporary international relations.

7.3 Informal Groups

Holding formal groups such as firms responsible accords with the way we use the concept of responsibility and seems both uncontroversial and useful once the requirement of an individual agent is dropped. When we admit that the desire for status and a good reputation seems to motivate organisations as well as individuals, we realise that, through discourse and the communication of expectations, we can utilise the resources of these agents to help confront harms that individuals cannot impact on alone. Yet formal bodies are not the only entities to which responsibility is fixed in everyday discourse. We also ascribe agency to nations or ethnic groups – the Hutus in the Rwandan genocide, the Serbs in the conflicts in Bosnia and Kosovo, the Germans in the Second World War – and hold them responsible for harm. Equally, practices such as nationalism and war are blamed for suffering. In this section I consider the implications of the SPM for the responsibility of informal groups, and the identities and practices within them.

Whereas the enhanced responsibility of firms has become established through contemporary discourse, the responsibility of informal groups has not received as much public or academic attention. Assigning responsibility to these groups is much more challenging as they are in no way analogous to the sovereign individual upon whom our current system is predicated. Informal collectives such as ethnic groups or

'the international community' do not have the formal decision-making structures which make the analogy to individuals possible, nor do they have collective intentions, so most work on collective responsibility rejects the idea that informal groups can be moral agents (and therefore subject to ascriptions of moral responsibility). There is also discomfort at the idea of blame being distributed on the basis of identity rather than action – liberalism relies on the law to manage responsibility, and many commentators are understandably opposed to the idea that courts could find individuals guilty and punish them for outcomes that they had no direct causal contribution to. However, the SPM does not require autonomous, intentional agency, nor does it see responsibility as necessarily linked to law or to blame, so there is room for informal groups to act and to be held responsible.

The groups under discussion here have an identity that is more than the sum of the identities of their constitutive parts and this identity persists over time, at least while the group is still in existence. The groups may be unorganised and uncoordinated, but their membership is not random: all participants are linked by common interest, behaviour or history, and this link forms an aspect of their identity. As members of the groups, participants behave socially, and their actions take significance and gain weight from being performed against the context of the group. Thus, mobs of genocidaires in Rwanda and cross border groups of consumers who buy a particular product can be seen as informal groups, as well as interest, ethnic, national or gender groups. The two types of informal group which have most relevance to the study of responsibility in international relations are ethnic or national groups, and the collective referred to as the 'international community'. These groups may have some kind of formal decision-making institutions or processes available to them, or said to represent them (territorial governments in the case of national and some ethnic groups and the organs of the UN for the international community) but the informal groups themselves still exist and have effects outside these structures. The next section considers the responsibility of informal groups and their constituent identities and practices, using examples from the conflict that accompanied the break-up of the

former Yugoslavia to illustrate the argument. Whether or not it is useful to hold these groups responsible is the subject of section 7.3.2.

7.3.1 Responsibility for Violence in the Former Yugoslavia

Throughout the 1990s, the Republics and Provinces of the former Yugoslavia were engaged in often violent struggles to establish power and independence (see Gow (1997) and Daadler & O'Hanlon (2000) for histories and discussion of the various conflicts). Responsibility for the atrocities which occurred has been the subject of much political, academic and media debate, with the UN Security Council establishing the ICTY in 1993 to hold individuals legally responsible for grave breaches of the Geneva Convention, violations of the laws and customs of war, genocide and crimes against humanity committed during the conflicts. As well as individual responsibility being assigned through international law in the conflicts, some theorists have argued that organisations such as the UN should bear some of the moral burden (see, for instance, Lang (2003a); Gow (1997); Daadler & O'Hanlon (2000)). But what of other actors? Should our debates about responsibility for such violence spread beyond individual politicians, individual soldiers and formal institutions?

Virginia Held (2002) looks at the responsibility of ethnic groups for ethnic conflict. She resists defining the groups too definitively, but explains that they are not just collections of people who support a particular policy, for instance ethnic cleansing. They have an identity and continuity over time and a communal life. She uses May (1992) to argue that groups *do* have moral agency in ethnic conflict as it is attitude as well as action which contributes to harm. Ethnic hatred, the attitude shared by substantial portions of ethic groups who can be held responsible, is morally blameworthy because even though such hatred is rarely against the law (and may even be protected by laws of free speech), it significantly increases the risk that harm will occur as it generates a climate in which such harm is more acceptable. This view accords with the arguments made by Barnes, Pettit and Smiley about status: if

members of a group foster a climate of ethnic hatred, then acts to harm the ethnic other may raise one's status within the group and thereby bolster self-esteem. The group's attitudes alter the environment in which the individual acts. If we share in the creation of such attitudes, then we share in the moral responsibility for the harm that results. Policies of ethnic violence, ethnic cleansing and genocide are only sustained by ethnic hatred, as demonstrated in the case of the former Yugoslavia. Following the dissolution of communism, the institutions which bound Yugoslavia together as a state disappeared, and political elites began to look for new power bases. Lacking organising factors such as trade unions or political parties due to years of communist rule, dormant national identities were mobilised by political leaders in both Serbia and Croatia (it is worth noting here that even though Held regards the Serbs as an ethnic group, and they certainly perceived themselves as such during the conflict, in fact Serbs and Croats share a similar ethnic heritage). These identities both created and reflected nationalist feeling. The leaders were certainly manipulative in their use of identity: Milosevic generated fear among Serbs living in Croatia and Bosnia that they would become a mistreated minority if these territories were allowed to self rule. However, Serbian communities allowed this fear to turn into ethnic hatred and continued to support the government who was generating the messages. Held therefore believes that Serbs as a group should take responsibility for Serbian violence in Bosnia and Kosovo as they were receptive to Milosevic's messages. I would add that Croatians should also be held responsible as they were equally as responsive to Tudjman's ultra-nationalist messages as the Serbs were to Milosevic. If their hate-speech had not found an audience, the political leaders would have stopped using it. The attitudes of the respective communities certainly seem to have allowed and enabled the violence which accompanied the break-up of Yugoslavia. Prior to the conflict, many of its inhabitants thought of themselves as Yugoslavs rather than Serbs, Croats, Bosnians and so on. Intermarriage was frequent – for instance, around 12% of marriages in Bosnia and Serbia and 17% of marriages in Croatia were heterogamous between 1980 and 1982 (Savezni Zavod Statistiki, 1961-1988, Demografska Statistika. Belgrad: SZS. Cited in Botev, 1993) and the populations in general lived in peace under the federative system. Yet through the 1990s nationalist

feeling grew to the point where campaigns of massive ethnic cleansing (including an estimated 700,000 Muslims 'cleansed' from Serb-dominated areas of Bosnia and 800,000 Albanians from Kosovo by the Serbs, and 200,000 Serbs from Krajina by the Croatians) and atrocities including the establishment of detention and rape camps became politically possible.

David Miller (2004) considers in more detail whether and how nations can be collectively responsible. He describes a nation as 'a community of people who share an identity and a public culture, who recognise special obligations to one another and value their continued association, and who aspire to be self governing' (Miller, 2004: 243). They therefore exhibit the characteristics of 'informal groups' outlined above: a nation may include the formal institution of a state (or perhaps more than one) but is not limited to it and can therefore be an agent in and of itself. Miller uses Tony Honoré's (1999) conception of outcome responsibility to consider the responsibility of these groups, which holds an entity responsible for the predictable or reasonably foreseeable consequences of its actions. Outcomes therefore do not have to be intended – just foreseeable under normal circumstances. Miller argues that nations can validly be held responsible if they display the characteristics of either 'like-minded groups' or 'co-operative practices'. Like-minded groups are 'groups who share aims and outlooks in common, and who *recognise* their like-mindedness, so that when individual members act they do so in the light of the support they are receiving from other members of the group' (Miller, 2004: 251). A mob is a good example of this type of group. Individuals seem to experience a contagion effect and behave differently than they would alone. Therefore, for Miller as for Held and May, everyone who contributed to the attitude of the mob can be held responsible for the violence that results, even if only a minority of the group actually behaved in an aggressive way. The norms established and values held by the collective contribute causally to the behaviour of the minority, as they appear to offer social status to those who take action in support of them. Miller gives the example of violence and racism against blacks in the postbellum American South as another case in which the collective has responsibility. The white community are collectively responsible for

the harm to blacks as they all participated in the community and so helped to sustain the climate of opinion which tolerated racism.

Nations also share the characteristics of like-minded groups in so far as they share a common identity and public culture. But before ascribing responsibility, Miller argues we need to be reasonably sure that their collective actions (though political channels or group actions which reflect some element in the national culture) are a reflection of their shared beliefs and values. Where the nation is self-governing and democratic, this reflection can be assumed, thus 'the more open and democratic a political community is, the more justified we are in holding its members responsible for the decisions they make and the policies they follow' but even in an autocracy national responsibility may be justly ascribed (Miller, 2004: 262). In considering Serb responsibility for ethnic cleansing in Kosovo, Miller notes that the Serbian population had no direct control over Milosevic and his armies, but argues that the extent to which Milosevic shared their national values imposed responsibility upon the nation, as did their lack of effort to be united in opposition (given that divides between the opposition parties helped Milosevic to stay in power). However, he also argues, somewhat opaquely, that people cannot be held responsible for beliefs and values that they possess as a result of sustained propaganda rather than the 'normal' processes of socialisation. It is clear from the history of the conflict that the Serbs meet the conditions to be considered as a like-minded group – the growing ethnic hatred displayed by the group certainly allowed the violence, but the place to draw the line between values and attitudes created by propaganda rather than 'normal' socialisation is much less obvious.

Miller and Held both contend that in general it is not possible for members of a national or ethnic group to dissociate themselves from the politics and practices of the group to avoid collective responsibility. For Held, even those who publicly dissociate themselves from group practices almost certainly still benefit from them (for instance postbellum whites in the US benefited from segregation even if they did not support it) and therefore share in the responsibility for the results of the practice. For Miller,

whole nations, including any dissenting minorities who disagree with national policies, can be held responsible even if they are not part of the same like-minded group. This is possible if the nation is a 'co-operative practice' in which individuals gain benefits from membership (such as political participation), substantially share the beliefs and values which constitute the national culture and have a fair opportunity to influence the policies of the group. Effectively, like Held, and similar to Young's position on responsibility as social connection outlined in Chapter 6, Miller is arguing that those who benefit from the community should share the responsibility for any harm it causes. This may seem unjust if we take a liberal, legalistic view of responsibility – that a direct and intended causal contribution must be made to any outcome for which we are to be blamed. The SPM however can allow for people to be responsible in degrees, so those who dissociate themselves from policies that harm may be less liable than those who do not, but no-one who participates in the group is entirely without responsibility. Also, the SPM suggests that while blame may be appropriate to assign retrospectively, all members of the community can be held prospectively responsible, without blame being implied, to reflect on their practices and change their attitudes and policies to prevent harm recurring.

Discussion of the social practice model in Chapter 6 showed that the agency of individuals is both allowed and constrained by the collective. Frost (2003a) outlines how actual or perceived pressure from others within the group can limit agency: if the agent does nothing to advance the values of the practice they are engaged in, for instance the practice of being a good Serb, they risk being ejected from it and thereby having their status removed. Attitudes develop in support of the practice, because the individual finds status within it. The practice of nationalism, and with it ideas of what it meant to be a good Serb or Croat, became a defining feature of the groups in the former Yugoslavia. The morality embedded in this practice was damaging - a point returned to in the discussion of the practices of state sovereignty and war below.

Practices, therefore, create agency and responsibility for the actors within them, but can also be the subject of responsibility. Responsibility is created by being assigned *ex ante* to individuals based on their participation in the practice concerned. Those individuals with roles within families, cultures, professions, nations and so on have responsibilities to those they are positioned in relationship to, defined by the expectations which attach to participants. The SPM, particularly the work of Smiley, is sensitive to the way that power works within these practices to define responsibilities. The ethics which dominate a practice are likely to be those that serve the powerful within the practice, which in turn supports Frost's contention that the embedded ethics of all the different practices we act within are unlikely to be consistent with one another (as power will be distributed differently across groups). There is no guarantee of a moral 'harmony of interests' – as noted in Chapter 5, Frost sees the arguments within and between practices, on who is responsible for what and how best to behave, as the quintessential content of ethics. The lack of an externally given moral architecture provides another good reason to hold groups responsible: the ethics embedded within practice really are just the creation of the collective, and as such the collective must bear responsibility for them. The group is the only actor that can change its ethics: because determining and evaluating moral responsibility is part of political discourse within the collective, so shifts in both expectations and in power can change conceptions of responsibility embedded in social practices. The change in the conception of the social responsibility of firms brought about by the CSR movement (discussed in section 7.2.1 above) provides evidence of the possibilities here.

Linked to practice is identity, for the identity of individuals is intrinsically bound up with their group membership and performance of the practices of the group. As attitudes develop in relation to the social roles we play within practices, over time they become constituents of identity. That identity is important to individual ethical action has been established by (among others) Kristen Monroe (2003), who researched the motivations of 15 Germans and Poles who rescued Jews during the Holocaust. She found that their actions were driven by their identities and their views

of themselves in relation to others, and not by religion or the liberal application of reason as is often assumed. None of the rescuers in Monroe's study seemed to face an agonistic choice between behaviours, even though their actions necessitated them breaking moral rules such as telling the truth. These rescuers did not weigh up pros and cons or risks and rewards of action, and they did not consider the 'objective', external principles of religion or reason. Rather, their identities limited the range of choices they saw as open to them, with the rescuers seeing themselves as acting out of a kind of moral 'sense' rather than making choices. Monroe argues that this sense is developed as agents incorporate ethical principles, through the processes of socialisation and maturation, into their adult identities. Like Barnes, Pettit and Smiley, she regards self-esteem as a basic human need and cites recent work in moral psychology by Colby and Damon (1993) and Blasi (1993& 1995) which suggests that if our behaviour strays too far from our self image or identity, we experience cognitive dissonance which motivates us to bring our behaviour back into line. Of course this process can work both ways. If identities are consistent with violence towards some groups or persons, then it may be more difficult than we currently appreciate for individuals to refrain from harming others, because they are not making a choice to harm, but acting in accordance with their moral sense. As the practice of nationalism developed among Serbs and Croats through the 1990s, national identities were mobilised and radicalised within the groups. On the basis of the arguments made by Monroe, these identities are likely to have brought about behaviour in line with the practice of ethnic hatred, with individuals acting out of a moral sense determined by socialisation into the practices of the group. That this behaviour is seen as acceptable within the groups is evidenced by the enduring support among Croatian nationalists for the actions of, for instance, retired General Mirko Norac and General Ante Gotovina, and Serbian residual support for Slobodan Milosevic and others such as Streten Lukic, all charged by the ICTY on counts of crimes against humanity and violations of the laws and customs of war, with Milosevic also (until his death) standing trial for genocide. If groups are not held responsible for the socialisation which produces violent identities, then responsibility

may be felt nowhere, as the individuals involved are unlikely to be asked to account for their actions, and will feel no incentive to change them.

The other informal group which receives a great deal of attention within international relations, and is assumed in ordinary discourse to have agency, is that labelled the 'international community'. Appeals for the international community to act are frequent, usually when reports surface of atrocities such as the genocide in Rwanda, the ethnic cleansing and genocide in former Yugoslavia and the actions of the Janjaweed militia in Darfur, and those who hold power within the group also see it as having agency: Kofi Annan argued in a 2005 Report that: 'if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations' (Annan, 2005: Paragraph 135). Bill Clinton, in a speech to Rwandans at Kigale airport on 25th March 1998, stated that: '[t]he international community, together with nations in Africa, must bear its share of responsibility for this tragedy as well. We did not act quickly enough after the killing began. We should not have allowed the refugee camps to become safe haven for the killers. We did not immediately call these crimes by their rightful name: genocide'.

The international community usually acts through the formal organs of the United Nations and other inter-governmental associations, but the norms and values generated by the community provide sufficient context for action for the community to be considered as a collective agent in itself. Like national and ethnic groups, the international community does not have a formal decision-making structure, but its members (most often conceived as those states with the resources to assist: predominantly the US and Western European states) do act in the light of others' opinions of them and do to some degree respond to status or reputation pressures. They are also capable of acting as a collective outside the structures of the UN, as with the 'coalitions of the willing' who bombed Kosovo in 1999 and invaded Iraq in 2003 (see Brown (2003b) for discussion of the agency of such coalitions). These coalitions acted after the UN system failed to generate the results desired by the most

powerful members of the community, and their actions have had far-reaching (if somewhat contradictory) effects on international conceptions of responsibility. The action NATO took against Serbian forces in Kosovo in 1999 was not sanctioned by the UN (it was never put to a vote as it was expected that either Russia, China or both would veto UN military interference without permission from the sovereign government in an internal armed conflict) nor was it clearly in accordance with international law, but was justified by the US and the UK as upholding Security Council resolutions on behalf of the international community. This action represented, according to Nicholas Wheeler (2001), a watershed in the development of a new norm or practice of humanitarian intervention. This practice had been developing within the community of states since the beginning of the 1990s (following the intervention of the international community into Iraq to establish 'safe areas' for the Kurdish population), with ideas of responsibility being debated frequently during the fifteen years since that initial intervention. Following the failure of the international community to intervene in the genocide in Rwanda, and its willing intervention in Kosovo, the Canadian government set up the independent International Commission on Intervention and State Sovereignty (ICISS) to try to generate consensus around the principles and process of humanitarian intervention. ICISS Co-Chair Gareth Evans, at the launch of the ICISS report, *The Responsibility to Protect*, explained the main conclusion of the Commission's work as follows: '… sovereign states have a responsibility to protect their own citizens from avoidable catastrophe. However, when they are unable or unwilling to do so, that responsibility must be borne by the broader community of nations'[15].

The actions of the international community through the 1990s demonstrate its agency outside the formal structures of the UN. The action taken by a 'coalition of the willing' in Iraq in 2003 may have reversed this trend, as there has been a profound loss of trust in Western (particularly US) motivation which is likely to mean claimed humanitarian motives for future interventions are questioned much more aggressively

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[15] Quoted in ICISS press release dated 18th Dec 2002. Available at http://www.iciss.ca/press2-en.asp (accessed 18th Feb 2006).

than they were over action in Kosovo. However, as with Corporate Social Responsibility, the fact that there is dissension over the proper role of the international community supports the social practice model conception of responsibility. The community is increasingly perceived to be an actor in its own right, and judgments of its responsibility in international relations can be seen to change over time. Up until the 1990s, the community was not seen as an actor of any significance (except perhaps during the Congress System following the Napoleonic Wars and the Concert of Europe period, but even in these periods, the international community was a small, fixed group of powerful states – see Brown, 2003b) and states, along with a few formal international organisations such as the UN, were seen as the agents of international relations. The fall of communism led to increased perceptions of the 'international community' as a collective with potential agency, and therefore responsibility, in its own right.

Other practices of the international community are not as progressive as the practice of humanitarian intervention is often seen to be. David Campbell (1998a) has examined the links between identity and the practice of nationalism in the Bosnian war. He argues that the traditional practices of international society, and not just the practices of the national groups within the former Yugoslavia, were 'complicit in and necessary for the conduct of the war itself', explaining that 'inscribing the boundaries that make the installation of the nationalist imaginary possible requires the expulsion from the resultant "domestic" space of all that comes to be regarded as alien, foreign, and dangerous' (Campbell, 1998a: 13). All who uphold and enforce the norms of state sovereignty are implicated in the practice of nationalism, because international society as a whole accepts that 'the national community requires the nexus of demarcated territory and a fixed identity.' The norms of the international community, on Campbell's account, helped to 'fix' national identities in the former Yugoslavia when the identities of its inhabitants had been, prior to the conflict, much more flexible and inclusive. The practice of sovereignty also limited the range of options seen as possible by the international community to end the conflict. Bosnia had never been a nation in itself, and non-nationalist forms of political life could not be

envisaged, so the peace efforts were directed at partitioning the territory along existing national lines. As with attitudes within ethnic groups, the practice of state sovereignty within the international community provides a context for action which all members should take responsibility for even if they are not directly implicated in specific harms that result from it.

Another practice of the international community which is necessitated by the discourse of sovereign statehood is that of war – a practice which is evident as a backdrop to most atrocities within the international system. Shaw (2003) examines the relationship between the practice of war and that of genocide. They are traditionally seen as distinct, with war portrayed as a legitimate activity of states: often necessary and sometimes noble. Shaw argues that genocide, by definition illegitimate and criminal, is actually a form of war, produced by the same forces within modern society that so frequently produce war: state power, economic organisation, ideology and the mobilisation and participation of the population. In the twentieth century, warfare 'in the hands of the most advanced liberal states, repeatedly degenerated into little more than the deliberate mass slaughter, first of soldiers, then of civilian populations' (Shaw, 2003: 25). These slaughters were not contrary to the social practice of war, but the inevitable and predictable consequence of it under modern conditions, according to Shaw. However, the argument is not that war causes genocide. Rather, war (itself now enabled by industrial capitalism, the profits of which are often used to buy arms) makes it easier for leaders to extend 'enemy' or 'other' ideology and propaganda to include social groups rather than just armies, and from there to widen the use of armed force to include targeting these groups as such. Other practices also contribute. Shaw sees the language of slaughter as embedded in culture and 'indulged' (2003: 119) in television and film, and the mass media as the 'principle means whereby society is mobilised for killing' (2003: 120). This is particularly visible when the media is state-controlled, as it was in Milosevic's Serbia and in Rwanda before and during the 1994 genocide. Shaw does recognise an irony in conceptualising genocide as a form of war: it is often only force that can stop such action (as the NATO support for the Croatian and Bosnian armies

did in Bosnia, the NATO bombing did in Kosovo and the energised RPF fighting did in Rwanda). Thus the practice of war may sometimes be legitimate, but its very existence provides the conditions of possibility for genocide.

Responsibility for conflict and atrocity in the former Yugoslavia does not lie with the attitudes, identities and practices of ethnic groups, or of the international community, alone. Both individuals (particularly the political leaders who controlled the resources of the warring Republics and provinces and who fanned the flames of ethnic hatred, and the military commanders who ordered and organised the crimes discussed) and formal institutions such as the governments and parliaments of the parties involved, the UN and NATO bear some of the responsibility and some of the blame. Anthony Lang (2003a), for instance, asserts that the UN must be held at least partly responsible for the massacres at Srebrenica, as it had assumed the responsibility to protect those who came to the UN declared 'safe-havens'. Constructing these areas implied it would defend the population, which it then failed to do. Lang also notes the personal responsibility of Yusaki Akashi (Special Representative of the Secretary General and Head of Mission in former Yugoslavia) and General Bernard Janvier (Military Commander of the UN forces in the territory) but argues that their actions were significantly shaped by the institutional culture of the UN. The argument of this section does not preclude responsibility for the violence in the former Yugoslavia from being assigned to individuals or formal organisations, but rather claims that without acknowledging the facilitating roles played by informal groups and practices we cannot fully understand that violence, so will struggle to prevent similar suffering in the future. The behaviour of individuals and institutions took place within social contexts provided by informal groups and their practices, which motivated particular behaviours and amplified individual contributions.

Within the discussion of CSR I noted the effects that widespread debate about ethics and social roles can have upon actions. As our judgements of responsibility change, so actors are incentivised (through a desire for status, linked, in the case of formal institutions such as firms, to a desire for commercial success) to change the way they

behave. Omitting to discuss the responsibility of informal groups by defining responsibility as a property of individuals, or, at most, individuals and formal groups directly analogous to them, has real, tangible effects. No pressure is felt by those whose attitudes provide the facilitating conditions for harm, and undue faith is placed in the law to tell us whether what we think and do is ethically acceptable.

The benefits of the communal assumption of responsibility may be seen in the case of German guilt for atrocities committed during the Second World War. In contrast to the Serbs and the Croats, the whole German nation has taken responsibility for the horrors of the Nazi period, not least the Holocaust. In a speech to the Israeli Parliament in Jerusalem on 1st February 2005, German President Horst Koehler stated: 'I want to underline that the responsibility for the Shoah [Holocaust] forms part of the German identity. That Israel can live within internationally recognised borders, free from fear and terror, is an incontestable maxim of German politics' (Koehler, 2005). In a speech in Berlin on 25th January 2005, German Chancellor Gerhard Schroeder declared: '[t]he overwhelming majority of Germans living today do not bear guilt for the Holocaust. But they do bear a special responsibility' (Schroeder, 2005). The German state has changed a number of times since the war, and most individuals who were involved are dead, so if responsibility had been ascribed only to those bodies, it would now have lapsed. The action by German leaders, supported by large sections of the German community, to *take* responsibility for the atrocities has led to a nation whose governments since 1949 have had unique and steadfast concerns within Europe to combat anti-Semitism and to develop ethical foreign policies. The nation endures as the state changes and individuals die, thus the responsibility, and through it the concern for Germany's ongoing behaviour in the international system, lives on.

7.3.2 Objections to the Informal Group as Responsible Agent

Does it make sense to hold informal groups responsible for outcomes such as the violence in the former Yugoslavia? There are various objections to doing so. The first would be the liberal individualist response: informal groups are neither rational nor intentional, so do not qualify for moral agency. As argued in the previous chapter, the social practice model questions whether individuals and formal institutions would qualify under these criteria themselves, so offers an alternative view of agency and responsibility that recognises the social construction of all moral agency and the social foundations of all judgments of responsibility. On this view, rationality and intentionality are not necessary to moral responsibility.

A second objection is that the groups, practices and identities discussed are structural features of an agent's environment and so cannot be seen as moral agents themselves. On this view, structure acts as an external, independent constraint upon agency but cannot be morally responsible for outcomes. Structures have no agency (moral or otherwise) in a strictly dichotomous ontology, so cannot have responsibility. However, the conception of agency as sociality and the social practice model of responsibility see agency and structure as existing on a continuum. Informal groups and their associated practices are the creations of collectives, and they exist and are recreated only through communal action. It may make sense for individuals to treat the practices and identities of groups as influences external to themselves in their private behaviour, but the collective, as authors of these influences, cannot do so – as argued in Chapter 5, structure is internal to the collective that creates and sustains it. The collective, or informal group, is morally responsible for any influence it has upon outcomes not because it has any kind of collective intention, but because it exercises collective agency. This is not the sum total of the actions of sovereign individuals, but an agency generated by the necessary sociality of individual action. No co-ordination mechanism is necessary (as it might be if we were looking for the responsibility of formal institutions) and most informal groups act together with little active reflection. However, reflection may be exactly what is required because practices and

expectations of social roles do affect the status of individuals within the group, so construct and constrain their agency.

To ascribe responsibility to these factors is not to remove it from individuals: it actually works to increase responsibility upon them. Under a liberal individualist model individuals are able to avoid responsibility by citing structural constraints. Once we see individuals as sharing responsibility for creating the constraints, alongside others in the collective, we can ascribe responsibility on the basis of their social participation. This responsibility may differ between individuals on the basis of the power they exercise within the relevant group: the extent to which an individual can influence or resist the constraints imposed may determine how much responsibility she is accorded. For example, the moral responsibility of Slobodan Milosevic for atrocities committed by Serbian forces remains high due to his formal and informal power within the community, but responsibility is added to all those who engaged in nationalist discourse or allowed it to flourish. A positive (rather than zero) sum of responsibility is generated to best ensure that such atrocities are not repeated in the future.

A third objection to holding informal groups responsible concerns the role of voluntaristic discourse in the practice of responsibility. If the SPM is correct, social life only works if moral responsibility is conceived as the property of individuals. It may be preferable to continue the practice of holding individuals (and organisations analogous to them) responsible even though there are many arguments to suggest this is mistaken, as moving the discourse of responsibility to cover informal groups may either give licence to individuals to behave in immoral ways or do damage to them as agents. However, this objection misunderstands the relationship between the individual and the collective in the SPM. Individuals create and sustain groups and practices through their inter-subjective interaction or collective agency. Holding a collective responsible, as outlined above, does not take away from the discourse of individual responsibility, but supplements it, as the individual and the collective are not ontologically separable. Communities, like organisations, empower their

members and give them access to resources they would not otherwise have: '[i]nsofar as communities enable individuals to do more harm than they could do otherwise do, communities also create more responsibility for those whose lives are woven into the fabric of the community itself' (May, 1992: 4). Certainly seeing informal groups as moral agents would require new expectations of the roles of their members to be generated to avoid the feeling that responsibility has been switched to an entity outside the control of any individual thus lessening the moral burden upon them. The individual would still be treated as a responsible agent, but that responsibility would be broadened to include shares in the responsibility for collective action or inaction. All those who participate in groups and practices should feel responsible for them as part of the collective (rather than as private individuals) and thereby motivated to reflect upon or change their participation, leading in time to a change in practices. This approach generates power and agency for the group. Acting together, the group can pressure individuals to change their behaviour by conferring status onto those who do.

The final objection to holding informal groups responsible concerns the position of the agent judging to those being judged. An implication of the work of Barnes, Pettit and Smiley (following Strawson) is that there is no point external to interaction from which to judge responsibility. If we are not participants in a group or practice, can we say anything about responsibility within it? There are two responses to this. The first is to acknowledge that those outside the group may not be able to make judgments of responsibility *within* the group, but still hold that they can ascribe responsibility to the group as a whole. From there, the group may be better able than external observers to apportion responsibility within itself.

The second response is to question the extent to which any of us are outside the informal groups which have agency in international relations. We are all implicated in the practices of nationalism, sovereign statehood and its defence by war. We may even be in the process of becoming members of the same status group or community of concern, if globalisation is rendering national boundaries ever less significant.

Certainly the statistics cited in section 7.2.1 suggest that we have a common identity as stakeholders in the practice of global capitalism. If this is the case, our perceptions of responsibility will change as our views of where the boundaries of our communities lie evolve, and we may come to see ourselves in an enlarged collective as sharing responsibility for much more than most are currently prepared to accept.

7.4 Conclusion

Using theories which see responsibility as a practice rather than a metaphysical property of individuals enables a new view of moral agency and responsibility in international relations. The recognition of the social character of individual behaviour opens up the idea of responsibility to formal groups such as NGOs and firms, and to unstructured multi-actor units such as ethnic groups and international society. These actors should be included in the discourse of responsibility as they have a profound power to affect our well being. The resources and identities of formal and informal institutions generate capacities which are more than the sum of the capacities of the individual agents who act within them, resulting in outcomes which would be impossible for individuals to achieve alone. Groups act as a kind of force multiplier of human agency – leveraging individual power (for good or ill) through access to the material and ideational resources of the institution: '[i]n advanced technological societies, much greater evil is done by groups of persons than by discrete individual persons' (May, 1992: 53).

Conceptualising groups as responsible agents does not relieve individuals of responsibility. Rather it accords responsibility to individuals in a more nuanced and appropriate way – it acknowledges that they are embedded within more and less formal social relationships, but requires that action taken socially is also the subject of responsibility. Responsibility cannot be eluded on this view by claiming that free will was not present, or was lessened by the influence of others, as individuals all participate in creating the seemingly structural factors which compose this influence.

The individual is required to acknowledge the responsibilities attached to the formal roles she plays within states, firms and other organisations and to the less structured roles she plays within informal groups, and through this to consider the full range of her ethical effects upon others.

Holding both formal and informal groups morally responsible encourages group members *qua* members to take responsibility and to tackle issues that individuals within the group cannot approach alone. We can (and do) hold such groups responsible without knowing how responsibility should properly be ascribed among the members of the group and without believing that all individuals within the group are equally to blame. While recognising the social context of events such as the violence in the former Yugoslavia in a more explicit way may not result in the successful ascription of responsibility from judges outside a community, it may encourage those who, through their action or inaction, allow the context to develop to *take* responsibility. Cultures cannot be altered by individuals alone, but they can be changed by the collective agency of the communities in which they arise (as demonstrated by the slow but sure rejection of apartheid in white South African culture, the defeat of anti-Semitism in post-war Europe, and the increasing support for notions of corporate responsibility around the world). Seeing ourselves as responsible within an organisation or community, regardless of whether we have contributed directly to harm, is an important step towards assessing or changing the norms and assumptions upon which our social life depends.

In the final chapter of this work I will consider the ethical approach and social arrangements which are most conducive to a more encompassing and empowering discourse of responsibility: a discourse which encourages the ongoing assessment and improvement of existing norms rather than the reification of the cosmopolitan liberal assumptions which limit our conception of responsibility and, through this, our possibilities for justice.

CHAPTER 8: THE FUTURE OF RESPONSIBILITY: VIRTUE, LAW AND THE REHABILITATION OF POLITICS

I began this work by documenting the increasing popularity of the concept of responsibility, and the concomitant dissatisfaction with the progress of the human rights regime. Politicians, international organisations, NGOs, firms and publics have all started to use the vocabulary of responsibility to confront social problems and to alleviate what they perceive to be suffering. However, despite an increase in interest in responsibility in international relations, we have not yet seen sufficient analysis of the concept in International Relations. I therefore aimed to begin such an analysis, arguing that our understandings of agency and responsibility are central to our ethics, and that the principal conflicts within international political theory can be seen to be conflicts over interpretations of these concepts.

The story of twentieth-century international ethics has largely been the story of the growth of cosmopolitan liberalism at the expense of communitarianism. The focus of ethical innovation has been upon the individual, through the human rights regime and its promotion via international law and international legal institutions such as the ICC. This position has much appeal: it challenges the relevance to ethics of (often arbitrary) geographical borders, and promotes the welfare of all human beings rather than buttressing the power of those in control of the coercive apparatus of the state. However, the individualist concept of agency that cosmopolitan liberalism is founded upon is highly problematic. Individualism assumes that we are autonomous beings who can cause events in the world around us but who are not ourselves caused, who flourish in the pursuit of our own interests and projects, and who should therefore be as free as possible from the interference of others. The idea of rights was developed in support of the idea that the individual agent exists and has value prior to interaction with others, and to protect the individual from the most significant threat to her freedom: the arbitrary power of the state. I criticised this view of agency, and proposed instead a model based on human sociality, which shows that agency is

created within collective practices in which we discursively recognise each other as autonomous in order to hold each person accountable for their actions, and through this, to co-ordinate our social lives. This view can explain both our experiences of free will (we see actions as free when we believe they could have been causally influenced by the evaluations of others, rather than when they are caused by physical processes, phobias and the like) and our sense that collective life or sociality is important to, and in some way constitutive of, the individual rather than something we participate in instrumentally in order to further our own interests. The status of agent, on this model, shifts from being based on the (supposedly) innate characteristics of human individuals, assigned prior to interaction, to being based on societal evaluations of each person's (inevitably socially influenced) behaviour.

The individualism of cosmopolitan liberalism leads to particular and limited conceptions of responsibility. In order not to encroach on her freedom, relatively little is expected of the individual, beyond refraining to interfere in the affairs of others. Law is the tool used to control obligation in liberal societies, and it provides a set of rules which individuals should obey to guarantee the broadest possible freedom for all. Morality beyond the law is a matter of personal taste, and the individual is not required under liberalism to make positive contributions to the welfare of others. Legal processes lead to responsibility being equated with blame, with the focus being on finding the deviant individuals responsible for intending and causing specific harms. I argued that this view leads to much suffering in international relations (in particular economic suffering such as severe poverty) falling outside the discourse of responsibility, because it does not result from the intentional action of individual agents. Conceptualising responsibility as liability under law also does not capture the rich ways we use the idea in everyday life, so I outlined instead the social practice model of responsibility. This model shows how we use the practice of responsibility to reflect our attitudes to others, and through this attempt to influence their behaviour. We hold each other responsible by requiring that each person accounts for their behaviour, or makes it intelligible to us with reference to collectively developed ethical standards, including expectations of the *ex ante* responsibility we incur in

performing our social roles. This process does not just take place inside law courts: it is an integral part of our social lives. To be responsible is primarily to be afforded the status of agent within the collective, and not necessarily to be to blame for any specific action. Responsibility is a dynamic inter-subjective construct, not bound by a universal moral code or within any territorial borders. It is refined and developed within collectives (themselves always evolving, and not tied to any specific geographical space) to meet the needs of new contexts. I outlined the changing expectations of the roles & responsibilities of firms, the sovereign state and the international community to demonstrate how the practice of responsibility works.

The main findings of the research support post-positivist positions in international political theory, and do so (perhaps controversially – post-structuralists would almost certainly reject the type of argument I have used here as it suggests that humans have some kind of instinct towards living socially) by using research from social psychology as well as from sociology to provide explanations for how agency and responsibility 'work' that are more plausible than the mainstream theories. Foundational claims about the individual and the community, inherent in both cosmopolitan liberalism and communitarianism, are rejected, and agency and responsibility are recognised to be created within social practices – the interactions between individuals – rather than being natural attributes of people or of communities. The building blocks of responsibility (and through this, agency) are reactive emotions and attitudes rather than objective rules: the purpose of the social practice of responsibility is to communicate our attitudes to others, and thereby attempt to influence their behaviour, in order to co-ordinate our social lives. This lends significant support to pragmatism, and to Richard Rorty's claim that suffering and cruelty are more likely to be reduced if we concentrate on changing people's attitudes to each other through a process of 'sentimental education' than if we continue to try (and fail) to ground our ethics on universal foundations (Rorty, 1993). My research also supports post-positivist ethics by recognising that the collectives in which agency and responsibility are constructed are not necessarily located in any particular territory. Groups connected by beliefs, by interests, by attitudes, by

experiences and by activities can accord status to their members, just as groups connected by location can. Membership of Al Qa'eda, or Amnesty, or the Catholic Church; participation in global efforts to reduce the spread of HIV/AIDS or to slow the destruction of the environment; believing that humans have rights; being a diplomat, a mother, or an academic – all these may be as (or more) important to our social identities and obligations as our citizenship in a particular state. Debates over responsibility in contemporary international relations take many forms, such as consideration of who, if anyone, is responsible to intervene in Darfur, who is responsible for ensuring the stability of Iraq, and what responsibilities the media has for inciting violence with the publication of cartoons offensive to many Muslims. Debates in the international sphere also concern what it is to be a responsible corporation and what responsibilities wealthy nations, firms and people have for alleviating poverty in the developing world. All of these debates have territorial aspects, but cannot seriously be categorised as discussions between bounded cultures or communities. Equally, they demonstrate deep disagreements over the nature of responsibility in each case, so suggest that there is no common global or cosmopolitan view.

My research does offer support to post-positivist IPT, but it also recognises the limits of post-positivist approaches. Post-positivism still tends to uphold the dichotomy between agent and structure, individual and community, which the conceptualisation of agency as sociality rejects. I argued that structural features of our environments are the creation of people acting socially rather than existent apart from human interaction. Structures may be outside the control of any particular individual, but they are wholly internal to the collectives which create and sustain them. This opens up the possibilities of responsibility by showing that all practices, cultures, constraints and structures can be questioned and challenged. The research presented here also accords with our experience of responsibility as dynamic within limits. The discourse of any given collective provides fixed points of reference in which ideas of responsibility develop, accounting for the gradual and deep changes we have seen in conceptions of the responsibility of the sovereign state or the firm in the last twenty

years. In identifying the limits of change as well as the possibility of it, the social practice model shows that all views of responsibility are not equally valid, and we can judge between them by referring to norms and shared understandings in the collectives they refer to. The norms and shared understandings must themselves be seen to be contingent and likely to favour the powerful rather than assumed to reflect a moral harmony, and judgements of responsibility must be recognised as fallible and subject to revision as circumstances change, but the judgements can be made nonetheless. Responding to others and creating, challenging and maintaining the standards by which we hold each other accountable for our actions across different practices are at the heart of ethics.

To conclude my research, in this final chapter of the thesis, I start to outline the broader implications of conceptualising agency as sociality and the social practice model of responsibility. Clearly, nothing necessarily follows from my analysis in terms of holding specific agents responsible for particular acts or outcomes. Agency and responsibility are internal to practices so no generalisations can be made outside those practices. However, we may be interested to know how the social practice model of responsibility can work best to co-ordinate our social lives, and, if so, there are some general implications for our current practices which can be identified. I consider two implications in particular, one regarding agency and one responsibility. The key implication of the SPM for agency is that ethical agency is about much more than simply following rules or laws. Responsibility is a necessary component of our socially constructed agency – holding people to account is the reason why we identify each other as autonomous agents – so responsible agency is integral to our social lives. However, the model rejects the foundationalism of cosmopolitan liberalism and communitarianism, leaving us without any universal morality or objective set of rules with which to guide our behaviour. The model seems to make responsibility both more central to the way we live and more taxing. The implication of this is that our agency needs to change: to better cope with the demands upon us, we need to develop ethical character in preference to searching for moral rules. This suggests looking again at 'virtue ethics', a normative tradition which takes a 'whole person, whole life'

approach to ethics instead of subordinating responsibility and separating it from the pursuit of self-interest. This is the subject matter of section 8.1.

In Chapter 7, I covered one key implication of the SPM for responsibility: I argued that the model broadens out our notion of responsibility to include consideration of how people act in formal and informal groups. The model suggests that because agency is necessarily social in character, and because acting together multiplies the effects of each person's agency, so responsibility must be accepted for the suffering that our communities facilitate, through attitudes, action or inaction. The second implication of the model, and the one I will cover in some detail in this chapter, is to do with the nature of responsibility. In the current international ethical architecture, responsibility is legalised. Systems of obligation are governed by legal institutions such as the ICC, and cosmopolitan liberals support the increasing legalisation of the system in order to solve the 'problem' of politics (as politics, particularly the politics of sovereign statehood, is seen as having a tendency to turn violent). The SPM implies that this view of responsibility is limiting: legalising responsibility, conceiving of it principally in *ex post* terms, and looking for deviant individuals to blame for discreet acts narrows the opportunities we have for alleviating suffering. I do not deny that law and liberal institutions can play important roles in society, and I consider what these roles are in section 8.2, but I do contend that they cannot work alone. Without universal values to refer to, and in a world in which the causes of harm are ever more difficult to trace, I argue, in section 8.3, that politics and the idea of political responsibility need to be rehabilitated. Politics, or the negotiation between different views of responsibility and of how to live socially, is necessary to ethics under the SPM.

8.1 Ethical Action: Virtues versus Rules

The first implication of the new conceptualisations of agency and responsibility is that acting ethically, which is now seen as central rather than peripheral to human

social life, will be easier to do if the agent is less concerned with following rules (as claims to universal standards have been rejected) and concentrates instead on developing certain qualities of character. Our responsibility under the SPM is understood to be much more extensive than it is under cosmopolitan liberalism, but significantly less structured. There is no assumption of an underlying harmony of interests, to be realised by individuals obeying the law, and no objective 'right' answer to ethical dilemmas. I concluded Chapter 7 by arguing that we are responsible for a great deal more than just the actions we intend to carry out. The social nature of our agency means we can be held responsible (though not necessarily that we will be held responsible) for the full range of our ethical effects upon others, whether the effects result from our exercising agency alone or in concert. Responsibility is extended to all aspects of our social relationships, but we have no objective rules to tell us how to discharge it. Also, we are participants in the practice of responsibility rather than passive bearers of obligation: we engage in the practice by seeking status for ourselves and awarding status to others, and by creating, challenging, refining and reinforcing the collective standards to which we refer when holding each other to account. To engage most productively in this practice, and to make decisions on how best to perform our roles and live our lives socially, we need to develop ethical skills and sensitivity to think through our impacts on others, and to shape collective rules or standards as well as apply them. The 'virtue ethics' approach best promotes this type of agency[16].

Virtue ethics sees the character of the agent (rather than the content of moral rules or the determination of consequences) as most important guide to ethical action, and asks fundamentally different kinds of questions to 'rule following' or deontological approaches. Instead of asking 'what should I do?' when faced with a moral problem, virtue ethics asks 'how should I live?' or 'what sort of person should I be? The creation of an ethical character is regarded as contributing to human flourishing, or even, on some Aristotelian essentialist accounts, necessary to it (see, for instance,

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[16] For more detail on virtue ethics, see: Anscombe (1958); Crisp (1996 & 1997); Foot (2001 & 2002); Hursthouse (1999); MacIntyre (1981); Nussbaum (1987, 2000 & 2001a); Swanton (2003); Williams (1985 & 1993a).

Hursthouse, 1999 and Nussbaum, 1987). Critical to such a character are the possession of virtues such as honesty, generosity, courage and integrity which guide behaviour, as well as the possession of *phronesis* or practical reason, which is the capacity to perceive the morally salient features of a situation. While the virtues which any particular collective values may differ, *phronesis* will be of benefit to the agent in all collectives. It involves maturity in ethical agency, through sensitivity to context, an understanding of the likely consequences of action, and an ability to perceive 'what is truly worthwhile, truly important, and thereby truly advantageous in life' (Hursthouse, 2003: 4).

This approach to ethics has its basis in Greek philosophy, particularly that of Aristotle, and differs substantially from the Judeo-Christian ethics embedded within liberalism. A Judeo-Christian world view sees the world as created and ordered by a benevolent God for the overall good of mankind. Thus, anything that takes place within the world can be explained by reference to divine goodness and justice, or, post-Enlightenment, to 'reason', even if it is not always clear quite how. Anything that happens to humans is in some sense their own fault or for their own good. This sentiment appears in liberalism in the belief in an underlying moral equilibrium or harmony of interests in human affairs. The Greeks did not see the world in these terms. They saw that bad things could happen to good people, and developed ethical approaches in response to this. Aristotle in particular held that human flourishing required external conditions that the agent's goodness could not by itself secure - so simply acting virtuously could not by itself guarantee happiness. In order to show and experience friendship, love and so on, we are vulnerable to rejection and loss, brought about by people or events over which we have no control[17]. The social practice model of responsibility has much in common with this view: we are inescapably vulnerable to others as our status depends on them, and suffering can result from the normal operation of the world – it does not require agents to deviate from moral codes.

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[17] See Nussbaum (1986) for a much more substantial discussion of the development of Greek ethics.

The benefits of this approach once the liberal view of responsibility has been rejected are significant. In an imperfect world, with no underlying harmony and no objective rules of behaviour, we need to develop sophisticated ethical skills – to be certain kinds of people – to function well as responsible agents. Virtue ethics is all about context, the situatedness of ethical issues and the development of the moral wisdom to make good choices in changing circumstances. It does not rely on rules to try to answer moral dilemmas before they arise, and instead recognises that more good can often be done by using ethical judgment and acting selectively, rather than by seeking to apply particular principles in every case. Brown (2003a) defends this position in relation to humanitarian intervention, using the analogy of choosing which homeless people to give money to in order to demonstrate that the only non-arbitrary universal rule that can be formulated in these kinds of circumstances is not to act. If we cannot agree on a set of rules to use to decide when to intervene in a sovereign state to stop human rights abuses, and we are unwilling to give up the idea that ethical action must by guided by moral rules, then we have to infer a rule not to intervene. Brown argues that it is preferable for us to develop an ethical sensitivity and the strength of character to act selectively in those contexts where we can relieve some (though almost certainly not all) suffering, rather than trying to find absolute moral rules, and the findings of this thesis support his claim.

Virtue ethics also helps us to cope with the sheer volume of responsibility we can incur on the SPM in contrast to our limited obligations under liberalism. Young argues that 'in a world with many and deep structural injustices, most of us share more responsibility than we can reasonably be expected to discharge.' (Young, 2006: 126). If we are held responsible (though not to blame) for all of our ethical effects upon others, then, given that we cannot solve all of the problems that our attitudes or behaviour cause, contribute to, influence or allow, we need strategies for choosing how to act to best discharge at least some of our responsibility. Developing character traits such as honesty and generosity, and skill in practical reasoning, can help us to understand our 'ethical footprint' on the world. Calculating our ethical footprint, (an idea inspired by the 'carbon footprint', or the measure of the impact our activities

have on the environment in terms of the amount of green house gases produced, measured in units of carbon dioxide – see http://www.carbonfootprint.com/) should include consideration of the impacts we have on other people and on our environment, in all of our different roles in formal and informal groups and in the practices we participate in, in order to judge our net contribution to the communities we are a part of. Virtue ethics encourages us to contemplate this contribution, to explore our opportunities to act differently in the future, to consider the range of resources we have available to utilise and to be imaginative in responding to situations which trouble us. Agents who develop social virtues and practical reason can act together to challenge features of our societies seen as structural and not open to change – as we have seen with the creative responses to sweatshop practices, poverty, Third World debt and corporate power documented within the thesis. Agents have spread information, asked questions, attracted attention, instigated debate, applied political pressure, altered their purchasing habits, donated money and come up with alternative ways of doing business in response to new thinking about responsibility. They did not, for the most part, act to fulfil a set of legal obligations, or to put right damage they themselves had intentionally caused, but instead exercised collective and imaginative agency to alter the social structures which arose from collective practices.

Virtue ethics sees ethical character and behaviour as an integral part of human flourishing, linked to all aspects of our inherently social lives, instead of something in conflict with, or constraining upon, our natural desires or self interest. Flourishing, including the development of socially-defined virtues or excellences of character, is a life-long task, which encompasses all aspects of human lives. Bernard Williams described ethics as being about 'living a whole life well' which neatly captures this approach (*The Guardian,* 13th June 2003). It compliments the view of agency as sociality and the social practice model of responsibility by showing how people can best function as responsible agents in a world without universal moral rules. Virtue ethics also resonates with the SPM because it dismisses the idea that there are moral judges who can make statements of universal moral truth, or speak for particular

cultures or traditions. It allows no special positions for interpreters of moral rules – everyone has the capacity to develop ethical character, attitudes and functioning, and thus all should have a voice in the discourse of responsibility. The status of responsible agent is open to all. Finally, and unlike cosmopolitan liberalism, virtue ethics recognises the importance of our social relationships to our flourishing. Agency and freedom come from an active engagement in the community, rather than protection from it. In the next section, I consider what kind of institutions best enable our agency within communities.

8.2 Cosmopolitan Liberal Institutions and the Law

There are two separate issues to cover when thinking about the role of institutions in the practice of responsibility. The first is which institutions to support – in this case, should we favour cosmopolitan liberal institutions such as constitutional democratic government, human rights, liberal freedoms and the law? Or are other institutions better suited to fostering the practice of responsibility? The second issue is the extent to which responsibility should be institutionalised. I deal with each in turn, but consider law, as the most critical institution in the liberal conception of responsibility, separately in section 8.2.1.

If human life is inherently social, and we are disposed to engaging in practices of responsibility, no particular institutions may be necessary to enable these practices. The SPM does not suggest that a society based on slavery or apartheid cannot be stable (and in fact many have been throughout history) as long as the ethics of the society reflect the reactive attitudes of the population. However, given the characteristics of the practice of responsibility, it is likely that some institutions more than others, reflecting some particular values, will facilitate a rich social practice. To what extent do cosmopolitan liberal institutions provide the conditions for the practice of responsibility to flourish? Perhaps surprisingly, given the criticism of conceptions of agency and responsibility in the doctrine which inspired this thesis,

the institutions promoted by cosmopolitan liberalism may be more supportive of the SPM than they initially appear.

Institutions play a key role in liberal and cosmopolitan liberal theorising. John Rawls (1971) sees institutions as necessary to social life: without institutions to adjudicate on claims, there can be no justice. Martha Nussbaum (2000) also sees institutions as necessary to flourishing: liberal institutions guarantee to all citizens a range of options to give them the greatest freedom and opportunity to develop the full range of their capabilities and thereby live a flourishing human life. Simon Caney (2005a), David Held (2004) and Thomas Pogge (2002) have all recently proposed elaborate cosmopolitan institutional structures to bring about global justice. The institutions all tend to favour are those most closely associated with liberalism: law and the rule of law (i.e. rule by democratic constitutional government), a human rights regime, provision of education and some level of healthcare, and a broad range of guaranteed freedoms: of speech, expression, religion and contract. These institutions may be grounded on a mistaken conception of the individual agent, but this does not automatically preclude them from being useful in facilitating responsibility as a social practice. In order to exercise our social agency and act as responsible agents, we are likely to need certain freedoms – to learn, to interact, to discourse, to respond to others – which we may best be able to achieve within a liberal polity. Philip Pettit (2001: 152-174) notes the importance of the state in supporting the freedoms necessary to enjoying our discursive status, and argues that democracy (both electoral and contestatory) is necessary to support discursive freedom, as the greatest threat to our status is to be dominated by others. He argues:

> [S]o far as a state is democratic … to that extent it will be non-arbitrary and will not compromise the freedom [as fitness to be held responsible] of its members. Its coercive laws and decrees and other initiatives will condition people's choices, as natural limitations do, but that state will not compromise people's freedom in the manner of a dominating presence. (Pettit, 2001: 178-179)

Barnes also supports liberal institutions, arguing that the liberal account of how best to order society is highly plausible, but only because the liberal account of the individual agent is not: 'the modern liberal state … allows leeway for the exercise of the formidable self-organising powers of social agents, mediates between the groups and collectives arising from their exercise, and remains responsive to a remarkable if imperfect degree to the needs and demands of all of them' (Barnes, 2000: 183).

The cosmopolitan liberal conception of the individual sees her as having a range of rights, and the doctrine proposes institutions to support these. While I have argued that a discourse centred only on rights is too isolating, the social practice model of responsibility does not dismiss them altogether. Larry May explains why:

> When individuals recognize that they often share agency or subjectivity with the members of their group, when they recognize that their individual actions have repercussions on the lives of these others of both a direct and indirect sort, then they should also come to a recognition of the connectedness of their lives with other lives in their group. The interdependency that exists in communities, once recognized, makes the members less self-centred and more interested in the interests of others. In inter-connected, interdependent groups, one of the prime responsibilities is to maintain the harmony of the group. And one of the chief ways this is accomplished is through the display of respect for each member of the group. Acting in a way which degrades other members disrupts the harmony of the self. Indeed, given the strong connection between individual and group agency or subjectivity, harming others may literally harm the self. (May, 1992: 170-171)

If rights are a good way to display our respect for others, then they can be supported by the SPM. However, the social practice of responsibility is likely to function best when rights are recognised alongside responsibility rather than alone (as rights alone do not seem to be working to ensure respect, as discussed in Part One, plus, ascribing the status of responsible agent is also a way to respect others) and when economic and social rights are promoted alongside political and civil rights. The status of responsible (and therefore free) agent, according to Pettit, requires 'an environment of choice that makes significantly numerous and distinct options available. If their options were restricted to a few or only trivially different alternatives, whether by

natural limitation or as a side-effect of social arrangements, then we might be loath to say that they were free persons' (Pettit, 2001: 66). We can tentatively conclude therefore (and this is an area where more research would be fruitful) that the political arrangements which are most likely to support both the material and discursive conditions of responsible agency may well be some version of the institutions proposed by cosmopolitan liberals (though not for the reasons they suppose).

The other issue to consider when looking at institutions and responsibility is how institutionalised responsibility should ideally be. Barnes makes a strong argument that indicates that the problem with liberal institutions is not their character but the level of responsibility we transfer onto them. As noted in Chapter 3, he argues that modern differentiated societies rely heavily on institutional responsibility and in particular on institutional responses to social problems. This is suboptimal as the people who staff the institutions do not feel the responsibility themselves – liability rests with 'employers, employers' insurers, or government agencies' (Barnes, 2000: 94) rather than with the individuals who inhabit the institutional roles. Incentive to discharge the responsibilities is consequently low compared to the strong reciprocal pressure that is created to behave ethically according to the standards of the group when we are held responsible in close-knit social networks – friendships, familial or kinship relationships and so on. The transfer of responsibility to impersonal institutions can therefore lead to a weakening of important social bonds: 'as the price of lapses in the meeting of individual responsibilities is more and more paid by institutions, the collective interest in their strong enforcement is radically weakened … [w]here responsibilities are attenuated, interdependence is weak and the strength of commitments is correspondingly low' (Barnes, 2000: 96 & 97). The liberal model of transferring *ex ante* responsibility to institutions in order to free the individual means that the social practice of responsibility is less able to do its job of enabling social life.

Institutions – particularly liberal institutions – can facilitate social life, provide the material and political environments in which to develop a rich social practice of

responsibility, and be an efficient way for individuals to co-ordinate their actions and magnify their agency. However, they are not required for the practice of responsibility to function (thus no-one outside a practice is justified in imposing them on others against their will), plus, reliance on them to discharge obligations can weaken the practice of responsibility. If free agency depends upon responsibility, then the effort to make the individual freer by taking responsibility away from her is counterproductive, if to do so threatens the overall practice as Barnes suggests. For the SPM to work optimally responsibility needs to be felt by individuals in their everyday lives – they need to be active in collectively holding each other to account and developing standards to use to do this. Responsibility is performative within practice, and to encourage responsible agency we need to allow agents to feel and discharge responsibility. How we devolve responsibility away from institutions is not clear – it is another area in which research on the conditions under which the social practice of responsibility can best function would be useful.

8.2.1 Legality and Responsibility

The institution most central to cosmopolitan liberal management of responsibility is the law. Domestic and, increasingly, international law and legal institutions are used to define responsibilities, to ensure that they are discharged and to punish those who renege on their obligations. Law, rather than politics, is tasked with managing responsibility as it is seen by liberals as a neutral and objective tool to adjudicate between interests. However, I argued in Chapters 3 and 4 that legalising responsibility has significant drawbacks.

When responsibility is managed principally using legal means, it tends to narrow the meaning of the concept. Young (2006) has identified that the *ex post* 'liability' conception of responsibility prevalent in legal models, which aims to identify the agent who voluntarily and knowledgeably caused a harm, and to find her guilty or at fault for that harm, limits the states of affairs which can be included in liberal

discourses of responsibility. Few harms in the international sphere can accurately be traced back to the voluntary and informed actions of individual 'criminals' or even individual agents, therefore much suffering is excluded from the discourse of responsibility. She also notes that conceptualising responsibility as liability encourages scapegoating and defensiveness more than genuine attempts to assist those harmed. I argued in Chapter 7 that there is a further drawback to the legalisation of responsibility which concerns collective agency: if we concentrate on finding the individuals who directly caused harm, we may fail to hold responsible all of those agents who facilitated, encouraged or allowed the harm, so doing little to prevent similar actions in the future.

Legalising responsibility requires a kind of formality in allocation which social attributions of responsibility do not. Agents and circumstances have to be very precisely defined in order to justly blame and punish wrongdoers, and defining the individual agent has proved highly problematic. I discussed in Chapters 3 and 4 the difficulty that international law has in conceptualising the individual agent in the international sphere. The move from state civil agency to individual criminal agency is fraught with conceptual difficulties that tend to be glossed over by supporters of international law. The Rome Statute which established the ICC sees the individual as both pre-social perpetrator and as socially embedded victim – a dichotomous conception that may not trouble practitioners but should concern international political theorists. Not only is it internally contradictory, it also encourages us to see the conflicts in which atrocities commonly take place in simplistic terms of good and evil. Again, if we do not sensitively allocate responsibility to all involved – and this necessitates a good understanding of the context of each situation and of the contribution made to outcomes by the attitudes and actions of the collectives which the perpetrators are members of – then there is little chance of preventing such events in the future. Law is good at punishing people, but not so good at prospective prevention: when responsibility is equated with guilt or blame, there is little incentive for anyone who is not directly implicated in harm to take responsibility for helping to ensure that the past is not repeated.

The final drawback of the legal regulation of responsibility stems from the liberal conviction that law is a neutral and objective tool which should be used in favour of subjective, power-driven politics. When law is seen as the solution to the problem of politics, then the effects of power upon law tend to be denied. I noted in Chapter 3 that war crimes trials are inevitably political, and argued in Chapter 4 that they will remain so at the ICC. Law cannot be divorced from the interests of power, and attempting to deny this only leads to the role that power plays being hidden from view.

All of this is not to say that law does not have a role to play to facilitate the social practice of responsibility. On the contrary, I believe it can play a crucial role. Law documents and formalises norms and standards of accountability within collectives, and facilitates orderly relationships between agents (see Reus-Smit (2004) and Yasuaki (2003) for discussion of international law as embodying shared understandings). It can constrain agents by requiring that they justify their actions according to the vocabulary of the law (see Wheeler (2004) for an analysis of this function of the law in terms of the effect of international law upon state military action). The criminal law can also help to prevent harm through shaping the value system of a society and encouraging the subjects of the law to come to believe that the actions the law prohibits are actually wrong (though, as I argue in Chapter 4, the conditions necessary for law to function this way may not be present at the international level).

Daniel Warner sees a more fundamental role for law in the practice of responsibility: he argues that law builds the collectives in which the practice takes place:

> [T]he law and the very process of organising can be seen as that which forms the community or group … the self-conscious recognition of authoritative processes, by individuals or states, changes the individual or state and represents the values of the society in question. By consciously recognising and obeying rules, individuals and states become part of a larger whole. That is, the very process of recognition is that which makes

the larger whole and changes the random group into a collectivity'.
(Warner, 1991: 79)

Philip Allott has a similar view of the importance of law. He argues that law is a way that society constitutes itself: 'Law carries the structures and systems of society through time. Law inserts the common interest of society into the behaviour of society-members. Law establishes possible futures for society, in accordance with society's theories, values and purposes.' (Allott, 2002: 290). Allott goes as far at to suggest that international law can constitute a collective of 'all-humanity' (Allott, 2002: 297) if it is allowed to do so – suggesting that law could create the global community of humanity that cosmopolitan liberals assume.

Even if it cannot constitute such a community, law may have other roles to play in the social practice of responsibility. International criminal trials can become symbolic public acts or events which allow a community to mourn its dead and attain some closure (though Truth Commissions may be more likely to lead to these outcomes – see Minnow (1998)). Trials could also provide a virtual school room for the sentimental education called for by Richard Rorty (1993): a public forum in which cross-cultural norms can be created and debated, in the hope that individuals will begin to act in accordance with them as if members of a genuine global community. Osiel (1997) supports this view of international trials, arguing that such trials, 'when effective as a public spectacle, stimulate public discussion in ways that foster the liberal values of toleration, moderation, and civil respect' (Osiel, 1997: 2). The evidence he offers for this is not entirely convincing, and the reactions to the trials of Milosevic and others at the ICTY suggest that trials are by no means guaranteed to promote the values of toleration and respect rather than intolerance and prolonged hatred, but there may be some validity to this claim. The trial of Saddam Hussein, and the reaction to it among Iraqis, will be instructive to watch in this regard.

The new international legal system also has specific benefits in terms of encouraging public debate about responsibility in some of the instances of harm discussed in the thesis. The first Prosecutor at the ICC, Luis Moreno Ocampo, is interpreting his

mandate broadly. He has been collecting evidence of crimes in Darfur and has recently reported his findings to the UNSC (Ocampo, 2006). His investigators have established a 'Darfur crimes database', which lists thousands of alleged murders and the displacement of two million people. Sudan's refusal to co-operate with the Court may make it very difficult for trials to take place, but Ocampo's work (and the extensive media coverage it is receiving) is ensuring that both the Sudanese government and the members of the UNSC feel continued pressure to work to resolve the situation in Darfur, whether through legal, political or military means.

Ocampo has also set his sights on corporations, and is attempting to influence their behaviour in conflict zones, despite there being no provision to prosecute collective or corporate actors within the Rome Statute. Powerful evidence is now available linking business and conflict. Companies may provide money, resources, infrastructure, products or services that facilitate human rights violations in the context of armed conflict. In many African countries, including Angola, Sierra Leone and the Democratic Republic of the Congo (DRC) diamonds have been, and continue to be, linked to human rights abuses either by insurgent groups or government forces (see http://www.amnestyusa.org/diamonds/index.do for more information on 'conflict diamonds'). In 2005, Human Rights Watch produced a report, "The Curse of Gold", showing the direct relationship between the success of rebel groups in the DRC and their control and exploitation of gold mines. They give examples in the report of the effect of corporations on conflict, including:

> AngloGold Ashanti, one of the largest gold producers in the world, started exploration activities in the Mongbwalu gold mining area [in 1993] … AngloGold Ashanti representatives established relations with the FNI, an armed group responsible for serious human rights abuses including war crimes and crimes against humanity, and who controlled the Mongbwalu area. In return for FNI assurances of security for its operations and staff, AngloGold Ashanti provided logistical and financial support – that in turn resulted in political benefits – to the armed group and its leaders. (Human Rights Watch, 2005: 2).

Most contemporary conflicts in Africa are about the exploitation of natural resources to some degree, and therefore corporations have a key role to play. Ocampo aims to

encourage these actors to act responsibly by publicising their behaviour. In a press release soon after Ocampo was elected as Chief Prosecutor, his Office stated that:

> The fighting taking place in Ituri seems to be the outcome of ethnic strife and of the struggle for local power, intertwined with national and regional conflicts. All of these aspects of the situation are fuelled by the way natural resources are exploited … Various reports have pointed to links between the activities of some African, European and Middle Eastern companies and the atrocities taking place in the Democratic Republic of Congo ... There is general concern that the atrocities allegedly committed in the country may be fuelled by the exploitation of natural resources there and the arms trade, which are enabled through the international banking system … [T]he Prosecutor believes that investigation of the financial aspects of the alleged atrocities will be crucial to prevent future crimes and for the prosecution of crimes already committed. If the alleged business practices continue to fuel atrocities, these would not be stopped even if current perpetrators were arrested and prosecuted. (Office of the Prosecutor, 2003).

The Prosecutor recognises the role that firms can play in conflict, and is seeking ways to target corporate actors who support the commission of atrocities. However, the Court can only prosecute individual executives, under Article 25 of the Statute, who, for the purpose of facilitating the commission of a crime within the jurisdiction of the Court, aid, abet or otherwise assist a criminal group in its commission or its attempted commission, including providing the means for its commission. Ocampo is relying on his high media profile to generate public debate and pressure for change over the responsibility of shareholders, other executives and customers of corporations for facilitating, funding or allowing the actions that a few individual executives may be held legally responsible for.

Ocampo has recognised that there are limits to what the pure process of law can achieve, and is pursuing justice and accountability more through the media than through the new Court. This is a creative way to use his office, which acknowledges the importance of public perceptions, politics and power. He has also been astute in announcing, on February 10th 2006, that his office will not investigate alleged war crimes committed in Iraq by Coalition forces: he recognizes that the ICC is most

likely to be a success if the US can be brought back into the discourse of international law. The relationship of law to politics is a new and fruitful research area in IPT (see Reus-Smit (2004) for exemplary work in this area), and, in the next section of this chapter, I suggest that an appreciation of what politics can offer in terms of responsibility is overdue. This is not to discard law: the process of making, amending and applying law is itself part of the practice of responsibility. However, given the lack of universal principles on which to found an objective set of international laws, and the effect of law in shutting out particular kinds of responsibility, we must supplement law with politics.

8.3 The Necessity of Politics

A key feature of what Judith Shklar calls legalism ('the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules' (Shklar, 1986: 1)), is its deprecation of politics. Shklar argues that politics is regarded by legalists (a category that cosmopolitan liberals are likely to fall into, as my argument in Part One indicates) as 'not only something apart from the law, but as inferior to law. Law aims at justice while politics looks only to expediency. The former is neutral and objective, the latter the uncontrolled child of competing interests and ideologies' (Shklar, 1986: 111). Yet I have made clear throughout this work that law and politics cannot be disentangled so easily, and that law, if used alone, stifles the social practice of responsibility. Cosmopolitan liberalism tends to privatise, legalise and individualise responsibility, but the practice of responsibility works best when it takes place in public, when collectives hold themselves responsible for change and when responsibility is distanced from guilt or blame. Public debate and collective accountability make politics and political action necessary, and the presence of power inevitable.

Philip Pettit and Marion Smiley both acknowledge the importance of power in ascriptions of responsibility. Pettit argues that to be free is to be given the status of

responsible agent, and that freedom is impossible if we are dominated by our state or by other agents, i.e. if they hold arbitrary power over us. Smiley notes that judgements of *ex ante* and *ex post* responsibility will each depend in part on the social or political power that the judge has to make the ascriptions 'stick'. The law can control the exercise of power to some extent, but it cannot change the fact that agents in every society are differentially powerful. An important question to ask is therefore: how can power be utilised within the social practice of responsibility?

The most interesting contemporary work which can help to answer this question is, in my view, new research on Arendtian ideas of agency and responsibility. Hannah Arendt's notion of agency is highly complementary to the conception of agency as sociality. She saw that one could not be an agent in isolation – agency requires the existence of others to engage in discourse with (Arendt, 1956: 234 & 236-243, cited in Lang & Williams, 2005: 225), and that this discourse takes place in the space between individual and community. The nature of human discourse is political, and Arendt saw no reason to try to change this, because she saw politics as the highest form of human action. We enact ourselves as agents through political interaction (Lang & Williams, 2005: 223) – through inter-subjective communication and negotiation over interests. This performative view of agency leads to a conception of responsibility that can help us to see the constructive role that power can play in the social practice model.

According to Arendt, power arises when people exercise agency together or 'act in concert' (Arendt, 1999: 233). But responsibility also arises from our social interactions. She argues that we must accept collective responsibility for the actions of the communities we live in:

> 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, and that the faculty of action, which, after all, is the political faculty par excellence, can be actualised only in one of the many and manifold forms of human community. (Arendt, 1987: 50)

Larry May echoes this position: '[a]s members of communities … we derive various benefits, which change the scope of our responsibilities. The shared responsibility we should feel for the harms perpetrated within our communities is precisely the cost we incur by being members of those communities.' (May, 1992: 183). This responsibility is not moral or legal guilt but *ex ante*, specifically political, responsibility. May and Arendt both see that acting together can create power to alleviate the most serious harms that we cause or allow: 'Seeing one's own moral status as interrelated with that of one's group members will negate the tendency to ignore the most serious moral evils, those which can only be thwarted by the collective efforts of communities' (May, 1992: 161-162). However, this acting together to thwart moral evils is unlikely to happen if responsibility is equated with guilt. Arendt argued that collective guilt leads only to sentimentality, not to action, and that we should therefore de-link responsibility and blame, and direct collective action to the future to prevent the outcomes our collectives are responsible for from happening again (Schaap, 2001: 756-758).

Iris Marion Young has used the Arendtian idea of forward looking collective responsibility to think through the problems of responsibility outside and across territorially bounded communities. She argues that the reason theorists such as Arendt see dense and demanding responsibilities between co-nationals is not to do with territory, but because 'the processes and structures in which [co-nationals] are embedded more tightly connect them, and the consequences of their actions affect the more local others than those far away' (Young, 2004: 376). Young therefore applies Arendt's ideas to actors in the global processes and structures of the twenty-first century. She contends that in order to make the institutions and practices our collectives generate more just, we must 'join … with others in collective action' (Young, 2006: 123) because individuals alone cannot make a real difference. The necessity of collective action to confront the harm we are implicated in due to our social connections to those harmed leads Young to see much responsibility as 'ultimately political responsibility' (Young, 2006: 123). 'Political responsibility … is

necessarily a shared responsibility both because the injustices that call for redress are the product of the mediated actions of many, and thus, because they can only be rectified through collective action' Young (2004: 387). This political responsibility must be borne by collectives who increasingly (though not often intentionally) influence and harm those territorially distant from them.

By politics, Young is referring to 'the activity in which people organize collectively to regulate or transform some aspect of their shared social conditions, along with the communicative activities in which they try to persuade one another to join such collective action or decide what direction they wish to take it' (Young, 2004: 377). Discharging responsibility involves engaging in discourse about our practices and trying to persuade others that some outcomes are wrong and can and should be changed through collective action. According to Young, following Arendt, this discourse is inherently political, and participation in it creates the power and agency needed to bring about transformation. Power, and the political negotiation of interests, is not only impossible to divorce from ethics, but is necessary to ethical social life. Our political participation within collectives – negotiating our interests, defining our expectations of social roles and sociable behaviour, drawing up laws, and to holding each other to account – is the very action which engenders the power of these collectives to bring about change in line with developing ideas of justice.

8.4 Conclusion

Once we recognise agency and responsibility as inherently social and inter-subjective, a whole range of new possibilities for human communal life can be imagined. Nothing is necessary and nothing impossible. The practices of war, of state sovereignty, of capitalism, are just (very entrenched and seemingly highly functional) practices that we use to manage our relationships. They are the creations of humans acting socially, and can be changed, as we have seen with the redefinitions of the role

of the state in the Responsibility to Protect process and the firm with the advent of corporate social responsibility.

However, there is still much work to do. The nature and scale of harm in the contemporary world is such that causal responsibility is not equal to it and the human rights regime is not preventing it. Our ideas of responsibility need to be expanded beyond strict legal considerations of what we have directly caused to include political responsibility for what we can potentially influence. There is good reason to think that this change is coming. I documented in Chapter 1 the growing realisation of the limits of the human rights regime, and outlined in Part One the reasons why the regime is so limited, based as it is on the cosmopolitan liberal conception of the sovereign individual agent. There is an increasing awareness that human flourishing is not brought about by mutual disinterest – by leaving one another alone to live isolated, self-interested, individual lives – but by achieving status in a social environment. Freedom, that most valuable commodity, requires more than one's 'rights' to be respected: to be free is to be afforded a certain status – that of responsible agent – by others.

Practice seems to be moving ahead of theory here, and a new discourse of responsibility is competing with the discourse of rights. The biggest ever anti-poverty campaign was formed under the banner of 'Make Poverty History' in 2005, with a view to holding the world's wealthiest states responsible for alleviating the suffering of the world's poorest people. This movement recognises the utility of power in bringing social change, campaigning under the slogan: '[t]hey have the power and we can make them use it' (Make Poverty History website, 2006). States have responded to this with unprecedented levels of debt cancellation and promises of aid. Firms are also feeling a new responsibility for their contribution to social life, and increasing numbers are responding to calls to improve their social and environmental impacts by assuming responsibilities aligned with their identities.

International political theory is struggling to keep up with these developments, because neither of its principal approaches to these issues, cosmopolitan liberalism and communitarianism, can adequately account for our experiences of agency or practices of responsibility. Within this thesis I have started to re-think the notions of agency and responsibility in IPT, in order to move past the impasse reached in mainstream theorising. An improved understanding of these notions is valuable in and of itself, but also, as I have shown in this final chapter, such an understanding offers us significant opportunities to move beyond the impossible dreams of cosmopolitan liberalism. Accepting that responsibility is about more than following rules or laws and assigning blame should motivate agents to develop social virtues and practical reason, enabling them to act together to challenge supposedly structural features of our world that we perceive to be causing harm. Accepting that politics is a necessary part of ethics should persuade us to concentrate less on making pre-political statements about supposedly universal standards and to turn our attention instead to how best to create and utilise the power to bring change. Finally, understanding that responsibility is a social practice, central to every human life, could lead us towards a world in which we each recognise and assume responsibility to genuinely promote the welfare of others, knowing that to do so – to act responsibly – is to flourish ourselves.

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