

*Refugee Policy and the  
Limits of Liberal Universalism*

by

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## **Abstract**

This thesis aims to construct a conceptual framework for characterising the relationship between duties to refugees and duties to fellow nationals. The need for such a framework is generated by the current impasse on the policy debate about the nature and scope of refugee rights. The thesis examines a range of liberal political theories to see if they can provide an adequate account, evaluating them on three criteria: normative desirability; practical feasibility; and internal coherence.

The discussion criticises liberal theories on two levels. Firstly, it shows how liberal universalist theories raise a problem of moral motivation: they impose overly stringent ethical demands, and risk being counter-productive. Attempts to incorporate some notion of the significance of national ties or to justify a national social contract simply produce an incoherent amalgam of universalist and particularist premises.

Secondly, the thesis argues that these problems reflect a more profound weakness in liberal theories of moral agency and motivation. Liberal theory relies on an assumed dichotomy between a personal and an impartial perspective. The moral agent is assumed to abstract from her personal characteristics to adopt an “ethical” view-point. This notion of impartiality is descriptively implausible, and produces a highly problematic rationalist theory of motivation. The thesis argues instead for an account that sees the agent as motivated by her personal disposition and community values to respect refugee rights. On this account there is no necessary conflict between particularism and duties to non-nationals. I develop this non-rationalist account by providing (1) a philosophical theory of motivation; substantiated by (2) a theory of the psychology of moral development.

The thesis shows how this non-rationalist account is consistent with a substantive commitment to universal duties. Moreover, it fulfils the two additional criteria of internal coherence and feasibility, thus providing a superior conception of the relationship between duties to compatriots and to refugees.

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## Introduction

### 1. The Crisis in International Refugee Policy

International refugee policy appears to be facing a crisis: an escalation in the level of refugee flows, accompanied by an increased reluctance of states to grant asylum to large numbers of refugees.<sup>1</sup> Most commentators characterise the crisis as a conflict between refugee rights and national interests, especially in cases of mass refugee influx. Granting asylum to large numbers of refugees is considered to impose a financial and political burden on receiving states, running directly counter to their national interest. The crisis in refugee policy has cast doubt on the adequacy of current international legal provisions for protecting the rights of refugees. These provisions oblige states to respect a range of rights and standards for asylum-seekers and those with refugee status.<sup>2</sup> The crisis also challenges the feasibility of recognising duties to respect the rights of those beyond borders. These moral duties are perceived by many to impose overly stringent requirements on states which are not realisable under current economic and political circumstances - especially not where they require absorbing large numbers of non-nationals.

Most of those defending refugee rights against this attack invoke liberal

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<sup>1</sup> The United Nations High Commission for Refugees (UNHCR) estimates that there are around 50 million refugees and displaced persons world-wide. See UNHCR, *The State of the World's Refugees: A Humanitarian Agenda* (Oxford and New York: Oxford University Press, 1997), p. 2; and *Refugees and Others of Concern to UNHCR: 1999 Statistical Overview* (<http://www.unhcr.ch/statist/99oviewtoc.htm>). Moreover, as UNHCR writes, "It can be predicted with some degree of certainty that states will prove increasingly reluctant to open their borders to refugees and to provide them with effective protection.... [T]he exclusionary attitude of states is now firmly established in both richer and poorer regions of the world." UNHCR, *State of the World's Refugees* (*ibid.*), p. 264.

<sup>2</sup> The most important instruments are the *Convention Relating to the Status of Refugees* (Geneva, 28 July 1951 (189 UNTS 137)) and its 1967 Protocol (New York, 31 January, 1967 (606 UNTS 267)); but there are also a range of "soft law" provisions, notably United Nations General Assembly Resolutions, and Conclusions of the UNHCR Executive Committee. For good overviews of these provisions, see James C. Hathaway, *The Law of Refugee Status* (Toronto and Vancouver: Butterworths, 1991); and Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon, 1996).



universalist arguments to justify their claims about duties to refugees.<sup>3</sup> Liberal universalism provides an accessible and cogent grounding for theories of duties to non-nationals, and its assumptions about the moral equality of human-beings deeply pervade moral and political discourse in liberal democratic societies. It is not surprising, then, that liberal universalist theories have a virtual monopoly on arguments for admitting greater numbers of refugees, and more generally for recognising moral duties beyond borders.

Yet despite this apparent facility for justifying refugee rights, liberal universalist theories are ill-equipped to provide an account of the relationship between duties to refugees and duties to fellow nationals. These theories have problems accounting for the significance of membership in particular states or communities. Starting from a premise of the moral equality of all individuals, pure liberal universalism denies the moral relevance of nationality and other characteristics that are not universally shared. And - unless liberal theorists can find practical or instrumental arguments for diluting this universal commitment (which many of them attempt to do<sup>4</sup>) - they proceed to derive theories of duties to refugees that seem hopelessly unfeasible. Consistent liberal universalist theories produce normative prescriptions that are at best utopian, at worst counter-productive to their own ends. The liberal universalist claim about the moral equality of refugees and nationals of receiving states produces practical norms that seem increasingly out of touch with the current debate on asylum policies in liberal democracies.<sup>5</sup>

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<sup>3</sup> I use the term “duty” to denote the obligations generated by individual rights in liberal political theory. In some contexts, I also use the term to refer to other types of ethical duties not generated by rights - for example duties related to notions of charity and humanity, or “special” duties generated by particular relationships with others.

<sup>4</sup> As I shall argue later on in the chapter, where liberal theorists have attempted to limit the moral demands of their theories, the outcome tends to be either based on dubious empirical claims, or an incoherent amalgam of universalist and communitarian premises.

<sup>5</sup> On “utopian” applications of liberal universalism to the question of refugees or migration, see, for example, Peter Singer, “Insiders and Outsiders”, in his *Practical Ethics* (Cambridge and New York: Cambridge University Press, 1979), pp. 247-163; Ann Dummett, “The Transnational Migration of People seen from within a Natural Law Tradition,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (Hemel Hempstead: Harvester Wheatsheaf, 1992), especially pp. 174-7. See also Mark Gibney, ed., *Open Borders? Closed Societies?: The Ethical and Political Issues* (New York and London: Greenwood Press, 1989). On general theories of liberal universalism (often termed cosmopolitanism) that create this kind of problem of feasibility, see Charles R. Beitz, *Political*

The patent unfeasibility of these theories generates a risk that liberal universalist arguments will come to be seen as irrelevant to the refugee policy debate. By advancing such stringent conceptions of duties, liberal universalism may be effectively relegating itself to the margins of political discussion. The dangers inherent in this tendency are clear: if liberal universalism is seen as irrelevant, there is no alternative political theory that could provide anything like a substitute in terms of the breadth and persistence of its appeal. The marginalisation of liberal universalist arguments would leave the field clear for the defenders of “national interest”, or crude forms of communitarianism.<sup>6</sup>

This thesis is motivated by a concern to counter the marginalisation of liberal universalist notions of duties to refugees. Thus while I am deeply critical of the liberal universalist failure to recognise the importance of community, it is not my intention to embrace a communitarian political theory of special duties. While rejecting many of its premises, I am broadly sympathetic to the liberal universalist normative agenda of promoting a more generous asylum policy in liberal democracies. Indeed, it is precisely because of this ethical commitment that I am keen to salvage liberal universalist prescriptions from their nationalist and communitarian critics. But I believe that the best hope for rescuing liberal universalism is to significantly modify its ontological assumptions about the self, and in particular about moral agency. This project of salvaging liberal universalist theory will require ascertaining the reasons for liberal theory’s inability to provide a plausible account of duties to refugees. Once the underlying

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*Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); Robert E. Goodin, “What Is So Special About Our Fellow Countrymen?,” *Ethics* 98:4 (1988), pp. 663-686; Thomas W. Pogge, *Realizing Rawls* (Ithaca and London: Cornell University Press, 1989), especially pp. 211-80; Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996); Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (New Jersey: Princeton University Press, 1980). Similarly universalist accounts can be derived from the work of Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982); and Brian Barry, *Justice As Impartiality* (Oxford: Clarendon Press, 1995).

<sup>6</sup> Arguably, this tendency is already discernible in certain of the cruder forms of communitarian and post-modernist responses to the inadequacies of liberal universalist theory. The retreat from universalist ethics can be understood as at least in part a response to the problem of the excessive motivational demands imposed by universalist morality. See, for example, Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, Mass: Harvard University Press, 1989), pp. 518-9; and Aaron Ridley’s account of the relationship between guilt and morality in

problems are revealed, the thesis will need to revise the relevant liberal premises, and offer an alternative account that avoids this risk of marginalisation. I shall argue that the short-comings of liberal universalism can be traced to its assumptions about moral agency and motivation. Thus rather than targeting the liberal universalist first order commitment to universal duties, the thesis will challenge its assumptions about the role of particular ties, interests and values in moral agency.

Clearly, the general critique of liberal ontology is not new. Many theorists have challenged liberal assumptions about the self as somehow able to detach herself from her social context and autonomously choose her own interests and goals; or the moral agent as rationally deliberating on practical action, abstracted from her particular ties and values.<sup>7</sup> But the line of argument pursued in this thesis is original in two senses. First, the specific focus of the thesis is on the less widely discussed question of liberal universalist assumptions about moral motivation.<sup>8</sup> It will reject the deep-seated liberal commitment to the notion of a split between an impartial, ethical perspective, and a particularist, self-interested perspective. And in providing an alternative account, it will bring together moral philosophy and psychological accounts to provide a plausible conception of moral agency and motivation. In so doing, the theoretical analysis will provide an original contribution to the question of moral motivation and agency. Second, the theoretical analysis is driven by a practical concern to retain or extend conceptions of duties to refugees. Thus while the political and moral philosophy analysis will have broader relevance to a range of ethical issues, the discussion

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Nietzsche, *Nietzsche's Conscience: Six Character Studies from the 'Genealogy'* (Ithaca: Cornell University Press, 1998), especially pp. 30-3.

<sup>7</sup> For important contemporary critiques of liberal ontology, see Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); and Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Harvard: Harvard University Press, 1989), pp. 3-107.

<sup>8</sup> On the question of motivation, critiques of liberal (usually Kantian) assumptions about motivation include those of Bernard Williams, "Internal and External Reasons," in *Moral Luck: Philosophical Papers 1973-1980*, ed. Bernard Williams (Cambridge: Cambridge University Press, 1981), pp. 101-13; G. E. M. Anscombe, "On Practical Reasoning," in *Practical Reasoning*, ed. Joseph Raz (Oxford and New York: Oxford University Press, 1978), pp. 33-45. Rüdiger Bubner, "The Possibilities of Practical Reason", in *Essays in Hermeneutics and Critical Theory*, ed. Rüdiger Bubner, trans. Eric Matthews (New York: Columbia University Press, 1988), pp. 147-94. These discussions have rarely been taken up in political theory discussions of liberalism, and (as

will also shed light on an immediate political problem. Putting these two points together, the aim of the thesis is to fundamentally revise liberal universalist assumptions about moral agency, whilst promoting the normative goal of recognising duties to refugees.

This type of combination of a critique of liberal ontology and adherence to substantive liberal values has been defended - on different grounds - by a number of political theorists and international relations scholars.<sup>9</sup> These authors have attempted to avoid grounding their commitment to liberal values in a transcendental justification or "strong foundationalism". Instead, they have located the source of their commitment to liberal universalism in shared intersubjective values (Charles Taylor, Mervyn Frost and the later John Rawls); or have justified conceptions of liberalism or rights through a pragmatic justification that supposedly dispenses with strong foundations (Richard Rorty and Molly Cochran); or have defended a form of liberal universalism conceived as an inclusive dialogic community (Jürgen Habermas and Andrew Linklater).<sup>10</sup> However, while these authors have made valuable contributions to the debate on ethics and foundations, none of them is directly concerned with the specific configuration of issues raised by my thesis. This is so for two reasons. First, none of them - with the partial exception of Charles Taylor and Jürgen Habermas

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far as I know) not at all in international political theory.

<sup>9</sup> For important contemporary political theory accounts, see Taylor, *Sources of the Self* (*op. cit.*); and Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989), and "Human Rights, Rationality and Sentimentality", in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 111-35. Arguably, Rawls' later work also falls into this category - see his *Political Liberalism* (New York: Columbia University Press, 1993); so too, I would claim, does the work of Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification", in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), pp. 43-115. For international theories with a similar combination, see Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Columbia: University of South Carolina Press, 1998); Mervyn Frost, *Ethics in International Relations: Towards a Normative Theory* (Cambridge: Cambridge University Press, 1996); several contributions by Chris Brown, including his recent "Universal Human Rights: A Critique", in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), pp. 103-27; and Molly Cochran, *Normative Theory in International Relations: A Pragmatic Approach* (Cambridge: Cambridge University Press, 1999).

<sup>10</sup> Arguably, some recent post-structuralist writers such as Richard Ashley, Rob Walker and William Connolly have embraced a similar combination of "anti-foundationalism" and an ethic of freedom or "marginal conduct", although they would deny that this represents a substantive

- addresses the questions of moral agency and motivation to extend duties to non-nationals, issues which are critical to the thesis. For this reason, in my discussion of motivation and moral agency I shall draw on liberal theorists who have dealt explicitly with questions of motivation (Chapters Two, Three and Four) and moral philosophers and psychologists who have written about moral agency (Chapters Five and Six), rather than theorists who have focused on questions of foundations. My rejection of liberal ontology flows from and is to a great extent shaped by my critique of liberal universalist theories of motivation and moral agency, rather than by a critique of their foundational claims *per se*.

Secondly, and related to this point, most of the attempts of international relations theorists to combine substantive liberal values with a critique of liberal ontology have been more concerned with the problem of value pluralism than that of motivation. They have been preoccupied with practical questions about the possibility of constructing an international community of shared values, justifications for intervention, or concerns about cultural imperialism. This has led theorists such as Mervyn Frost, Chris Brown and Molly Cochran down a somewhat different path, focusing on how one can justify particular norms and policies in the absence of an Archimedean point from which to evaluate different values. While such questions are clearly crucial to international relations, they do not directly address the practical problem of extending duties to non-nationals.

One exception to this is Andrew Linklater, who is explicitly concerned with the relationship between ethical duties to fellow nationals and to the rest of humanity.<sup>11</sup> In his recent work, Linklater's central normative concern has been to demonstrate the possibilities of political and social forms within modern societies that promote the inclusion of minority groups and aliens. However, Linklater's project is primarily a sociological enquiry into the prospects and empirical conditions for this form of inclusiveness. Thus his account teases out common strands in current ethical and political debates on universalism and particularism

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commitment to liberalism. See Linklater, *Transformation (op. cit.)*, pp. 71-2; Cochran, *Normative Theory (op. cit.)*, pp. 133-5.

<sup>11</sup> Linklater, *Transformation (op. cit.)*, p. 56.

and the social and political contexts in which such debates arise, in order to demonstrate the potential for inclusive dialogic communities. It does not systematically address the conceptual and ontological questions which I consider to be crucial for constructing an adequate conception of duties to refugees. Thus while I am sympathetic to Linklater's normative focus on problems of inclusion and exclusion, its more sociological focus nonetheless leaves unanswered the questions of moral agency and motivation which are the major concerns of this thesis.

In sum, while much attention has recently been devoted to questions of how to justify duties beyond borders in the absence of a universalist liberal ontology, existing literature fails to address the specific practical and theoretical concerns of the current thesis. Most contributions have concentrated on the problems of value pluralism, without grappling with questions of motivation to extend duties to others; or they have focused on the sociological conditions under which societies may extend duties to non-nationals, but without a detailed philosophical and psychological analysis of conceptions of duties and moral agency. This thesis aims to fill this gap, providing a conceptual and ontological analysis of the relationship between ethical duties to compatriots and to refugees. Its objective is therefore two-fold: to advance theoretical understanding of moral agency and motivation in liberal theory; and to help motivate a more generous policy towards refugees in liberal democratic states.

Given these two concerns – the practical and the theoretical - it is important to elaborate the concerns that triggered this critique of liberal universalism. I shall do this below in sections 1.1 and 1.2, returning to the question of theoretical approaches to addressing the problem in 1.3 and 1.4.

### *1.1 The conflict between refugee rights and national interests*

I suggested that refugee policy is facing a crisis, and that this crisis had generated doubts about the feasibility of international refugee law and the liberal universalist model. But in order to understand why the universalist model is so

vulnerable to attack, we should consider how the policy debate on this issue is framed. For it is partly as a result of the polarised nature of the debate that liberal universalism has come to appear so unfeasible.

Over the past two decades or more, the debate on strategies to respond to the refugee crisis has become polarised around two apparently incompatible perspectives. On the one hand, advocates of human rights and refugee protection berate states for restrictive measures and a failure to respect the standards for refugee protection defined in international law. These critics of state practice invoke international refugee law as the ethical standard for evaluating refugee policy, basing their normative prescriptions on universalist theories of individual rights.<sup>12</sup> On the other hand, states tend to draw on notions of national interest to justify restriction. They claim that national economic, strategic and social goals take precedence over duties to refugees. Defence of the national prerogative to restrict refugee influx may be couched in pragmatic, *realpolitik* language, or be defended in terms of the ethical relevance of national ties.<sup>13</sup>

The apparent incompatibility of these two perspectives – the nationalist and the universalist – would suggest that there is a conflict or trade-off between these two sets of interests. Indeed, most academics, human rights lobbyists, government and United Nations (UN) officials share a similar characterisation of the basic problem: a conflict between the rights of refugees and national interests in situations of mass influx.<sup>14</sup> This notion of a conflict assumes that the two sets

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<sup>12</sup> See, for example, Jens Vedsted Hansen, "Non-Admission Policies and the Right to Protection: Refugees' Choice versus States' Exclusion", in *Refugee Rights and Realities*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 269-88; Reinhard Marx, "Non-Refoulement, Access to Procedures, and Responsibility for Determining Refugee Claims", *International Journal of Refugee Law* 7:3 (1995), pp. 383-406; Arthur C. Helton, "What is Refugee Protection?", *International Journal of Refugee Law*, Special Issue (1990), pp. 119-29.

<sup>13</sup> The former category comprises realists who see the pursuit of such national interests as inevitable. See Rainer Bauböck, "Legitimate Immigration Control", in *Legitimate and Illegitimate Discrimination: New Issues in Migration*, ed. Howard Adelman (York, Canada: York Lanes Press, 1995), pp. 3-40. The second category includes some communitarian thinkers, such as Michael Walzer, who argues that communities should be entitled to choose who to admit to membership. See Walzer, *Spheres of Justice* (*op. cit.*), pp. 49-50.

<sup>14</sup> For an overview of this debate, see Christina Boswell, "The Conflict Between Refugee Rights and National Interests: Background and Policy Strategies", *Refugee Survey Quarterly*, 18:2 (1999), pp. 64-84.

of considerations are shaped independently of one another. National interests reflect exclusively self-interested domestic concerns, and are shaped by interests and beliefs quite separate from those that define ethical duties. On this account, any coincidence between ethical duty and national interest is contingent on economic and political circumstances. The two sets of considerations may converge in certain periods, as indeed they did in the post-war decades, when the need for additional labour in industrialised states encouraged a more generous stance to both refugees and economic immigrants. But the current configuration of socio-economic conditions in most states, so it is argued, has generated a clear conflict between national interests and refugee rights.

It should not be any great surprise that the trade-off characterisation is favoured by those keen to restrict refugee influx. Defence of the national interest is often effective in mobilising political support - it conveys notions of pragmatism, skilful leadership and patriotism. By extension, those who seek to prioritise refugee rights over the national interest can be labelled as politically naïve, unpatriotic or idealistic. The combination of *realpolitik* and patriotic loyalty is politically extremely effective - so that even where there is no vital political or economic interest at stake, the term can be invoked to cover a broad set of moral and pragmatic arguments. It is partly its lack of clear definition that makes it an effective political tool. Where duties to non-nationals are characterised as in conflict with the national interest, there is a cluster of ill-defined but intuitively persuasive arguments to limit the number of refugees recognised.

Given the political uses of this term, it is all the more surprising that many proponents of universal rights have tended to embrace a similar conception of the relationship between universal duties and national interests. They also share the notion that the “ethical” stance is in conflict with national interests, but they castigate the national interest as selfish and unethical. Any deviation from the requirements of universal rights reflects the self-serving and power-seeking nature of states. On many universal rights accounts, there is an implicit suspicion about the motives of states, and an idea that political objectives are somehow



impure and constraining of humanitarian and human rights goals.<sup>15</sup> But while rejecting the legitimacy of pursuing the national interest over ethical duty, they nonetheless accept the assumed dichotomy between the two.<sup>16</sup>

Now it is certainly not my intention to undermine the aspiration of refugee rights activists to encourage a more generous refugee policy. Indeed, as I have already noted, one of the central aims of the thesis is to find a framework that can provide scope for encouraging the extension of duties to refugees. Nor do I want to question here whether there is a moral case to be made for prioritising the “national interest” over duties to non-nationals in any given situation. My aim is rather to question whether it is both descriptively accurate, and politically advisable, for proponents of refugee rights to accept a sharp distinction between ethical concerns and national interests. In other words, is it an adequate characterisation of the relationship between the interests of compatriots, and duties to non-nationals? And, if not, is there an alternative way of conceptualising this relationship, that avoids the descriptive and practical shortcomings of this trade-off characterisation? The answer to this question will take shape through the critical analysis of liberal universalism in the following chapters. For now, I shall limit my remarks to raising some initial doubts about the adequacy of this characterisation in the debate on refugee policy (in 1.2); and suggesting how its origins might be traced to more profound tensions in liberal political philosophy (1.3).

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<sup>15</sup> For example, the liberal theorist Brian Barry writes about a “celebration of selfishness” in UK and US foreign policy – see Brian Barry, “Can States be Moral? International Morality and the Compliance Problem,” in *International Ethics in the Nuclear Age*, ed. Robert J. Myers (Lanham and London: University Press of America, 1987), p. 106. A good example of the tendency to juxtapose states and the “political” with refugee rights can be found in a piece by S. Alex Cunliffe and Michael Pugh, “UNHCR as Leader in Humanitarian Assistance: A Triumph of Politics over Law?”, in *Refugee Rights and Realities*, ed. Frances Nicolson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 175-99.

<sup>16</sup> This description is slightly caricatured, since many also acknowledge that ethical considerations *may* in certain cases influence states, or that ethical goals may coincide with self-interest. See, for example, John R. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, in association with the Royal Institute of International Affairs, 1986), p. 151. However, this characterisation of liberal universalism arguments nonetheless captures an important underlying assumption in the refugee policy debate about the basic dichotomy between the two interests or values, and one which - as I shall argue - has deep roots in liberal political and moral thought.

## 1.2 Practical doubts about the trade-off model

First, in terms of the descriptive accuracy of this trade-off account, a large body of literature in international relations has cast doubt on simplistic notions of national interest. Many theorists have rejected the claim that there is a set of “real” interests that can be derived from a rational assessment of national economic and political considerations. Rather, notions of national interest are shaped by a range of values, beliefs and interests that are not directly determined by rational calculations of narrow domestic interests.<sup>17</sup> One subset of this critique involves a rejection of the conception of nation-states as separate, bounded units of interest, instead stressing the role of transnational or sub-national interests and ties in shaping political action.<sup>18</sup> While this discussion is of general interest to the question of refugee policy, I am more concerned with a second type of critique that stresses the role of shared values in defining interests. The concern here is not so much linked to the empirical claim that political decisions are shaped by sub- or transnational interests. Rather, the point is that it is misguided to conceive of interests - whether individual, national, sub-national or transnational - as independent of ethical values.<sup>19</sup> Just as it is simplistic to assume that an individual’s interests are independent of her values and beliefs, so too is it misleading to conceive of a national interest that is independent of broader ethical considerations. Commitment to ethical values will create implicit

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<sup>17</sup> For a useful collection of these critiques, see Robert O. Keohane, ed., *Neorealism and its Critics* (New York : Columbia University Press, 1986), especially Robert W. Cox, "Social Forces, States and World", pp. 204-54; and Richard Ashley, "The Poverty of Neorealism", pp. 255-300.

<sup>18</sup> For a selection of contributions that can be loosely grouped under this category, see John Burton, *World Society*; see Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977); John Gerard Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis", in Keohane, *Neorealism and its Critics* (*op. cit.*), pp. 131-57; Stephen D. Krasner, *Defending the National Interest: Raw Materials Investment and U.S. Foreign Policy* (Princeton: Princeton University Press, 1978), Part One.

<sup>19</sup> This point has been made by a number of international relations theorists associated with the revival of “normative theory” in international relations theory - see Andrew Linklater, *Transformation* (*op. cit.*), pp. 23-5; Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (*op. cit.*), especially pp. 141-2. On realist assumptions about amorality in politics, see Chris Brown, *International Relations Theory: New Normative Approaches* (Hemel Hempstead: Harvester Wheatsheaf, 1992), p. 97. For a discussion of the question in relation to refugee policy, see Randolph Kent, "Emergency Aid: Politics and Priorities", in *Refugees and International Relations*, ed. Gil Loescher and Laila Monahan (Oxford: Clarendon, 1990), pp. 63-84.

norms and expectations about what constitutes acceptable or desirable behaviour. I do not want to exaggerate the role of such ethical norms in shaping refugee policy. But it would be equally wrong to overlook it, especially on an issue as normatively laden as that of duties to refugees. In short, the notion of a dichotomy or trade-off between refugee rights and national interests seems descriptively simplistic.

Second, quite apart from the descriptive problems with the trade-off conception, there are also considerable practical risks in embracing this account. Drawing a distinction between national interests and ethical duty is not a particularly effective strategy for motivating support for a generous refugee policy. If adopting an ethical stance is characterised as in opposition to one's interests - as self-abnegating rather than personally fulfilling - then it is not evident how advocates of refugee rights could motivate support for their cause. Castigating the defenders of national interest as self-centred and calling for a more purist moral approach is likely to be counter-productive, especially in a climate where the claims of liberal universalism appear to be so unfeasible. Again, as we shall see in the thesis, there are parallels here with the moral philosophical distinction between the personal disposition and the requirements of morality. The traditional Kantian distinction between will and moral duty seems to have pervaded the discourse on national interest and universal ethics, bringing with it the associated problems with generating moral motivation.<sup>20</sup>

In addition to this practical problem of encouraging motivation, the trade-off characterisation has a second prescriptive weakness: it limits the scope for defining and evaluating possible alternative solutions to refugee problems. Couching the relationship in terms of refugee rights versus national interests precludes the possibility of defining approaches which could meet the concerns of both nationals and refugees. For want of a better term, the trade-off conception constrains the development of "positive sum" approaches to refugee problems. The requirements of ethical duty are defined in rigid terms, with any

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<sup>20</sup> I shall unpack this question in detail in Chapter Five.

incorporation of national concerns representing a deviation from universalist ethics. Yet recent developments in refugee policy seem to have transcended this trade-off conception. A number of innovative policy approaches have been debated and implemented over the past decade, which do seek to address the concerns of states whilst meeting the needs of refugees. For example, the temporary protection regime for Bosnian refugees established a form of short term asylum which was designed to ensure the safety of refugees for the duration of the conflict, whilst minimising the burden on receiving countries. An increased emphasis on protecting the “internally displaced” and monitoring of refugees after they have repatriated also aims to ensure the human rights of refugees through alternatives to asylum. However, these innovations have been *ad hoc* and for the most part lacking a coherent rationale. Debate on and evaluation of these policies has also suffered from a marked lack of consensus on how to define their success.<sup>21</sup> Trapped in the trade-off characterisation, refugee rights activists often criticise them as a “compromise” of refugee rights under pressure from states.

These descriptive and practical short-comings of the trade-off account - the simplistic definition of national interest, the problem of motivation and the lack of framework for designing and evaluating new policies - would imply that the current *impasse* in the policy debate is partly a conceptual problem. While it would be a mistake to underplay the conflicts of interest between states and refugees, the main concern being addressed here is that the current characterisation may be inadequate, and even counter-productive to the normative goals of liberal universalism.

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<sup>21</sup> For general overviews of the issues raised, see James Hathaway, *Towards the Reformulation of International Refugee Law: Research Report 1992-97* (Center for Refugee Studies, York University, Canada, 1997); Pirkko Kourula, *Broadening the Edges: Refugee Definition and International Protection Revisited* (The Hague: Martinus Nijhoff Publishers, 1997). For examples of those opposed to the new approaches, see James C. Hathaway, “New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection”, *Journal of Refugee Studies* 8:3 (1995), pp. 288-300; and Mikhael Barutciski, “The Reinforcement of Non-Admission Policies and the Subversion of UNHCR”, *International Journal of Refugee Law*, 8:1/2 (1996), pp. 49-110.

### 1.3 *The inadequacy of applied political theory analyses of the problem*

The inadequacy of current conceptions of refugee rights and national interests becomes more evident if one considers recent offerings of liberal political theorists on the question. The relatively few attempts that have been made to apply political theory to the specific problem of refugee policy can be divided into two categories.

Firstly, a number of contemporary political theorists have defended particular approaches to refugee policy as one component of a broader theory of justice.<sup>22</sup> In most cases, theories of justice are advanced in the first instance for application at the domestic level. Even where such theories are premised on universal rights, the restriction of immigration is justified by the need to preserve and nurture pre-established political institutions and principles in the domestic arena. As we shall see in the following chapters, the attempt to justify restriction on these grounds usually takes one of two routes. Either the theorist introduces particularist arguments for restricting immigration, in which case the argument tends to result in an incoherent jumble of different types of justification based on conflicting premises.<sup>23</sup> Or restriction is justified on tenuous instrumental grounds.<sup>24</sup> Alternatively, where liberal theories do remain faithful to their universalist premises, they either rely on implausible empirical assumptions about the limited scale of the refugee problem or a high degree of motivation to admit refugees.<sup>25</sup> These liberal universalist arguments will be considered in detail in chapters two to five. What it is important to note for now is that these few

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<sup>22</sup>See, for example, Walzer, *Spheres of Justice*, *op. cit.*, pp. 49-50; Bruce Ackerman, *Social Justice in the Liberal State* (Hew Haven, Conn: Yale University Press, 1980), p. 95; Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State", in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1994), pp. 142-3.

<sup>23</sup> This is a problem with David Miller's account of duties to non-nationals, in his *On Nationality* (Oxford and New York: Oxford University Press, 1995). For a full discussion, see Chapter Three.

<sup>24</sup> See Ackerman, *Social Justice* (*op. cit.*), p. 95.

<sup>25</sup> Habermas, "Struggles for Recognition" (*op. cit.*), pp. 142-3; Ann Dummett, "The Transnational Migration of People seen from within a Natural Law Perspective", in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 169-80.

attempts to directly address the refugee question hold out little promise of advancing the policy debate. As I shall argue, they rely on the same assumptions about the conflict between national interests and universal duties that characterise the policy debate.

The implications of the conceptual inadequacy of liberal universalist notions of duties to refugees seems to be entirely lost on most political theorists. The refugee problem is deemed to represent an aberrant case which is atypical of the questions confronting liberal political thought.<sup>26</sup> Liberal theorists on the whole are preoccupied with issues of how to regulate competing claims within multicultural states, or how to ensure a fair distribution of resources between citizens. Most theories dealing with justice at the international level are more concerned with norms of justice for regulating relations between states, or the question of how to export liberal values to non-liberal states. The question of the nature and grounds of duties to refugees is something to be worked out once these more important components of the theory are in place. The failure of these conceptions of justice to provide a convincing account of the relationship between refugee rights and national interests is not considered to pose a fundamental challenge to such theories. Rather, it encourages them to view the refugee question as an exceptional case.

This marginalisation of the refugee issue in political theory is partly redressed by the second category of literature, which draws on broad traditions in political theory to clarify and address refugee-related policy issues.<sup>27</sup> Some recent works on immigration policy raise many issues relevant to refugee policy, indeed the refugee problem is often treated as a subset of the question of immigration. However, by drawing unproblematically on current political theory conceptions, these contributions tend to encounter a similar problem to the theories discussed above. Their direct application of political theory to the problem of refugees

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<sup>26</sup> Thus John Rawls, for example, justifies his failure to address the question of duties to refugees on the grounds that flight "is eliminated as a serious problem in a realistic utopia". See his *The Law of Peoples* (Cambridge, Mass and London: Harvard University Press, 1999), p. 9.

takes on board the same assumed dichotomy between universal ethics and national interests. As such, it obscures deeper flaws in the way political theory addresses the issue of duties to non-nationals.

Gibney, for example, introduces a collection of essays on ethics and immigration policy with the questions “[c]an closed borders be morally justified? To what extent should a nation be able to maintain its “communal autonomy” through its immigration policies?”<sup>28</sup> Likewise Whelan highlights the problem of migration pressures caused by global disparities in wealth, and the need for political philosophers “to inquire into what (if any) justifications can be offered for the power universally claimed by states to exclude foreigners from their territory...”<sup>29</sup> The policy issues these authors seek to address parallel those raised in this thesis: namely, conflicts between the (more or less morally founded) claims of immigrants, and national interests. Yet the sources of these conflicts are unlikely to be clarified - let alone resolved - by considering whether states may legitimately restrict influx. Such an approach already assumes a distinction between the requirements of universal ethics and the interests and goals of nationals of the receiving state. The former require that receiving states respect the universal rights of refugees and (certain categories of) immigrants. And the latter call for some restriction on unlimited immigration, based on the value of preserving the institutions and values of the receiving society. The question of determining immigration or refugee policy thus becomes a matter of finding the right balance in a trade-off between two sets of conflicting ethical demands.

As with the liberal theories of justice discussed above, these political theory discussions of immigration reinforce the notion of a dichotomy between refugee rights and national interests. The theoretical enquiry is defined from the outset in such a way as to preclude the influence of conceptions of universal

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<sup>27</sup> Gibney, *Open Borders?* (*op. cit.*); Barry and Goodin, *Free Movement* (*op. cit.*); Rainer Bauböck, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot: Edward Elgar, 1994).

<sup>28</sup> Gibney, *Open Borders?* (*ibid.*), p. xiii.

<sup>29</sup> Frederick G. Whelan, "Citizenship and Freedom of Movement: An Open Admission Policy", in *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed. Mark Gibney (New York and London: Greenwood, 1989), pp. 3-4.

duties on definitions of national interest. The only possible conclusion of such enquiries will be some form of trade-off or compromise between the distinct values of national interest and universal rights.

Drawing together these points, one of the reasons for the current *impasse* in the debate on refugee policies seems to be an inadequate account of the relationship between refugee rights and national interests. Attempts to apply political theory to the issue as thus defined can do little to resolve these issues, or even to clarify the nature of the conflict between the two sets of interests.

#### 1.4 *The need for a critique of liberal universalist accounts of moral agency*

The failure of applied political theory to address these questions suggests either that the wrong questions are being asked, i.e. that political theory is not being applied to the policy debate in the most constructive way. Or it implies that political theory is itself deficient - that the simplistic nature of the characterisation stems from the conceptual and theoretical poverty of political theory, and especially the liberal tradition. It is this more radical claim that will be pursued in the thesis. The claim is that the inability to adequately conceptualise the problem of refugee rights is symptomatic of a deeper, unresolved tension in liberal theory regarding the relationship between universal and particular duties. This inadequate conception originally shaped, and now serves to constrain, the debate on refugee policy. Thus the impasse in the refugee policy debate is not simply attributable to muddled or simplistic thinking: the origins of the trade-off model can be traced to a deeply ingrained assumption in liberal thought. Namely, the assumption that there is a dichotomy between a personal, particularist perspective, which comprises personal characteristics and interests, as well as particularist social ties, values and beliefs; and an impartial, ethical perspective, which is abstracted from these particularist elements, and which should serve as a constraint on the pursuit of self-interest.

In order to defend this claim, I shall present an analysis and critique of liberal universalist theories at two different levels. First, I shall consider whether



liberal universalism can overcome the practical problems outlined above without fundamentally revising its ontological assumptions about moral agency and the relationship between personal and impartial viewpoints. This analysis will be predominantly first order, or what I term a “thin” critique: it will consider whether liberal universalism can overcome the problem of feasibility through revising the content of its normative prescriptions, or through elaborating a plausible theory of moral motivation. This initial thin critique is important for two reasons. First, given that the aim of the thesis is to bolster liberal universalist prescriptions of duties to refugees, we should consider whether this can be done without dispensing with the second order claims of liberal universalism. After all, the analysis is not primarily motivated by doubts about the philosophical foundations of liberalism or its individualist conception of the self. The main concern is a practical question about how to justify refugee rights. The second order questions about liberal universalist ontology are only raised once it is firmly established that first order revisions will not suffice. In other words, once it becomes clear that more radical modifications are required to provide an adequate justification for first order liberal universalist claims. The second reason for analysing liberal universalist theories in some detail is that in the course of this “thin” critique I will be able to tease out tensions and problems that are common to these theories, and which will help indicate where the deeper fault-lines in liberal universalism are located. The question of duties to refugees enables one to draw out these problems in an especially clear way. For the configuration of moral and practical problems raised by refugee policy provides us with a unique insight into the weaknesses of liberal universalist assumptions about moral agency and motivation.

The second layer of more radical critique will build on the first section, examining the sources of these first order problems. It will locate the origins of the problem of feasibility in liberal universalism’s commitment to a rationalist conception of moral agency and motivation. This second order critique will argue that liberal claims about the role of reason and impartiality are untenable, and show how these claims are at the root of the problem of feasibility in liberal political theory. The thesis will offer an alternative account of moral motivation

and agency, which rejects the assumed split between an impartial and personal perspective. The account will be substantiated by drawing on psychological theories of moral development and motivation, which reinforce my claims about the relationship between personal and impartial viewpoints. This alternative account - which I term the “non-rationalist” account of moral agency - constitutes an attempt to overcome the practical problems associated with liberal universalism, whilst retaining its substantive first order commitment to refugee rights.

So while the thesis is motivated by a practical concern, it embarks on a theoretical discussion that has far wider repercussions for moral and political philosophy. For the practical problem of refugee policy is not simply an exceptional case that can be safely ignored by liberal universalism. Rather, this specific set of issues highlights the problem of motivation and moral agency in liberal universalist theory in a particularly stark fashion. It forces liberal theorists to confront a set of problems that have for the most part been overlooked by political theory, but which are highly relevant to a range of moral questions.<sup>30</sup>

To recapitulate, the linkages between theory and practice in this thesis are two-fold. On the one hand, the practical problem of refugee policy triggers the need for theoretical analysis. Theory must be applied to a specific practical problem to help overcome an impasse in the policy debate. But at the same time, the practical problem itself helps to unearth problems with theory that have been obscured in other discussions of liberal universalism. So the practical problem is not simply a catalyst for the theoretical discussion, but has a more active role in pin-pointing the flaws in liberal universalism.

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<sup>30</sup> One important reason for this neglect seems to be the supposed priority of other concerns - especially the problem of conflict - in the international sphere. These problems were often seen as taking precedence over questions of universal justice, and meant that the radical implications of liberal universalism were not acknowledged (see Chapter Four for a fuller discussion of this point). The issues of refugees challenges this prioritisation, thus providing an excellent case for unpacking the problem of motivation in liberal universalist theory.

## 2. Method of Analysis

### 2.1 *A conceptual analytical approach*

From the outset, the problem has clearly been defined as *conceptual* rather than empirical. The case has been made for reviewing how conceptions of the relationship between duties to refugees and compatriots may shape policy, rather than emphasising the role of empirical conditions, such as changes in economic policy or the nature of refugee flows. I am not denying that these empirical conditions are probably the most important factors shaping refugee policy. But I would also claim that shared beliefs and values significantly influence how we define refugee rights and national interests. In other words, the empirical conditions and the practical responses required could be conceptualised in a number of different ways. It is these different *conceptions* of duties to refugees that are the focus of this thesis. The aim is to find a way of conceptualising the current set of empirical conditions in a way that avoids the short-comings of liberal universalism, whilst retaining its general normative prescriptions regarding duties to refugees. The task of the thesis is therefore to examine the scope for changing conceptions of what duties we owe to refugees, under the assumption that the empirical conditions that have led to the current refugee crisis will largely hold constant. Any policy measures proposed will relate to possible ways of influencing conceptions of duties to refugees, rather than, for example, ways of influencing the level of flows, or modifying the international refugee regime. This is not because I do not think that such empirical changes are possible. It is because I believe that there is scope to address the current policy dilemma through a conceptual theoretical analysis that seeks to alter the way people understand this configuration of empirical conditions.

An important assumption underlying this conceptual approach is that prevalent political and moral ideas provide a framework within which people evaluate and rank the desirability of different actions and goals. By “prevalent” ideas, I mean the assumptions made about morality and society that shape philosophical and political debate on these questions, and the (often conflicting)

theories and arguments invoked. These various concepts and theories of ethics, human nature and social interaction shape the policy debate and provide criteria for designing, justifying or criticising different approaches. In turn, changes in empirical conditions can also influence these concepts in three ways. Empirical changes can highlight internal inconsistencies in moral and political theories, reveal or imply the falsity of their assumptions about the phenomena they are describing or explaining, or demonstrate the practical impediments to the realisation of their goals.

But this claim about the interaction of ideas and events raises a further question about how best to explain and influence these concepts. Here it is important to distinguish between two different approaches to explanation. The first, historical approach emphasises the role of historical analysis in understanding and explaining the evolution of current conceptions of social phenomena. It seeks to trace the development of different concepts and ideas, and understand how these interacted with events to produce particular conceptions of empirical phenomena.<sup>31</sup> This type of historical account can help one understand how a particular configuration of ideas and events produced current conceptualisations of the relationship between refugee rights and interests.

The historical approach has considerable merits. It highlights the contingency of current conceptions, suggesting the fluidity of empirical conditions, providing an important reminder that things have not always been this way, and may change substantially in the future. And it suggests possible changes in the way in which such phenomena could be characterised. Perhaps most importantly, it can provide a standard of comparison or contrast to help characterise what is distinct about current phenomena and concepts. This approach is therefore clearly important for placing current policy problems and concepts in a broader perspective. It may also indicate the possible scope and direction of changes in empirical conditions and political and moral thought.

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<sup>31</sup> For a good example of this approach in the history of liberal political thought, see Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge University Press, 1986), pp. 6, 18.

Following this approach, Chapter One will briefly trace the evolution of concepts of duties to refugees and national interests, and how they were influenced by historical events in shaping current characterisations of the refugee crisis.

However, the historical approach cannot in itself provide a detailed inventory of existing alternatives to this conceptualisation, and does not therefore constitute an adequate basis for examining different available conceptions of duties to refugees. Nor does it offer much guidance for how one is to choose between different conceptions. Historical analyses are either silent on the issue of prescription, or where they are explicitly attached to normative goals, they tend to be teleological or determinist. So while it may be perfectly adequate for the purposes of explanation, historical analysis alone does not provide the requisite tools for policy prescription.

The second more conceptual approach helps address this deficiency. Rather than trace the evolution of concepts, it seeks to evaluate existing conceptions and theories using a number of moral, practical and conceptual criteria. Different theories are tested against these standards, which typically include factors such as moral intuitions or convictions and conceptual consistency and coherence. The procedure for evaluating different conceptions involves testing various available theories against the chosen criteria. Where the theory does not conform to the given criteria, it may either be modified or rejected. The conceptual approach to analysis is thus explicit about the criteria for an adequate theory or conceptual framework, setting out the grounds on which one chooses between different theories and conceptions.

Rawls' notion of reflective equilibrium is a good example of a conceptual analytical approach. Reflective equilibrium involves testing "our considered moral judgements" against different conceptions of ethics or justice, to see which theories best fit these judgements. Reflective equilibrium is "reached after a person has weighed various proposed conceptions and he has either revised his judgements to accord with one of them or held fast to his initial convictions (and

the corresponding conception).”<sup>32</sup> The process of revision is not necessarily one way: J. L. Mackie usefully characterises it as a process of adjusting either or both our judgements and some set of principles “until the most satisfactory coherent compromise is reached.”<sup>33</sup> The Rawlsian model is a good starting-point for the purposes of this thesis. Indeed, the process of matching different conceptions with one’s considered convictions seems to be a good method for ensuring that one finds a theory consistent with one’s first order commitments - in my case the commitment to promoting a more generous refugee policy. Rawls’ method also puts a premium on conceptual coherence, another important condition for an adequate theory. So I shall follow the Rawlsian model in adopting these two criteria for evaluating different theories: those of normative desirability, and conceptual coherence.

There is a third criterion I shall include, which concerns the practical feasibility of the conception. It was suggested in the section on political theory that questions of feasibility have an important bearing on the adequacy of a theory. This is not simply because an unfeasible theory is of little practical use. More seriously, I would argue that unfeasible moral or political goals may actually be counter-productive. As I suggested earlier in the discussion of liberal theories of universal rights, stringent conceptions of duty may seem impossible to realise, rendering them irrelevant to practical debate. This is not to say that fundamental normative goals should be abandoned simply because they are not considered feasible. But it does imply that where a theory is unable to show how people are or could be motivated to respect its requirements, we should consider it as deficient, at least for practical purposes.<sup>34</sup> Indeed, it is precisely this type of practical inadequacy that leads me to question liberal universalist assumptions about moral agency. The importance of practical feasibility and how this should

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<sup>32</sup> John Rawls, *A Theory of Justice* (Oxford and New York: Oxford University Press, 1972), p. 48.

<sup>33</sup> J.L. Mackie, *Ethics: Inventing Right and Wrong* (London: Penguin, 1983), p. 105.

<sup>34</sup> I am in agreement with Thomas Nagel on this point, when he argues that “The danger of utopianism comes from the political tendency, in pursuit of the ideal of moral equality, to put too much pressure on individual motives or even to attempt to transcend them entirely through an impersonal transformation of the social individual. A nonutopian solution requires a proper balance between these elements...” Thomas Nagel, *Equality and Partiality* (Oxford and New York: Oxford University Press, 1991), p. 24.

influence one's selection of political theory will be elaborated in the course of the thesis.

In summary, an adequate conception of duties to refugees should meet three criteria: normative desirability, internal coherence, and practical feasibility. These criteria will be applied to evaluate different liberal universalist theories in Part One of the thesis, and again in the Conclusion to assess the adequacy of the alternative non-rationalist account offered in Part Two.<sup>35</sup>

## 2.2 *Scope*

I have stressed that the thesis aims to address the policy problem of the perceived conflict between refugee rights and national interests. By taking this policy problem as the starting-point of the analysis, I am implicitly accepting a number of presumptions about the nature of the problem of refugee influx. Most importantly, I am accepting the existing legal definition of "refugee". Refugees are defined in international law as those who have fled their country "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".<sup>36</sup> In practice, many states also offer various forms of protection and asylum to those fleeing more generalised violence and armed conflict.<sup>37</sup> A number of commentators have questioned the relevance of this category on various grounds. It has been argued that those fleeing poverty or natural disasters are as much in need of asylum as those fleeing violence and persecution; and that the most serious victims of persecution and violence may not be able to cross international borders, or even

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<sup>35</sup> It should be noted that other criteria are employed to evaluate the moral philosophical and psychological theories discussed in Chapters Five and Six. Since these theories are more abstract than the political theories discussed in Part One, it does not make sense to subject them to the conditions of practical feasibility and normative desirability. Instead, they are evaluated on grounds of plausibility and internal coherence. See the introduction to Chapter Five and the Conclusion.

<sup>36</sup> Article 1 (A.2), *Convention Relating to the Status of Refugees* (Geneva, 28 July 1951 (189 UNTS 137)).

<sup>37</sup> See, for example, Hathaway, *The Law of Refugee Status* (*op. cit.*), pp. 19-20; Goodwin-Gill, *The Refugee in International Law* (*op. cit.*), pp. 21-6.

to leave their homes.<sup>38</sup> Indeed, I would agree that the distinction between these categories often has little ethical relevance within a framework of liberal universalism thought. The reason for retaining the narrower definition of refugee is political rather than ethical. In the current restrictionist climate, even those who meet the existing international legal definition are not guaranteed asylum. The continued respect for existing provisions on refugee rights is far from assured, let alone the acceptance of far greater numbers of forced economic migrants, or the extension of protection to those unable to flee. My priority is to try to encourage a more liberal policy towards those refugees who have at least in principle been acknowledged as legally entitled to asylum. The question of extending the legal definition to cover forced migrants and other victims of human rights abuse should only be broached once the recognition of this narrower category is assured.<sup>39</sup>

A second limitation in the scope of the thesis concerns the types of theories under discussion. I am limiting the discussion to an analysis of liberal conceptions of duties to refugees. Liberal political theory is the most obvious choice for characterising duties to refugees, partly because it has produced the universalist theories that underpin current international provisions on refugee and human rights. However problematic the refugee and human rights regimes may be, they have been the objective of a remarkable level of international consensus, and do exert a considerable - and I would argue generally positive - influence on the refugee policies of liberal democratic states. The liberal tradition in a broad sense also provides the prevalent moral framework for debating and justifying asylum policy in liberal democracies. This is not to say that liberal theories underpin a commitment to the international refugee regime in all cultures. Islamic, African or other concepts of asylum may provide a different justification

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<sup>38</sup> See Patricia Tuit, "Rethinking the Refugee Definition", in *Refugee Rights and Realities*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 106-18.

<sup>39</sup> Indeed, many refugee campaigners and academics argue that opening up the current legal definition could lead to a further dilution of current provisions, given the current restrictionist climate. See, for example, the contribution by Erika Feller, Director of the Department of International Protection, UNHCR, at the Portuguese Presidency Council Conference on Justice and Home Affairs, Lisbon, 15-16 June 2000 (<http://www.unhcr.ch/issues/asylum/lisbon>).



for recognising the rights of refugees in other cultures.<sup>40</sup> But these cultural variations are not the concern of this thesis, which will focus on the more narrow range of political theories used to justify refugee rights in liberal democracies. Within this category of liberal democratic thought, I shall concentrate on what might broadly be characterised as the Anglo-Saxon tradition of liberal theory. And where I need to refer to more particular characteristics of the debate over refugee policy, I shall focus on the British context. Having said this, the analysis of political and moral theory may be more or less applicable to other industrialised liberal democracies. It may also have wider resonance, insofar as non-liberal states also adhere to standards of international refugee law grounded in similar moral and political values.

### **3. Outline of the Argument**

The thesis is divided into two main parts. Part One, which comprises Chapters One to Four, provides a detailed analysis of liberal universalist conceptions of duties to refugees. Chapter One introduces the discussion by examining the historical origins of current conceptions of the crisis in refugee policy. It traces the origins of liberal concepts of duties to non-nationals, and considers how these conflicted with notions of nationalism and the national interest. The chapter then discusses how these ideas influenced attitudes to refugee influx in Britain before the twentieth century, and then in response to the escalation of refugee flows in the inter-war period, the Cold War era, and since the 1970s.

Having examined the origins of the current crisis in refugee policy, Chapters Two, Three and Four take up the task of finding an adequate conception of duties to refugees in liberal theory. A range of different theories are assessed on the criteria of normative desirability, conceptual coherence and practical

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<sup>40</sup> See, for example, Gaim Kibreab, *African Refugees: Reflections on the African Refugee Problem* (Trenton, NJ: Africa World Press, 1985); Joseph Chan, "A Confucian Perspective on Human Rights for Contemporary China", in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell; and for a more general discussion, John Charvet "The

feasibility. Chapter Two examines utilitarian and right-based forms of liberal universalism. It argues that utilitarian accounts fail to meet the criterion of normative desirability - they are unable to produce a conception of duties to refugees that is ethically acceptable, suggesting the need for some theory of rights. However, right-based universalist theories encounter a serious problem of feasibility, imposing duties that are overly stringent and which deny the significance of particular ties.

Chapter Three attempts to rectify this short-coming of right-based universalism by examining theories that incorporate a layer of “special” or “particular” duties in addition to universal duties. However, the attempt to combine universalist and particularist values creates two types of problem. First, theories that embrace a conception of basic rights as trumping other particular interests encounter a similar problem of feasibility to that discussed in Chapter Two. Second, theories that do not accept the priority of universal rights result in a confused combination of universalist and particularist premises that creates conceptual incoherence.

In a final attempt to find a liberal universalist theory that meets the three criteria, Chapter Four examines social contract theories. These theories claim to address the problem of feasibility by deriving their norms from agreement between parties to a contract. But this creates two types of problems for social contract theories. Either they derive justice from the self-interested motivation of contractors, producing norms that are morally unacceptable and unlikely to extend beyond borders. Or they derive more ethically driven conceptions of global justice, but only by making highly implausible claims about the moral motivation of contractors. In this second case, social contract theories encounter the problem of feasibility described earlier on. The explicit treatment of the question of motivation in social contract theories helps elucidate the sources of the problem of motivation in liberal theory: namely, its assumptions about the split between impartial and personal perspectives in moral agency.

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Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights,” *Millenium* 27:3 (1998), pp. 523-41.

Having failed to find an adequate liberal universalist conception of duties to refugees, Part Two of the thesis undertakes a more radical critique of the ontological and psychological premises of these theories. I argue that it is only through a revision of liberal universalist second order assumptions that one can derive a conception of duties to refugees that meets the three criteria. Drawing on the critique in Part One, Chapter Five analyses liberal universalist assumptions about the role of reason in moral agency. It challenges two related premises of liberal universalist theory: the “rationalist” claim that moral action is motivated by reason rather than desire; and the “cognitivist” claim that moral norms are derived from reason or from the structure of language rather than shared values. Instead, I defend what I term a “non-rationalist” account, which posits the interdependence of reason, beliefs and desires in motivating moral action. Moral motivation is generated by desire rather than reason, and then mediated by shared beliefs and reason.

This philosophical account of moral motivation requires some substantiation in psychological theory, which I aim to provide in Chapter Six. Here, I challenge the prevalent cognitivist conception of moral development and motivation, criticising it on the grounds of empirical plausibility. I suggest an alternative Kleinian account, which locates the sources of moral motivation in the individual’s disposition to empathy, rather than her cognitive capacities. I build on this account to show how this empathic disposition is mediated by reason and beliefs to create more sophisticated forms of sympathy. I also explain how a desire for affirmation motivates the individual to internalise intersubjective values and beliefs, thus explaining motivation to respect forms of morality not related to sympathy.

Chapter Seven considers the implications of this non-rationalist account of moral motivation for our conception of duties to refugees. While the account set out in Chapters Five and Six rejects the cognitivist and rationalist assumptions of liberal universalism, it is still compatible with a commitment to first order liberal values. However, commitment to these values will be contingent on historical and cultural conditions, rather than guaranteed by the essential characteristics of

human beings or the structure of language. The non-rationalist account can therefore meet the criterion of normative desirability, but only insofar as conceptions of universal rights are constitutive of those socialised in liberal democratic societies.

In the Conclusion I reiterate the case for the non-rationalist account, demonstrating how it meets the three criteria for an adequate account of duties to refugees. Finally, I round off the argument by outlining some of the practical implications of this account for refugee policy.

## **PART I**

# **CRITIQUE OF LIBERAL UNIVERSALISM**

## **Chapter One**

### **The Origins of the Crisis in Refugee Policy**

It was suggested in the Introduction that the current impasse in the refugee policy debate is partly attributable to political theory conceptions of the relationship between universal liberal ethics and particular interests and ties. Liberal universalist notions of the split between interests and ethical duty are rendering conceptions of refugee rights increasingly unfeasible. Not only do liberal notions of universal duties seem overly stringent in the current political context. By juxtaposing them with notions of interests, liberal theory makes it difficult to see how people could be motivated to comply with these ethical demands. But while I have argued that the perception of a crisis in refugee policy is a relatively recent phenomenon, notions of both universal rights, and of supposedly conflicting particularist theories, have a long history in political thought. So the question arises as to why this conception of conflict between refugee rights and national interests did not emerge before. At the level of political theory, the question is that of why the (now evident) short-comings of liberal conceptions of duties to non-nationals were not clearly exposed in the past. Why, in other words, it was not evident that consistent practical application of universal rights would imply unfeasible obligations to non-nationals.

To answer this question, it is necessary to trace the historical emergence of this notion of a conflict between refugee rights and national interests, and how the conceptions of this conflict have shaped responses to refugee influx. While such an historical approach is not the main focus of the thesis, as I argued in the Introduction, it is nonetheless important for helping us grasp the distinct nature of the current conception of conflict, demonstrating its fluidity, and suggesting possibilities for changing it.

Providing such an historical account raises a number of questions about the evolution of political thought and its interaction with empirical events, some

of which were already raised in the Introduction. I shall return to these questions in section one of this chapter. The remainder of section one will be devoted to tracing the development of notions of duties to non-nationals and national interests in political thought before the twentieth century. Section two will provide a more detailed analysis of how these ideas shaped conceptions of the refugee problem as it emerged in the twentieth century, and how this generated the current conception of a conflict between universal duties and particularism. Finally, in section three I shall summarise the relevant developments in moral and political thought, and how these interacted with empirical events to produce the current impasse in the refugee policy debate.

## **1. Origins of the Refugee Crisis in Political Thought**

### *1.1 Development of political thought and the refugee problem*

Contemporary theorists draw on two main sets of values to justify refugee rights and the defence of national interests. The first set comprises what I have referred to as universalist theories, which include various conceptions of human rights, international justice or universal duties. Most of these theories can also be characterised as liberal in the broad sense, and it is a liberal variant of universalism that explicitly underlies international human rights and refugee law.<sup>41</sup> Proponents of refugee rights therefore tend to draw on liberal conceptions of universal rights and international justice to justify their claims. The second set of theories rejects the universalist premises of these liberal theories, taking as their starting point the local or particular - usually community or nation. Such particularist accounts place duties to fellow nationals above obligations to other groups. This second category includes an eclectic range of theories, including romanticist and communitarian accounts of the moral relevance of special ties and community practices, and realist theories of international politics that defend national interests on more pragmatic grounds.

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<sup>41</sup> I shall define the term "liberal" more clearly in the next chapter, where I categorise different liberal theories. For the purposes of this discussion of the evolution of liberal notions of rights, the term is used loosely to denote theories that place emphasis on the value of individual freedom.

Now while both categories of ideas have a long history in western thought, there are two main reasons why the current conception of a conflict between universalism and particularism in the context of refugee policy has only recently emerged. First, as I shall argue later, earlier theories in both the universalist and particularist categories did not have a clearly developed conception of the sorts of practical implications of their theories for duties to non-nationals that have now emerged. Liberal theories of rights, although from early on grounded in some conception of the shared characteristics of humans, were only gradually extended in scope to apply to individuals of all races. And even once they were extended in principle, for a variety of reasons, liberal political theories rarely recognised positive duties to assist individuals in other states. Neither did earlier forms of particularist and nationalist theories clarify the now familiar notion of the national prerogative of controlling immigration until fairly recently. Here the change in political thought reflects the evolution of the system of sovereign states and the rise of nationalism in the nineteenth century, as well as the development of notions of community.

But the emergence of a conception of conflict between refugee rights and national interests was also clearly affected by a second major factor: the changing nature of refugee flows and conditions in receiving countries. While conceptions of duties to non-nationals were shaped by prevalent ideas in moral and political thought, empirical events have in turn revealed tensions or short-comings in political theory conceptions. Thus while notions of universal rights and particularism may from the outset have differed in their philosophical foundations and practical implications, the conflict between the two in the matter of refugee policy has only emerged as the refugee problem itself has escalated. In periods when immigration and refugee flows were not considered to be problematic, the question of duties to refugees and its conflict with national interests simply did not arise.

This account of the role of political thought and empirical events in producing the current conception of conflict between refugee rights and national interests does of course make a number of assumptions about the relation between



ideas and historical events. As I stated in the Introduction, I am assuming that political and moral ideas provide a framework within which people evaluate and the desirability and feasibility of different actions and goals. I assume that changes in empirical conditions can influence these ideas, through drawing attention to their conceptual deficiencies or practical short-comings. In the case at hand, changes in the nature and scale of refugee movements influenced ideas about duties to refugees in two ways. The refugee crises of the twentieth century seemed to highlight the incompatibility of two different strands of political thought, i.e. nationalist and liberal universalist; and it implied the practical unfeasibility of realising universalist duties.

Before considering these developments in more detail, I should make one final point about political thought and empirical events. While I have argued that empirical change can generate the revision of existing political and moral ideas, the account of political and moral thought in section one of this Chapter will not examine in any detail the role of empirical conditions in shaping moral and political thought. My interest in the interaction between ideas and empirical phenomena is not so much as a means of explaining the evolution of political thought in general. Rather, I am concerned to show the influence on political thought of a particular set of practical questions, *viz.* duties to refugees. These practical problems did not emerge in a clear-cut form before the end of the last century. My account of pre-twentieth century political thought will therefore be more narrowly focused on the emergence of ideas that were *later* to influence conceptions of duties to refugees. Only in part three, which deals with the refugee phenomenon in the twentieth century, will I consider in more detail the influence of empirical change on these notions of duties to non-nationals.

## *1.2 The evolution of conceptions of universal rights*

There are many different ways of charting the development of notions of universal rights, but I shall limit the discussion here to two main aspects. First, I shall outline the initial emergence of a recognisable conception of equal rights in political thought; and second, I shall consider the failure until fairly recently to

apply these theories to the question of duties to non-nationals. Rather than attempting to explain why rights emerged in their current form, then, the analysis focuses on the negative question of why rights in classical theories were *not* seen to generate duties to non-nationals. This will help explain why universal rights have only recently been perceived as generating such inordinate demands. And it will provide a good basis for showing how empirical changes in the last decades have influenced conceptions of duties to non-nationals.

The notion of individual rights can be traced back to the concept of “*ius*” in early Roman law.<sup>42</sup> *Ius* originally denoted objective right - that which was good or fair - and only acquired its subjective form in mediaeval natural law theories. In the twelfth century, natural lawyers asserted that property, or *dominium*, was a *ius*, thus implying a subjective claim that generated requirements on the part of others. The definition of *ius* was subsequently extended in the early fifteenth century to denote a faculty or ability, hence the possibility of talking about a natural *ius* to freedom.<sup>43</sup> Over the next two centuries, discussions of the nature and scope of such a *ius* often revolved around questions of duties to other peoples. Spanish colonisation of America at the turn of the fifteenth century sparked a theological debate about the natural rights of slaves, with the Dominican Vitoria famously asserting that natural liberty could not be exchanged at any price except life itself.<sup>44</sup> Religious wars and the Ottoman threat also influenced the emergence of theories of *ius gentium* in this period, notably Grotius’ theory of rights which denied a natural duty to obey the sovereign (although he retracted this by denying a right of resistance in practice). Grotius’ theory is also striking in its assertion of a right to intervene on behalf of the natural rights of subjects of other sovereigns, although again, this did not generate a practical right for subjects to rebel against their own rulers.<sup>45</sup>

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<sup>42</sup> Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), p. 8.

<sup>43</sup> Tuck, *Natural Rights Theories* (*ibid.*), p. 27.

<sup>44</sup> F. de Vitoria, “De Indis”, in *Vitoria: Political Writings* [1534], ed. A. Pagden (Cambridge: Cambridge University Press, 1991).

The mediaeval and renaissance emphasis on the law of peoples shifted in the seventeenth and eighteenth centuries to a preoccupation with questions of national politics and the role of the state. The classical social contract theorists focused on the problems of political legitimacy and the property rights and civil liberties of citizens. Hobbes' social contract theory contained many elements of a recognisably modern theory of rights. Rights were grounded in the natural capacities of man, and thus the good was equated with individual interest. His state of nature depicted men as naturally equal in power and reason, and this equality provided moral and pragmatic grounds for their equal participation in the contract.<sup>46</sup> Locke's liberal theory also stressed the equal capacity of individuals, although individual rights were derived from duties to God, rather than grounded in human interests. Nonetheless, these rights were also in the interests of human beings and knowable by reason, thus opening the possibility for a secular theory of rights. Locke also took the significant step of asserting a greater right to resistance, making the sovereign's authority conditional on his respecting the rights of subjects.<sup>47</sup>

These classical theories already contained many of the central elements of modern liberal theories of rights: men in the state of nature have equal natural rights, and they are equal participants in the social contract. The claim that men had a natural interest in securing certain rights, and that they would recognise these interests through the exercise of reason, later became the explicit grounding for theories of the rights of man and subsequently human rights.<sup>48</sup> Yet in light of the emergence of such individualist and universalist accounts of individual rights by the eighteenth century, it is all the more striking that these theories were not perceived to have explicit implications for duties to the nationals of other countries. If it was accepted that rights were the natural attributes of all men, in

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<sup>45</sup> Hugo Grotius, *Grotius on the Rights of War and Peace* [1625], trans. William Whewell (Cambridge: Cambridge University Press, 1953).

<sup>46</sup> Thomas Hobbes, *Leviathan* [1651] (London: J. M. Dent and Sons, 1957), pp. 63-83.

<sup>47</sup> John Locke, *Second Treatise of Government* [1690], ed. Richard Cox (Wheeling, Illinois: Harlan Davidson, 1982), p. 128.

<sup>48</sup> Consider, for example, Article 1 of the 1948 *Universal Declaration of Human Rights* (General Assembly Resolution 217 A (III) of 10 December 1948), which declares that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience."

retrospect it might appear odd that classical theorists did not construct theories of universal duties, especially given the extensive treatment of such issues in earlier natural law theories.

We can clarify this disparity between contemporary and classical treatment of the question by categorising the differences along two axes: the question of the *scope* of rights and the duties they generated; and that of the *content* of individual rights. This conceptual scheme will help indicate the types of historical explanations that might account for the relatively recent emergence of notions of duties to non-nationals (although I will not elaborate such an account here<sup>49</sup>).

On the question of the scope of duties to non-nationals, one can distinguish three different senses in which the category of right-holders was restricted. First, despite the presumed equality of men in the state of nature, the scope of political rights was limited in classical contract theories. Women were not equally capable of reason, nor, in most theories, were those from non-civilised cultures, although it is not always clear if this is due to natural inferiority or a lack of development.<sup>50</sup> Hence slavery was morally acceptable, at least until the emergence of the anti-slavery movement in the nineteenth century. These limitations in scope were echoed in the American and French declarations on the late eighteenth century, and went largely unchallenged at the national level until political mobilisation of the working classes and women's movement in the nineteenth and early twentieth centuries.

Closely linked to the question of the moral subjects of rights was the issue

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<sup>49</sup> Clearly, a causal explanation of this "gap" in rights theories would require an account of the socio-economic context in which these theories emerged, and the national and international political questions with which they were grappling. I shall narrow my focus to clarifying the nature of the disparities between current and past conceptions from a contemporary perspective.

<sup>50</sup> For a fuller account of the treatment of women in classical liberal thought, see Diana Coole, "Women, Gender and Contract: Feminist Interpretations", in *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London and New York: Routledge, 1994), pp. 191-210. There was some debate on women's rights in the late eighteenth century, especially following the publication of Mary Wollstonecraft's *Vindication of the Rights of Women* [1792], ed. Miriam Brody (London: Penguin, 1992), although little progress was made on political rights

of the level of development required to justify exercising natural rights. Thus many liberal theorists who believed in the natural equality of men (and even of women) argued for limiting the scope of legal rights of non-civilised cultures. Some of the most progressive nineteenth century British liberals argued that colonisation was beneficial to inferior peoples, who would benefit from the spread of civilisation. And Mill denied that there was a duty to intervene to protect the rights of subjects of other states, on the grounds that only peoples who were sufficiently mobilised to fight for their own rights were capable of exercising autonomy.<sup>51</sup>

The third sense in which the scope of rights was restricted concerns the preoccupation with political questions within the state. Liberal political theory from the seventeenth century onwards was dominated by national concerns, such as the problem of political obligation, and how to maximise prosperity. Rights were primarily instruments for ensuring the right balance of freedom and state interference. From a more negative point of view, the often precarious relations between European states in this period meant that questions of duties to non-nationals became to a large extent irrelevant. Insofar as the international sphere was characterised by insecurity, the central problem of international political theory remained that of regulating conflict between states rather than ensuring the rights of all individuals. The apparent disparity between universalist justifications of theories of individual rights at the national level, and the lack of such rights in relations between states, reflected the perceived salience of the problem of conflict between states. This concern is clearly present in the (limited) writings of social contract theorists on international politics, with Hobbes, Rousseau and Kant more or less converging in their conclusion about the

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until over a century later.

<sup>51</sup> Both of these grounds for limiting the exercise of rights - the subjects of rights and the capacity to exercise rights - could, of course be explained in the context of an emerging capitalist class, concerned to defined their economic freedom and extend political influence, and in the case of imperialism to exploit new markets. For the classic account, see Karl Marx, "On the Jewish Question" [1843] in *Karl Marx: Early Texts*, ed. David McLellan (Oxford: Blackwell, 1971), pp. 85-114; and for a Marxist history of classical social contract theory, C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford and New York: Oxford University Press, 1962).

unfeasibility or undesirability of a global social contract.<sup>52</sup>

The second axis of change in concepts of duties to non-nationals concerns the *substance* of rights. The eighteenth and nineteenth century emphasis on negative liberty was predominantly geared towards limiting the role of the state.<sup>53</sup> Rights were used as tools for generating duties of forbearance, not obligations to assist individuals. The rights of non-nationals, where they were acknowledged at all, would therefore be best realised by a domestic contract between rulers and ruled. Yet the emphasis on “negative” liberty was clearly not common to all political and moral theories: there were other important strands in western thought that invoked a range of different values and objectives, and which also served to influence liberal theories. Many of these other conceptions were integrated into liberal theories, enabling them to broaden out and encompass a greater range of conditions for human flourishing. So it should be stressed that while this emphasis on negative liberty and property rights was an important strand in eighteenth and nineteenth century politics, the development of liberal political thought was also profoundly influenced by a number of other conceptions of universal duty.

Among these influential strands in political and moral thought were Christian notions of charity and obligation, ideas which were central to the tradition of natural law and explicitly influenced the work of social contract theorists such as Locke, Rousseau and Kant.<sup>54</sup> Also missing from this narrow conception are a variety of teleological moral and political theories, which found early articulation in ancient Greek philosophy and later influenced ideas about “positive freedom” and human flourishing in the thought of Rousseau, Hegel and Marx. Again, many of these theories influenced the development of liberal

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<sup>52</sup> Issues of duties to individuals in other states arose mainly in relation to the treatment of one’s own nationals or religious kindred in other countries. See Evan Luard, “The Origin of International Concern over Human Rights”, in *The International Protection of Human Rights*, ed. Evan Luard (London: Thames and Hudson, 1967), pp. 7-324.

<sup>53</sup> J. W. Gough, *The Social Contract: A Critical Study of its Development* (Oxford: Clarendon Press, 1936), p. 147.

<sup>54</sup> On the influence of Augustinian theology on Rousseau and Kant, see Taylor, *Sources of the Self*, (*op. cit.*), pp. 361-6.

theories of rights. Another more teleological strand can be found in eighteenth century theories of moral sentiment and later utilitarian theories. These diverse notions of duties, benevolence and the good life influenced liberal as well as particularist theories, but in many cases their moral prescriptions were not until recently codified in the language of individual rights.<sup>55</sup> Notions of duty and benevolence were often relegated to the private sphere of charitable institutions or the church, or couched in terms of social goals rather than individual rights.<sup>56</sup> The same applied to notions of duties to non-nationals, which were associated with Christian duty or charity rather than duties generated by universal rights.<sup>57</sup>

Nonetheless, theories of rights did eventually take on board a far wider conception of the conditions for individual freedom or flourishing. Liberal thought was profoundly influenced by changing conceptions of the role and functions of the state in the nineteenth century. These conceptions were in turn influenced by the demands of a politically mobilised working class, and the articulation of more radical notions of emancipation and equality.<sup>58</sup> Again, while these social and economic claims were not initially couched in the language of rights, they were integrally bound up with aspirations to freedom. The “New Liberalism” of the late nineteenth and early twentieth centuries, and what Shapiro terms the “Keynesian moment” in the history of liberal thought represented an important shift in notions of the material preconditions for the genuine exercise of autonomy.<sup>59</sup> Once the link between socio-economic equality and liberty had been made in this way, it was a short conceptual step to asserting universal rights to

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<sup>55</sup> Thus, for example, Jeremy Bentham famously criticised the French Declaration of Rights - see “Anarchical Fallacies”, in *Human Rights*, ed. A. I. Melden (Belmont: Wadsworth, 1970), pp. 28-39. Hegel and Rousseau did, of course, both advocate a conception of rights, but in both cases they were grounded in a rather different way, and had a somewhat different role than rights in the individualist theories of English liberalism.

<sup>56</sup> Classical utilitarian theories defined the right in terms of maximisation of social utility rather than individual rights. Despite subsequent attempts to reconcile the two, the structural distinction between these approaches still influences rights discourse, with many claiming that more “positive” interests in welfare are not the legitimate subjects of rights, which should cover only the sphere of negative, or civil liberties.

<sup>57</sup> For a good example, see Daniel Defoe, *A Brief History of the Poor Palatine Refugees, Lately Arriv'd in England* (London: 1709).

<sup>58</sup> The obvious examples are Marx and Engels, but such ideas were also propounded by left liberals such as Hobhouse and Keynes in the late nineteenth and early twentieth century.

subsistence, shelter, education, health-care and so on. Most contemporary liberal theories now advocate some combination of negative and positive freedom, although they strike the balance between social justice and legal freedoms in different ways.<sup>60</sup> As I shall argue, it is partly this extension of the substance of rights that has rendered the demands of universal justice so difficult to meet.

### 1.3 *Nationalism and the national interest*

While conceptions of the scope and substance of liberal rights were being extended from the eighteenth century onwards, notions of nationalism were also becoming more prevalent in this period.<sup>61</sup> The rise of nationalism and theories of the moral relevance of the nation-state was closely bound up with the processes of state consolidation and democratisation in Europe. These empirical factors also had a direct impact on the phenomenon of refugees: state consolidation and nationalism both generated large numbers of refugees; and encouraged restrictions on their entry in countries of refuge. In examining the emergence of theories of nationalism and the national interest and their impact on notions of duties to refugees, we therefore need to examine two sets of processes. First, the process of state formation and its relation to notions of nationalism. And second, the impact of these empirical developments and political ideas on refugees and asylum.

Central to understanding the emergence of moral and political theories of nationalism was the consolidation of a number of European nation-states from the fifteenth century onwards, notably Spain, France, England and Holland. A combination of industrial development, demographic changes and international

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<sup>59</sup> Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge University Press, 1986), p. 153.

<sup>60</sup> Rawls' theory of justice is an example of this, especially his notion of "primary goods". See John Rawls, *A Theory of justice* (Oxford and New York: Oxford University Press, 1972), pp.90-5.

<sup>61</sup> I shall follow Mayall in using the term "nationalism" in a loose sense, to denote the doctrine that "the world is (or should be) divided into nations and that the nation is the only proper basis for a sovereign state and the ultimate source of governmental authority." James Mayall, *Nationalism and International Society* (Cambridge: Cambridge University Press, 1990), p. 3. This definition has the advantage of encompassing both liberal and more "organicist" conceptions of nationalism.



conflict led to the gradual centralisation and rationalisation of the state's control over a clearly demarcated territory and the population within it.<sup>62</sup> This process was characterised by the growth of centralised administrative structures to implement policies of taxation, law and order, military recruitment and education. These nations were able to achieve military and economic power in the sixteenth and seventeenth centuries, and set an example to other aspiring nation-states.<sup>63</sup>

The consolidation of the nation-state was often aided by, and in turn encouraged the development of, notions of national identity. The centralisation of administration and education and the imposition of a national language encouraged the emergence or strengthening of a shared national culture and identity. The development of such a sense of shared characteristics and common purpose was essential in order to ensure loyalty to the sovereign, raise taxes and mobilise soldiers for war. The moral and political relevance of such a sense of patriotism was articulated by Rousseau in the eighteenth century in his concept of the "general will" which transcended the aggregate individual interests of citizens. This more idealised concept of nationality was given impetus by the French revolution, which identified national self-determination with democratic popular resistance against monarchical rule. While the French conception of nationality was essentially liberal and had a civic conception of membership, the idea of popular national resistance was given a more particularist slant by subsequent theories and political movements. Rousseau's notion of general will

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<sup>62</sup> For accounts of the early history of nation-state formation, see Charles Tilly, *The Formation of National States in Western Europe* (Princeton: Princeton University Press, 1975); and Hagen Schulze, *States, Nations and Nationalism: From the Middle Ages to the Present*, trans. William E. Yuill (Oxford: Blackwell, 1996).

<sup>63</sup> Different authors place relative emphasis on various of these factors. Gellner, for example, stresses the role of shared education and culture in creating a series of internally homogeneous cultural pools. See Ernest Gellner, *Nations and Nationalism, New Perspectives on the Past* (Oxford: Blackwell, 1983). Hobsbawm places more emphasis on the influence of state policies of conscription and taxation on mobilising support for the nation state - see Eric J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990). In the case of Michael Mann, the relevant factor was popular resistance against these state interventions, which motivated a "drive to democracy" and expanded functions of the state. Mann, "A Political Theory of Nationalism and its Excesses", in *Notions of Nationalism*, ed. Sukumar Perival (Budapest: Central European University Press, 1995), pp. 44-64. Others such as Schulze and Tilly (*op. cit.*) emphasise patterns of conflict within European states that generated the formation of national coalitions. We need not decide between the different theories here - what is important for this analysis is the impact of these processes on conceptions of duties to non-nationals.

was expanded in nineteenth century romantic thought, notably in Herder's conception of *volk*, and his expressivist theory of language.<sup>64</sup> National liberation and unification movements, as well as political élites seeking legitimacy, found it useful to highlight the distinctive linguistic or ethnic characteristics of nationalities in order to mobilise support for existing or aspiring states. The identification of ethnic or linguistic characteristics with state-building was to be a major cause of refugee flows from the late nineteenth century onwards, as we shall see in the next section.

But the growing importance of the nation-state and nationalism also had profound implications for the treatment of refugees. As the state's jurisdiction over its population and territory was consolidated, the criteria of membership and thus the distinction between citizens and non-citizens became more important.<sup>65</sup> And the increasing democratisation of nation-states, part product of the need for popular support for state consolidation, lent a new significance to citizenship. Not only did the state guarantee security, it was also to become the guarantor of civil and political rights, and increasingly of social welfare. The perceived social and economic benefits of citizenship would encourage a reluctance on the part of citizens to share finite resources with non-nationals, especially in times of unemployment and depression. Although the rights accrued to citizens in democratic states were grounded in a characteristically universalist conception of equal rights, they still had the effect of reinforcing the significance of national membership. Hence it was not only explicitly particularist or exclusivist conceptions of nationalism that generated hostility to non-nationals. While liberal conceptions of citizenship did not generate the types of persecution and expulsions of ethnic minorities that occurred in states attached to a particularist conception of nationality, they nonetheless encouraged a reluctance to extend the benefits of membership to non-citizens. Nationalism in both the French republican and the romantic organicist traditions influenced the nature and scale

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<sup>64</sup> Georg G. Iggers, *The German Concept of History: The National Tradition of Historical Thought from Herder to the Present* (Middletown, Conn.: Wesleyan University Press, 1983).

<sup>65</sup> See Andrew Linklater, *The Transformation of Political Community* (Cambridge: Polity Press, 1998), pp. 189-90.

of refugee flows, as well as national responses to influx in the twentieth century.<sup>66</sup>

Finally, it is worth considering the role of international politics in solidifying national loyalties and narrow conceptions of national interests. The political use of nationalist sentiment was not limited to securing support for self-determination or state consolidation. It had helped mobilise support for Napoleon's expansionist policy, and was subsequently important for enlisting popular support for empire building and the imperial conflicts of the late nineteenth and early twentieth centuries.<sup>67</sup> The combination of patriotic zeal and the racist theories invoked to justify imperialist practices lent an even more exclusionary aspect to nationalism. The rising inter-state tensions around this period, which climaxed in 1914, also reinforced notions about the priority of national interest over transnational cultural ties, free trade or duties to non-nationals.

The "realist" theories of international relations that emerged in the 1930s and 1940s emphasised the primarily self-interested behaviour of states, and identified "national interests" with the search for power in international politics.<sup>68</sup> This conception of national interest, and especially its later forms in neo-realist theories, assumed that states defined their interests independently of their moral values, and that the objective of states was to promote the interests of those already within their jurisdiction. Unlike the communitarian or romanticist accounts of nationalism, the realist account was ostensibly descriptive rather than normative. And as such, it was in principle compatible with liberal universalist political theories. Many liberals still accept these realist descriptive claims about the nature of national interest, whilst diverging from realists' practical

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<sup>66</sup> The strongest proponent of this thesis is Michael Mann - see his "A Political Theory of Nationalism" (*op. cit.*); and "The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing", *New Left Review* 235 (1999), pp. 18-45. Rogers Brubaker posits a similar distinction between "political" and "ethnocultural" nationalism, but is less pessimistic about the former variant and its impact of immigration policies. See his *Citizenship and Nationhood in France and Germany* (Cambridge, Mass: Harvard University Press, 1992).

<sup>67</sup> Although much of the justification for imperial expansion was ostensibly liberal universalist - see Mayall, *Nationalism* (*op. cit.*), pp. 43-5.

<sup>68</sup> Hans Joachim Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (1954).

prescriptions. On this account, the gap between “ideal theory” and the current state of international politics can be explained by the regrettable selfishness of states. And once again this produces a conception of national interest and universal duties as having separate sources – the one self-interested, the other ethical, and both defined independently of one another.

## **2. Universal Rights, National Interests and Responses to Refugee Influx**

I shall now examine how these potentially conflicting conceptions of universal duties and national interests influenced the treatment of refugees in the twentieth century. This section will give a brief account of the history of refugee flows in Europe, and consider the factors shaping responses to these flows, including domestic economic, international political considerations, as well as the influence of nationalist and liberal political thought. The historical account will be divided into three main periods. First, I shall consider the period before World War One, during which refugee and immigration flows were still fairly small, and emigration to the New World allayed fears about over-population. Debates on immigration and refugees mainly revolved around whether immigrants contributed to prosperity, although there was some discussion of “Christian duties” to assist refugees. The second period - the inter-war years and World War Two - saw a significant increase in refugee flows, but no clear definition of international commitment to protect refugees. Concerns linked to economic depression and international political tensions explicitly over-rode any conception of duties to refugees. Thirdly, the post-World War Two refugee regime codified a conception of individual rights of refugees. While embodying liberal universalist ideas, the feasibility of this approach was contingent on economic and political conditions that ceased to hold in the 1970s and 1980s, resulting in the current crisis in refugee policy.

## 2.1 *Refugees before World War I*

Refugee flows – at least as they are conceived in current definitions - began to occur in Europe from around the end of the fifteenth century. There had been substantial movements of people before then, but most instances of religious persecution in the Middle Ages were localised and sporadic cases, which did not give rise to mass movement. In the late fifteenth and early sixteenth centuries, religious conflict in Europe and the growing power of nation-states led to more widespread and systematic persecution of religious groups.<sup>69</sup> The first major movement of this kind was the expulsion of Jews from Spain in 1492. Further forced displacement in Western Europe followed the Reformation, the French Wars of Religion and the Thirty Years' War. From the 1550s onwards, England began to serve as a place of refuge for displaced Protestants from the Spanish Netherlands, and French Huguenots. When the Edict of Nantes was revoked in 1685, a further 200,000 Huguenots fled to England, indeed the term “refugié” was first coined to denote this group. It was subsequently adopted in English as “refugee”, and by 1796 the *Encyclopaedia Britannica* noted that it had been “extended to all such as leave their country in times of distress.”<sup>70</sup>

Most victims of religious persecution had little problem finding asylum. European states were generally apprehensive about population shortages, and were more interested in restricting emigration from their territory than preventing influx. By the second half of the seventeenth century, a number of English economists were asserting the economic importance of having a large labour force, which was seen as a means of improving the balance of trade and thus national wealth. The debate on immigration over the next century revolved around questions of population and national prosperity, and the right of Europeans to settle in colonial territories.<sup>71</sup> There was some debate in the 1700s

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<sup>69</sup> Daniel Statt, *Foreigners and Englishmen: The Controversy over Immigration and Population, 1660-1760* (Newark, University of Delaware Press, 1995), pp. 25-6.

<sup>70</sup> Cited in Michael Marrus, *The Unwanted: European Refugees in the 20<sup>th</sup> Century* (Oxford and New York: Oxford University Press, 1985), p. 8.

<sup>71</sup> For a discussion of debates on the economic benefits of immigration, see Daniel Statt, *Foreigners and Englishmen (op. cit.)*, pp. 43-51. For the classic work on population problems,

about whether to restrict the entry of a wave of Palatine refugees, with some concerned that they would take jobs from Englishmen. But there was a perceived economic interest in accepting them, as well as a Christian duty to help fellow Protestants. Daniel Defoe, writing about the Protestant refugees from Germany, talked about “the People of *England*, who liberally and with open Hearts and Hands contribute to the Subsistance of their distressed *Protestant Brethren*.”<sup>72</sup>

Concern about population shortages were assuaged by the dramatic increase in population from the second half of the eighteenth century. European states for the first time began to encourage emigration to North America and the colonies, and by the 1820s most countries had removed existing restrictions.<sup>73</sup> Yet despite some concerns about over-population, the absorption of refugees did not pose a significant problem for most of the nineteenth century. Refugees usually arrived in small numbers, tended to be fairly affluent, and so were not considered to be a burden on receiving countries. In the first half of the century, many political exiles found refuge in European cities, including Polish, Russian, Spanish, Portuguese, Italian and German dissidents. By the 1850s, London was an important centre for European exiles, and there appeared to be genuine popular sentiment against restricting the entry of refugees, and for allowing them freedom to pursue political activities in exile as long as they respected English law.<sup>74</sup> The Liberal Prime Minister Lord Palmerston is cited as referring in around 1860 to

that law of hospitality by which we have invariably been guided with regard to foreigners seeking asylum in this country. Any foreigner, whatever his nation, whatever his political creed, whatever his political offences against his Government...may find in these realms a safe and secure asylum as long as he obeys the law of the land.<sup>75</sup>

Here a Liberal politician is articulating a clear notion of impartial treatment of

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see Thomas Robert Malthus, *An Essay on the Principles of Population: Or, a View of its Past and Present Effects on Human Happiness, etc* (London: Reeves and Turner, 1888).

<sup>72</sup> Daniel Defoe, *A Brief History of the Poor Palatine Refugees, Lately Arriv'd in England* (London, 1709), p. 9.

<sup>73</sup> Sarah Collinson, *Europe and International Migration* (London and New York: Pinter Publishers for the Royal Institute of International Affairs, 1994), p.30.

<sup>74</sup> Marrus, *The Unwanted (op. cit.)*, pp. 18-9.

refugees, rather than special treatment for Christians or Protestants. The notion of duties to refugees was taking on a more secular tone, although it was still not couched as a universal right.

This liberal attitude was more difficult to sustain in the last third of the century, when the rise of nationalism and anti-Semitism was both a cause of large-scale movements, and heightened intolerance of refugee influx in receiving countries. From the 1880s onwards, there was a steady and large-scale flow of Jews escaping persecution in Russia and East Europe. Most of these were accepted by the United States – around 2.25 million people between 1881 and 1914 – but significant numbers settled in Western European countries, including some 120,000 in Britain.<sup>76</sup> In the 1880s, the United States, Canada and Australia began to impose restrictions on entry, and this had important repercussions for Europe, generating concern about the diminishing possibilities for emigration to the New World. At the same time, concerns at the continuing flow of East European Jews into West Europe, rising unemployment after 1901 and anti-Semitism in receiving countries brought the issue of immigration control to the fore.<sup>77</sup> In 1904 a Conservative government introduced the first restriction of immigration through an Aliens Bill, designed to exclude “undesirable and destitute aliens.”<sup>78</sup> There was considerable opposition to the bill from the Liberal Party, partly because of its implicit anti-Semitism, partly because it was seen as constituting an attack on political asylum. Liberal opposition succeeded in amending the 1905 Act, which contained safeguards for refugees, i.e. those who could prove they were “seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds, or for an offence of a political character, or persecution involving danger to life and limb.”<sup>79</sup> Entry was

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<sup>75</sup> Cited in Statt, *Foreigners and Englishmen* (*op. cit.*), p.89.

<sup>76</sup> Collinson, *Europe and International Migration* (*op. cit.*), p. 34

<sup>77</sup> James Walvin, *Passage to Britain: Immigration in British History and Politics* (Harmondsworth: Penguin in association with Belitha Press, 1984), pp. 63-4.

<sup>78</sup> Cited in John A. Garward, *The English and Immigration, 1880-1910* (Oxford and New York: Oxford University Press, 1971), p. 46.

<sup>79</sup> Garward, *The English and Immigration* (*op. cit.*), pp. 46 and 88.

further restricted with the introduction of passport controls in 1914.<sup>80</sup> The rise of nationalist feeling, domestic economic and social unrest, and concerns about the insecure international climate generated the first wave of immigration restrictions.

## 2.2 *Refugee flows in the inter-war years and World War Two*

The inter-war years saw a significant increase in the number of refugees, most of whom were fleeing religious and nationalist-based persecution, and fascist regimes. Most refugees in the 1920s were casualties of the processes of state formation and consolidation. The disintegration of the Hapsburg, Romanov and Ottoman Empires was accelerated by the war and the peace treaties of 1919-21. Conflict in the Balkans had already precipitated the “unmixing” of hundreds of thousands of Muslims and Christians, and the Turkish massacre of Armenians in 1915 had led to the flight of around 350,000.<sup>81</sup> In 1913 a population exchange agreement between Bulgaria and Turkey had led to a transfer of roughly 50,000 from each side. After the 1918 Peace Treaties, the unmixing of nationalities was seen as a necessary, albeit regrettable, means of consolidating the newly independent states.<sup>82</sup> The nationalising process in central and east Europe led to the displacement of millions of ethnic and national minorities from Poland, Russia, the Ukraine, Hungary and Czechoslovakia. Population exchanges were also generally accepted as a means of preventing conflict, with agreements for exchanges between Turkey, and - respectively – Bulgaria and Greece, resulting in the mainly coerced movement of almost two million people. Many of the minorities who did not move were made stateless. Romanian citizenship law of 1924, for example, made 100,000 Jews inside Romania stateless, and the Soviet Union stripped almost one million Russians of citizenship in the early 1920s.<sup>83</sup>

While there was no recognition of international legal duties to assist these refugees, the 1920s did see the first international cooperation to address refugee

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<sup>80</sup> Tony Kushner and Katherine Knox, *Refugees in an Age of Genocide* (London and Portland, Or.: Frank Cass, 1999), p. 44

<sup>81</sup> For figures, see Collinson, *Europe and International Migration* (*op. cit.*), p. 36.

<sup>82</sup> Michael Mann, “The Dark Side of Democracy” (*op. cit.*), p. 65.

<sup>83</sup> Marrus, *The Unwanted* (*op. cit.*), p. 174.



policies. The League of Nations established a High Commissioner on Behalf of the League in 1921 “to coordinate the action of governments and private organisations for the relief of Russian refugees, to regulate the legal status of a large class of persons who had been rendered stateless, and to assist them to find permanent homes and work.”<sup>84</sup> The High Commissioner’s services were extended in 1924 to cover Armenian refugees. The High Commissioner was successful in finding homes for most of these refugees, mainly because of labour shortages in Europe, and partly also because of the wide range of approaches used, including creating employment opportunities, and generally linking assistance to measures to promote European economic development.

However, international cooperation was seen as a provisional arrangement to address the temporary refugee problems caused by the upheaval of World War One and the creation of new states. The refugees under the High Commissioner’s mandate were defined on the basis of territory, nationality or religion, rather than on a more abstract and generally applicable definition of “refugee.” There was no conception of universal refugee rights underlying international cooperation. Moreover, assistance to refugees was explicitly political, rather than humanitarian: methods such as population exchange sought to address security concerns as much as humanitarian needs, and many of the resettlement programmes were explicitly tailored to the labour requirements of receiving states. Unlike the current UN framework, inter-war arrangements were not even nominally founded on recognition of the universal rights of refugees.

Cooperation to address refugee flows was largely paralysed in the 1930s, with economic depression in Europe and America, and unstable international relations. There were large-scale movements from fascist regimes in Italy, Spain and Germany. Up to one million Italians were expelled by Mussolini, and around half a million Spanish Republicans fled to France. By the second half of the decade, there was considerable concern at the prospect of mass influx of German refugees into West European states. The flight of Jews from Germany began as a

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<sup>84</sup> Cited in John George Stoessinger, *The Refugee and the World Community* (Minneapolis: University of Minneapolis Press, 1956), pp. 15-16

small but steady flow in the early 1930s, increasing dramatically as Nazi anti-Semitic policies became more stringent in 1938. However, economic and political concerns were also motivating restrictive policies in this period. European receiving states faced economic depression in the 1930s, and France in particular had already absorbed large numbers of refugees from Spain and Italy. Already in 1933, the British Home Office was using a far less liberal rhetoric than in the past. As one official put it, “We do not...admit that there is a ‘right of asylum’; but when we have to decide whether a particular refugee is to be given admission to this country, we have to base our decision...on whether it is in the public interest that he be admitted.”<sup>85</sup> The “national interest” prevailed over - as yet ill-defined - duties to refugees.

As the persecution of Jews intensified and the plight of refugees from Germany and Austria became more apparent to European states, public opinion in many countries called for the relaxation of restrictions on Jewish immigration. Simpson wrote in 1939 that the Dutch were “deeply stirred by the intensified persecution of German Jews in November 1938, and the Government was strongly urged to relax restrictions.”<sup>86</sup> In Britain, too, heavy pressure on the government led to the establishment of a special cabinet commission to streamline procedures for receiving and assisting Jewish refugees.<sup>87</sup> But with the onset of war in 1939, restrictions on emigration made it more difficult to flee Nazi persecution. Around 350,000 refugees had managed to escape Nazi persecution before the war broke out, but between 1939-41 only 71,500 managed to flee Germany and Austria.<sup>88</sup>

The Second World War caused huge refugee flows, with an estimated 30 million people displaced in Europe over the course of the war. The largest movements of refugees in Europe occurred in the last stages of the war, as

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<sup>85</sup> Quoted in Marrus, *The Unwanted (op. cit.)*, p. 150.

<sup>86</sup> Sir John Hope Simpson, Simpson, Sir John Hope, *Refugees: A Review of the Situation Since September 1938* (Oxford and New York: Oxford University Press, 1939), p. 78.

<sup>87</sup> Simpson, *Refugees (ibid.)*, p. 69. On public pressure and local initiatives to assist refugees from Nazism, see Knox and Kushner, *Refugees (op. cit.)*, pp. 140 and 164-8.

<sup>88</sup> Marrus, *The Unwanted (op. cit.)*, p. 205.

millions of people were displaced by intensive fighting and aerial bombardments in 1944-5. In 1943 the Western Allies established the UN Relief and Rehabilitation Administration (UNRRA) to provide relief and assist repatriation. Between 1943-6, UNRRA repatriated around fourteen million people in Europe. But around one million “unrepatriables” remained, most of whom were Soviet citizens who refused to return to the USSR. Again, while this period was marked by the movement of large numbers of refugees, the problem was characterised as the result of temporary conflict and upheaval in Europe. Once these displaced people had been repatriated, it was hoped that refugee flows would largely dry up, and there would be no further need for international mechanisms.

The inter-war years, then, had been characterised by large-scale refugee flows, mainly resulting from nation-state formation in the 1920s and fascism in the 1930s. The Christian and liberal notions that had influenced responses to refugees in the nineteenth century proved difficult to sustain in the face of economic depression and international security concerns. But as yet, no clear-cut conceptions of refugee rights had been codified, and so the notion of a conflict between refugee rights and national interests was still not conceptualised in the way it is today. However, in the post-World War Two era there was a discernible shift from refugee definitions based on group characteristics to a more general definition based on violation of individual rights. In particular, Cold War politics had a huge impact on the design and evolution of the post-war international refugee regime, producing an individual right-based conception of refugees and an emphasis on resettlement as the favoured response to refugee flows.

### *2.3 Refugee rights since World War Two*

The shift towards a right-based and resettlement oriented approach first emerged in the context of discussions over the constitution of the new International Refugee Organisation (IRO), established to take over responsibility from the provisional UNRRA. In the negotiations over its mandate in 1946, there was a sharp division between communist countries and the West over whether it should assume responsibility for the million “unrepatriables” from the communist

bloc. The Soviet Union was concerned that the IRO would block the repatriation of these “traitors, quislings, and war criminals”, and use them as a source of recruitment for spies.<sup>89</sup> The predominant Western view that repatriation must be a voluntary decision eventually prevailed, and the Soviet Union refused to join the IRO.

The IRO succeeded in resettling most of the remaining UNRRA caseload. There were substantial labour shortages in Europe, the Americas and Australia, and a clear political incentive to accept those fleeing communist regimes.<sup>90</sup> However, there were growing concerns on the part of the United States (US) about the international expansion of the IRO’s activities in the late 1940s. Indian partition, the Palestinian conflict and the Korean War all produced large movements of refugees, generating fears that refugee flows would not be limited to East-West movements.<sup>91</sup> In 1950, the Statute of the current United Nations High Commissioner for Refugees (UNHCR) was accepted. The UNHCR had a limited mandate, and its influence was constrained by the refusal of both the US and the Soviet Union to join.<sup>92</sup> Nonetheless, its definitions of “refugee” and the goals of international cooperation to deal with refugees still shape international refugee policy. A similar definition was adopted in the subsequent Convention on the Status of Refugees, drafted in Geneva in 1951. The Convention defined refugees as those who are outside their country “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>93</sup> Those party to Convention were obliged not to expel or send refugees back to countries where their “life or liberty” would be at risk, thereby establishing the right to “non-refoulement.”<sup>94</sup>

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<sup>89</sup> Stoessinger, *The Refugee (op. cit.)*, p. 66

<sup>90</sup> See Jacques Vernant, *The Refugee in the Post-War World* (London: George Allen and Unwin, 1953), p. 343, on the UK's interest in accepting refugees from displaced persons camps.

<sup>91</sup> It should be noted that refugees from Palestine and Korea were covered by separate agencies – respectively the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) and UN Korean Reconstruction Agency.

<sup>92</sup> The US did eventually sign the Convention in 1968, as the refugee question took on greater political significance.

<sup>93</sup> Article 1A, *Convention Relating to the Status of Refugees* (Geneva, 28 July 1951 (189 UNTS 137)).

<sup>94</sup> Article 33, *Convention Relating to the Status of Refugees (ibid.)*.

The definition of refugee was clearly based on a universalist theory of human rights, although – as has subsequently been argued – with a bias towards civil and political rights rather than economic, social and cultural ones.

At the time of drafting, there was already some anxiety on the part of states about the potential scope of duties it imposed. As the French delegate argued, “The right of asylum rested on moral and humanitarian grounds which were freely recognised by receiving countries, but which had certain essential limitations.”<sup>95</sup> In particular, there was considerable debate over the applicability of the right to non-refoulement to large groups, with France, the Netherlands, Italy and Germany all arguing that the terms of the Convention should apply to individuals rather than mass influx. Indeed, the Dutch delegate “wished to have it placed on record that the Conference was in agreement with the interpretation, that the possibility of mass migration across frontiers or of attempted mass migrations was not covered by Article 33.”<sup>96</sup> Nonetheless, the Convention sets no restrictions on the right to non-refoulement based on national interest, other than the extreme case in which a refugee may be expelled “on grounds of national security or public interest”, and even in this case the refugee has the right to appeal.<sup>97</sup>

The concerns voiced by some states in the course of these negotiations may have seemed rather exaggerated in the 1950s. The Convention included no right to asylum or nationality, and restricted its provisions to refugees who had become homeless due to events before 1 January 1951. The decision whether or not to include non-European refugees also remained a prerogative of governments. Yet regardless of the initial intentions of its members, the geographical and temporal scope of the Convention was subsequently expanded. Already from 1957 onwards, the mandate of the High Commissioner was being

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<sup>95</sup> Paul Weis, *The Refugee Convention, 1951: The Travaux Préparatoires Analysés* (Cambridge: Cambridge University Press, 1994), p. 335.

<sup>96</sup> *Ibid.*, p. 335.

<sup>97</sup> Article 32 (1), *Convention Relating to the Status of Refugees* (*op. cit.*). There are other grounds for the exclusion of a refugee from the terms of the Convention, but they are not directly related to the national interest - see Article 1 (f).

extended to cover refugee problems in developing countries, including the refugees generated by independence struggles and post-independence civil conflicts.<sup>98</sup> Faced with the *de facto* expansion of international involvement in refugee problems, it was only logical that the right-based definition of refugees be extended to cover refugees from all countries. The provisions of the Convention were given global application by a 1967 Protocol.<sup>99</sup> Indeed, in many states the definition of refugee was also broadened to include those fleeing generalised violence and armed conflict, and more recently gender-based persecution.<sup>100</sup>

The expansion of the scope of refugee law was not perceived as particularly problematic in the 1950s and 1960s, which were dominated by East-West flows. The first major refugee flow was a result of the 1956 Hungarian Revolution, when 200,000 refugees were in need of resettlement. A similar number fled Czechoslovakia after the Soviet invasion.<sup>101</sup> But restrictions on emigration from the Soviet bloc for the most part kept the numbers of refugees limited, and the continued demand for labour raised no perceived conflict with national interest. Both of these factors, and the ideological symbolism of refugee flows from the East, led to a strong preference for resettlement.<sup>102</sup> The repatriation emphasis of the inter-war years was replaced with what has now been characterised as an “exile bias”,<sup>103</sup> as well as a reluctance to consider ways of addressing the causes of refugee flows. There was little if any discussion of the

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<sup>98</sup> In 1957 the mandate was extended to cover Tunisia and Hong Kong, and was subsequently extended to other groups through the High Commissioner's “good offices” function - see Cecilia Runstrom-Ruin, *Beyond Europe: The Globalization of Refugee Aid* (Lund: Lund University Press, 1993), pp. 22-3.

<sup>99</sup> New York, 31 January, 1967 (606 UNTS 267).

<sup>100</sup> On the former, see James C. Hathaway, *The Law of Refugee Status* (Toronto and Vancouver: Betterworths, 1991), pp. 19-20; and Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon, 1996), pp. 21-6. On gender based persecution, see UNHCR, *State of the World's Refugees: A Humanitarian Agenda* (Oxford and New York: Oxford University Press), pp. 196-7.

<sup>101</sup> Collinson, *Europe and International Migration* (*op. cit.*), p. 40.

<sup>102</sup> The political significance of East-West flows was particularly important in shaping US refugee policy. Until 1980, refugee admissions were limited by law to those fleeing communist countries and countries in the Middle East. See Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford and New York: Oxford University Press, 1993), pp. 58-9.

<sup>103</sup> See Gervase Coles, “Approaching the Refugee Problem Today,” in *Refugees and International Relations*, ed. Gil Loescher and Laila Monahan (Oxford: Clarendon Press, 1990), p. 387.

typically pre-war concern with the range of "solutions" to refugee problems.<sup>104</sup> UNHCR's role was seen as essentially palliative, its task being to address the symptoms of conflict and human rights abuse rather than their causes.

The terms of the 1951 Convention and the focus on resettlement began to create problems in the 1970s. Since the mid-sixties, there had been concerns about racial tension in European states, and of societies being "saturated" with immigrants.<sup>105</sup> The 1973 oil crisis and ensuing recession also led to a decline in the demand for labour, and by the late 1970s all industrialised receiving states had introduced legislation that largely halted immigration flows. With restricted possibilities for immigration, many people from developing countries turned to the remaining routes for entry into industrialised states: family reunification, illegal immigration and asylum. By the 1980s, European asylum systems were overwhelmed with applications, generating what is now perceived to be an asylum crisis.

#### 2.4 *The asylum crisis*

Faced with large numbers of asylum-seekers they had little obvious economic or political incentive to accept, industrialised states found their international legal obligations difficult to fulfil. Two rather different but related problems emerged. One was the administrative and legal difficulty of sorting through large numbers of cases to sift out *bona fide* from what are now termed "bogus" applicants. This triggered a series of policy measures to reduce access of "economic migrants" to the asylum procedure, "streamline" the procedures for determining status, and enforce the return of asylum seekers whose claims were rejected (I shall describe some of these measures below). The focus was on distinguishing between genuine refugees and economic migrants.

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<sup>104</sup> For a discussion of these solutions, see Sir John Hope Simpson, *The Refugee Problem: Report of a Survey* (London and New York: Oxford University Press, 1939), pp. 522-45. By 1953, when Vernant wrote his exhaustive volume on the refugee question, these options were barely mentioned. See Jacques Vernant, *The Refugee* (*op. cit.*).

<sup>105</sup> Collinson, *Europe and International Migration* (*op. cit.*), p. 51

What is of more concern to this thesis is the second problem of how to respond to large numbers of *bona fide* refugees, i.e. those whose claims *did* meet the criteria for Convention status. The increase in refugee flows to industrialised countries presented a serious challenge to international refugee policy, one that went beyond questions of administrative efficiency and enforcement of restrictionist migration policy. Even if asylum procedures could be reformed to sort through genuine cases quickly and reliably, it is certain that there would still be too many Convention refugees – or at least many more than liberal democracies would be willing to take at present. The feasibility of the 1951 Convention had been contingent on small-scale flows and a willingness of governments to receive refugees. While these flows remained limited and there was a demand of labour in industrialised countries, these provisions were interpreted generously, with states usually granting a wide range of social and political rights and often permanent residence. But by the 1980s the generosity of these provisions and the “exile bias” became a problematic model for responding to mass influx. For the first time, the universal duties embodied in the Convention seemed clearly to conflict with national interests in restricting immigration.

The perceived conflict between refugee rights and national interests was exacerbated with the end of the Cold War. By 1989, the ideological symbolism of accepting refugees from the East had given way to concerns about potential mass influx from eastern Europe and the Soviet Union once emigration restrictions were eased. The increase in illegal immigration had also raised concerns about migration and security, with a rise in the incidence of trafficking in illegal immigrants, often linked to drugs trafficking. Finally, the prevalence of ethnic conflict in Africa, the Confederation of Independent States (CIS) and the former Yugoslavia created large-scale movements of refugees to western Europe, with little prospect for conflict resolution and repatriation in the short term. The refugee flows caused by conflict in Bosnia dealt a final blow to confidence in existing arrangements, with refugee law seemingly imposing unfeasible requirements.



With the post-World War II regime seeming to be less and less relevant, industrialised states began to consider new approaches for preventing, containing or redirecting refugee flows, and for encouraging repatriation. First, industrialised states began to introduce a series of measures designed to avoid abuse of the asylum system - or, as critics would argue, to restrict access for asylum seekers. These “streamlining” measures included introducing accelerated procedures for “manifestly unfounded” applicants; visa restrictions and lists of “safe third countries” to which asylum seekers could be returned; sanctions for airlines that carrying passengers without valid documents; and limited social welfare benefits and employment rights for asylum seekers.<sup>106</sup> Second, European states and North America introduced new forms of “temporary protection” for those fleeing violent conflict, which established a set of rights and conditions of stay that fell short of those set out in the Geneva Convention. This form of temporary protection was widely applied in the case of those fleeing conflict in Bosnia and Croatia in the 1990s, and was criticised by many for representing a dilution of standards of refugee protection.<sup>107</sup> Thirdly, the 1980s saw a new wave of interest in measures to address the “root causes” of forced migration and refugee flows.<sup>108</sup> There was also a renewed interest in the kind of broader range

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<sup>106</sup> These measures have been introduced in Europe at both national and regional levels. At the regional level, European Union “harmonisation” of asylum policies have generated criticism of attempts to construct a “fortress Europe”. See Daniele Joly, “A New Asylum Regime in Europe”, in *Refugee Rights and Realities*, ed. Frances Nicolson and Patrick Twomey (Cambridge: Cambridge University Press, 1999) pp. 336-56; Khalid Koser and Richard Black, “Limits to Harmonisation: The ‘Temporary Protection’ of Refugees in the European Union”, *International Migration* 37:3 (1999), pp. 521-43; and Hélène Lambert, “Building a European Asylum Policy under the ‘First Pillar’ of the Consolidated Treaty Establishing the European Community”, *International Journal of Refugee Law* 11:2 (1999), pp. 329 - 37. More generally, there has been wide criticism of national policies to restrict access to asylum systems and manage influx. See Jeremy Harding, *The Uninvited: Refugees at the Rich Man's Gate* (London: Profile Books; London Review of Books, 2000); Patricia Tuitt, *False Images: The Law's Construction of the Refugee* (London: Pluto, 1996); and UNHCR, *The State of the World's Refugees: A Humanitarian Agenda* (Oxford and New York: Oxford University Press, 1997), especially pp. 189-203.

<sup>107</sup> Mikhael Barutciski, “The Reinforcement of Non-Admission Policies and the Subversion of UNHCR”, *International Journal of Refugee Law* 8:1/2 (1996), pp. 49-110; S. Alex Cunliffe and Michael Pugh, “UNHCR as Leader in Humanitarian Assistance: A Triumph of Politics over Law?”, in *Refugee Rights and Realities*, ed. Nicolson and Twomey (*op. cit.*), pp. 175-99.

<sup>108</sup> Sadruddin Aga Khan, “Study on Human Rights and Massive Exoduses”, UN Commission on Human Rights (E/CN.4/1503, 1981). For a good overview of these measures, see Aristide Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford and New York: Oxford University Press, 1989). On European Union measures, see European Commission, *Communication on Immigration and Asylum Policies* ((COM(94) 23 final) Brussels 1994); and Cornelis D. de Jong, “Elements for a More Effective EU

of solutions to refugee problems that characterised inter-war responses. These “new solutions” included the prevention or containment of conflict situations that might trigger refugee flows; the establishment of safe havens and other forms of intervention to protect displaced persons in their countries of origin; and efforts to protect and assist the repatriation of refugees in the aftermath of conflict.<sup>109</sup>

The refugee crisis which began to emerge in the 1970s sharply focused the notion of a conflict between universal rights and national interests. The theories of universal duties that underpinned the post-World War Two international refugee regime had evolved over centuries, from natural law theories in the sixteenth century, through the Enlightenment and nineteenth century liberalism. But prior to this century, the applicability of liberal universalist theories of rights to refugee issues had never seriously been put to the test. The increase in refugee flows in Europe from the end of the nineteenth century onwards implicitly challenged the feasibility of universalism as the basis for determining asylum policies. But the conflict between liberal universalism and notions of national interest most clearly emerged in the second half of the twentieth century, when the universalist implications of liberal rights were given substance in international refugee law. The liberal universalist conception of refugee rights embodied in the Geneva Convention was seen as feasible in the context of the Cold War and economic growth. But with changes in the nature and scale of refugee flows, and economic and social tensions in receiving countries, these international obligations seemed to impose overly stringent demands. And the nationalist ideas and narrow definitions of the “national interest” that had been influencing immigration restriction since the 1900s seemed to be incompatible with universal duties.

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Response to Situations of Mass Influx”, in *International Journal of Refugee Law* 8: 1/2 (1996), pp. 156-68

<sup>109</sup> For an overview of these different approaches, see UNHCR, *People of Concern*, Report of a Conference on Refugees (Geneva: 21-3 November 1996), especially the report on the session on “Refugees: New Approaches to Traditional Solutions”; and Christina Boswell, “The Conflict Between Refugee Rights and National Interests: Background and Policy Strategies”, *Refugee Survey Quarterly*, 18: 2 (1999), pp. 64-84.

### **3. Reconsidering Liberal Universalist Conceptions of Duties to Refugees**

This perceived conflict between refugee rights and national interests has raised serious questions about the feasibility and, in some quarters, the desirability of recognising universal duties to refugees. So what, then, are the prospects for rescuing liberal universalist conceptions from this critique, and encouraging a less restrictionist policy to refugees?

Liberal universalist theories are now caught in a difficult position. Having successfully codified a conception of universal rights in international refugee law, there is a risk that this conception will become increasingly marginalised because of its perceived conflict with national interests. To many, it no longer seems feasible to expect states to perform duties that run so directly counter to their political and economic interests. This problem of the feasibility of realising refugee rights is partly a product of the liberal universalist notion of a split between universalist ethical duty and self-interest. Liberal universalists have tended to assume a separation between the spheres of impartial ethics and interests, a separation that is also reflected in the liberal universalist conception of rights framed in the current international refugee regime. Existing provisions on refugee rights are thus premised on the notion that states should and will be motivated to adhere to their international obligations from liberal or humanitarian principles, rather than because it is in the national interest.

These requirements of refugee law seemed feasible in the 1950s and 1960s, when recognising refugee rights appeared to coincide with national interests. This meant that the problem of feasibility did not arise, and there was no real need to question whether states were motivated to respect refugee rights out of moral duty or self interest. However, since the 1970s there has been a growing perception of the economic and social costs of refugees, and hence a perception that these international obligations conflict with the national interest. Many consider that it now seems unrealistic for states to respect their international obligations on refugee rights: the only motivation to do so would be moral, a question of pure ethical principle, rather than through any interest the

state may have. And this is the source of the current problem of feasibility for liberal universalist theories. Not only are ethical considerations viewed as separate from political and economic interests, as they were in the 1950s-60s. They are now perceived as being directly in conflict with them, and the only reason to respect refugee rights seems to be a purely altruistic - some would say utopian - commitment to moral principle.

There are two possibilities for overcoming this perceived conflict and avoiding the marginalisation of liberal universalist conceptions of refugee rights. One would be a change in the empirical conditions that have prompted states to see refugees as a threat to national interests.<sup>110</sup> Such a shift could create a coincidence between current conceptions of national interests and duties to refugees. I have already explained why I am not pursuing this sort of empirical analysis (see section three of the Introduction). My focus is on the potential for changing conceptions of the relationship between refugee rights and national interests. This second possibility for resolving the perceived conflict between refugee rights and national interests involves rejecting the liberal universalist (and realist) assumption of a split between duty and interests. The claim is that conceptions of ethical duty can shape national interests, and that it is simplistic to assume any clear or necessary separation between the two.

The task of the next three chapters is to examine current universalist conceptions, and to suggest the origins of this problem of marginalisation. Using the criteria outlined in the introduction – normative desirability, practical feasibility, and internal coherence – it will critically evaluate the main variants of different liberal theories in turn. This first part of the thesis will clarify the weaknesses of liberal notions of duties to non-nationals, and the source of the problem of feasibility. The second part of the thesis will proceed to construct an alternative account that addresses the problem of feasibility by rejecting the notion of a split between duty and interests, whilst retaining a substantive liberal

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<sup>110</sup> For example, some demographers have argued that ageing populations in industrialised states will create a need for additional foreign labour. See "Europe's Need for Immigrants", *The Economist* (6 - 12 May 2000).

commitment to extending duties to refugees.

## **Chapter Two**

### **Liberal Universalism and the Problem of Feasibility**

Most legal and ethical arguments for extending duties to refugees derive their justification from some form of liberal universalist theory. As I observed in the last chapter, international refugee law is grounded in a conception of universal rights, and proponents of a more generous asylum policy tend to invoke notions of universal duties to defend their claims. I also showed how notions of universal duties could be traced through a long tradition of liberal moral and political thought. It therefore makes sense to start our discussion of conceptions of duties to refugees with an examination of liberal universalist theories. These theories would appear to provide the best route for deriving an account of duties to refugees that is consistent with the normative criterion outlined in the Introduction.

This chapter will start by categorising different varieties of liberal universalist theory, distinguishing in particular between utilitarian and right-based theories. Both of these types of universalism have been used by theorists to provide an account of duties beyond borders, so there are a number of good exemplars to consider. Sections two and three will discuss two types of utilitarian accounts of duties to non-nationals: those that aim to maximise utility; and those that aim to eliminate suffering. The first variety of utilitarian theory encounters problems defining, measuring and ensuring a fair distribution of utility, and is thus inadequate as a framework for defining duties to refugees. The second variety avoids many of these problems, but its focus on the alleviation of suffering has the effect of undermining autonomy and other valuable goods in the longer-run. Both of these accounts fail to meet the criterion of normative desirability, and should therefore be abandoned as possible frameworks for defining duties to refugees. The weaknesses in both accounts also strongly suggest the need to incorporate some notion of rights.

Section four moves on to a discussion of right-based liberal universalism, arguing that these theories better meet the normative criterion of an adequate conception of duties to refugees. But while right-based theories provide a good substantive conception of duties, they face a serious problem of practical feasibility. The problem of feasibility that was mentioned in Chapter One is elaborated in more detail, and the discussion argues that liberal universalists cannot address these problems without substantially altering either their commitment to universalism, or their assumptions about motivation.

It should be noted that the discussion employs a number of different types of critique to assess the adequacy of theories. The main criteria are of course the three outlined in the introduction - normative desirability, practical feasibility and internal coherence. But some of the criticisms based on these criteria will be applicable to *all* theories within the category under discussion (e.g. the criticism will apply to all utilitarian theories, or all universalist theories). Others will apply only to particular exemplars of the theory (e.g. the criticism will be specific to the theory of J. S. Mill, or Robert Goodin). Of course, the first type of more general criticism is more important for sorting through which type of account will best suit our purposes. But the second type of critique is also worthwhile, as it provides a more comprehensive review of different political theories available, and is of general interest to scholars in the field of international ethics. I shall specify in the course of the discussion which criticisms are general and which are specific.

## **1. Refugees and Liberal Political Theory**

### *1.2 Categorising liberal universalist theories*

A universalist moral or political theory is one which gives equal weight to the interests or well-being of all human-beings. Thus whatever the theory's conception of the good or the conditions for human well-being, it will start from the premise that every individual has an equal moral claim to this good and/or the means for pursuing it. Universalist theories are based on an assumption of the

moral equality of human beings. This implies that (at least part of) the morally relevant characteristics of human-beings are those which are universally shared, for example the capacity for reason, or interest in maximising pleasure. A radical or “thick” universalist theory will assume that the only morally relevant features of human-beings are those that are universal. The theory will give equal consideration to the interests of each individual, regardless of their particular characteristics, ties, or other non-universal features.<sup>111</sup>

Universalism, as noted in Chapter One, should be contrasted to communitarian or “particularist” theories, which hold that the proper subject-matter of morality is specific groups or communities rather than all people *qua* human-beings. Such special moral claims may be grounded in scepticism as to the possibility of establishing a universally accepted system of ethical values, or more radical moral relativism. This may provide an argument for limiting the scope of moral duties to the relevant sphere of shared ethical values.<sup>112</sup> Alternatively, particularism may be based on a theory of morality that holds that certain groups or individuals have a greater moral claim by virtue of their relationship to the moral agent. For example, family members may have a special moral claim even if the conditions for their well-being are universally shared. Their interests may generate special duties on the part of particular agents (in this case other family members), despite the fact that these interests may be common to all human beings. A “thin” universalist theory may incorporate elements of particularism, for example by according limited moral relevance to non-universal considerations such as membership of a particular community. On this account, while certain aspects of human interests are universal and should be given equal consideration, the moral agent may have special moral responsibilities towards members of her family or community, for the reasons mentioned above.

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<sup>111</sup>There may be good reasons for treating certain individuals as the objects of special duties, for example we may be in a better position to advance the well-being of those around us than those at the other end of the globe. However, in a universalist theory this special treatment is justified only on instrumental grounds, insofar as it is an effective means of giving equal consideration to the interests of all – it is an efficient division of labour.

<sup>112</sup> It could be consistent with a form of “contingent” universalism – i.e. a thesis that holds that it is empirically true that there is in fact universal adherence to the same set of values, even though these values are not derived from the universally shared characteristics of all human beings. I shall return to this question in Chapter Seven.



While universalist theories all give equal weight to the claims of individuals, they differ on the question of which universal characteristics give rise to claims to equal treatment. Broadly speaking, liberal theories are characterised by the importance they attach to liberty. Thus the relevant shared characteristics in liberal theory will be the individual's interest in freedom or the conditions for realising freedom. But beyond this loose definition of liberal universalism, there is considerable divergence between different theories. For the purposes of this analysis, two distinctions between the various types of theory are of especial relevance. The first is the distinction between consequentialist and deontological liberal theories. And the second is the distinction between two types of deontological account: need-based and consent-based accounts.<sup>113</sup>

Regarding the first distinction, deontological theories hold that the morally relevant characteristic of human-beings is their rationality, or capacity for autonomy. The purpose of political theory is to ensure the equal distribution of freedom to enable individuals to exercise these capacities. The equal distribution of freedom is usually ensured through a system of rights, which enable individuals to realise individual freedom. The guarantee of the relevant rights over-rides other goods, for example the pursuit of social goals or maximisation of pleasure. As mentioned above, there are two main types of deontological theories. First, there are those that derive and justify rights and theories of justice through consent. These are better known as social contract theories, which aim to secure individual autonomy through a procedure which enables individuals to select terms for regulating their interaction. Most social contract theories have traditionally been designed to construct rules for a given group of people or society, typically for separate states. In this sense they are less straightforwardly universalist, as many (but not all) of them see their object as to secure compliance on rules to regulate the interaction of given communities.<sup>114</sup> The focus on the

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<sup>113</sup> These categories are fluid. Shapiro, for example, rejects the sharp distinction between utilitarian and deontological liberal theories, claiming that most liberal theories combine a mixture of the two. See Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge University Press, 1986), pp. 273-4

<sup>114</sup> As Scanlon puts it in his discussion of Rawls' contract theory, justice "applies only to persons who are related to one another under common institutions. The problem of justice arises...for people who are engaged in a cooperative enterprise for mutual benefit, and it is the problem of

domestic social contract raises a number of issues distinct from the discussion of purer forms of right-based universalism, and will be examined in Chapter Four. The second type of deontological theory comprises those theories that derive rights from a specific conception of interests and needs. The discussion in section three of this Chapter will focus on this second variety of right-based universalist theories, which define the distribution of rights on the basis of a more detailed elaboration of the conditions for freedom or well-being, rather than a procedure for selecting principles.

In contrast to right-based theories, utilitarian theories consider the morally relevant characteristic of humans to be their interest in happiness, pleasure or some other conception of well-being. Utilitarianism holds that the rightness of wrongness of an act or rule depends on its effect on the welfare of all human beings. Welfare in this context can be defined in a number of ways. Bentham defined it in a narrow sense, as pleasure and the absence of pain, while Mill famously distinguished between “higher” and “lower” pleasures, according a privileged status to intellectual well-being over sensual pleasures.<sup>115</sup> Some recent utilitarians have broadened it to encompass more general conceptions of well-being, including notions of the “good” that are at least partially independent of their contribution to pleasure and the absence of pain.<sup>116</sup> The emphasis on utility, however defined, does raise a number of issues about what counts as a legitimate interest, need or desire. In particular, it will make a significant difference to the theory whether utility is measured according to subjective, perceived well-being, or defined on the basis of some external standard. I shall return to this distinction later in the discussion.

Two main elements distinguish utilitarian theories from deontological theories. The first is their consequentialist structure. They evaluate acts

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how *the benefits of their cooperation* are to be shared.” See M. Scanlon, “Rawls’ Theory of Justice”, in *Reading Rawls*, ed. Norman Daniels (Oxford: Blackwell, 1975), p. 202.

<sup>115</sup> Mill, John Stuart, “Utilitarianism” [1861], in *On Liberty and Other Essays*, ed. John Gray (Oxford and New York: Oxford University Press, 1991), pp. 139-43.

<sup>116</sup> A notable example is Amartya Sen. See his “Plural Utility”, in *Utilitarianism and its Critics*, ed. Jonathan Glover (New York: Macmillan Pub. Co; London: Collier Macmillan Publishers, 1990), pp. 78-88.

according to their effect on the well-being of people, rather than on the grounds of any intrinsic value of the act or principle in question. Their central concern is to promote the greatest good for all people: they do not attribute moral significance to the typically deontological concern with integrity or intentions. Secondly, utilitarian theories do not accord any intrinsic value to individual freedom. Liberty is valued insofar as it is instrumental to well-being or happiness, but is not an end in itself. Nonetheless, most utilitarians argue that liberty is an essential component or precondition for well-being, and thus defend a robust conception of liberty on utilitarian grounds. Utilitarian theories may therefore be classified as “liberal” in a broad sense, and it is to these liberal utilitarian theories that I now turn.

## 2. Maximising Utility

Utilitarianism might initially appear to provide a good basis for characterising duties to refugees. Indeed, a number of theorists have employed utilitarian theory to construct accounts of duties to non-nationals.<sup>117</sup> The universalist premises of utilitarian theories mean that they attach no special moral relevance to nationality, over and beyond duties to humanity in general. A utilitarian theory of duties to non-nationals would give equal consideration to the interests of all. Any recognition of special duties would have to be justified on instrumental grounds – as the best means of realising universal utility. As the utilitarian theorist Goodin points out, on this account the “duties that states (or, more precisely their officials) have vis-à-vis their own citizens are not in any deep sense special. At root they are merely the general duties that everyone has toward everyone else worldwide.”<sup>118</sup>

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<sup>117</sup> Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of our Social Responsibilities* (Chicago: University of Chicago Press, 1985), and “What is So Special About Our Fellow Countrymen?”, *Ethics* 98:4 (1988), pp. 663-86; Peter Singer, *Practical Ethics* (Cambridge and New York: Cambridge University Press, 1979); Anthony Ellis, “Utilitarianism and International Ethics”, in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 158-79.

<sup>118</sup> Goodin, “What is so Special” (*op. cit.*), p. 681.

However, this section and section three will highlight a number of problems with utilitarianism, which suggest the need for a right-based account. The discussion of utilitarianism will involve critiques of two different variants of the theory. First, this section will discuss problems with theories that aim to maximise utility. 2.1 will consider the problem of subjective preferences in defining and measuring utility. And 2.2 will discuss the question of distributing utility. It will be argued that utilitarian theories require some system of rights in order to ensure a satisfactory distribution of fundamental goods. Section three will discuss the second type of utilitarian theory, which attempts to avoid these problems through employing a narrower conception of avoidance of harm. However, this negative conception of utility fails to address more long term questions of justice. Again, the best route for the utilitarian seems to be to adopt a system of rights.

### *2.1 Utility and the problem of subjective preferences*

The first major hurdle for a utilitarian theory is the problem of how to define “utility”. Classical utilitarians defined utility as a subjective state experienced by individuals. On this account, utility denoted the individual’s happiness, or pleasure and the absence of pain. The level of happiness or pleasure experienced by the individual provided the main criterion for assessing the rightness of acts and evaluating rules and goods. The *quantity* of utiles (units of happiness) experienced was, according to this form of classical utilitarianism, the sole basis for such evaluations. Thus the goal of any act or policy would be to maximise the utility of all people, including non-nationals.

One central problem with this classical account is that it fails to make any qualitative distinctions between the sorts of goods that may contribute to utility. As Mill was to point out, the account allows for no distinction between different sorts of pleasure. Thus there is no scope for prioritising more enriching experiences over, for example, instant gratification of the senses, except on the grounds of the *quantity* of pleasure derived. So a contented slave could be said to derive as much utility as an angst-ridden philosopher who enjoyed a far higher

level of autonomy and intellectual satisfaction. This will clearly not do for a conception of duties to refugees. It would fail to make the relevant qualitative distinction between different types of pleasure or pain. For example, it could not adequately capture the qualitative distinction between the subjective state of a refugee who had been able to escape persecution but felt lonely and disoriented in his country of asylum; and one who had been imprisoned in his country, but continued to enjoy the friendship of fellow inmates. Both may derive the same level of utility – or the second may derive even more – but many would value the freedom of the refugee over the pleasure felt by the prisoner. The classical concept of utility seems too crude a measurement for evaluating the desirability of different states.

Mill's solution was to introduce a qualitative distinction between higher and lower pleasures, while maintaining that these different types of pleasure all fell within the same category of "utility". He thus qualified the purely quantitative account of pleasure provided by classical utilitarians, but without abandoning utility as the sole and ultimate standard of evaluation. Mill's justification for this qualitative distinction is extremely weak. It is difficult to see how one can defend a *qualitative* distinction between different types of pleasure, solely on the grounds that "higher" pleasures produce a greater *quantity* of utility. In other words, Mill seems to be implicitly accepting the existence of a standard of evaluation which is independent of the criterion of pleasure. What he refers to as the heterogeneity of pleasure surely reflects an acknowledgement of a plurality of values. The "intrinsic superiority" of higher pleasures such as academic study over, say, eating chocolate is based on the value attached to intellectual achievement, knowledge, or independence of thought. And the superiority of seeking asylum over imprisonment is based on the intrinsic value attached to liberty. In addition to pleasure, then, one might want to introduce additional criteria for assessing the value of different goods. Such criteria might include the contribution of acts or goods to the development of virtues (for example intellectual excellence, compassion or creativity); or the intrinsic value of

exercising certain capacities (autonomy, reason or moral integrity).<sup>119</sup> Even if one accepts Mill's argument that those who have experienced higher and lower pleasures will tend to prefer the former - and this is a highly dubious empirical claim - it is far from clear that this preference is based solely on the contribution to utility. Rather, it would imply that utility is not the sole standard of evaluation. In short, the concept of subjective utility will not suffice on its own.

There is a second problem with the subjective account. In addition to the problem of qualitative distinctions, relying on subjective states may produce extremely unpalatable patterns of distribution. Certain people might have very expensive or demanding tastes, and require a greater amount of a particular good to achieve the same level of utility. An especially difficult case for the utilitarian is that of how to deal with those with morally objectionable preferences. For example a racist person's utility might be increased through the restriction of asylum. If duties to refugees are determined on the basis of the equal consideration of individual preferences, then these racist attitudes would be factored into the equation of utility distribution. If the strength of racist feeling were sufficiently high, then the loss of utility resulting from taking in refugees might provide grounds for restricting influx. Yet most liberal theorists would not accept racist attitudes as a morally acceptable ground for limiting refugee influx. While they may in fact influence government policies on restriction, liberals would not consider such views to constitute moral grounds for justifying a particular distribution. Accepting such attitudes as a basis for distributing utility would produce a pattern of distribution that would seem to contradict the universalist principles on which utilitarian theory is based.<sup>120</sup>

In conclusion, not only does the exclusive reliance on the standard of utility deny the existence of other values. It also potentially legitimises morally dubious preferences. The only acceptable route for utilitarians seems to be to introduce a broader conception of utility, which embraces a plurality of values

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<sup>119</sup> The former list of goods would be compatible with a consequentialist account; embracing the latter might necessitate incorporating some form of deontological theory.

that contribute to human well-being. And, moreover, to define well-being on the basis of certain external, non-subjective criteria. Indeed, many utilitarians have argued that the problems raised by relying on subjective utility justifies the introduction of objective criteria for measuring welfare.<sup>121</sup> Thus utility should be defined in terms of objectively definable goods, such as wealth, healthcare, accommodation, security, and so on. Utilitarian theories based purely on the notion of the individual's subjective happiness seem to be untenable. And this represents the first of a number of retreats from utility towards some theory of rights.

## 2.2 *Distributing utility: aggregate maximisation and equality*

Once the question of *what* to distribute has been settled, the issue arises of *how* to distribute these goods. The two most famous distributional principles are the maximising or “aggregating” principle, and the egalitarian principle. Let us consider the maximising principle first, often termed the “aggregate utility” principle. According to this principle, the ultimate goal of any action or institution is to maximise the total amount of utility or welfare. The aggregate utility principle has been widely criticised as failing to be sensitive to the distribution of utility between individuals.<sup>122</sup> If what matters is the maximisation of total aggregate utility, then this goal may be achieved through profoundly unequal patterns of distribution. For example, one person's interests might be legitimately sacrificed for the sake of a smaller increase in the well-being of a large number of people. The possibility of such sacrifice raises familiar objections to utilitarianism, notably its conflict with widespread intuitions about justice. As Rawls puts it, on a utilitarian account “there is no reason in principle why the greater gains of some should not compensate for the lesser losses of

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<sup>120</sup> See, for example, Ronald Dworkin on the problem of racist attitudes, in *Taking Rights Seriously* (London: Duckworth, 1996), p. 235.

<sup>121</sup> For a discussion of the debate on subjective and objective criteria, see John Elster and John E. Roemer, eds., *Interpersonal Comparisons of Well-Being* (Cambridge: Cambridge University Press, 1992).

<sup>122</sup> Critiques include John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972), p. 26; Bernard Williams, “A Critique of Utilitarianism”, in *Utilitarianism: For and Against*, ed. J. J. C. Smart and Bernard Williams (Cambridge: Cambridge University Press, 1993), pp. 77-150.

others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many.”<sup>123</sup>

The case against this extreme form of aggregate utility is now widely accepted, and most contemporary utilitarian theories have defended some alternative principle for distributing utility. The most obvious alternative is to embrace an egalitarian principle of distribution. Egalitarian theories aim to achieve equal utility for all, giving equal consideration to the welfare of each individual. One can find an example of this type of average utility approach in the work of Peter Singer, who advocates a principle of equal consideration. In his discussion of the distribution of welfare, he argues that this principle of equality “acts like a pair of scales”, which “favour the side where the interest is stronger or where several interests combine to outweigh a smaller number of similar interests.”<sup>124</sup> In other words, the distribution of goods is determined on the basis of an evaluation of relative interests. The distributive principle should give precedence to more pressing concerns over less fundamental interests. It would also mean that the claims of those with less of the good in question are given priority over those with a greater quantity of the good. The principle of equal consideration would therefore necessitate a redistribution of goods until the interests of all parties are equally met, thus achieving a “balance” of equal consideration.

Singer applies this principle of equal consideration to the question of refugees.<sup>125</sup> He argues that since the concern to escape from persecution is clearly more pressing than the concerns of those in receiving countries to limit admission, there are grounds for a considerable extension of duties to refugees. Where there is a conflict between the interests of refugees and rich receiving states, the latter should be expected to make greater sacrifices of welfare than they currently do. The utility gained for the refugee by avoiding torture or death will

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<sup>123</sup> Rawls, *Theory of Justice* (*op. cit.*), p. 26.

<sup>124</sup> Singer, *Practical Ethics* (*op. cit.*), p. 22.

<sup>125</sup> See Peter and Renata Singer, “The Ethics of Refugee Policy”, in *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed. Mark Gibney (New York and London:



be far greater than the utility sacrificed by receiving countries through a rise in taxes, or a more densely populated country.

However, Singer is aware that the "scales" model of equal consideration could imply substantial loss of utility for receiving countries.<sup>126</sup> A generous entry policy would be likely to encourage far more people to emigrate from poorer countries, potentially leading to mass influx into richer states. This could jeopardise the more fundamental interests of receiving countries. On the principle of equal consideration, restrictions on entry would only be justified in cases where the sacrifice of individuals in the receiving state outweighed the benefits derived by refugees. But this might lead to a situation in which the utility of both refugees and receiving states is scaled down to a significantly lower level. Rather than increasing the welfare of refugees, the principle of equal consideration might imply a decline in the welfare of receiving states until it was equal to that of the refugee sending state. Singer acknowledges that this would be problematic when he writes,

Since the interests of the refugees in resettlement in a more prosperous country will always be greater than the conflicting interests of the residents of those countries, it would seem that the principle of equal consideration of interests points to a world in which all countries continue to accept refugees until they are reduced to the same standard of poverty and overcrowding as the third world countries from which the refugee are seeking to flee.<sup>127</sup>

Not only does this conception of duties to refugees seem to be totally unfeasible, it also leads to what Joseph Raz has termed a problem of "wastage".<sup>128</sup> Singer's "scales" model fails to distinguish between policies that equalise utility by *withdrawing* a good or entitlement; and those that ensure an equal distribution through granting this good to those that do not have it. In the former case, the principle of equal consideration would cause wastage of utility. Where equality

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Greenwood, 1989), pp. 111-30; and Peter Singer, "Insiders and Outsiders", in *Practical Ethics* (*op. cit.*), pp. 247-63.

<sup>126</sup> On the problem of the sacrifices required by richer states, see Chris Brown, *International Relations Theory: New Normative Approaches* (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 166-7.

<sup>127</sup> Singer, "Insiders and Outsiders" (*op. cit.*), p. 261.

of utility is the main goal, it may result in a substantial decrease in the utility of each person. In this sense, it would conflict with the goal of utility maximisation. As Barry puts it, “the principle of equal utility, if interpreted strictly, would require us to say that a situation of equally shared misery was morally preferable to a situation in which everyone was very happy but some were more so than others.”<sup>129</sup>

The best way of avoiding these distributional problems would be to introduce a threshold of welfare or utility, below which individuals should not morally be required to fall. This is the approach implicitly adopted by Singer to respond to the problem of wastage. He argues that there are certain grounds on which it would be justifiable to restrict influx prior to the point at which the welfare of receiving countries was scaled down to that of refugees. For example, where there is a threat of irreparable damage to the environment, or a serious danger to security, “the balance of interests would have swung against a further increase in the intake of refugees.”<sup>130</sup>

This is a reasonable condition, but it is not one that Singer can easily incorporate into his scales model. The scales model assumes that goods should be maximised, consistently with their equal distribution. Loosely stated, the goal is to achieve the greatest possible amount of utility for each person. But the introduction of the notion of a threshold implies that the goods in question have other characteristics not captured by this distributive principle. First, it implies – as we have seen - that there is a minimum level of welfare, below which individuals should not be expected to fall, even if this means that others remain even worse off. This means that there is a minimum acceptable quantity of the good, and that ensuring the minimum amount for some could take precedence over ensuring equal distribution for all at a level beneath this minimum. So the distributive principle becomes more complex than a question of simply maximising utility consistent with its equal distribution. A second feature of

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<sup>128</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1988), p. 227.

<sup>129</sup> Brian Barry, *Theories of Justice* (Berkeley and Los Angeles: University of California Press, 1989), p. 79.

goods not recognised by the scales model is what Raz has termed “satiability”. Raz argues that maximising principles such as the one advanced by Singer are not sufficiently nuanced to capture the notion that most claims to utility or welfare are “satiabile”. In other words, they are demands that can be met by a given level of distribution. Any allocation of utility above this level becomes unnecessary, or at least a less urgent concern. Satiabile goods are also “diminishing”, in that the more of the good a person has, the weaker the reason to give her more of this good.<sup>131</sup>

According to Raz, “[t]he ideals at the foundation of morality and politics are all diminishing and satiable principles.”<sup>132</sup> Be this as it may, the sorts of goods at stake in the conflict between refugee rights and national interests would seem to be satiable and diminishing. These would include interests of refugees in securing physical security and material welfare, and the interests of receiving goods such as a healthy natural environment, or a tolerant society. These are not goods that it would make sense to maximise indefinitely. For example, the interest in physical security or living in a tolerant society involve goods that will be satiated at a certain level. Such satiable goods allow one to define a level of needs, or threshold of welfare, below which individuals or groups should not be expected to fall. And the notion of satiability enables one to distinguish between priority cases, where individuals are lacking even the most basic needs, and cases where basic needs are satisfied and thus of less urgent concern. This notion of satiation departs from utility maximising principles, introducing a layer of needs. It is a concept that is simply not captured by utilitarian models based on equality and/or maximising principles. This is true not just of Singer’s theory, but of all such utilitarian accounts.

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<sup>130</sup> Singer, “Insiders and Outsiders” (*op. cit.*), p. 262.

<sup>131</sup> An example of a satiable and diminishing good is that of human needs, which might be embodied in the principle that everyone’s needs should be met. This good is satiable, in that the needs in question can be met, and it is diminishing in that the closer a person is to having these needs met, the less she will benefit from a further increase in the relevant good. Conversely, as Raz writes, “the further one is from the point of satiation the stronger is one’s right to the benefit conferred by the principle.” Raz, *Morality* (*op. cit.*), pp. 236-7.

<sup>132</sup> Raz, *Morality* (*ibid.*), p.241.

To summarise the argument so far, utilitarian theories face a number of problems that point strongly to the need for a conception of rights. Firstly, theories that rely on subjective states have problems defining utility, and can lead to morally unacceptable patterns of distribution, necessitating the introduction of some external or objective criteria for measuring welfare. Secondly, utilitarian theories have difficulties with distributive principles. Theories based on an aggregate maximising principle will be insufficiently sensitive to questions of distribution. Utilitarians have attempted to avoid this problem through adopting a principle of average utility maximisation. However, this averaging principle creates its own problems. Strict equality may call for distributions that simply scale down the average utility, rather than tolerating some inequality at a higher level of utility for all. The discussion will now consider whether alternative accounts of utilitarian theory can avoid these problems.

### **3. Alleviating Suffering**

Before turning to right-based theories, it is worth examining a second variety of utilitarian theory that appears to avoid these problems. Rather than seeking to maximise utility, such theories have the more modest goal of alleviating suffering. One of the more sophisticated theories of this kind is provided by Robert Goodin. Goodin's theory of universal duties avoids many of the short-comings of utility maximising theories. He defends a consequentialist theory of duties to non-nationals that is defined on the basis of an objective criterion of well-being - the concept of vulnerability. He argues that individuals have a duty to protect and assist those who are dependent on them or vulnerable to their actions and choices. The theory is universalist, in that it denies the intrinsic significance of special duties to compatriots. Non-nationals and refugees in principle have an equal claim to be protected and assisted. As he writes, "the state's special responsibility to its own citizens is, at root, derived from the same considerations that underlies its general duty to the refugee." As such, "it would be wrong for any state to press the claims of its own citizens strongly, to the

disadvantage of those who have no advocate in the system”, i.e. refugees.<sup>133</sup>

### 3.1 *Protecting the vulnerable*

The notion of vulnerability seems to overcome the two central problems with the theories discussed in the last section: the need for thresholds, and the problem of relying on subjective preferences. First, the vulnerability principle is not an exclusively maximising principle, in that it does not aim at an unlimited increase in utility. Nor does it aim to maximise total utility at the expense of equal distribution. Rather, it has the more negative aim of avoiding harm and suffering. The notion of avoiding harm clearly assumes a threshold of welfare below which individuals should not be expected to fall. Where they are below this level, other agents are morally required to assist or protect them in order to attain the acceptable threshold of well-being. In the case of refugees, one might define the threshold as including protection from physical threats, assistance to meet material needs, or some other list of conditions linked to the 1951 Convention definition of refugee.<sup>134</sup> Since the principle is based on a threshold concept rather than a scales model, it would not justify redistribution which involved denying these goods to those who already enjoyed them, for the sake of achieving the goal of equality.

Secondly, the vulnerability thesis is less susceptible to the problem of subjective preferences. The conditions necessary for avoiding harm and suffering would be objectively definable, and would apply equally to all human-beings. They would be based on a conception of universally shared human needs, and thus the quantity required for each individual would not vary significantly (or at least not on morally arbitrary grounds). Thus the problem of inter-personal comparison would not arise.

However, there are a number of rather different problems with Goodin’s account. One of these is specific to his theory - i.e. his argument for limiting the

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<sup>133</sup> Goodin, "What is so special about our fellow countrymen?" (*op. cit.*), pp. 684-5.

scope of duties. Other problems stem from the consequentialist structure of the theory, and are problems characteristic of all utilitarian accounts. I shall deal with the first problem in this section, and the more general critique of consequentialism in 3.2.

The first difficulty for Goodin's theory, then, is that of how it responds to the problem of feasibility. If all individuals are morally obliged to protect and assist others, then there seems to be no limit to the moral demands of the vulnerability thesis. It would imply the obligation to extend protection and assistance to all those below the relevant threshold, thus imposing potentially limitless duties on moral agents. In terms of refugee policy, the vulnerability thesis would deny the relevance of special duties to compatriots, and thus advocate a far more generous refugee policy. Goodin attempts to avoid the problem of feasibility by arguing that there are instrumental or pragmatic grounds for dividing responsibility for protection, on the basis of an agent's relation to other individuals.

On balance, persons relatively near to us in space and in time probably *will* be rather more vulnerable to us. Their interests are more likely to be affected more heavily by our actions and choices than are the interests of persons more distant; and our nearer neighbours in space and time are more likely to be depending on us, more or less exclusively, for assistance and protection."<sup>135</sup>

The notion of allocation based on vulnerability, then, provides the justification for a moral division of labour on instrumental grounds. Goodin argues that a moral agent has special duties to those who stand in a particular relation to her. "What is crucial, in my view, is that others are depending on us. They are particularly vulnerable to our actions and choices. That, I argue, is the true source of all the standard special responsibilities that we so readily acknowledge."<sup>136</sup> On this account, the moral agent has a special responsibility to people who are currently dependent on her support, thus presumably limiting the scope of moral duty to manageable proportions.

Yet it is difficult to see how one can sustain a distinction between actual

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<sup>134</sup> See Chapter One.

<sup>135</sup> Goodin, *Protecting the Vulnerable* (*op. cit.*), p. 121

and potential dependency. Why should a moral agent have a duty to assist those currently dependent on her, but not to extend protection and assistance to all those who might potentially benefit from it? The distinction between actual and potential dependants seems to rest on some implicit notion of the instrumental benefits of division of labour. Such instrumental arguments for dividing universal duties – as will be seen in the next chapter – tend to be based on some argument about why an agent will be better qualified to assist or protect those nearer to her. For example, one could justify a division of labour on the grounds that people with close geographic or cultural ties would have better information about people's needs, or could be more efficient in supplying the goods necessary to meet their needs. I may have a better understanding of the needs of people from my tribe or neighbourhood, or may be better located geographically to deliver food to people living near to me.

Now while some of these arguments may justify a division of labour on instrumental grounds, Goodin's account does not seem to provide a very convincing defence of such an arrangement. The criterion of actual dependency does not seem to be a legitimate ground for allocating responsibility. It may potentially be far more effective for a particular agent to perform duties to a given group of people who are not currently dependent on her. For example, she may have a particular talent for conflict mediation or be especially motivated to help lepers in Calcutta. Even though they are not actually vulnerable to her actions, there would be strong utilitarian grounds for her to carry out duties of assistance to these leprosy sufferers or attempt to resolve conflict between two ethnic groups. Conversely, one could imagine a group of people living in extreme poverty on a desert island, with no particular ties to other peoples. In this case their welfare would not be directly dependent on the actions of any specific agents, and thus there would be no obvious candidates for assisting them.<sup>137</sup> The division of responsibility according to actual dependence does not seem to be justifiable on utilitarian grounds. It will not be the most effective means of

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<sup>136</sup> *Ibid.*, p. 11.

<sup>137</sup> See O'Neill's discussion of the scope of moral duties, and especially the notion of the moral relevance of "connectedness." Onora O'Neill, *Towards Justice and Virtue: A Constructive*

meeting needs, and will thus fail to promote universal welfare.

Quite apart from the dubious justification of the division of moral labour, there is also a significant practical problem with the thesis. As has been argued, the relation in which an agent stands to her dependants is not permanently fixed. If the vulnerability thesis were to provide a universal principle for the distribution of responsibility, then it would presumably lead people to alter their relations so that they could derive increased benefit from agents. If one person or state is in a good position to extend protection and assistance to others, then it is likely to encourage more people to enter into a relationship of dependency on this state. This would clearly be the case with refugee policy. On Goodin's account, a state would have special responsibility for those who are claiming asylum at their borders or in their territory. Since these people are especially vulnerable to the actions of receiving states, this would generate special duties on the part of the state to accept them. But this would presumably encourage much larger numbers of people to travel to the state in question so that they too would be in a similar dependency relation.

Goodin does suggest that where possible, richer states should cooperate to share the responsibility of receiving refugees. But where other states are unwilling to share the burden, the duty would fall exclusively on the first country of asylum: "Suppose that no other nation is prepared to share the refugees (or the costs). Then our nation would be under a peculiarly strong responsibility, a sort of international equivalent of an individual responsibility, to offer them sanctuary."<sup>138</sup> The problem here is that a conception of duties based on actual dependency would encourage many more people to transfer dependency to receiving countries, even where they were not necessarily high-risk cases. The dependency thesis would justify extending asylum to a far wider category of immigrants, providing they were able to travel to the borders of the receiving country and become dependent on it for assistance. And this would make such a basis for defining duties to refugees highly unfeasible. Goodin's conception of a

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*Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), pp. 100-6.

<sup>138</sup> Goodin, *Protecting the Vulnerable* (*op. cit.*), p. 168.



division of labour based on dependency is practically unworkable, as well as ethically unjustifiable.

### 3.2 *Vulnerability and dependency*

There is a second problem with the potential consequences of adopting the vulnerability thesis, and this is common to all utilitarian theories that employ a notion of harm avoidance, or what I shall term the negative conditions for basic well-being. One of the virtues of the vulnerability thesis, as we saw, was its ability to define objective conditions for avoiding harm that were equally valid for all human-beings. Yet defining the theory's telos as avoidance of harm and protection of the vulnerable provides only a partial conception of well-being. The classical utilitarians - problematic as their theories were - did at least have a conception of well-being which incorporated happiness as well as the absence of pain. And the provision of such a positive conception is vital for a consequentialist theory. After all, these theories evaluate acts according to the desirability of their consequences. So without a full account of desired consequences, one can only have a limited assessment of the desirability of the act.

The absence of a fuller conception of flourishing would not be so problematic if securing these minimum conditions were a pre-condition for achieving positive well-being. But the difficulty for the vulnerability thesis is that achieving its goals detracts from and even undermines the search for human flourishing. If one limits the political goal to the avoidance of harm, then there is a risk that this will limit the scope for seeking more satisfactory solutions that address the causes of vulnerability, and achieve a fuller form of human flourishing. Relieving distress and protecting the vulnerable would encourage dependency on short-term assistance, in turn detracting from the longer term goal of addressing the conditions that gave rise to dependency, and also limiting the development of autonomy.

We can illustrate this point by considering the implications of the

dependency thesis in the area of refugee policy. A reliance on immediate assistance and protection would risk encouraging dependency on external aid, to the neglect of actions to address the causes of refugee flows. In particular, a greater dependency would undermine the longer-term capacity to improve conditions in sending countries. The provision of assistance would therefore fail to address the causes of vulnerability, and may well even be counter-productive to this goal. Indeed, concerns about an exclusive emphasis on relieving symptoms prompted a shift of emphasis in the early 1980s towards measures to address the “root causes” of refugee flows.<sup>139</sup> The root cause approach advocated forms of redistribution and the promotion of human rights in sending countries, through measures such as debt relief, trade liberalisation and foreign direct investment. Although this was largely motivated by the desire to limit refugee flows and thus relieve the burden on receiving countries, it was also seen as a means of improving the situation in sending countries as an end in itself. Measures to “empower” those in areas of potential emigration was seen as ethically preferable to providing assistance and protection once people were forced to flee.<sup>140</sup>

Likewise, at the level of political theory, the problems of relying on a notion of vulnerability have generated criticism from justice theorists. Brian Barry, for example, has argued that theories of justice are far better placed than notions of humanity to achieve a fair distribution of resources. The principle of humanity sets a limited task of relieving suffering where it occurs. By contrast, justice provides guidance on the best procedures and mechanisms for ensuring a fair distribution of resources. In Barry’s words, “humanity is a question of doing good; justice is a question of power.”<sup>141</sup> The just distribution of resources provides the means of empowering people, and hence can both address the causes of vulnerability, and provide the conditions for autonomy. Such a conception of justice would involve the distribution of rights, rather than the distribution of

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<sup>139</sup> See references in note 108, *supra*.

<sup>140</sup> Indeed, the problem of “dependency syndrome” has long been a concern in refugee policy, and has encouraged those working with refugees in camps and with asylum-seekers to consider ways of “empowering” people rather than simply distributing assistance.

<sup>141</sup> Brian Barry, “Humanity and Justice in Global Perspective”, in *Ethics, Economics, and the Law*, ed. J. Roland Pennock and John W. Chapman, Nomos XXIV (New York: New York University Press, 1982), p. 245.

goods that immediately relieve vulnerability.

This notion of autonomy implies commitment to a more positive conception of human flourishing, one that is central to liberal political thought. Yet it is a conception that is not adequately captured by utilitarian theories. As I have tried to show, conceptions of the negative conditions for basic well-being, such as Goodin's vulnerability thesis, provide only a partial account of the goal of political and moral action. The notion of avoiding suffering is not only insufficient as a telos, it also potentially undermines the achievement of more positive goals, through encouraging dependency on outside assistance. On the other hand, we should also recall that utilitarian theories that do try to incorporate a thicker conception of flourishing have problems defining and distributing the goods necessary for individual well-being. The more complex the conditions for human flourishing, the more problematic it becomes to ensure the fair distribution of these conditions. In particular, where individual autonomy is central to the conception of flourishing, as it is on the liberal account, then the utilitarian account is ill-equipped to ensure proper distribution. What all of this points to is the need to introduce objective entitlements or goods that enable individuals to realise these goods - in short, a theory of rights.<sup>142</sup>

Utilitarian theories do not after all appear to be very good candidates for characterising the relationship between refugee rights and national interests. The arguments against utilitarian accounts in this section have been various, and it is worth briefly recapitulating the main steps of the critique. First, theories based on subjective preferences or conceptions of welfare failed to produce morally acceptable patterns of distribution. As a conception of duties to refugees, the utility maximising, subjective preference model would lead to morally unacceptable patterns of distribution. Moreover, the emphasis on utility maximisation failed to take into account notions of satiation and diminishing returns, implying the need for some notion of threshold. Many critics of utility maximising theories therefore point to the superiority of right-based theories in

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<sup>142</sup> This is not to say that palliative action is not essential once people have fled. I simply mean that it should not be the exclusive concern.

ensuring adequate distribution.

Having dismissed utility maximising accounts, the discussion considered whether Goodin's vulnerability thesis could avoid these two problems. He introduced a satiable and diminishing conception of welfare based on external criteria. However, the theory encountered a different set of short-comings. The first problem of the grounds for dividing labour was specific to his theory, and it is also a problem that recurs in different forms in right-based theories. So it was relevant to the critique of Goodin's account, but did not imply that we should reject all negative utilitarian accounts. The second problem, however, was common to all such theories. It was the point that the focus on avoidance of suffering would be likely to encourage further dependency on assistance, thereby increasing the problem of feasibility. And dependency on the provision of immediate assistance and protection might lead to a neglect of the causes of vulnerability.

Utilitarian theories seem to face a choice between a positive conception of utility that faces insurmountable problems of distribution; and a negative conception that undermines the achievement of human flourishing. Again, the preferable alternative seems to be a theory of justice that distributes the means for achieving autonomy and self-sufficiency. So I shall now turn to an examination of right-based theories.

#### **4. Right-Based Universalism**

Deontological or right-based theories may derive and justify rights from a number of different assumptions about the nature of human-beings. Typically, liberal theories derive rights from a conception of the individual as having an interest in freedom. This interest in freedom justifies imposing duties on others to respect one's freedom. Such duties should of course be consistent with the equal distribution of such a right to freedom. Since all people have a common interest in freedom, there is an equal right to such freedom, and hence duties should be imposed so as to ensure the equal distribution of this right.

Some liberal theorists have argued that all rights derive from the basic right to freedom.<sup>143</sup> On this account, the assertion of any right presupposes a commitment to a fundamental right to freedom. This attempt to trace all rights back to a basic right to freedom does, however, have the effect of excluding a large body of liberal rights theories that do not ground all rights in the individual's interest in freedom.<sup>144</sup> For example, it would exclude need-based theories, which hold that rights are grounded in other basic interests, such as the need for subsistence and physical security.<sup>145</sup> Since I want to consider this second class of theories as potential candidates for a conception of duties to refugees, I shall adopt a broader definition of rights. A right can be understood as an interest of an individual that is important enough to generate requirements of action on the part of others. According to Raz's definition, "X has a right' if and only if X can have rights, and other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty."<sup>146</sup> The notion that there is some such set of universal rights and that these rights are the fundamental principles of morality seems to accord with the prevalent human rights framework.<sup>147</sup>

Right-based universalism has certain *prima facie* advantages as a

<sup>143</sup> The classic account is by H. J. L. Hart, "Are There Any Natural Rights?", in *Political Philosophy*, ed. A. Quinto (Oxford and New York: Oxford University Press, 1967), pp. 53-66.

<sup>144</sup> This point is drawn from John Charvet, *Theory and Practice of Human Rights*, Summer School Lectures, London School of Economics and Political Science (unpublished, 1999).

<sup>145</sup> See, for example, Henry Shue, *Basic Rights: Subsistence, Affluence and UK Foreign Policy* (New Jersey: Princeton University Press, 1980). The definition also excludes religious accounts, such as Locke's grounding of rights in duties to God, although this omission is of less concern, as the discussion is focusing on modern western, secular theories.

<sup>146</sup> Raz, *Morality (op. cit)*, p. 166. Raz himself rejects right-based theories.

<sup>147</sup> There has been extensive writing on the meaning and grounding of human rights in international law. For good overviews, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989); John R. Vincent, *Human rights and International Relations* (Cambridge: Cambridge University Press, in association with the Royal Institute of International Affairs, 1986); and Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics* (Cambridge and New York: Cambridge University Press, 1999). It should be stressed that although universalist right-based theories may derive some of their appeal from their embodiment in international human rights law, the analysis of universalist theories in this chapter does not treat universal right-based approaches as necessarily supportive of the existing regime. Right-based theories may defend a variety of views on the substance and grounding of human rights, which may or may not accord with prevalent conceptions of human rights in international law. In order to maintain a distinction between prevalent conceptions of human rights and various right-based theories, the latter will be termed "universal" (rather than "human") rights in the course of the discussion.

candidate for reconciling refugee rights and national interests. As with utilitarianism, since nationality has no intrinsic moral relevance, the interests of compatriots are accorded no special weight. Conflicts of interest between refugees and receiving countries can be resolved on the basis of a common scale of value, with each person's interests accorded equal weight. Duties to compatriots would have no special quality or strength over and above duties to the rest of humanity. I shall argue in this section that right-based theories fare better than utilitarianism in meeting the criterion of normative desirability.

However, such theories encounter serious problems of feasibility. The practical demands of guaranteeing an equal distribution of universal rights would generate immense duties on states to assist the nationals of other states, including a duty to admit a substantially higher level of refugees than at present. There is evidently a significant gap between the requirements of such universalist theories of rights, and the current practice of states. The gap between ethical norms and practice should be of no great surprise, and does not in itself provide grounds for rejecting the theory. What is more problematic is the failure of right-based universalism adequately to explain the gap and to suggest how it might be bridged. Right-based universalist theories tend to respond to this problem in two ways: by defining the gap between theory and practice as a problem of motivation; or by justifying some restriction on instrumental grounds. This section will argue that neither defence is satisfactory, thus calling into doubt the practical feasibility of liberal universalism as a conception of duties to refugees.

#### *4.1 Universal rights and the problem of feasibility*

As with utilitarian theories, right-based universalist theories hold that the only morally relevant features of individuals are those which are common to human beings in general. An individual's nationality will therefore not affect the weight accorded to her moral claims. This implies that where certain universal rights are considered fundamental to well-being, each individual should have an equal right to live in a state where these rights can be enjoyed. From this equal right to enjoyment of universal rights, one can derive a universal right to move. If

there is a disparity in the quality of universal rights between states, and a person's fundamental rights are not being guaranteed in her home country, she has a right to move to a country where her rights will be better protected. The right to relocate may be understood as derivative of fundamental universal rights.<sup>148</sup> Equally, the fact of being a member of a particular state does not in principle affect the nature and strength of duties to compatriots. Duties to refugees are just as binding as duties to compatriots. While there may be good arguments for dividing up responsibility for enforcing these duties on the basis of a system of separate states, thereby generating a system of special duties between compatriots, such special duties would be justified in an instrumental rather than an intrinsic sense. As we saw in 3.1, they would be justified on grounds of efficiency, for example because of proximity or mutual dependence or local knowledge. But these instrumental arguments for a division of labour would be likely to prescribe the extension of duties to those seeking asylum in one's state, since the receiving states would be well placed to provide practical assistance.

On the right-based universalist account, then, there would be no good justification - either intrinsic or instrumental - for privileging the rights of fellow nationals over non-nationals. Indeed, the existence of inequalities between states in terms of the enjoyment of universal rights would imply a duty to admit refugees. The receiving society has no moral justification for restricting influx, except where admission will infringe the universal rights of its nationals to an equivalent or greater degree than the infringement of the universal rights of non-nationals which results from non-admission. As one right-based universalist argues:

On this view, the collective interest of a receiving society could not be weighed against the individual's right to move, in the sense that the interests of an economy, a culture or a theory of the nation could not be advanced against the right. Only

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<sup>148</sup> Whether or not the right to relocate implies the right to migrate into a given country raises a number of difficult questions, some of which are dealt with later in this chapter. One question there is no space to deal with is that of whether a right should be conditional on the feasibility of its being simultaneously enjoyed by large numbers of people. Barry argues that the existence of a right to immigration - like any activity subject to congestion - "depends upon not too many people exercising it." See "The Quest for Consistency: A Skeptical View", in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 279-87.

infringement of recognised individual human rights could justify exclusion.<sup>149</sup>

As with the utilitarian universalist accounts considered in the previous section, the most glaring problem with this account is the question of feasibility. States' refugee policies do not remotely approximate to this universalist theory of ethics, nor do states appear to recognise such duties as morally binding. Right-based universalist theories tend to respond to this problem of feasibility in two ways. First, some acknowledge the gap between existing practice and the requirements of universalist rights, defining the problem as a lack of moral motivation. On this account, individuals and their political leaders are simply too selfish to perform the required ethical duties to refugees. In terms of individual nationals of the receiving state, the lack of moral motivation would be characterised as a conflict between duty and self-interest, in which the latter prevails. At the group level, it may be defined as a conflict between universal rights and national interests, in which domestic strategic and economic concerns override duties to non-nationals.

I already raised doubts about the practical implications of this account in the previous chapter. Explaining the gap between current practice and the requirements of universal ethics as a problem of motivation is not problematic simply because it produces an unfeasible theory. More seriously, it is potentially counterproductive to its own objectives. Where a theory defines the requirements of morality at an unattainable level, non-compliance with these standards can produce an outcome which is further from the desired goal than the successful realisation of less demanding, or "second best" moral rules. The possible effects of non-compliance therefore need to be taken seriously. If people are simply not motivated to comply with the relevant moral rules, it suggests the need for a more critical evaluation of the assumptions being made about moral motivation.

I shall examine the problem of motivation in more depth in subsequent chapters, where I will be arguing that liberal universalist theories rely on an

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<sup>149</sup> Anne Dummett, "The Transnational Migration of People seen from within a Natural Law Perspective", in Barry and Goodin (eds.), *Free Movement (op. cit)*, p. 177.



implausible theory of motivation. The practical problems liberal universalist theories face generating motivation to comply with their demands reflect a deeper flaw in their assumptions about moral motivation and moral agency. This more radical critique of liberal universalism raises a number of second order philosophical and psychological questions, which go beyond the scope of the present chapter. For the time being, then, I shall limit my critique to expressing more practical doubts concerning liberal universalist assumptions about motivation. Defining the gap between duties and practice as a problem of motivation at best fails to provide a realistic account of duties to refugees; at worst, it is potentially counter-productive to its own ends.

#### 4.2 *Instrumental justifications for restriction*

The second response of right-based universalist theories to the problem of feasibility is to introduce a series of instrumental arguments for justifying the restriction of refugee influx. This is a more common route for universalist right-based theorists, many of whom argue that there are universalist liberal grounds for limiting the equal distribution of rights to refugees in practice. For example, the maintenance of law and order may be a precondition for guaranteeing the right to freedom from arbitrary killing. Likewise, a degree of stability will be required for the effective functioning of social institutions, again a necessary condition for the protection of universal rights. Such preconditions for individual rights could override equal distribution of rights, as indeed Dummet argues this when she admits that the goal of national security could trump the right to immigrate.<sup>150</sup>

This limited claim about the need to preserve national security is fairly uncontroversial. Indeed, it would be rather paradoxical to argue on universalist grounds for the erosion of the conditions necessary for the realisation of universal rights. Yet the goal of ensuring national security would not provide grounds for a significant restriction of influx. It would still commit liberal receiving states to admitting far higher levels of refugees than at present - possibly millions.

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<sup>150</sup> Dummett, "Transational Migration" (op. cit.), p.177.

Arguments based on the protection of current welfare state provisions or employment for nationals would not be morally accepted grounds for restricting influx. So the introduction of the goal of national security as a precondition for the effective exercise of universal rights would not solve the problem of feasibility.

Other liberal universalists have provided more extensive instrumental grounds for justifying restriction, incorporating a wider list of goods or goals which may be considered pre-conditional for the enjoyment of universal rights. A number of liberal political theorists writing on the subject of immigration argue that a range of public goods is necessary for the nurturing of liberal values and institutions. These may be concrete procedural or institutional arrangements, such as the rule of law, due process and a democratic constitution, or more abstract concepts such as the values of tolerance and fairness. Ackerman, for example, argues that citizens must be willing and able to engage in a liberal dialogue, which justifies restriction of immigration “to protect the ongoing process of liberal conversation.”<sup>151</sup>

Yet as the list of requirements gets longer and more complex, it becomes increasingly difficult to evaluate the respective demands of universal rights, and the goods necessary for the longer term enjoyment of these rights. There seems to be a wide margin of variation in assessments of the preconditions for the preservation of universal rights in liberal states. Liberal universalist instrumental arguments could be used to justify a range of immigration policies, from almost open borders to extreme restriction. As Nardin observes, “liberal egalitarianism sometimes looks like little more than a vehicle for whatever opinions happen currently to be in favour in democratic societies.”<sup>152</sup>

The possibility of defending highly restrictionist policies on such seemingly nebulous instrumental grounds does raise doubts about the adequacy of

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<sup>151</sup>Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, Conn: Yale University Press 1980), p. 95.

<sup>152</sup>Terry Nardin, “Alternative Ethical Perspectives on Transnational Migration”, in Barry and

the right-based model. It seems to create a high level of indeterminacy. The impact of the admission of non-nationals on the goods that are preconditional for the exercise of rights is at best uncertain. Liberal rights theorists would insist that this grey area of indeterminacy could be cleared up - at least in principle - by an assessment of the empirical preconditions for the exercise of rights. The problem of indeterminacy is simply a reflection of the complexity of evaluating exactly how the goods in question will contribute to the enjoyment of rights. In short, a right-based universalist may argue that indeterminacy is not a sufficient reason for abandoning right-based universalism as a framework for refugee policy.

However, the grey area of indeterminacy does beg a number of questions. On the universalist right-based model, as we saw, the problem of indeterminacy allows for a range of justifiable stances on refugee policy. Disagreement over policy revolves around questions of which public goods are necessary for securing universal rights in receiving states and for exporting these rights to other countries, and the extent to which influx of refugees may undermine these goods. Yet it is patently false that disagreements of this kind account for the spectrum of policy positions on admission, or even that they are characteristic of the current policy debate. Those advocating more restrictionist policies tend to do so on domestic-centric grounds, rather than on the basis of tenuous arguments about the longer term protection of universal rights. Such arguments do not start from an impartial, universalist perspective, but particularist considerations, often premised on the moral relevance of nationality.<sup>153</sup>

Right-based universalism would deny the legitimacy of such considerations in designing refugee policy. Particularism is simply a “rationalization of selfishness”.<sup>154</sup> Yet in many cases, their instrumental

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Goodin, *Free Movement (op. cit.)*, pp. 276.

<sup>153</sup> According to Barry, impartiality involves “not being motivated by private considerations”, and implies that “you must not do for one person what you would not do for anyone else in a similar situation.” See Brian Barry, *Justice as Impartiality* (Oxford and New York: Oxford University Press, 1996), p.12. If we accept this definition, impartiality can be assumed to be a requirement of right-based universalism (at least as characterised in this chapter). The concept of impartiality and Barry’s theory of justice are discussed in more depth in Chapter Three.

<sup>154</sup> Andrew Belsey, “World Poverty, Justice and Equality”, in Robin Attfield and Barry Wilkins (London: Routledge, 1992), p. 41.

arguments for restriction arrive at suspiciously similar conclusions to those of particularists. It would be difficult to dispute that a certain minimum of security is necessary for realising the basic rights of fellow nationals to subsistence and physical security, and civil liberties. But it is far from evident that the right to housing benefit or use of public parks could trump the right of a non-national to freedom from torture. At any rate, this prioritisation of the rights of compatriots could not be justified on universalist grounds. To put it bluntly, the instrumental arguments for protecting liberal institutions appear somewhat disingenuous – they seem to be excuses for smuggling in a commitment to special ties and the protection of particular ways of life. It is not my intention to deny that such particularist values may be worthwhile. The point is rather that they cannot be justified on purely universalist grounds.

There is a further reason for incorporating at least some form of particularism, which is not central to the argument but is nonetheless relevant. Thus far, it has been argued that the grey area of indeterminacy in evaluating the competing interests of refugees and receiving states may disguise a commitment to particularism. Some account of the significance of particular ties and projects, and their relation to moral motivation, will be vital if the universalist perspective is to provide an adequate theory of duties to refugees and to compatriots. Yet there is also a case for incorporating some notion of particularism on the basis of the diversity of values. As was noted in the previous section, a number of liberal theories justify restriction to protect a complex bundle of rights and goods in the receiving state. On a universalist account, the value of these goods and rights is wholly derivative of universal rights. Yet if one considers the sheer diversity of the sorts of goods and rights which are valued in different states, it seems implausible to claim that their value is derived from their contribution to the same set of universal rights. Even if all societies do share an interest in enjoyment of these rights, these rights do not necessarily exhaust that society's conception of ethically relevant rights, goals and goods, or – to put it another way - of the conditions for well-being.<sup>155</sup>

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<sup>155</sup> I say that this argument is not central because the problem of cultural diversity does not directly arise in the case of duties to refugees. The fact that refugees are seeking asylum in a

The need for a layer of additional or supplementary rights and goods, combined with a recognition of the diversity of such rights and goods in different societies, is a powerful argument for introducing some degree of particularism into universalist theory.<sup>156</sup> It is at least *prima facie* plausible that such considerations could co-exist with recognition of certain universal duties, including duties towards refugees. One possible objection is that incorporating particularist considerations may legitimise a more restrictive refugee policy. Recognising the moral relevance of (some) special duties is hardly the most promising route for motivating a sense of duty towards refugees. Yet the force of particularist concerns in motivating action cannot be overlooked, and may be integral to understanding the moral relevance of special ties and values. Moreover, as suggested earlier, the requirements of universalist ethics are so demanding that it may be preferable to legitimise some degree of particularism under certain specified criteria, rather than retain standards of morality which are likely to be disregarded. The danger of excessively high standards is that lapses or lack of motivation are indiscriminately unethical: the model does not allow for degrees or prioritisation of different forms of immorality. Incorporating a theory of legitimate particularism will at least allow for a more nuanced evaluation of the various types of non-ethical (particularist) actions. The next chapter will consider whether the types of “thin universalism” produced by such a theory could be good candidates for the task.

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particular state implies a willingness to accept the political culture of that society, and does not raise serious problems of cultural conflict - at least not in the case of most asylum-seekers in liberal democracies. However, the question of cultural diversity is relevant insofar as it challenges the claim of liberal universalism to provide a comprehensive or exhaustive ethical theory. In other words, the problem of cultural diversity does not arise if liberal universalist theories aim to cover only questions of duties to non-nationals and related ethical matters. But it does become problematic if the theory claims to cover the full set of values and rights that should regulate human interaction in all societies. In this case, the fact of diversity may cast doubt on the claims of liberal universalism to provide an exhaustive ethical theory.

<sup>156</sup>It should be stressed that the argument from difference does not imply acceptance of radical relativism. It is perfectly consistent to recognise the diversity of cultural and ethical values whilst adhering to a theory of universal rights which are necessary - but not sufficient - for human well-being.

### 4.3 *Conclusion*

In summary, the chapter considered two forms of liberal universalism: utilitarianism and right-based theories. Having categorised different theories in the first section, the second and third sections of the chapter considered the shortcomings of two distinct variants of utilitarianism. The first account relied on a concept of utility that raised problems with measurement of utility, and with distribution between individuals. These difficulties suggested the need for a conception of well-being that was objectively definable and measurable, and that included a notion of thresholds of basic welfare. Goodin's vulnerability thesis addressed both these needs, but raised additional problems of its own. Its partial, negative account of welfare had potentially damaging consequences for autonomy, and raised concerns about justice.

The fourth section of the chapter discussed whether a theory of universal rights could provide a better account of duties to refugees. It was argued that these theories provided a better substantive conception of duties to refugees, thus meeting the criterion of normative desirability. However, these theories failed on the criterion of practical feasibility. Section four considered two possible responses to the problem of feasibility. First, right-based theorists could define the gap between moral duty and practice as a problem of motivation. Initial doubts were raised about the practical implications of this approach, although a more detailed analysis of the assumptions about moral motivation and agency was deferred until later in the thesis. The second response was to justify restriction on instrumental grounds. Yet neither was this approach satisfactory – it seemed to represent a tacit defence of special ties.

It was suggested in conclusion that universalists may provide a better conception of the relationship between duties to non-nationals and compatriots by incorporating a (limited) commitment to particularism. Such theories of "thin universalism" are considered in the next chapter.

## Chapter Three

### Thin Universalism and the Problem of Internal Coherence

There have been a number of attempts to reconcile universalism with recognition of the moral relevance of duties to compatriots. This chapter will discuss two main approaches to the question. The first approach, discussed in section one, takes as its starting point a commitment to ensuring basic rights, which trump non-basic rights and goals where they conflict. By keeping the list of universal rights to a few very basic requirements, such theories hope to limit the scope of universal duties to manageable proportions, and to allow for the value of special duties. The second type of account, dealt with in section two, starts from a particularist perspective, and attempts to show that this is compatible with a commitment to at least some universal duties. The particularist approach explicitly defends the value of special ties and interests, but argues that attachment to these goods still leaves room for performing duties to non-nationals. Both of these approaches thus attempt to find a means of combining universalist and particularist duties.

In the discussion that follows, it is important to bear in mind the rationale for incorporating particularist considerations into universalist theories. Pure universalism encountered a problem of practical feasibility, and was unable to show how people could be motivated to respect the requirements of universal ethics. It also faced a second problem with accounting for the diversity of rights, goals and goods that are valued in different communities. *Prima facie*, thin universalist theories seem to avoid both problems because they allow for a layer of particularist values, thereby both limiting the stringency of the requirements of ethics, and allowing for cultural diversity. Most importantly for the current discussion, they attempt to address the practical problem of motivation by restricting the content of universal duties.

However, I shall argue that the various theories of thin universalism considered in this chapter fail to address these problems. Basic rights theories do not avoid the problem of motivation for the question of duties to refugees; and they are committed to a rigid hierarchy of rights that does not stand up to scrutiny. As in the case of pure universalist theories, they encounter a problem of feasibility. Theories starting from particularist premises, meanwhile, embrace a confused mixture of universalist and particularist justifications that simply heightens the conflict between duties to compatriots and to non-nationals. In terms of our criteria for an adequate account, I shall suggest that these theories encounter a problem of internal incoherence. In light of this, the chapter argues that the attempt to address the problem of motivation by introducing a first order commitment to particularism fails to meet the criteria for an adequate account. The chapter will conclude in section three by showing how these problems highlight a more profound theoretical problem with the assumed separation between particular and impartial perspectives in political and moral thought.

## 1. Basic Rights Theories

Theories of basic rights limit universal rights to a restricted list of core, or essential claims. As one theorist writes, they offer “a relatively narrow and manageable focus” for duties to non-nationals, and thus do not seem to create the problems of feasibility discussed in the last chapter.<sup>157</sup> And since they do not claim to cover all aspects of well-being, they allow for a degree of cultural diversity in the definition of non-basic rights and goals. This section will consider whether theories of basic rights can provide an adequate conception of duties to refugees. I shall start by arguing in 1.1 that on closer examination, these theories do not solve the problem of motivation. And the various attempts to limit universal duties through a division of responsibility for guaranteeing rights fail to overcome the problem. I shall then proceed in 1.2 to challenge the claim that basic rights should have priority over all other goods in all cases, questioning whether basic rights theories can provide a tenable hierarchy of different rights.

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<sup>157</sup> Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), p. 42.



## 1.1 Basic rights and motivation

Basic rights are usually taken to mean rights which are in some sense essential for well-being or action.<sup>158</sup> According to these theories, basic rights do not exhaust the conditions for human well-being. Nor is the enjoyment of basic rights necessarily more rewarding or worthwhile than the enjoyment of non-basic rights or goods. The point is rather that such rights are conditions for the exercise of all other rights and goods. As Alan Gewirth argues, basic rights “have as their objects the essential preconditions of action, such as life, physical integrity, mental equilibrium.”<sup>159</sup> These rights are an essential prerequisite for human action. Where basic rights conflict with non-basic rights, the former should be given priority: “Basic rights must be fulfilled before other rights.”<sup>160</sup> A similar theory is advanced by Shue, who holds that the enjoyment of the basic rights to physical security and subsistence “is essential to the enjoyment of all other rights.”<sup>161</sup> Shue’s theory is especially worth pursuing, as he deals explicitly with questions of duties to non-nationals, so in the discussion that follows I shall focus on his account. However, the criticisms I level at his theory apply to other theories of basic rights, including that of Gewirth.

Shue does not explicitly incorporate particularist values into his theory of basic rights, but the structure of his theory is (at least superficially) compatible with a form of thin universalism which allows for the intrinsic value of particularist rights and goals. Shue’s list of basic rights is limited to the right to subsistence and physical security.<sup>162</sup> He calls these rights “inherent necessities” - their enjoyment is an essential component of the realisation of other rights. Shue argues that these universal basic rights generate duties that should trump the enjoyment of non-basic rights and goods. “One is required to sacrifice, as necessary, anything but one’s basic rights in order to honor the basic rights of

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<sup>158</sup> Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1992); Henry Shue, *Basic Rights: Subsistence, Affluence and U. S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980).

<sup>159</sup> Gewirth, *Human Rights* (*op. cit.*), p. 12.

<sup>160</sup> *Ibid.*, p. 12

<sup>161</sup> Shue, *Basic Rights* (*op. cit.*), p. 19.

others.”<sup>163</sup> Shue’s theory of basic rights is clearly intended to cover duties to non-nationals, indeed part of his book on the subject is devoted to a discussion of US foreign policy. He does not consider that realisation of universal basic rights will raise a serious problem of feasibility: since the list of basic rights is so restricted, it will be unlikely to impose overly stringent duties.

Yet even on the basis of his minimalist list of rights, the problem of motivation remains. Ensuring the enjoyment of the rights to subsistence and physical security would require an enormous investment of resources by wealthy states in developing countries. It would require not only radical redistribution of wealth, but also intervention or stringent enforcement mechanisms to ensure the relevant political and economic changes in a number of states. The question of motivation is even more problematic in the case of refugee influx. Refugees have by definition fled actual or threatened human rights violations, and a refusal to admit them may be tantamount to failure to carry out a duty generated by basic rights. So simply scaling down the list of universal rights to a bare minimum may not bring us any closer to finding a practically feasible and normatively desirable candidate for characterising duties to refugees: even basic rights theories may encounter problems in motivating action consistent with their ethical requirements.

One response to the problem of motivation mentioned in Chapter Two was to introduce an instrumental justification for dividing responsibility for ensuring rights. In the discussion on utilitarianism, I considered Goodin’s theory for dividing responsibility. While this instrumental defence was difficult to sustain, I did not rule out the possibility of justifying a division of labour on other instrumental grounds. Such an argument could justify apportioning responsibility to sovereign states for protecting their own citizens, thereby limiting the problem of motivation to accept refugees. It is worth considering whether basic rights theorists could overcome the problem of motivation by invoking alternative arguments for a division of labour.

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<sup>162</sup> Shue, *Basic Rights (op. cit.)*, p. 20.

There are a number of arguments for dividing responsibility for duties to non-nationals. Rights may be more effectively guaranteed by those with geographical proximity, greater power or resources, or better information or local knowledge. However, it is difficult to sustain any of these arguments in the case of refugees. On the issue of geographical proximity, asylum seekers have by definition arrived in or at the border of the territory of the receiving country. Thus the geographical proximity argument would not justify apportioning responsibility to the country of origin, but would if anything suggest that the receiving country was more responsible than any other country for protecting these refugees. Thus the problem of motivation to assist refugees would remain. As concerns a possible division of labour based on resources, industrialised states are clearly in a better position to assist refugees from poor countries. Again, this would not justify limiting the duties of receiving countries vis-à-vis refugees. And regarding the argument that those with better knowledge of the needs or interests of the refugees in question should assist them, this is not evidently the case with issues of refugee protection. Refugees have often fled countries precisely because of persecution on cultural, religious or ethnic grounds, and will get the best protection in states that are not divided along similar ethnic lines. Moreover, the form of assistance and protection requested by refugees is to a large extent cross-cultural – immediate security and material assistance. In short, none of these justifications for a division of labour between states seem to apply in the case of refugees.

There is another frequently invoked reason for such a division of labour, which concerns the problem of dependency. It has been argued that assisting non-nationals creates dependence on external assistance, undermining the country of origin's willingness and ability to perform duties in the longer term. This argument may be compelling in the context of economic assistance to other countries or military intervention. Yet it is far from clear that this division of moral labour would apply in cases of refugee influx. Admitting refugees is unlikely to create economic dependency on the part of those in the country of

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<sup>163</sup> *Ibid.*, p. 114.

origin. Given that the definition of refugee limits the legitimate grounds for claiming asylum to flight from persecution or security threats and not economic hardship, the problem of dependency on external assistance does not really arise. The performance of duties on the part of the receiving state is very unlikely to affect performance of these duties by the country of origin. If anything, the receiving state is more likely to try to pressure the sending country to ensure respect for these rights, in the hope of facilitating the return of refugees, thereby shifting responsibility for their protection. The desire to create conditions for refugee repatriation may therefore lead to greater pressure on sending countries to ensure basic rights.

Shue's argument for a division of labour pursues a slightly different line, arguing that the "burdensome" duties of any one individual should be limited through institutional arrangements.<sup>164</sup> Shue distinguishes between negative duties not to infringe the rights of others, and positive duties which require the expenditure of resources to ensure that others enjoy their rights. While negative duties are universal, these more burdensome positive duties can and should be divided up between duty bearers. He argues that "[o]ne cannot have substantial positive duties toward everyone, even if everyone has basic rights. The positive duties of any one individual must be limited."<sup>165</sup> The best means of parcelling out these positive duties is through organisations and institutions which can both perform duties more efficiently, and also provide an important "psychological buffer" to avoid needless anguish and guilt when individuals are unable to perform all the duties that seem to be required of them. The performance of duties through institutional arrangements generates indirect "duties to create, maintain, and enhance institutions that directly fulfill rights."<sup>166</sup>

This account raises two main concerns. First, it is not clear what sorts of duties fall on individuals in the absence of the appropriate institutional arrangements. Second, the problem of motivation would still arise in cases where

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<sup>164</sup> Henry Shue, "Mediating Duties", *Ethics* (1988), p. 689.

<sup>165</sup> *Ibid.*, pp. 690-1.

<sup>166</sup> *Ibid.*, p. 696.

institutions were unable to limit individual duties to share finite resources. I shall deal with each problem in turn.

On the first point, Shue does not specify whether or not performance of duties is strictly conditional on the effective functioning of the relevant institutions. If institutional mechanisms for co-ordinating duties fail for any reason, it is not clear on Shue's account whether individuals are obliged to fill the gaps and ensure full coverage of rights, or whether the absence of institutional arrangements effectively lets them off the hook. In the former case, the absence or break-down of institutional arrangements would imply that individuals had positive duties to ensure the basic rights of others. For example, if there were no institutional provision for assisting refugees once they had arrived in one's country, individuals would be morally bound to meet the basic rights of refugees by providing them with food, shelter and physical protection. Alternatively, in the second case, the claim would be that individual duties were conditional on the existence of effective institutions. Where such institutions did not exist, individuals would have no obligation to assist refugees.

It is highly doubtful that Shue would commit himself to this second claim that duties were contingent on the existence of institutional arrangements. This would be tantamount to arguing that the division of labour was valued solely for its ability to limit individuals' duties, rather than because it was the best means of realising the basic rights of those in need. It would imply a limited commitment to realising basic rights, which does not seem consistent with Shue's robust moral defence of the universal scope of these rights, and their status as trumping other rights and goods where they conflict. Yet if Shue accepts the alternative claim that institutions are simply the best means for ensuring the goal of realising basic rights, then the failure of these arrangements would mean that individuals faced potentially unlimited positive duties to guarantee basic rights. And in this case, the problem of motivation would remain.

Of course, it could be argued that the failure of institutional arrangements would generate a duty to establish relevant public provisions, or to strengthen

those that already exist. Yet even assuming this were feasible, there is a second major problem with Shue's argument. Institutions may render the performance of duties more efficient or simple, and may thus limit the "burden" of performing positive duties in many cases. But they will not significantly limit the requirements of universal duties in cases involving the division of finite resources. In the context of refugee policy, there are already a number of institutions at national, regional (European Union) and global levels which perform these duties on behalf of individuals. Yet they have certainly not provided a neat solution to the problem of individual motivation to perform duties. This is to a large extent because the duties generated by refugee rights cannot be neatly sectioned off for performance by designated institutions. Refugee influx could potentially affect the lives of citizens of receiving societies at many different levels. Delegating responsibility to institutions for ensuring the welfare and security of refugees will not serve to alleviate nationals of the receiving society of their duties to refugees.

None of these attempts to divide responsibility for performing duties generated by refugee rights seems to circumvent the problem of motivation. The duties generated by basic rights simply are immensely demanding in the context of refugee influx. This implies that many of the descriptive and prescriptive problems attributed to right-based universalism in the last section equally apply to thin universalist theories of basic rights.

## *1.2 Basic rights and well-being*

The second criticism of basic rights theories revolves around their grounds for prioritising certain rights over other values and goods. I shall challenge the claim that one can construct fixed hierarchies of different rights, arguing that core rights cannot be systematically prioritised over other goods. I shall briefly consider two possible responses to this problem: the extension of the list to include additional rights; or the rejection of any set formula for prioritising different goods. The first response simply leads us back to the problem of

cultural diversity mentioned in Chapter Two. The second will be explored in more detail in section two.

As we have seen, basic rights theorists argue that these rights represent the necessary conditions for the enjoyment of all other rights and goods.<sup>167</sup> For example, I cannot realise my right to read *The Satanic Verses* or enjoy an art exhibition if I am suffering from severe malnutrition; nor will I be likely to appreciate clean air if I am in constant danger of being shot by armed gangs. This distinction between basic rights and non-basic rights and goods seems to be an effective way of recognising cultural diversity whilst retaining duties to respect the basic rights of those from different cultures.

Yet the notion of rights as preconditional to the enjoyment of other rights and goods becomes problematic in cases where rights conflict. If basic rights are to be trumps in cases of conflict with non-basic rights, then the implication is that basic rights are in some sense more fundamental to well-being than other rights and goods. Shue argues that while basic rights are “inherent necessities” of well-being<sup>168</sup>, they are not necessarily of special intrinsic value: “rights are basic only if enjoyment of them is essential to the enjoyment of all other rights, irrespective of whether their enjoyment is also valuable in itself.”<sup>169</sup> For example, the right to education may be “much greater and richer – more distinctively human – than merely going through life without ever being assaulted.”<sup>170</sup> This implies that the relationship between basic and non-basic rights is more complex than that of straightforward hierarchy. Basic rights may be the *sine qua non* for the (long term) enjoyment of other rights or goods, but their actual enjoyment is not necessarily of intrinsic value, or at least is less intrinsically valuable than the enjoyment of non-basic rights.

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<sup>167</sup> Shue, *Basic Rights (op. cit.)*, p. 27.

<sup>168</sup> *Ibid.*, p. 26.

<sup>169</sup> *Ibid.*, p. 67.

<sup>170</sup> *Ibid.*, p. 20.

However, theories prioritising basic rights seem to assume that the supplementary rights and goods that are supposedly made possible by the realisation of basic rights will in fact simultaneously or subsequently be realised in the society in question. In other words, basic rights may in themselves have little intrinsic value, but they are necessary for laying the foundations for the enjoyment of a further set of intrinsically fulfilling goods and rights. The value of basic rights lies in their role in enabling the realisation of other rights. Basic rights theorists would presumably acknowledge that a life in which basic rights were realised but no other rights or goods were realisable would not be fulfilling. Yet this creates problems where there is a conflict between the enjoyment of basic and non-basic rights. If one is forced to choose between the two, it is not evident that basic rights will be valued over non-basic ones. For example, a person may prefer to relinquish the right to physical safety, in order to retain the self-respect and fulfilment derived from, say, pursuing her chosen career, or expressing her political convictions, or having a homosexual relationship. In a more extreme scenario, one could imagine a society in which all but the most basic rights have been forsaken to secure the basic rights of others. In this case, life without non-basic rights and cultural enrichment may simply not be worth living. Many if not all people would choose to risk physical insecurity and poverty in order to enjoy at least some non-basic rights and goods. This could be the case even if immediate enjoyment of non-basic rights at the expense of basic rights would be life threatening or undermine the possibilities for enjoying any rights or goods in the long term.

The issue of the prioritisation of basic rights is more evidently problematic in cases where the individual's rights conflict with the basic rights of others. Under these circumstances, Shue argues that the individual should forego all non-basic rights and goods if they conflict with the basic rights of others.<sup>171</sup> Where basic rights come into conflict with supplementary or particularist rights, goals and goods, basic rights must be trumps. This involves sacrificing, in ascending order of importance, preference satisfaction, cultural enrichment, and

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<sup>171</sup> *Ibid.*, p. 114.



non-basic rights.<sup>172</sup> This raises the question as to whether rights and goods essential to one's well-being – but which are not “basic” in Shue's sense - should be sacrificed for the sake of more hollow and less intrinsically valuable basic rights. There seems to be little point in retaining basic rights and giving up all other rights and goods, if the former are valued only as instrumental to enjoyment of the latter.

Shue avoids confronting this problem by asserting that “in fact it is most unlikely that anyone would need to sacrifice anything other than preferences, to which one has no right of satisfaction and which are of no cultural value, in order to honor everyone's basic rights.”<sup>173</sup> Yet the possibility of such sacrifices is not so unlikely in the context of mass influx. The rights of refugees in such cases could plausibly conflict with, for example, access to welfare state provisions and services and employment; or with more abstract public goods such as living in a tolerant and liberal society. In some cases, it is not unimaginable that an individual would choose to forego basic rights in order to secure non-basic rights or goods.

The point here is not so much that of whether this level of sacrifice is justified, but rather it concerns the criteria for distinguishing and prioritising different rights. It is not being denied that refugee rights may justifiably require immense sacrifices on the part of the receiving country. Rather, the point is that Shue's hierarchy may not be an appropriate prioritisation of the goods and rights that we would be willing to renounce, and the order in which we would wish to renounce them. Shue's account assumes that rights that are preconditional to the enjoyment of non-basic rights should not be traded in for non-basic rights, even though the value of these basic rights may be purely instrumental. This may well be a useful prioritisation for the purposes of foreign aid or intervention. In these cases, promoting the enjoyment of basic rights by non-nationals may not directly conflict with the rights of citizens in the donor country. Moreover, the focus on basic rights allows for national or local autonomy in designing institutions and

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<sup>172</sup> *Ibid.*, p. 115.

policies that embody the values of the particular society. As such, the basic rights model is able to define duties towards non-nationals in a precise and practically useful way, which nonetheless respects the diversity of particularist values and institutions in different societies. Yet the case of refugee influx reveals the inadequacy of this prioritisation in cases of extreme conflict between the rights and interests of nationals and non-nationals.

Donnelly makes a similar point in his critique of basic rights. He considers a number of attempts to produce an ultimate list of core rights, but argues that they all

share a common and fatal problem. They could all be fully enjoyed, and still people could be left living anomic, degraded lives, unable to speak their minds, to choose their religion, to become involved in politics, to have a reasonable chance of finding a job, to get an education, to associate with whom they choose, and so forth.<sup>174</sup>

Donnelly's point is that basic rights cannot be separated from the wider list of human rights that all should enjoy. He argues for a more exhaustive list of universal rights that would incorporate all the rights necessary to "protect human dignity".<sup>175</sup> Yet this alternative to basic rights theories simply takes us back to the types of thick universalist theory criticised in the previous chapter. Basic rights theories may be committed to an untenable hierarchy of rights; but more comprehensive theories of rights encounter the old problems of motivation and cultural diversity. So the answer cannot be to supplement the list of basic rights, as Donnelly proposes.

An alternative response to the criticism of basic rights theories is to deny the possibility of laying down rigid norms about the priority of basic rights at all. Rather than supplement the list, this approach would involve the rejection of any absolute prioritisation of moral claims. Bernard Williams puts this point cogently, arguing that an individual's projects may be so integral to his existence

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<sup>173</sup> *Ibid.*, p. 114.

<sup>174</sup> Donnelly, *Universal Rights (op. cit.)*, p. 41

<sup>175</sup> *Ibid.*, p. 41.

that life without them would be meaningless and not worth living.<sup>176</sup> If these projects conflict with the requirements of universalist ethics – in our case with the basic rights of refugees – it may not be reasonable or desirable for people to give up the source of meaning in their lives for the sake of others. “There can come a point at which it is quite unreasonable for a man to give up, in the name of the impartial good ordering of the world of moral agents, something which is a condition of his having any interest in being around in that world at all.”<sup>177</sup> Williams’ point is that it may not be reasonable to demand that basic rights trump non-basic rights or goods if the latter are more critical to well-being. This would imply that there could be legitimate space for personal projects or special ties that are not ethical in the universalist sense, but are nonetheless essential to the individual’s well-being.

Whether or not this is a reasonable demand which would be compatible with any form of thin right-based universalism will be considered in the next section. It will be argued that this kind of thin universalism is unconvincing, partly because of its reluctance to abandon the separation of the impartial and self-interested perspectives.

## 2. Particularism and Basic Rights

Basic rights theories, as we have seen, fail to overcome the problem of motivation, and have problems justifying a rigid hierarchy of rights in cases of conflict. An alternative approach to combining universalist and particularist claims is to start from particularist premises, and then show how such a position could be combined with commitment to at least some universal rights. In this and

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<sup>176</sup> See Bernard Williams, “Persons, Character and Morality” in *Moral Luck: Philosophical Papers 1973-1980*, ed. Bernard Williams (Cambridge: Cambridge University Press, 1981), p. 14.

<sup>177</sup> Williams, “Persons, Character and Morality” (*ibid.*), p. 14. Williams’ point is not simply that the demands of impartial ethics are unreasonable in the sense of demanding inordinate or overly stringent sacrifice or heroism. It is the more radical claim that failure to respect the strictures of impartial ethics may not be unethical at all. Indeed, ground projects “may be altruistic, and in a very evident sense moral” (p. 13). This second claim is based on Williams’ argument that the impartial perspective is a misrepresentation of moral agency, which leads to an artificial dichotomy between self-interest and impartial ethics. This theme, and Williams’ arguments, will be discussed in more detail in Chapter Five.

the following section I shall consider two varieties of this argument. The first defends a communitarian conception of moral duty, but argues that such an approach could nonetheless accommodate basic rights. I shall argue that this mixture of different ethical justifications leads to theoretical incoherence and practical confusion. The second variety, discussed in section three, claims that there is a legitimate sphere of self-interest that should be protected from encroachment by the demands of universal ethics. In this case the starting-point is a consideration of self-interest rather than an ethical commitment to special ties. I shall argue that the attempt to limit moral requirements introduces an arbitrary cut-off point between duty and self-interest that cannot be justified on moral or pragmatic grounds. In conclusion, I shall suggest a more profound problem with both theories, linked to their basic assumption about a dichotomy between universal ethics on the one hand, and special ties or self-interest on the other.

### 2.1 *Miller and basic rights*

In his discussion of the “ethics of nationality”, David Miller attempts to find “some compromise view” that combines a commitment to particularist and universalist ethics.<sup>178</sup> Having rejected universalist attempts to incorporate particularist considerations, he suggests that it would be more productive to start from the other direction, incorporating universal duties into a particularist ethical theory. His attempt to do so clearly illustrates the problem with such approaches, and will thus provide us with a good exemplar of this sort of argument.

Miller starts from a particularist perspective which accords intrinsic value to special relations between members of families, communities and nation-states. He rejects “the view that the subject matter of ethics is persons considered merely as such, independent of all local connections and relations.” Instead, he adopts “a second view of ethical agency in which the subject is seen as already deeply embedded in social relationships. Here the subject is partly defined by its

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<sup>178</sup> David Miller, *On Nationality* (Oxford and New York: Oxford University Press), p. 51.

relationship and the various rights, obligations and so forth that go along with these, so these commitments themselves form a basic element of personality.”<sup>179</sup> Such particular relationships and characteristics create special duties, which are not reducible to or derivative of general duties to human beings. Special duties may be generated at a variety of levels, for example between family members, ethnic groups, or compatriots.

While asserting the ethical relevance of such ties, Miller is reluctant to embrace fully-fledged particularism, and deny the existence of any duties to humanity at large. “There are generic conditions for living a decent life which can be expressed in terms of rights to bodily integrity, personal freedom, a minimum level of resources, and so forth. We have obligations to respect these rights in others that derive simply from our common humanity.” These rights may “include rights to provision, for example in cases where a natural shortage of resources means that people will starve or suffer bodily injury if others do not provide for them.”<sup>180</sup> This basic rights thesis establishes a form of thin universalism which, according to Miller, is consistent with his particularist perspective. He “can see no reason why those who hold particularist views should not also endorse such a list of basic rights.”<sup>181</sup> The assumption seems to be that a commitment to particularist or special duties leaves space for the performance of universal duties that are grounded in basic rights. The two sets of duty are, nonetheless, grounded in distinct types of justification, which, as Miller acknowledges, represent “two competing accounts of the structure of ethical thought.”<sup>182</sup>

This combination of different ethical commitments raises the question as to which approach should have priority when the demands of the two perspectives conflict. And here Miller’s argument is ambiguous. Miller argues at one point that basic rights should be over-ridden if they prove too costly to respect. If

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<sup>179</sup> Miller, “The Ethical Significance of Nationality”, *Ethics* 98 (1988), p. 647.

<sup>180</sup> Miller, *On Nationality* (*op. cit.*), p. 74.

<sup>181</sup> *Ibid.*, p. 74.

<sup>182</sup> *Ibid.*, p. 49.

intervention to uphold the basic rights of those in other countries conflicts with duties to compatriots, it is not necessarily the case that basic rights should trump special duties.<sup>183</sup> He qualifies this slightly by allowing that obligations generated by very basic rights – for example the obligation to protect people from death by starvation – should probably not be trumped by less basic special obligations, but again, “provided the cost of protecting these rights is relatively small.”<sup>184</sup> The implication is that where protecting basic rights implies more than a “relatively small” cost, special duties should trump basic rights. This seems to reflect a fundamental misunderstanding of the moral implications of a commitment to a theory of universal rights. If Miller really believes that we have universal obligations to ensure the conditions for the basic well-being of others, then he cannot waive this duty where it conflicts with special duties. The theory of basic rights he endorses claims that the enjoyment of basic rights is in an important sense core or fundamental to the individual’s interests: they are the precondition or necessary requirement for the enjoyment of all other rights.

Now I did of course challenge this type of rigid hierarchy in the previous section, suggesting that attempts to lay down a definitive prioritisation of rights were difficult to sustain in cases of conflict with other rights and goods. But the way to overcome this problem is to reject absolutist lists of basic rights *tout court*. The short-comings of basic rights theories will not be avoided simply by defending a parallel commitment to particularist ethics. Indeed, the combination of a particularist ethical theory with a commitment to basic rights will produce even greater problems on both theoretical and practical levels. I shall consider the theoretical and practical problems in turn, before returning to the question of how Miller seeks to overcome these problems in his account.

On the level of theory, I observed in the last chapter that particularist and universalist theories rely on very different assumptions about the validity of moral claims. Universalist theories hold that certain rights or duties are universally valid, and hence applicable across all cultures. Their validity is not contingent on

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<sup>183</sup> *Ibid.*, p. 75.

historical or cultural conditions, but is grounded in the essential and universally shared characteristics of human beings. By contrast, the particularist theory espoused by Miller sees moral claims as derived from the shared values of particular communities. How, then, can the two commitments be incorporated into the same moral theory? One possibility is to conceive of the notion of universal rights as a moral belief particular to specific communities. A commitment to the universal scope of rights could be defended on particularist grounds if the community in question were committed to a substantive conception of universal rights. In this case, members of that community would share a commitment to duties to non-nationals. But the commitment would be contingent on intersubjective values, rather than grounded in the objective characteristics of human beings.<sup>185</sup> Miller rejects this justification for basic rights, instead grounding them in a universalist account of the “generic conditions for leading a decent life”.<sup>186</sup> This justification is clearly at odds with his central account of the source of moral values.

The confusion here is more than theoretical: it has practical implications in cases of conflict between universal rights and particular ties. We have seen that universalist defences of basic rights claim that these rights trump other rights and goods. And indeed they must defend such a hierarchy if they are to be consistent in their reasoning. A basic rights theory would be incoherent if it did not involve a claim that such rights should have priority over non-universalist considerations. Yet a consistent commitment to basic rights, as we have seen, could potentially generate substantial duties in the case of refugee influx, thus conflicting with particularist goods and special duties to compatriots. Given Miller’s commitment to the ethical relevance of nationality, he would surely be reluctant to accept the consequences of basic rights theories of particularist values. Miller cannot be both universalist and particularist in equal measure - he must choose which claim should have priority. If particularist considerations trump universal rights, then he cannot consistently defend a commitment to basic

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<sup>184</sup> *Ibid.*, p. 75.

<sup>185</sup> I shall be discussing this justification for substantive universal rights in more depth in Chapter Seven.

rights. And if basic rights over-ride particularist considerations, then we are once again confronted with the problems of motivation and hierarchies discussed in the previous section.

Nonetheless, Miller appears to believe that he can avoid this practical conflict between the requirements of universal rights and special ties. He bases his argument on two rather problematic claims: an empirical claim that such conflicts would not in fact arise, or at least that they would not be serious; and an ethical argument that limits duties to intervene to assist non-nationals.

Now we have already seen that the first argument fails in the case of refugees. Contrary to what Miller claims, the case of duties to refugees could generate a serious conflict between basic rights and duties to fellow nationals (see 1.2). The second argument takes a rather different tack, and it is worth considering the problems it raises.

Miller argues that his commitment to the ethical significance of nationality also generates a moral justification for not intervening to realise the rights of nationals of other countries. As he writes, “if we want to take nationality seriously, then we must also accept that positive obligations to protect basic rights (e.g. to relieve hunger) fall in the first place on co-nationals, so that outsiders would have strong obligations in this respect only where it was strictly impossible for the rights to be protected within the national community.”<sup>187</sup> In this form, the argument for the special duties of fellow nationals is fairly weak: there would still be a duty to intervene if it was “strictly impossible” for the relevant state to realise the rights of its nationals (however this condition may be interpreted). But Miller goes on to make a stronger claim, effectively relinquishing responsibility for realising the basic rights of others, even where they cannot be met by the other state.

If bad policies or vested interest in nation A mean that some of its citizens go needy, then, if nation C decides that its own welfare requirements mean that it cannot afford

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<sup>186</sup> Miller, *On Nationality* (*op. cit.*), p. 74.

<sup>187</sup> *Ibid.*, p. 79.



to give much (or anything) to the needy in A, it has not directly violated their rights; at most, it has permitted them to be violated, and in the circumstances this may be justifiable.<sup>188</sup>

In effect, then, the relevance of nationality trumps the duty to intervene. And in this case, Miller would be committed to claiming the priority of particularist over universal basic rights. Yet once again his stance is ambiguous, and at other parts in the argument he seems to retreat from this conclusion. While his defence of non-intervention seems to be based on a claim about the moral relevance of nationality and the responsibilities of governments towards their citizens, he also criticises the liberal commitment to self-determination. As he puts it, “Why make a fetish of self-government if your basic rights will be better protected by outsiders?”<sup>189</sup> Rather surprisingly given his commitment to communitarian ethics, he suggests that advocates of self-government “ought to take seriously the case for benevolent imperialism.”<sup>190</sup>

While I have dwelt at some length on the inconsistencies in Miller’s argument, the purpose of this critique was not simply to highlight the problems with one theorist’s account. The point was rather to shed light on the problems inherent in any such combined approach. Miller’s failure to take a clear line on the problem of conflict between particularism and universalism, and his inconsistent prescriptions on the question of intervention, reflect the basic theoretical and practical tension between a commitment to particularist and universalism. Theories of basic rights as trumps fail; but so too do theories that attempt to combine particularist and universalist ethics without according clear priority to either. We should now turn to a third variant of thin universalism, which limits the requirements of universal ethics. Examining the reasons for the failure of this third account will elucidate a deeper problem that is common to all thin universalist theories: the assumed dichotomy between the sources and moral demands of universal and particular duties.

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<sup>188</sup> *Ibid.*, p. 79.

<sup>189</sup> *Ibid.*, p. 78.

<sup>190</sup> *Ibid.*, p. 77

### 3. The Limits of Ethical Obligation

A number of writers have argued for the legitimisation of a sphere of self-interest, which limits the requirements of universal ethics. Such theories assert that the agent should be free to pursue a range of personal goals without being constrained by the requirements of ethical duty. These arguments for limiting moral obligation, which I shall consider in this section, do not defend personal or particularist claims on moral grounds (as, for example, Miller's argument did), but on grounds of self-interest or pragmatism. The claim is that it is unreasonable to expect people to act in accordance with the requirements of morality on all occasions, as such unlimited duties would lead to an inordinate sacrifice of self-interest. Such arguments are usually based on an acknowledgement of the stringent demands of morality and the problem of motivation. They argue that universal ethical theories – whether utilitarian or right-based – do not adequately reflect the nature of persons.<sup>191</sup> Just as I suggested in Chapter One, these theories claim that consistent application of universalist ethics can present unrealistic demands. And the remedy proposed by these theories is to justify the imposition of a range of limitations on these demands. In this respect, they would seem to be good candidates for addressing the problem of motivation already discussed.

A good example of such an argument is provided in the work of James S. Fishkin.<sup>192</sup> Fishkin argues that the “difficulty in consistently applying this principle [the requirements of impartial ethics] is that we would be led, step by step, to sacrifices of *heroic* proportions.”<sup>193</sup> It is therefore reasonable to establish limits to the level of sacrifice demanded of universalist morality. More specifically, the universalist conception of ethics fails to allow sufficient scope for two main types of particularist or what Fishkin terms “agent-centred” claims. The first is special duties to particular groups, such as one’s family or country,

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<sup>191</sup> Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon, 1989), p. 262.

<sup>192</sup> See James S. Fishkin, *The Limits of Obligation* (New Haven: Yale University Press, 1982); and his “Theories of Justice and International Relations: The Limits of Liberal Theory”, in *Ethics and International Relations*, ed. Anthony Ellis (Manchester: Manchester University Press, 1986), pp. 1-12. A similar line of argument is pursued by Brian Baxter, “The Self, Morality and the Nation-State”, also in *Ethics and International Relations*, ed. Ellis (*op. cit.*), pp. 114-26.

<sup>193</sup> Fishkin, *Limits of Obligation* (*op. cit.*), p. 72.

and personal projects. The conflict between such particularist claims and universal duties was considered in the discussion of Miller's account, where I criticised attempts to combine these with a theory of basic rights. But Fishkin concentrates on a second type of agent-centred claim, which seeks to justify imposing limits on the demands of morality, providing scope for the legitimate pursuit of personal goals and interests.

Under this second category of agent-centred claims, Fishkin makes a further distinction between two types of limits on moral demands. Firstly, the "cut-off for heroism" limits the level of sacrifice demanded of any individual. Thus there are certain levels of sacrifice that should not be morally required of people. And secondly, the "robust sphere of indifference" prevents moral requirements from pervading every aspect of daily life, allowing "a substantial proportion" of our actions to fall "within the zone of indifference or permissible free choice."<sup>194</sup> As Fishkin observes, these devices justify the abandonment of the type of equal weighting for every-one's interests that is defended by universalist theories. On this non-universalist account, the individual is not required to consider the interests of all from an impartial perspective. Indeed, these limitations on moral duty "appear to give extra weight to the interests of particular persons...compared to the interests of everyone considered impartially."<sup>195</sup>

Fishkin does not argue that one should ignore the demands of ethics altogether: he is not advocating that people behave in a wholly egoistic way. Rather, he advances what Kagan has termed a "moderate" position,<sup>196</sup> defending a limited commitment to ethical duty. Yet this intermediate stance between pure egoism and ethical universalism creates problems for the account. As I shall argue, by refusing to embrace either a purely universalist ethical or a purely egoistic account, Fishkin is unable to provide well-founded criteria for determining when these limits should be imposed. I shall elucidate this problem

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<sup>194</sup> Fishkin, "Theories of Justice and International Relations" (*op. cit.*), p. 4.

<sup>195</sup> *Ibid.*, p. 8.

<sup>196</sup> Kagan, *Limits of Morality* (*op. cit.*), p. 6.

by considering two main weaknesses of the moderate position. The first relates to criteria for balancing conflicting considerations; the second to the relationship between the two sets of considerations. I shall deal with the first question in this sub-section, the second in section 2.3.

First, on the moderate account, as Kagan points out, the agent is permitted to give more weight to her own interests than to the interests of others. Considerations linked to securing the agent's own happiness, or realising her rights, count for more in her moral decisions than the happiness or rights of others. Yet the question arises as to the grounds on which such extra weighting is permitted. And there are two possible answers to this question: on egoistic, or on ethical grounds. The first type of egoistic justification is clearly problematic for Fishkin's theory. While he argues for limitations on universal duty, Fishkin does not want to deny his commitment to (at least some) moral duties. His aim is simply to ensure that they are limited to manageable proportions. Yet if he imposes limitations on egoistic grounds, then it is difficult to see how he can be committed to any moral duties beyond those which people are already willing to perform. If the argument for limiting duty is that people's motivation is limited, this implies that moral duty is being defined on the basis of existing motivation. And in this case, morality becomes a legitimisation of existing interests, and there is no reason to encourage people to extend duties beyond their present scope. In the case of refugees, this would imply either retaining the present level of restriction, regardless of the plight of future possible refugees; or it may even imply diminishing current levels, if public opinion feels that existing duties seriously conflict with their self-interest.

Perhaps it could be contended that people do in fact recognise some moral duties, and that basing a definition of ethics on existing motivation will still enable one to retain a commitment to a (limited) ethical theory. Thus most people do accept at least limited duties to a certain number of refugees. But even this limited moral commitment will be undermined by an egoistic-based account of the limits of morality. If people believe that they can legitimately curtail duties if it is not in their interests to perform them, then there seems to be little to stop

them from ratcheting down current obligations. The notion of a moral “ought” would lose its force: morality would no longer set out norms and standards to which individuals should aspire. And in this case, even the limited duties to which they are currently committed could be discarded on egoistic grounds. If morality really is an elaboration of self-interest, then it is hard to see how Fishkin can retain any commitment to even limited universalism. While Fishkin clearly does not intend such a whole-scale abandonment of ethics, this seems to be the implication of an attempt to limit duty on self-interested grounds. Once egoism is defined as trumping the claims of universal ethics, there seem to be no grounds for constraining the priority of egoism over duty.<sup>197</sup>

The alternative route for Fishkin would be to justify the limitation of universal duty on ethical grounds. He could offer a particularist or an instrumental universalist argument for limiting the demands of universalist morality. Thus rather than defining the personal sphere as self-interested, he could define it as a sphere of particularist values, or as a means of meeting universalist demands.<sup>198</sup> On either account, the balance between universalist and particularist duties would be determined by evaluating different moral claims and the best means for realising them, rather than through defence of the self-interested sphere. Now I have already suggested that arguments for allowing particularist considerations to trump basic universal rights lead to incoherence. As we saw in the discussion of Miller’s theory, the structure and justification of basic rights theories preclude the possibility that other ethical claims may legitimately trump its requirements. One cannot retain a consistent thin universalist position whilst allowing its requirements to be over-ridden by special duties. So the particularist justification for limiting universalist duties fails. The other route open to Fishkin is an instrumental argument for the division of

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<sup>197</sup> The only basis for justifying universalism would be on the grounds that it was demanded by egoism itself. But clearly the coincidence of egoism and universal duties would be quite contingent and provide an extremely patchy and unreliable grounding for such duties.

<sup>198</sup> It should be noted that this would imply a broad rather than a narrow conception of morality. According to Mackie, the narrow conception views ethics as a constraint on the pursuit of self-interest; while the broad conception of morality includes “whatever body of principles” is permitted as reasons for a person to do something. J. L. Mackie, *Ethics: Inventing Rights and Wrong* (London: Penguin, 1977), p. 106.

responsibility for securing universal rights. Again, I shall not rehearse the arguments against this account, which were discussed in the first section of this chapter. Such instrumental arguments ultimately fail to limit universal duties to feasible proportions, especially in cases like that of refugee influx.<sup>199</sup>

The special weighting of agent-centred claims, then, cannot be coherently defended on egoistic or ethical grounds. If self-interest trumps universal ethics, then it becomes difficult to sustain any commitment to ethics at all. Alternatively, if one accepts a combination of particularist and universalist values, then basic rights or their equivalent must have priority over particularist claims. Finally, instrumental justifications for special duties fail to provide sufficient grounds for restricting the requirements of universal morality. In short, there seem to be no clear criteria for balancing the claims of universal ethics against non-universalist considerations, without conceding priority to the former. Fishkin's account seems to be based on his own intuitive feelings about the appropriate level of ethical duty, without any convincing justification to back up the account.

What these arguments suggest is that the demands of universalist ethics cannot be curtailed without changing the substance and/or justification of universalist theories. Universalist theories are grounded in a conception of individuals as meriting equal consideration. And this commitment to moral equality cannot simply be watered down by introducing egoistic or particularist claims. Such attempts to combine universalism with special duties create muddled amalgams of theories with very different premises. Universal duties cannot be limited by invoking agent-centred claims, for this perverts the core

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<sup>199</sup> Fishkin himself suggests an argument for limiting ethical universalism on grounds of the value of individual liberty. I shall not consider this in detail, as it is extremely muddled, and does not advance our understanding of the different routes for attempting to justify limiting ethical requirements. It is not clear on Fishkin's account whether liberty should be equally distributed, or whether it can be claimed by the agent without considering whether the claim is consistent with the equal right to freedom of all. As such, it is not clear whether Fishkin's argument fits into the category of egoistic, particularist or universalist justification for limiting universal ethics. Perhaps it is a classical liberal argument of the Smithean type, based on an assumed harmony of interests. On this account, Fishkin could argue that the happiness of all would best be achieved through each individual acting in accordance with her own self-interest. But in this case, the problem of inordinate moral duties would not arise. And if Fishkin accepted this harmony of interests account, there would be no need to introduce limits to the demands of morality in the first place.

commitment of universalism to the impartial consideration of the rights and interests of all individuals. And it contradicts the universalist commitment to a conception of human-beings as morally equal. A theory of ethics that privileges the claims of some over others - that abandons the requirements of impartiality - cannot be coherently combined with a universalist theory. The only means of limiting the requirements of universal ethics is to argue from the other direction: to change the substance and justification of universalist theories, rather than to take universalist ethics as a given and impose limitations on grounds of self-interest or particularism. Hence the possible routes to constraining the requirements of ethics are either to change one's definition of ethical duty, for example by limiting universalism to a list of basic rights (see previous section); or to change the way in which universalist theories are grounded - a possibility that will be developed in Chapter Five.

#### **4. The Dichotomy between Impartial and Personal Perspectives**

These observations lead us to a more general problem with the attempt to limit the requirements of universal ethics. This second point concerns not so much the criteria for balancing universalist and particularist or self-interested claims, but rather the relationship between the two. One problem with Fishkin's argument for limiting universal duties was that he implied that these requirements, and the particularist considerations which limit them, are determined independently of one another. In other words, the balance between universalist and particularist concerns is characterised as a trade-off between two conflicting sets of interests. This account precludes from the outset the possibility of universalist duties influencing particularist considerations. If one defines the limits to morality exclusively on the basis of the agent's self-interest, there is no scope for such agent-centred concerns being influenced by the demands of impartial morality. Fishkin's concepts of zones and thresholds fail to recognise the dynamic relationship between self-interest and impartial ethics. They do not allow for any interaction or mutual influence between the partial and impartial spheres.

The problem of a supposed split between impartial and personal perspectives is clearest in the case of Fishkin's theory, but it equally applies to the theories of basic rights and Miller's particularist/universalist theory discussed earlier in the chapter. In the case of basic rights theories, the impartial perspective was captured by the commitment to a core list of universal rights, which served to constrain pursuit of personal or particular interests. And in Miller's theory, the attempt to incorporate a commitment to universal rights within a particularist ethical theory led to incoherence precisely because he retained this assumed dichotomy between two different perspectives. His acceptance of a notion of universally valid, impartial norms could not be consistently combined with a commitment to a particularist perspective that could trump these universalist considerations.

This notion of a dichotomy between two independently defined sets of considerations is of course parallel to the characterisation of the refugee policy debate outlined in Chapter One. In that case, as I argued, the discussion on responses to refugee influx is constrained by the assumed conflict between refugee rights and national interest. The parallel between the dichotomy conception of national interest/refugee rights and self-interest/universal ethics is no coincidence. The assumed separation of a universal, impartial perspective and a self-interested, particularist sphere is widespread in liberal thought, and has undoubtedly shaped our wider assumptions about the relationship between ethics and self-interest. Whether at the level of individual or national interests, this characterisation encourages us to see the personal perspective as exclusively agent-centric, the national perspective as solely domestic oriented. And this assumed dichotomy can be seen as at least partially responsible for many of the problems with universalism discussed in this and the previous chapter. I shall illustrate this claim by briefly recapitulating the problems of motivation and thin universalism raised so far, from the point of view of this dichotomy between self-interest and ethics.

First, on the question of motivation, the assumed dichotomy makes it difficult to encourage an extension of universal duty where it is seen as



conflicting with self-interest. As I argued in Chapter Two, this has the effect of rendering universal rights theories hopelessly unfeasible: not only do they impose a set of stringent duties, but they hold out little prospect of motivating people to comply with these. The separation of self-interest and the requirements of ethics creates serious practical problems of motivating compliance with duties to non-nationals.

Second, the various attempts by thin universalist theories to address the problem of motivation are again hampered by the dichotomy characterisation. Where universalism is combined with particularist or egoistic considerations, what is being attempted is the simultaneous defence of two independent and separately justified perspectives. And a balance between the two is bound to lead to incoherence and practical confusion where the demands of the two conflict. In such cases, the theory must claim either that universal ethics trumps egoism, or vice versa. In the former case, the outcome may be theoretically coherent, but it does not address the problem of motivation. In the latter case, where egoism trumps universal ethics, this must imply the abandonment of a coherent commitment to universalism. Theories of particularism or egoism as trumping universal ethics contradict the basic premises of universalism.

These two implications of the assumed dichotomy between universalism and particularism - the problem of motivation, and the inability to combine the two considerations in any acceptable fashion - strongly suggest that we should search for an alternative account. An adequate account of duties to refugees needs to avoid the problems of incoherence and unfeasibility we encountered in the discussion of right-based universalism and thin universalism. I hinted above that universalist theories could in principle avoid these problems in two possible ways: by changing their content, or by grounding their claims in a different way.

The first route would require a revision of first order conceptions of the nature and scope of duties to non-nationals. This chapter considered several such attempts to alter the content of universalist theories, but none was successful. Liberal universalism simply does impose stringent demands, and it seems

impossible to alter this without rendering the theory incoherent. The shortcomings of liberal universalism cannot be overcome by introducing particularist values. Retaining this form of universalism requires a consistent application, or else we might as well abandon this conception of morality altogether.

However, there is one more possible route for addressing the problem of feasibility without abandoning the assumed split between personal and impartial perspectives, or the universalist grounding of such theories. This would involve providing a more plausible theory of motivation, that could demonstrate how universal theories of duties to refugees might indeed be practically feasible. I shall consider this less drastic revision of liberal universalism in the next chapter on social contract theory. These theories define and justify duty on the basis of a notion of consent. People are obliged to conform to a set of rules to which they have given their (hypothetical) consent. As I shall explain in the next chapter, social contract theories attempt to solve the problem of motivation by tying duty to agreement. The content of duty varies depending on what people agree to (or would agree to under specified conditions). However, the basic moral justification for most social contract theories remains a liberal universalist commitment to a conception of individuals as free and equal. Consent is valued (in most cases) because it enables individuals to realise their capacity for reason or autonomy. So social contract theories retain two of the central premises of liberal universalism: a universalist grounding, and an assumed dichotomy between impartial and personal perspectives.

It is important to consider whether social contract theories are able to define an adequate conception of duties to refugees while retaining these two premises. For if they can provide an account of duties to refugees that is conceptually coherent, empirically plausible, and normatively desirable, then there will be no need to further challenge universalist assumptions about the foundations of liberal theory. If social contract theories are successful in this task, then the critique of liberal universalism will be limited to the forms of right-based universalism discussed in this and the previous chapters. In this case, there would be no need to probe second order liberal universalist assumptions.

However, rather than solving the problem of motivation, the discussion of social contract theory will demonstrate why a more radical, second order critique is necessary. And it will elucidate the more profound flaws common to all liberal universalist theories of duties to non-nationals.

## Chapter Four

### Social Contract Theory and Moral Motivation

Social contract theory can be classified as a variant of liberal universalism, but one that is more explicitly concerned with the question of motivation. Social contract theories claim to ensure that people will be motivated to comply with rules of justice. The way in which theorists justify this claim varies, but all contractarians share a commitment to the notion of consent. By securing the consent of participants, contract theories claim to ensure cooperation with rules of justice. For most social contract theorists, consent has a dual role: it both generates morally desirable norms; and it ensures that people have good reason to obey these norms. In other words, achieving agreement on rules of justice produces a coincidence between what people should do and what they will be motivated to do. As such, social contract theory would appear to be a good candidate for defining duties to refugees. It is liberal universalist in substance<sup>200</sup>; but also claims to address the problem of feasibility, through ensuring consent to its terms of justice.

This chapter will consider whether social contract theories can provide a good framework for characterising duties to non-nationals. Of primary interest for us at this stage of the argument is the question of motivation and the role of consent in social contract theory. We need to examine whether or not social contract theories can address the problem of motivation whilst retaining a liberal universalist conception of duties to refugees. The argument will therefore be structured to address this question. The first section will categorise different social contract theories according to how they define the role of consent. This categorisation will provide the framework for a discussion of three social contract theories: those of Thomas Hobbes, John Rawls, and Brian Barry. These three

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<sup>200</sup> This is true of most social contract theories, although Hobbes is a notable exception - his theory certainly does not produce liberal prescriptions, although the structure of his contract was replicated by other contract theorists to produce more a liberal conception of justice.

theories offer good exemplars for drawing out short-comings of different types of contract theory.

Two main weaknesses are highlighted in particular. First, theories that derive rules of justice in order to regulate conflict between individuals yield morally deficient theories, and fail to provide a normatively adequate conception of duties to refugees. This is the central problem with Hobbes' account, and is also a problem for most interpretations of Rawls' theory of justice, as discussed in sections two and three. Barry's theory seeks to avoid this problem, providing a more robust conception of duties to non-nationals. His theory of justice as impartiality thus provides the best bet for constructing a truly global contract. However, Barry's theory reveals a second main weakness: the problem of feasibility. Although Barry claims to address the problem of motivation, I shall argue that his theory will not generate compliance at the global level. Moreover, the brittle structure of his theory renders the problem of motivation even more acute than it was in the case of theories of universal rights. The chapter will conclude by considering what the critique of global contract theory can add to our understanding of the more fundamental tensions in liberal universalist theory.

## 1. The Goals of Social Contract Theory

Before examining specific theories, it is worth making a few general comments about the structure and aims of social contract theory. Social contract theory, or contractarianism, has a long tradition in liberal political thought dating back to the seventeenth century<sup>201</sup>, and has recently been revived in the works of Rawls, Scanlon and Barry.<sup>202</sup> Contract theory originally revolved around the

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<sup>201</sup> For a classic history of contract theory, see J. W. Gough, *The Social Contract: A Critical Study of its Development* (Oxford and New York: Oxford University Press, 1936); see also David Boucher and Paul Kelly, eds., *The Social Contract from Hobbes to Rawls* (London and New York: Routledge, 1994).

<sup>202</sup> John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972); Thomas M. Scanlon, "Contractualism and Utilitarianism", in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1981), pp. 103-28; Brian Barry, *Justice as Impartiality* (Oxford: Clarendon, 1995); Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974) - although this latter can be categorised as libertarian rather than liberal. The

question of political obligation and aimed to ensure the negative freedom of citizens from encroachment by the sovereign.<sup>203</sup> Yet there was also an important related question of how to ensure cooperation between individuals who were - according to most theorists - naturally self-interested, and who were competing for scarce resources.<sup>204</sup> Under these conditions, or what Hume termed the “circumstances of justice”, cooperation could only be ensured by means of a set of rules for regulating conflict between competing interests or conceptions of the good. In other words, the natural self-interest of individuals and the scarcity of resources necessitated rules of justice.<sup>205</sup> It is this concern with principles for regulating social interaction that has been the central preoccupation of recent social contract theory. Contractarianism in political theory has come to be used as a hypothetical device for justifying one particular set of rules or principles for regulating social interaction over others. The basic rules for regulating social interaction are derived from a hypothetical agreement of parties to a contract.

Understood in its broadest sense, then, the social contract is a hypothetical agreement between individuals about the rules that should govern their social cooperation. But beyond this general function of ensuring agreement, social contract has more specific uses in different theories. Contractarians tend to argue for the significance of the contract for two different types of reason. First, they may see the contract as a device for ensuring compliance with a set of rules in order to avoid conflict. The contract guarantees the cooperation of all participants, and therefore ensures stability and may also maximise the individual benefits of cooperation.<sup>206</sup> A second reason for valuing the contract is because of the moral significance of autonomy. On this account, what is important about the

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contractarian approach is also, arguably, employed in the theory of Jürgen Habermas. See Chapter Five for a fuller discussion of this.

<sup>203</sup> Gough, *The Social Contract (op. cit.)*, p. 147.

<sup>204</sup> Interestingly, John Charvet has argued that the problem of motivation arose as a result of the secularisation of political theory: liberal theorists needed to show why individuals would naturally want to comply with rules of justice, in the absence of divine directives. John Charvet, *Theory and Practice of Human Rights*, Summer School Lectures, London School of Economics and Political Science (unpublished, 1999).

<sup>205</sup> For David Hume’s development of the notion of the “circumstances of justice”, see *A Treatise of Human Nature* [1739], ed. Ernest C. Mossner (London: Penguin, 1969), pp. 535-49.

<sup>206</sup> Contemporary variants have incorporated the notion of the positive benefits of cooperation as an incentive to cooperate, as well as the motive of avoiding death or harm.

contract is not so much that it ensures a stable outcome, but that it defines terms of justice that rational agents would (at least hypothetically) agree to under conditions of equal autonomy. On this account, the significance of the contract is that it guarantees morally just terms, i.e. terms that contractors would consent to *qua* rational and autonomous actors.

While most social contract theories draw on some combination of these two notions of consent, the distinction between the two is nonetheless important. Placing relative emphasis on either the problem of conflict, or the moral value of autonomy, will have a bearing on the practical norms that one derives from the contract, and on the question of motivation. Regarding the content of the norms chosen, to put it simply, if conflict is defined as the basic problem for political theory, then the motivation to comply with rules of justice will usually be derived from the self-interested desire to avoid conflict or to maximise individual gains. This is the approach adopted by Hobbes, and more recently David Gauthier.<sup>207</sup> In their theories, the content of justice will be defined according to the self-interest of the parties, and the scope of justice will be contingent on the existence of conflict between individuals. Non-nationals will only be included in the contract if they threaten the stability of the society in question, or if their cooperation in some way brings additional benefits to current members. On the other hand, if consent is motivated by ethical considerations – as in the case of Barry’s theory, and on some interpretations of Rawls - then terms of justice are likely to be defined on the basis of a commitment to fairness or impartiality. In this case, the scope of the contract may also incorporate a wider sphere of individuals, and the terms of justice are more likely to include a commitment to the rights of non-nationals.

These two ways of deriving a theory of justice from consent also reflect different conceptions of the relationship between justice and motivation. The first takes existing motivation as a starting-point, thence deriving terms of justice. On this account, terms of justice are an extension of the desire to avoid conflict or to

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<sup>207</sup> David P. Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986).

preserve one's life or liberty. The second approach defines a moral conception of justice, and then tries to show how and why people will be motivated to respect its strictures. As one commentator has more cynically put it, in social contract theory "two winning moves are possible: either interest must be reduced to duty, or duty must be derived from interest."<sup>208</sup>

The paramount concern of this thesis is to find a theory that allows for a conception of duties to non-nationals, and the conflict-based model seems unlikely to be able to provide this. Indeed, as I shall argue in the discussion of Hobbes, a morally adequate theory of international justice must be (at least partly) morally driven, rather than based on egoism. So Rawls' and Barry's morally driven theories seem to provide the best hope for deriving a global conception. Nonetheless, it is useful to start by examining Hobbes' theory, in order both to grasp the structure of contract theory, and also to understand the deficiencies of the conflict-based account. The theories of Rawls and Barry can be best understood through contrasting them with the purely egoistic account of Hobbes.<sup>209</sup>

## 2. Hobbesian Theories: Deriving Duty from Interest

The best known example of deriving duty from self-interest is that of Hobbes' social contract theory, which produces a theory of justice which has been characterised as "justice as mutual advantage" or justice as a *modus vivendi*.<sup>210</sup> Hobbes starts from the assumption that people's motives for entering into a social contract are purely self-interested. In Hobbes' *Leviathan*, people sacrifice a portion of individual freedom and enter a social contract in order to ensure their own preservation.

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<sup>208</sup> Gordon J. Schochet, "Intending (Political) Obligation: Hobbes and the Voluntary Basis of Society", in Mary Dietz (ed.), *Thomas Hobbes and Political Theory* (Kansas: University of Kansas, 1990), p. 6.

<sup>209</sup> Indeed, the critique broadly follows the structure of Barry's discussion in *Justice as Impartiality* (*op. cit.*), which elucidates his ethically driven theory through building on a critique of the Hobbesian account. See pp. 28-79.

<sup>210</sup> See, respectively, Barry, *Justice as Impartiality* (*op. cit.*), p. 28; and Thomas W. Pogge, *Realizing Rawls* (Ithaca and London: Cornell University Press, 1989), p. 101.



The finall Cause, End, or Designe of men (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Commonwealths,) is the foresight of their own preservation, and of a more contented live thereby.<sup>211</sup>

Compliance with a set of rules for regulating social interaction is preferable to risking death in a violent and anarchical state of nature. Indeed, the object of *Leviathan* is “without other design, than to set before mens eyes the mutuall Relation between Protection and Obedience.”<sup>212</sup> Hobbes’ political theory is constructed on the basis of what he understands to be human motivation, and moral duty is simply an extension of self-interest. As such, self-interest necessarily coincides with duty, and the rules of justice generate motivation on purely egoistic grounds.

Hobbes does not offer his contractors a choice between different sets of rules: those entering society face a more stark choice between almost unconditional obedience to the existing Sovereign, or a return to the dreadful state of nature.<sup>213</sup> Nonetheless, his theory of human motivation and reason yields a particular theory of justice. Given that the only reasons for accepting rules constraining individual freedom is that they promote the individual’s self-interest, then by definition it must be advantageous to the individual to comply with just rules. The existence of mutual advantage is a necessary condition for ensuring obedience. Significantly, it is also a sufficient condition for those rules to be just: justice is no more than a set of mutually advantageous rules for regulating social intercourse. As the contemporary Hobbesian Gauthier writes, “not only do we undertake obligations only for prudential reasons, but the undertaking extends only to what we have prudential reasons for carrying out.”<sup>214</sup>

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<sup>211</sup> Thomas Hobbes, *Leviathan* [1651] (London: J. M. Dent and Sons, 1957), p. 87.

<sup>212</sup> *Ibid.*, p. 391.

<sup>213</sup> The only condition of the Sovereign’s authority is that he preserve the lives of his citizens - a condition which of course corresponds to the motive for entering a contract in the first place.

<sup>214</sup> This equally applies to Gauthier’s reformulation of Hobbes’ theory. See David P. Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clarendon Press, 1969).

## 2.1 *The moral critique*

A number of commentators have criticised this conception of justice as morally defective.<sup>215</sup> For the purposes of this argument, the more narrow concern is the implications of such a theory for the nature and scope of duties to refugees. Can the Hobbesian theory of justice account for duties to non-nationals, and adequately characterise their relationship with duties to compatriots? Barry's critique highlights two main problems with the theory which are relevant here. Firstly, justice as mutual advantage does not establish criteria for rules that correspond to what we would normally consider to be just or fair. Those in a position of relative strength will be able to influence rules to their personal advantage. This has negative implications for the extension of justice to refugees in two respects: they may not get fair treatment under the terms agreed to, or alternatively they may be excluded from the contract altogether. The second main critique is an internal problem of the relationship between motivation and justice: just rules will not necessarily trigger motivation to comply with them. Even if most or all parties to the contract accept that these rules are just, it may not be in every individual's self-interest to comply with the rules in every instance. Again, this may create problems for application of the theory to the international sphere, where there may be a greater number of instances in which just behaviour will require action which does not coincide with prudential interest. The two problems will be discussed below and in 2.2.

The first problem is that justice as mutual advantage, in the words of Barry, fails "to correspond in crucial respects to what is normally considered to be just."<sup>216</sup> Justice as mutual advantage implies that complying with rules of justice will only be *relatively* advantageous to each individual, compared with their situation in the absence of these rules. If those choosing principles of justice start from unequal positions in terms of wealth or power, then a mutually

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<sup>215</sup> Nagel, for example, argues that "Hobbes' feeling that no man can ever act voluntarily without having as an object his own personal good" ruins "any attempt to put a truly moral construction on Hobbes' concept of obligation." See Thomas Nagel, "Hobbes' Concept of Obligation", in *Thomas Hobbes: Critical Assessments, Volume II*, ed. Preston King (London and New York: Routledge, 1993), p. 122.

advantageous contract may produce fundamentally inegalitarian rules. Justice as mutual advantage has nothing to say about what sorts of distributions are fair, or how the benefits and burdens of social cooperation should be shared. It provides no moral basis for claims to equal or fair treatment, except insofar as such principles may be necessary to ensure that the rules of justice are mutually advantageous to all parties to the contract. Yet in the absence of equal starting-points, weaker individuals may agree to principles that produce a relative improvement in their situation, but which do not correspond to what we would consider to be just principles. As Barry writes, “so long as even very rough equality of strength obtains among the parties to rules of justice, the rules recommended by justice as mutual advantage will tend to correspond to those that we would ordinarily think just... Where this rough equality fails to obtain, the correspondence will break down.”<sup>217</sup>

In this scenario, the terms of justice would be worked out on the basis of characteristics that most liberals would consider to be morally arbitrary, such as political power, wealth, intelligence or physical strength. The agreement reached may well incorporate favourable treatment for the more powerful.<sup>218</sup> The possibility of such a scenario makes the extension of justice as mutual advantage to refugees highly problematic. Assuming that they are in fact admitted to a state, individual or small groups of refugees will tend to be in a weaker bargaining position, and therefore unable to secure fair terms. The receiving state will be able to decide how many refugees to admit, and under what conditions. If justice is an extension of self-interest, is not at all clear that those granted asylum will get fair or even tolerable treatment. If one were to follow the logic of a theory of justice based on self-interest, the standard of treatment of refugees would be significantly lower than is currently the case.

More seriously, it is probable that refugees would not be included in the contract at all. If the scope of justice is determined merely by considerations of

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<sup>216</sup> Barry, *Justice as Impartiality* (*op. cit.*), p. 48.

<sup>217</sup> *Ibid.*, p. 45

mutual advantage, then the inclusion of refugees will depend on the extent to which those in the receiving country are dependent on the cooperation of refugees. In the case of a *national* social contract, it has traditionally been argued that compatriots are more dependent on one another's cooperation to avoid conflict, and that it is therefore in their interest to establish and maintain mutually acceptable rules. But there will be little or no motive to establish fair terms of justice with those on whom one is not dependent in this sense, for example refugees. Individual or small groups of refugees do not generally pose a threat to stability, and thus their cooperation is not required in order to prevent conflict; and they are often perceived as lacking the resources to make a positive contribution to society, i.e. unable to provide goods which would benefit the members of the society in question. Refugees are therefore seen as lacking the skills or resources to render their inclusion mutually advantageous to the receiving society. The country of refuge is not dependent on their consent to ensure peace or to generate additional resources. This question of dependence has raised problems for Hobbesian social contract theories at the domestic level. Gauthier, for example, writes of his own theory that "animals, the unborn, the congenitally handicapped and defective, fall beyond the pail of a morality tied to mutuality. The disposition to comply with moral constraints... may be rationally defended only within the scope of expected benefit."<sup>219</sup> Following this logic, it would also be rational to exclude refugees from a system of reciprocal benefit. Those currently outside the sphere of interdependence are unlikely to be included in a social contract motivated by self-interest, let alone one whose terms are fair.

The only way theories of justice as mutual advantage can establish their applicability to the international sphere seems to be by showing that receiving states are in fact dependent on the cooperation of refugees. The refugee policy debate would then revolve around an empirical question of the actual reliance of nationals on non-nationals. It would be extremely difficult to establish a case for admitting refugees on these grounds. Perhaps one could imagine an extreme case

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<sup>218</sup> Barry illustrates this point with the example of the treatment of indigenous populations in Australasia and North America by European settlers. *Ibid.*, p. 41

<sup>219</sup> David P. Gauthier, *Morals By Agreement* (Oxford: Clarendon Press, 1986), p. 268

where the presence of refugees outside of the relevant state would pose a threat to national security. In this case, establishing mutually advantageous rules for regulating cooperation between refugees and nationals may be in the interest of the receiving country. But this is a rather far-fetched scenario. Moreover, the extension of justice to these refugees would be entirely contingent on the coincidence of self-interest and the terms of the contract. It would not establish principles of justice for regulating interaction with refugees in general, but merely with regard to particular case-loads. Refugees who did not pose a similar threat to security would not be included in such an agreement.

A second possible route for establishing dependence would be to argue that refugees had resources or skills which were useful or necessary for the receiving state. In this case, entering into a contract with refugees would be advantageous to nationals because of refugees' positive contribution to society. This type of consideration clearly influenced a number of western European states in the 1950s and 1960s, when they absorbed large numbers of immigrants to provide labour in a period of economic growth.<sup>220</sup> Yet as with the previous example, the willingness to admit refugees would be a function of the extent to which they would be advantageous from a purely self-interested perspective. In many cases the self-interest of nationals would not coincide with the interests of refugees. This motive for admitting refugees does not provide a consistent and reliable basis for grounding duties to refugees, and represents an extremely impoverished account of the nature of our duties to refugees.

An alternative to arguing for dependence on refugees would be to concede that refugees fall outside the sphere of justice, and define duties to refugees as a question of humanity, rather than one of justice.<sup>221</sup> Again, this is a profoundly unsatisfactory option. I already touched on the inadequacy of notions of humanity as a basis for duties to refugees in Chapter Two (see section 3.2). Such an approach would imply that all those who are too weak or unimportant to be

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<sup>220</sup> See Chapter One, section 2.3.

included in the contract would not be the subject of justice but rather of charity or supererogatory duties. This category would presumably include the congenitally handicapped as well as refugees. Given that these categories would normally be considered to be the subjects of some form of justice or fair treatment, their exclusion from the scope of justice demonstrates the inadequacy of theories of justice as mutual advantage. This inadequacy is a clear consequence of attempting to derive duty from self-interest.

## 2.2 *The problem of compliance*

Before abandoning the theory of justice as mutual advantage, it is useful to consider a second problem which further casts doubt on the theory's account of individual motivation. Quite apart from the scope of the contract or the fairness of its terms, it is difficult to see how the rules established by justice as mutual advantage would generate motivation to comply with all of the rules all of the time. Several commentators have argued that this creates a "free rider" problem: assuming that every-one else (or most people) cooperate, it may be in my self-interest not to cooperate, at least in certain instances.<sup>222</sup> Justice as mutual advantage has the structure of a prisoner's dilemma, in which the social contract is agreed to because cooperation is preferable to conflict. But if every-one else cooperates, then it may be rational for me not to cooperate, provided that my non-cooperation does not jeopardise the stability of the whole agreement. As Barry writes:

Settlements underwritten by justice as mutual advantage are no more than truces.

As soon as one side or the other feels it can improve its position, there is nothing to restrain it so long as (measured within its own conception of the good) the prospective gains outweigh the anticipated costs.<sup>223</sup>

He concludes that the "pursuit of advantage does not provide an adequate motive for compliance with rules that would be mutually advantageous if generally

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<sup>221</sup>For a good account of the distinction between the two, see Brian Barry, "Humanity and Justice in Global Perspective," in *Ethics, Economics and The Law*, ed. J. Roland Pennock and John W. Chapman, Nomos XXIV (New York: New York University Press, 1982), pp. 219-52.

<sup>222</sup>For a clear summary of the problem of free-riders in contract theory, see Rawls, *Theory of Justice* (*op. cit.*), pp. 267-70

observed.”<sup>224</sup> In other words, the exclusive dependence on self-interest to motivate compliance creates a very fragile system of social cooperation. The system is fragile in the sense that just rules do not seem capable of generating compliance on every occasion. Thus not only do the rules derived from self-interest fail to correspond in important respects to what we would normally consider to be just. Even if we accept the adequacy of justice as mutual advantage as a system for regulating social interaction, it is not at all clear that the system would be stable.

Many commentators have attributed both of these weaknesses - the moral inadequacy of the theory of justice, and the failure of just rules to generate motivation - to the simplistic nature of Hobbes’ theory of motivation.<sup>225</sup> This has led several commentators to supplement the theory with a more complex account of human motivation.<sup>226</sup> In doing so, they have avoided the problem of making compliance contingent on the individual’s egoistic interest in obeying every rule on every occasion. Richer theories of motivation can also provide non-egoistic reasons for agreeing to a particular set of rules, thereby allowing for a fairer conception of justice, and for the inclusion in the contract of those with whom it is not in one’s self-interest to cooperate. This would open up a possibility for including refugees in a social contract. The next section will consider Rawls’ attempt to base his theory of justice on a more complex account of motivation.

### 3. Rawls and Justice as Fairness

Rawls’ theory of “justice as fairness” has a rather different conception of the conditions under which people should select principles of justice. His contract is designed to yield fairer terms of justice, which do not discriminate

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<sup>223</sup> Barry, *Justice as Impartiality* (*op. cit.*), p. 39

<sup>224</sup> *Ibid.*, p. 48.

<sup>225</sup> Brown, for example, describes it as “incredibly crude and plainly false.” See S. M. Brown, “Hobbes: The Taylor Thesis” in *Thomas Hobbes: Critical Assessments, Vol. II*, ed. Preston King (London: Routledge, 1993), p. 101. Rawls takes a more lenient view, viewing Hobbes’ account of motivation as no more than a “common foothold for political argument.” See John Rawls, “The Idea of an Overlapping Consensus”, *Oxford Journal of Legal Studies*, 7:1 (1987), p. 2.

<sup>226</sup> I shall discuss two such attempts below - i.e. those of Rawls and Barry.

between individuals on what liberal universalists would consider to be morally arbitrary grounds. Unlike Hobbes, the terms of justice do not establish a mere *modus vivendi* between individuals with conflicting ends. Instead, he introduces certain hypothetical conditions to ensure that his contractors will choose terms of justice that do not discriminate on grounds of wealth, talent, social status, gender or race. Rawls' theory is Kantian in inspiration, basing its theory of justice on a conception of individuals as autonomous choosers of their own ends. It therefore avoids the moral deficiencies of the Hobbesian account, and would appear to offer a better basis for deriving a contract that recognises duties to refugees.

However, as I shall argue in this section, Rawls retains a basically Hobbesian conception of rationality, assuming that the parties to his contract are motivated by self-interest. The commitment to a Kantian conception is introduced through a separate device - the "veil of ignorance" - which is imposed on the parties to ensure a morally desirable outcome. The separation of self-interested motivation and the veil of ignorance creates problems in deriving a morally adequate conception of duties to refugees. I shall conclude the section by considering Barry's critique of Rawls, which locates the problem in Rawls' theory as his procedural separation of egoistic motivation and impartial morality.

### 3.1 *Motivation and the veil of ignorance*

Rawls' theory of justice can be understood as an attempt to combine two theories of the role of consent: a Humean account of the circumstances of justice; and a Kantian commitment to a conception of individuals as free and equal. The Humean premise implies that justice is required to solve a problem of conflict, thus making the application of rules of justice contingent on the "circumstances of justice". In contrast, the Kantian element suggests a moral commitment to a universalist conception of individuals as worthy of equal consideration, and hence a global contract. It is worth considering how Rawls incorporates each of the two strands, and examining their implications for international justice and duties to refugees.



First, as observed above, Rawls explicitly embraces a Humean interpretation of the “circumstances of justice.”<sup>227</sup> He argues that there are certain “background conditions” which give rise to the need for principles for choosing arrangements to regulate social interaction. These circumstances obtain “whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity.”<sup>228</sup> This would imply that justice is required to solve a cooperation problem: it is required to avoid conflict between persons of roughly equal strength competing for scarce resources. On this account, society is no more than what Rawls sometimes refers to as a “cooperative venture for mutual gain”,<sup>229</sup> with justice simply a set of rules for avoiding conflict and ensuring social stability. It should be noted that a consistent application of the circumstances of justice account would yield no more than a *modus vivendi*. If the need for stability were the sole reason for advocating justice, then one could solve the problem with recourse to a Hobbesian theory of justice. And if one assumes that parties to the contract are mutually disinterested people competing for scarce goods, then one would expect them to agree to some form of justice as mutual advantage.

Yet Rawls’ theory of justice aims to do more than provide rules for ensuring stability and cooperation. If justice were required solely to avoid conflict caused by scarcity and natural selfishness, then Rawls would not require his parties to choose principles from behind a “veil of ignorance”. The veil of ignorance requires the parties to adopt what amounts to an impartial ethical perspective. The parties have no knowledge of their social and economic status, natural assets, psychological disposition or conception of the good.<sup>230</sup> The veil of ignorance is designed to avoid an “outcome biased by arbitrary contingencies”, in other words to preclude principles that are chosen on the basis of partial considerations.<sup>231</sup>

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<sup>227</sup> Indeed, he writes that his conception of the circumstances of justice “adds nothing essential” to Hume’s account. See Rawls, *A Theory of Justice (op. cit)*, p. 127.

<sup>228</sup> Rawls, *A Theory of Justice (ibid.)*, p. 128.

<sup>229</sup> *Ibid.*, p. 126.

<sup>230</sup> *Ibid.*, p. 137.

<sup>231</sup> *Ibid.*, p. 141.

But although Rawls introduces a moral component, it is kept separate from the motivation of the parties to the contract. While the parties are obliged to adopt the impartial perspective represented by the veil of ignorance, this ethical perspective is independent of their self-interested rationality. Contractors in what he terms the "original position" are thus motivated by prudence or self-interest. The moral component of the choice of principles is guaranteed by the imposition of an external mechanism which ostensibly has no basis in the psychological make-up of the parties.<sup>232</sup> Thus Rawls introduces a sharp division between impartial and self-interested perspectives. The impartial perspective is captured by the fact that people voluntarily take on the veil of ignorance, which avoids an outcome influenced by morally irrelevant factors. While the self-interested perspective is captured by the rationality of the parties.<sup>233</sup>

Now as I suggested at the beginning of this section, this creates serious problems for deriving an adequate conception of duties to non-nationals from Rawls' theory. In 3.2 and 3.3 below, I shall consider the ways in which Rawls' theory could be applied to the international sphere, and hence its implications for refugees. I shall consider applications of his theory derived from, respectively, the notion of the circumstances of justice, and from his Kantian moral theory.

### 3.2 *The circumstances of justice*

One way of applying Rawls' theory of justice to the international sphere is to emphasise the significance of the circumstances of justice in deriving terms of justice. On this account, the scope and content of justice would be determined on the basis of empirical criteria. Namely, it would depend on the existence of a situation in which individuals with roughly equal power were competing for scarce resources. While establishing the existence or not of these empirical conditions would appear to be a relatively straightforward matter, there has been some controversy over whether or not the relevant conditions hold in the international sphere; and, if they do, whether they are characteristic of relations

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<sup>232</sup> I shall elaborate this question of the psychology of motivation in Chapter Six.

between individuals, or between states.<sup>234</sup> I shall consider in turn the possibility of deriving a global or an inter-state contract from an argument about empirical conditions.

The first possibility is that the argument for a global contract theory could be based on a claim about the existence of circumstances of justice between all individuals. This interpretation of the global implications of the theory of justice has been most famously pursued by Charles Beitz.<sup>235</sup> Beitz challenges Rawls' assumption that justice should be limited to relations between individuals at the domestic level. He argues that Rawls derives this conclusion about the limited scope of justice from an incorrect empirical claim about the self-sufficiency of states.<sup>236</sup> Beitz argues that there is a substantial degree of economic interdependence between states, which creates a "non-voluntary society-wide system of economic institutions which defines starting positions and assigns economic rights and duties."<sup>237</sup> Beitz argues that these institutions constitute a basic structure which should be regulated by Rawls' principles of justice because "by defining the terms of cooperation, they have such deep and pervasive effects on the welfare of people to whom they apply regardless of consent."<sup>238</sup> Given the

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<sup>233</sup> Rawls, *Theory of Justice* (*op. cit.*), pp. 142-50.

<sup>234</sup> For an overview of applications of social contract theory to problems in international relations, see David R. Mapel, "The Contractarian Tradition and International Ethics", in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 180-200; and John Charvet, "Contractarianism and International Political Theory", in *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London and New York: Routledge, 1994), pp. 175-90.

<sup>235</sup> See Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); "Cosmopolitan Ideals and National Sentiment", *Journal of Philosophy* 80 (1983), pp. 591-600; "Justice and International Relations" in *International Ethics*, ed. Charles R. Beitz, Marshall Cohen, Thomas Scanlon and A. John Simmons (Princeton, NJ: Princeton University Press, 1985), pp. 282-311; and "Sovereignty and Morality in International Affairs", in *Political Theory Today*, ed. David Held (Oxford: Polity, 1991), pp. 236-54. For an account of the evolution of his applications of Rawls' *Theory of Justice*, see Molly Cochran, *Normative Theory in International Relations* (Cambridge: Cambridge University Press, 1999), pp. 23-41.

<sup>236</sup> Beitz' original argument in his 1979 book was based solely on this empirical claim about the fact of interdependence between individuals. He subsequently supplemented the empirical argument for a global contract to a more Kantian, or ethically driven conception of the moral (rather than pragmatic) relevance of inter-connectedness. (See Cochran, *Normative Theory* (*op. cit.*), p. 40). It is this latter argument that I focus on in my discussion. However, as I shall argue, this latter Kantian argument still invokes a somewhat jumbled mixture of empirical and ethical grounds for deriving international justice.

<sup>237</sup> Beitz, "Justice and International Relations" (*op. cit.*), p. 303

<sup>238</sup> *Ibid.*, p. 303.

extensive and nonvoluntary nature of interdependence, then, the principles of distributive justice must apply “in the first instance to the world as a whole, then derivatively to nation-states.”<sup>239</sup>

However, we should be careful about following Beitz down this path. Beitz appears to misunderstand the significance of interdependence in the work of Rawls. On Rawls’ account, empirical assumptions about the level of interdependence between individuals do play an important role in determining the scope of justice. But the relevance of economic and social interdependence stems not so much from the ethical significance of human interaction, but rather from the need to ensure cooperation between people with different interests or conceptions of the good. Interdependence creates a need for agreement on principles for regulating social interaction because without such principles there would be conflict for scarce resources. It is not significant for ethical reasons, as Beitz seems to suggest. Beitz is conflating an argument about the *ethical* significance of interdependence with an argument about the circumstances of justice.

This confusion leads Beitz to misapply Rawls’ theory in his prescriptions about the scope and content of justice. His misunderstanding of the notion of interdependence as employed by Rawls leads him to characterise all individuals as interdependent at a global level. Now such a form of global interdependence may be relevant in an ethical sense. For example, one could argue that the actions of each individual could potentially affect the well-being of any other person, and that this (potential) interdependence of all human beings provides ethical grounds for regulating the interaction of all individuals in a global theory of justice.<sup>240</sup> But this does not follow from Rawls’ conception of interdependence, which describes a state of actual dependence on others, requiring cooperation to ensure stability. On this conception, it is certainly not the case that all individuals are dependent on one another. In fact, as Rawls himself argues, this situation of mutual

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<sup>239</sup> *Ibid.*, p. 305.

<sup>240</sup> See, for example, Onora O’Neill’s account of the relevance of “connection”, in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge

dependence is more characteristic of relations between states.

Rawls himself has derived two different international accounts from his theory of justice, the first of which constitutes an argument for inter-national rules of justice, derived from the circumstances of justice.<sup>241</sup> Thus in his first lecture on the subject in 1993, he emphasises the significance of the Humean element of his theory in deriving principles of international justice.<sup>242</sup> Rawls argues that principles of justice should be worked out in the first instance for the “basic structure of a closed and self-contained democratic society.”<sup>243</sup> Only once this is done will the parties consider principles of international justice, extending outwards to construct principles for the “law of peoples.” In this second stage, the parties to the contract represent the societies of peoples who have already worked out their domestic principles of justice. They do not deliberate behind a veil of ignorance, but select inter-national principles in full knowledge of their nationality and the terms they have agreed to at the domestic level. The principles agreed to are far looser than the conception of justice as fairness. Notably, they omit the egalitarian and redistributive features of the domestic conception.<sup>244</sup> The resulting conception of the law of peoples is based on “familiar principles” of international law, including the right of states to self-defence; duties of non-intervention, observance of treaties and certain restrictions on the conduct of war.<sup>245</sup> Rawls does also include a general commitment “to honor human rights”, which are later listed as “such basic rights as the right to life and security, to personal property, and the elements of the rules of law, as well as the right to a certain liberty of conscience and freedom of association, and the right to emigration.”<sup>246</sup> But these rights are not nearly as comprehensive as those enjoyed by participants in the domestic contract - indeed, Rawls stresses that they

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University Press, 1996), pp. 105 and 113-21.

<sup>241</sup> I shall discuss his second account below in 3.3, as it is based more on the Kantian element in his theory rather than the Humean strand.

<sup>242</sup> John Rawls, “The Law of Peoples”, in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 41-82.

<sup>243</sup> John Rawls, “Law of Peoples” (*op. cit.*), p. 46.

<sup>244</sup> See Rawls, *Theory of Justice* (*op. cit.*), Chapter II, and especially his account of the “difference principles”, pp. 75-8.

<sup>245</sup> Rawls, “Law of Peoples” (*op. cit.*), p. 55.

<sup>246</sup> *Ibid.*, p. 68.

must not be “peculiar to our Western culture”, but acceptable to those from what he terms “well-ordered” non-liberal societies.<sup>247</sup> In essence, this amounts to limiting the conception of justice at the international level to a *modus vivendi*. Terms of justice are designed to ensure a stable international environment, in which states can get on with the more important business of ensuring domestic justice and stability.

Rawls' first contribution to the subject of international justice generated wide-spread criticism. One criticism frequently levelled at account is that his focus on the domestic basic structure leads him to treat groups of people rather than individuals as the relevant moral unit in the international sphere.<sup>248</sup> Rawls does not provide a conception of duties to those outside of the relevant sphere of social cooperation, thus wholly overlooking the question of duties to non-nationals and to refugees.<sup>249</sup> This omission of duties to individual non-nationals is largely explained by the narrowly defined purpose of Rawls' principles for international cooperation. The law of peoples is not designed to achieve global fairness or rectify violations of human rights. Rather, it should be understood as a means of establishing rules between societies that *already* meet basic human rights standards. “[D]efense of well-ordered peoples is the first and most urgent task.”<sup>250</sup> Well-ordered states can find sufficient common consensus to agree to principles which will provide the best international context for realising domestic justice. The principles adopted for the international sphere are thus seen as

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<sup>247</sup> *Ibid.*, p. 70. Indeed, it is difficult to see how Rawls can derive even this limited conception of human rights as part of his “law of peoples”, given that contractors are strictly only interested in ensuring international stability. Perhaps he considered that international respect for human rights was a means of preventing conflict, but he does not advance this as a justification. The only comment he makes on possible motivation to agree to the international respect of human rights is that “systematic violation of these rights is a serious matter and troubling to the society of peoples as a whole.” (*ibid.*, p. 68). But he does not explain what he means by this in his 1993 essay.

<sup>248</sup> See Mark R. Wicclair, “Rawls and the Principle of Nonintervention”, in *John Rawls's Theory of Social Justice: An Introduction*, ed. H. Gene Blocker and Elizabeth H. Smith (Athens: Ohio University Press, 1980), p. 297; and Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1975), p. 133.

<sup>249</sup> That is, unless they fall under the category of “mutual assistance between peoples in times of famine and drought.” Rawls, “Law of Peoples” (*op. cit.*), p. 56. However, the implications of this commitment in terms of how liberal states should respond to violations of human rights in other countries, or how such principles are to be reconciled with the right to non-intervention, are not spelt out.

<sup>250</sup> Rawls, “Law of Peoples” (*op. cit.*), p. 73.

secondary to the central question of achieving stability and consensus on principles of justice for the basic structure. The main impetus for considering questions of international justice seems to stem from its potential threat to these domestic arrangements. The neglect of individual justice is therefore not an aberrance. Rather, it can be understood as the logical outcome of a conception of justice as triggered by the circumstances of justice that hold between states.

### 3.3 *Morally driven agreement and the “strains of commitment”*

However, we have seen that there is another interpretation of Rawls, which emphasises the Kantian rather than the Humean strand of his theory. On this account, Rawls is committed to a conception of individuals as free and equal, and it is this *moral* premise that should determine the nature and scope of justice. As Pogge argues, for example, Rawls’ neglect of individual justice beyond borders is inconsistent with his “conception of all human beings as free and equal moral persons.”<sup>251</sup>

This emphasis on the moral element in Rawls’ theory raises an important question about the foundations of his commitment to Kantian ethics. In his recent work, Rawls has argued that his conception of justice should not be understood as grounded in a metaphysical account of the essential and universal characteristics of human beings. Rather, this conception is derived from the shared values of individuals of a certain cultural context. Thus the moral values embodied in the veil of ignorance are not universally valid, but describe the moral beliefs of inheritors of liberal democratic institutions and a liberal tradition of political thought.<sup>252</sup>

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<sup>251</sup> See Pogge, *Realizing Rawls* (*op. cit.*), p. 240. In fact, Pogge’s grounds for “globalising” Rawls’ theory are extremely ambiguous - they seem to comprise a mixture of a Kantian metaphysical conception of persons, and an empirical claim about shared values.

<sup>252</sup> This is what Rawls terms the “political” conception of justice. For a discussion of the political conception, see *Ethics* 99:4 (1989), especially contributions by Kurt Baier, “Justice and the Aims of Political Philosophy”, pp. 771-90; and Jean Hampton, “Should Political Philosophy Be Done without Metaphysics”, pp. 791-814. See also O’Neill, *Justice and Virtue* (*op. cit.*), pp. 46-7. It should be noted that there are two central features of this political account. (a) The conception of justice is not comprehensive, i.e. it is a political rather than moral, and can be embraced by people with a range of religious and cultural beliefs. This “thin” conception is designed to appeal to

Now on this non-metaphysical reading, justice as fairness must be understood as deriving its ethical content from the intersubjective values of contractors. As such, justice as fairness will only be chosen by those committed to the liberal conception. And commitment to this conception is clearly contingent on the historical and cultural context of the contractors. It is most likely to be agreed by citizens of liberal democracies, and not members of non-liberal non-democratic states.<sup>253</sup> Once again, this seems to pull us back from a global contract to one agreed between members of liberal democratic societies. The applicability of the veil of ignorance is thus limited to particular societies, and - short of a major shift in the values of all non-liberal societies - will not be applicable to the global sphere. And without the application of a veil of ignorance, justice will be determined on the basis of the need to avoid conflict.

This is indeed the conclusion derived from Rawls' second contribution to the subject, which is more consistent with his concept of justice as "political not metaphysical". In the 1999 version of the Law of Peoples, Rawls rejects his earlier assumption that the veil of ignorance would not be applicable to a contract between peoples. Instead, parties to the inter-national contract deliberate from a position of ignorance of a number of important characteristics. They do not know the size of their territory, population or their military strength, the extent of their natural resources or their level of economic development.<sup>254</sup> The imposition of this veil of ignorance is justified because the contractors are committed to a principle of mutual respect and recognition between peoples. All of the peoples participating in the contract have an interest in political independence, freedom and security, and as such "are fully prepared to grant the very same proper respect

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members of multicultural liberal democracies. And (b) the conception is derived from shared values. So its source is the liberal tradition of moral and political thought, rather than derived from reason. It is this second aspect that is of interest to the present discussion.

<sup>253</sup> Rawls does of course believe that there is a possibility of overlapping consensus in multicultural societies, where liberal values are understood as "political" rather than "comprehensive". See John Rawls, "Justice as Fairness: Political Not Metaphysical", *Philosophy and Public Affairs*, 14:3 (1985), p. 252; but as he argues in his "Law of Peoples", he is less confident about agreement on the conception of justice as fairness by non-liberal societies (*op. cit.*, pp. 68-9).

<sup>254</sup> Rawls, *Law of Peoples* (1999, *op. cit.*), pp. 32-3.



and recognition to other peoples as equals".<sup>255</sup> Their moral commitment to principles of liberty and individual rights also leads them to agree to a stronger set of international rules on human rights. Thus they agree to promote the human rights of other peoples, if necessary through sanctions and even intervention.<sup>256</sup> And unlike in Rawls' earlier account, national rights of autonomy and self-determination are explicitly contingent on respect for human and minority rights.<sup>257</sup>

However, it should be recalled that this 1999 account is derived from a political conception of justice. And as such, the scope of the contract is limited to the members of nations that would be morally committed to the principles embodied in the veil of ignorance. It can therefore be binding only on "decent peoples", namely peoples that recognise human rights, have a "decent consultation hierarchy", and allow a "right of dissent."<sup>258</sup> This would exclude most major refugee producing countries (for example Afghanistan, Yugoslavia, Iraq or Sierra Leone); and, given that the parties must be peoples and not individuals, the terms of the contract would not cover individuals fleeing these countries. It would only cover individuals fleeing liberal and "decent" states. This implies a tension between a commitment to human rights that are universal in scope, and the requirement that only peoples already committed to these principles can be subject to these international rules. In other words, while individuals in liberal democracies would presumably be morally driven to promote human rights in non-"decent" states, they would be prohibited from so doing by the limited scope of the contract.<sup>259</sup> Thus we seem to be left again with a morally inadequate conception of duties to refugees. Rawls' political conception of justice is unable to generate a global contract. If one accepts that justice as fairness is derived from shared values rather than metaphysics, the scope and

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<sup>255</sup> *Ibid*, p. 35.

<sup>256</sup> *Ibid.*, p. 81.

<sup>257</sup> *Ibid.*, pp. 38, 79.

<sup>258</sup> *Ibid*, p. 61.

<sup>259</sup> Rawls does acknowledge that his theory fails to cover the case of migration and refugee flows, but is content to assume that the causes of flight will be "eliminated as a serious problem in a realistic utopia." Refugee flows "would disappear in the Society of liberal and decent Peoples." *Law of Peoples* (1999, *op. cit.*), p. 9.

content of the social contract is limited to peoples with the appropriate political and moral values.

If Rawls' political conception of justice yields an inadequate conception of duties to refugees, perhaps it would be more fruitful to derive a global conception of justice from Rawls' earlier work, prior to his explicit abandonment of a metaphysical conception. If one understands the Kantian commitment to universal rights as universally valid rather than derived from shared values, this could potentially yield a global contract that would ground duties to refugees. A global application of Rawls' theory of justice as fairness would require imposing a veil of ignorance on all individuals, or on the representatives of each state - whether the peoples in question were "decent" or not. In addition to deliberating from a position of ignorance of their wealth, power and other moral arbitrary characteristics, contractors would also be deprived knowledge of whether they were actual or potential refugees. Presumably this would encourage them to introduce an extensive set of refugee rights, with provisions far more generous than those currently in place. And the terms would cover all individuals, regardless of whether they originated from "decent" or "non-decent" countries.

Now the problem with such an agreement would be that it would be unlikely to secure continued compliance once the veil of ignorance was lifted. It should be recalled that Rawls' procedure assumes that parties are motivated by rational self-interest. The moral component of their agreement, which ensures that *fair* terms are accepted, is only guaranteed by the imposition of a veil of ignorance. But once the terms of justice have been agreed upon, the veil is lifted and people are once again aware of their socio-economic situation and personal characteristics. And given their self-interested motivation, those who are privileged in terms of natural assets, wealth or social status will be unlikely to be motivated to continue to comply with the chosen terms.

The problem of continued compliance outside of the original position gives rise to what Barry has termed the “strains of commitment”.<sup>260</sup> The principles of justice chosen in the original position must be acceptable once the veil of ignorance has been lifted. This means that those who are worst off under the terms should nonetheless still consider that the chosen principles of justice are better than other principles that could have been selected in the original position. Hence those who lose substantial privileges as a result of the redistributive implications of the principles should nonetheless continue to comply with them. This implies a requirement of unanimous agreement for the principles not only in the original position, but also once people are aware of their actual position and natural assets, social and economic status, and so on.<sup>261</sup> In fact, the test of the strains of commitment is far more challenging for Rawls’ theory of justice than ensuring the relevant terms are chosen in the original position. As Barry argues, the test has a crucial role in ensuring consent for principles. As he writes, “the implicit criteria determining what principles are consistent with the ‘strains of commitment’ test are actually the criteria for principles of justice.”<sup>262</sup> Only the strains of commitment test will ensure cooperation once people know about their characteristics and socio-economic status.<sup>263</sup>

Barry argues that this problem arises because of Rawls’ assumption of self-interested motivation. It is his characterisation of the parties to the contract as unmotivated by moral considerations that obliges Rawls to impose a veil of

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<sup>260</sup> Barry, *Justice as Impartiality* (*op. cit.*), p. 52

<sup>261</sup> The distinction between the two conditions for agreement are equivalent to Nagel’s distinction between the impartial perspective and the requirements of unanimous agreement – see Thomas Nagel, *Equality and Partiality* (Oxford and New York: Oxford University Press, 1991), especially chapters two, three and four. The latter requirement of unanimous agreement allows those who have least to gain from a set of rules effectively to impose a veto (pp. 38-9).

<sup>262</sup> Barry, *Justice as Impartiality* (*op. cit.*), p. 67.

<sup>263</sup> It should be noted that Barry’s point is directed primarily at the problem of how Rawls derives his principles from behind a veil of ignorance. He argues that deliberating on terms of justice in the Original Position could generate agreement on utilitarianism. According to Barry, it is the strains of commitment test - not Rawls’ procedure for selecting principles - that ensures this option is ruled out. The strains of commitment test allows those who turn out to do worst under the chosen arrangements once the veil is lifted to veto these terms. While the current discussion is not directly concerned with this question of vetoing arrangements that do not adequately incorporate respect for individual rights, Barry’s point about the “strains of commitment” does of course have more general relevance to the problem of motivation.

ignorance. Barry argues instead for a conception of motivation that includes a moral component. This would render the veil superfluous. “Where the parties are assumed to be pursuing their own interests, a veil of ignorance is essential. But where they are assumed to be motivated by the desire to reach an agreement on reasonable terms, a veil of ignorance is an optional feature – a heuristic device which can be resorted to on occasion but does not have to be relied on to create solutions.”<sup>264</sup> Barry favours a procedure for agreeing terms of justice that resembles Rawls’ strains of commitment test, rather than his original position.<sup>265</sup> The next section will consider whether the theory he produces - justice as impartiality – can produce a better conception of duties to refugees.

#### 4. Justice as Impartiality

Barry’s theory of justice as impartiality in many ways resembles Rawls’ theory of justice. Indeed, Barry characterises Rawls’ theory as a variant of justice as impartiality: it is “the best-known, most influential, and the most fully developed variant of justice as impartiality.”<sup>266</sup> The main difference between Barry’s and Rawls’ early theory lies in the procedure for agreement to terms of justice. Rather than representing the impartial or moral perspective through the imposition of a veil of ignorance, Barry assumes that the parties to the contract are aware of their social and economic status and natural assets. Nonetheless, they are able and willing to abstract from these morally arbitrary characteristics and choose fair principles. There is no device for making a sharp distinction between moral motivation and self-interested rationality: impartial and personal perspectives are assumed to coincide in Barry’s conception of reason. Barry prefers to conceive of contractors as motivated by the desire for fairness. On this account, the impartial perspective is not conceptually or psychologically distinct from the interests of contractors. Rather, it is assumed that the contractors have an interest in or desire to accept impartial terms.

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<sup>264</sup> Brian Barry, *Theories of Justice (op. cit.)*, p. 331.

<sup>265</sup> As Barry writes, it “constitutes an independent version of justice as impartiality, and one that would if systematized lead us to the theory proposed by T. M. Scanlon.” See *Justice as Impartiality (op. cit.)*, pp. 112-3.

<sup>266</sup> Barry, *Justice as Impartiality (op. cit.)*, p. 8.

In terms of its characterisation of individual psychology, Barry's failure to make a clear distinction between egoism and altruism seems at least *prima facie* to be a more accurate portrayal of people's motivation: reasons for action invariably involve a complicated mixture of egoism and altruism, and it is difficult in practice to disentangle one from the other. However, at the conceptual level it creates a new set of problems for Barry's account. Not only does his theory still rest on an assumed dichotomy between self-interest and impartial ethics. Paradoxically, his attempt to deny the dichotomy through the notion of a desire for fairness leads to a number of serious practical problems with his account. By blurring the conceptual distinction between self-interested and ethical motivation in his procedure for selecting principles, he is unable to explain impediments to motivating the global application of justice. Moreover by linking motivation so tightly to terms of justice, his theory risks being counter-productive. Where the relevant motivation is not triggered, there will be no terms of justice at all.

#### 4.1 *The desire for reasonable agreement*

Barry argues that people are motivated to agree to his criteria for just rules precisely because of their desire for reasonable agreement.<sup>267</sup> The concept of "reasonable agreement" is the key phrase in this formulation, and needs some unpacking. Barry takes this construction from Scanlon's "contractualist" account of morality, according to which the nature of moral wrongness can be stated as follows:

An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement.<sup>268</sup>

This rather skeletal statement calls for several explanatory remarks. First, the agreement must be one that is informed in the sense of not being "based on superstition or false belief about the consequences of actions."<sup>269</sup> Second, it

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<sup>267</sup> As we shall see, the precise formulation is in the negative - i.e. the desire to agree to terms that no-one could reasonably reject.

<sup>268</sup> Scanlon, "Contractualism and Utilitarianism" (*op. cit.*), p. 110.

<sup>269</sup> *Ibid.*, p. 111.

should be unforced in order to rule out coercion to agree to terms from a weaker bargaining position. And thirdly, the notion of that which can be “reasonably rejected” is designed to “exclude rejections that would be unreasonable *given* the aim of finding principles which could be the basis of informed, unforced general agreement.”<sup>270</sup> A rejection will be reasonable only if it is based on the desire to find principles which others similarly motivated could not reasonably reject. It is therefore assumed that all parties to the contract are similarly motivated. Scanlon prefers the stronger condition “no-one could reject” to “every-one could accept” in order to rule out agreements involving substantial levels of self-sacrifice for some people. It is possible that some would voluntarily sacrifice their own interests in accepting an agreement, on terms that it would be perfectly reasonable for them to reject, a possibility that Scanlon wants to avoid.

While acknowledging that Scanlon intends his contractualist construction as a conception of the nature of morality, Barry employs it for a narrower purpose. He sees the construction as a “device for talking about what is fair, on a certain fundamentally egalitarian conception of fairness.”<sup>271</sup> Barry does not consider the notion of contractualism to be a complete theory of the nature of morality, but it is one that captures the notion of fairness which is at the heart of his theory of justice. Scanlon’s construction can be seen as a device for agreeing to a conception of justice, and Barry argues that the theory chosen will be justice as impartiality.

Justice as impartiality certainly appears to be a more plausible candidate for grounding duties to refugees than justice as mutual advantage. The notion of *reasonable* agreement ensures that the terms established under the contract are not contingent on power or other morally arbitrary characteristics. And since self-interest is no longer the sole motivation for compliance, one would expect parties to the contract to agree to fair terms for vulnerable groups such as refugees. Justice as impartiality does in this sense correspond more closely to what liberals would normally consider to be just. But are the assumptions it makes about

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<sup>270</sup> *Ibid.*, p. 111.

motivation plausible, and will this conception of motivation be generated by the criteria for just rules?

The plausibility of Barry's theory of motivation will hinge on whether a desire for reasonable agreement really does motivate people in the requisite sense, or at the very least whether people can be encouraged to develop such a motivating desire. Barry holds that the desire for reasonable agreement presupposes the existence of "the desire to live in a society whose members all freely accept its rules of justice and its major institutions."<sup>272</sup> Barry does not provide an account of the source of this desire in *Justice as Impartiality*, or its relationship to more narrowly defined self-interest. He apparently takes the existence of this type of motivation as an uncontroversial fact of human psychology. "I do not think the agreement motive presents a serious problem. The desire to be able to justify actions and institutions in terms that are in principle acceptable to others is, fortunately, widespread."<sup>273</sup>

But as with other liberal universalist theories, as soon as one attempts to apply his conception to the international sphere, it appears to be completely unfeasible. Even assuming that justice as impartiality would be selected as a principle for regulating interaction at the domestic level, it seems far-fetched to assume that people would be motivated to extend the scope of this agreement to govern interaction with non-nationals. Such extension would mean that refugees would have an effective veto on unfair or partial terms governing their rights. Refugees would be justified in "reasonably rejecting" terms that did not treat them with impartiality, thus implying the duty to extend the same treatment to all actual and would-be refugees as that already afforded to current nationals. As I have already argued in other cases, such an arrangement would not motivate the compliance of the citizens of receiving states. They would be extremely reluctant to extend their domestic terms of justice to govern the treatment of non-nationals.

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<sup>271</sup> *Ibid.*, p. 113.

<sup>272</sup> Barry, *Justice as Impartiality* (*op. cit.*), p. 164.

<sup>273</sup> *Ibid.*, p. 168.

The recurrence of this problem of motivation is in one sense not surprising: we have encountered similar problems of feasibility in Chapters Two and Three. Yet Barry's theory did initially seem to hold out the prospect of addressing the problem of motivation. He claimed that his account - unlike that of Rawls - would show why people would be motivated to comply with impartial justice. Barry argued that the desire for fairness would guarantee a practical commitment to engage in his procedure for selecting rules of justice, and to continue to comply with these rules. But his empirical claim that people are motivated by the desire for fairness is not justified, at least not as regards the extension of justice to non-nationals.

This is a rather worrying problem for Barry's theory. For the effective functioning of his contract presupposes that the parties will be motivated in the relevant sense. The existence of the desire for reasonable agreement is preconditional for securing agreement to justice as impartiality. So if this empirical precondition is not met, his terms of justice will not gain the consent of the parties, and justice as impartiality will not apply. The application of the terms of justice is contingent on the existence of the correct type of motivation. Perhaps Barry is right to assume that the desire for fairness motivates parties at the domestic level. But this desire certainly does not extend to agreement at the international level. And given this, there is a risk that he will be unable to derive any terms of justice whatsoever for the global sphere. If agreement on terms is conditional on the existence of a desire for fairness, then parties are unlikely to agree to any rules of justice for regulating interaction with non-nationals.

Moreover, there is a second problem with extending motivation to the international sphere. The problem of motivation is of course common to all the theories of liberal universalism we have discussed so far. But in Barry's case, the difficulty is exacerbated by his failure to distinguish conceptually between moral and self-interested motivation. By combining the two elements in the notion of the desire for fairness, Barry makes it difficult to locate the impediments to motivation at the international level. In other words, there is no way of explaining why the desire for fairness is more reliably triggered at the national



than at the international level. With Rawls' theory, it was at least possible to separate out the self-interested from the ethical component, and attempt to explain why self-interest might impede motivation to apply principles internationally. But for Barry, the coincidence of self-interest and moral motivation in the desire for fairness makes it difficult to explain the limits of moral motivation to extend terms of justice to refugees. The desire for fairness does not differentiate between the significance of agreement on terms of justice at the domestic and the international sphere. It simply assumes that parties to the contract will be impartial between the two, an assumption that is clearly empirically incorrect.

Having discussed some of the practical and heuristic problems created by Barry's conception of motivation, I would like now to probe what I consider to be the source of these problems in his theory: namely, Barry's underlying assumptions about reason and desire. For the practical problem of feasibility generated at the international level stems from a fundamental deficiency of his theory that is also common to Rawls' theory of justice. Both are committed to what I shall term a "rationalist" theory of motivation. *Prima facie*, this may appear to be a strange claim: after all, Barry talks about a "desire" for fairness, implying that moral motivation is based on sentiment rather than reason. But I shall argue in the next section that, like Rawls, Barry's theory of motivation can only be coherent if it assumes that agents are motivated by reason. Barry and Rawls' theories are both implicitly committed to an assumed split between an impartial perspective and a personal viewpoint. This split creates problems for explaining motivation to comply with terms of international justice. While the two theorists attempt to patch up the problems created by this assumed split in different ways (Rawls through the veil of ignorance and Barry through blurring moral and self-interested motivation), both are fundamentally flawed by their implicit attachment to this simplistic conception of moral agency.<sup>274</sup>

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<sup>274</sup> It should briefly be noted that this section provides only a brief introduction to the problem of rationalism. The issue is discussed in more depth in Chapter Five.

#### 4.2 *The source of the desire for fairness: egoism, sentiment or reason?*

What, then, is this underlying theory of motivation that causes problems for both Rawls' and Barry's accounts? There are three traditional accounts of the sources of moral motivation: it could be held to be located in self-interest, sentiment, or a more moral conception of rationality. I will briefly consider each of the alternatives to see which is compatible with Barry's theory. The purpose of this quick review of theories of motivation is not so much to evaluate the merits or weaknesses of each in their own right - this will be one of the subjects of the next chapter. Rather, my aim is simply to show why Barry is committed to a rationalist theory of motivation.

The first option for Barry is to derive the desire for fairness from self-interest. This possibility is clearly ruled out by Barry in his rejection of egoistic social contract theories. More specifically, in a discussion of Rawls' work, Barry agrees with what he understands to be the latter's assumption that there "is an independent motive for behaving justly stemming from the recognition of others as having legitimate claims to have their interests taken into account."<sup>275</sup> This independent motive is not based on considerations of mutual advantage or reciprocity, but would seem to be an altruistic concern, i.e. a concern for the well-being of others which is not reducible to self-interest or prudence. It should be noted that Barry's rejection of a purely self-interested account of motivation is somewhat qualified by an acknowledgement that "the experience of dependence on others is an important predisposing factor" in creating the desire for fairness, and hence that it is "more likely to come to the fore in conditions of approximately equal power than in conditions of radical inequality."<sup>276</sup> While this notion of predisposing conditions is evocative of Hume's account of the "circumstances of justice", Barry seems to attribute less weight than does Hume to the significance of conditions of dependence or equality in motivating justice. His argument seems to be that the desire for fairness exists regardless of these

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<sup>275</sup> Barry, *Theories of Justice* (*op. cit.*), p. 324.

<sup>276</sup> *Ibid.*, p. 289-90.

empirical conditions, although it is likely to be stronger where rough equality of strength between the parties obtains.

Yet Barry must also forego a sentiment-based account of motivation. As Scanlon argues, the type of motivation required for a contract based on reasonable agreement cannot be based on sympathy. The utilitarian notion of sympathy is unlikely to yield consistent and even-handed treatment of all individuals.<sup>277</sup> It can motivate us “because of our sympathetic identification with the good of others. But as we move from philosophical utilitarianism to a specific utilitarian formula as the standard of right action, the form of motivation that utilitarianism appeals to becomes more abstract.”<sup>278</sup> In other words, motivation generated by sympathetic identification does not seem to be triggered by the more abstract notion of aggregate well-being. By contrast, the desire for fairness is impartial in its choice of objects, and is concerned with justifying action on the basis of what would normally be considered as just. Presumably this makes it a better candidate for accounting for people’s desire to perform duties to a more abstract set of objects, with whom they have no particular identification. It would certainly be more effective at motivating people to accept refugees with whom they have no particular sympathy or affinity. Assuming that the desire for fairness does have motivational force, it would seem to trigger moral motivation more *systematically* than sympathetic identification.<sup>279</sup>

Both the sentiment and the self-interest based theories of motivation would seem to yield an overly partial or particularist conception, which would not be appropriate for generating compliance with impartial justice. So if the desire for fairness is not based on either sympathy or egoism, it must have at its source some concept of reason. On this account, Barry’s theory of motivation would be more akin to the Kantian variant: reason, rather than sentiment or self-interest, motivates us to comply with the requirements of morality. Our commitment to

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<sup>277</sup> Scanlon, “Contractualism and Utilitarianism” (*op. cit.*), p. 115-6.

<sup>278</sup> *Ibid.*, p. 115.

<sup>279</sup> Scanlon’s argument here reflects a wider problem with combining a sympathy-based account of motivation with a theory of impartial justice. Such a combination of empirical assumptions and moral theory would commit Barry to externalism - see the discussion in section one, Chapter Five.

impartial justice is generated by rational deliberation on the requirements of universal morality. I shall discuss the more general problems with the Kantian account in Chapter Five. The point I want to make here is that Barry's theory of motivation must embrace some such conception of reason. If morality is defined as adopting an impartial perspective, then only a reason-based account of motivation will supply the appropriate motivation.

Now a Kantian conception of reason, as we have seen, would produce a commitment to the impartial application of terms of justice. This would mean that those engaging in practical deliberation on the requirements of justice would be motivated by a conception of justice that did not differentiate on the grounds of nationality, race, wealth, and so on. And refugees would thus be included in the scope of the agreement on terms of justice. If the moral component of motivation is guaranteed by impartial reason, then the empirical limitations of moral motivation must be explained by self-interest or sentiment. It is these partial or particularist considerations that constrain motivation to extend justice to non-nationals. This would seem to tally with Barry's account - indeed this characterisation of a conflict between particularist considerations and impartial justice seems to explain why the desire for fairness is not so reliably triggered at the international level.

But this unfortunately takes us back to the problem with the Rawlsian account. In the discussion of Rawls, we saw that the application of justice as fairness was contingent on continued commitment to terms agreed behind a veil of ignorance. Rawls' separation of self-interested rationality on the one hand, and an externally imposed veil of ignorance on the other, made it difficult to understand why people would comply with terms once the veil of ignorance was lifted. Barry's theory aimed to overcome the problems caused by this division of self-interest and impartiality, combining the two in a description of the desire for fairness. But once we unpack Barry's notion of the desire for fairness, we encounter exactly the same problem. Justice is motivated by impartial reason, and as such should not differentiate between national and non-national subjects of justice. But this form of moral motivation is constrained by particularist

considerations - be they egoistic, or related to sympathetic identification with a particular group of people. And this produces a division between the personal perspective and the requirements of impartial justice. This split is along precisely the same lines as the division between the veil of ignorance conception of impartiality and the self-interested rationality of the parties that we found in Rawls.

To make matters worse for Barry, his attempt to plaster over this split gets him into a fresh set of difficulties. As I suggested in 4.1, his notion of the desire for fairness simply obscures the division, exacerbating the problem of explaining limited motivation. By presenting a conception of motivation that merges egoistic and moral reasons for action, it is difficult to pinpoint the impediments to extending motivation to non-nationals. And this explanatory weakness in turn makes it more difficult to find ways of encouraging motivation to expand the scope of justice.

In addition this practical problem of pin-pointing impediments to encouraging motivation, as we have seen, there is a structural problem with Barry's theory of motivation. By combining self-interest and altruism in the single concept of the desire for fairness, he creates a rather brittle theory of motivation, which cannot allow for the legitimacy of or even evaluation of compromise or "second best" options. It has been argued that once the desire for fairness is triggered, it is more systematic than more emotional sources of motivation, notably feelings of sympathy. This was described by Scanlon as a virtue, as motivation is thus not dependent on unreliable and morally arbitrary identification with particular people or situations. Yet the quality of being systematic works the other way: if the desire for fairness is not triggered in its pure form, there is no nuanced or weaker version of the desire which will motivate people to accept second best terms.<sup>280</sup> While terms of justice may be more or less fair, and their scope may cover a smaller or greater range of people, the desire for fairness does not recognise the significance of these differences.

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<sup>280</sup> Examples of "second best" approaches in refugee policy are given in Chapter One, in the discussion of new approaches to refugee protection. See section 2.4.

Where the desire for fairness is triggered, rules of justice will apply impartially to all people, regardless of nationality. Where it is not, justice will not apply at all. Barry's framework seems to rule out non-systematic or less than full-scale principles of justice. Justice must be full-fledged impartiality, embodied in the condition of reasonable rejectability, or it is not justice.

Both Barry and Rawls face problems generated by the assumed split between personal and impartial perspectives. This makes it difficult to explain motivation to extend justice to non-nationals. Hence these morally driven social contract theories fail to address the problem of motivation. Indeed, in tying agreement so closely to justice, through the notion of consent, they are left with a rather stark choice as exemplified in the different interpretations of Rawls: either a Hobbesian account in which justice is based on egoistic motivation and is limited to the domestic level; or a Kantian account in which justice is global in scope, but does not generate motivation. In the latter case, we are back to the problem of the feasibility of liberal universalist theories. But we also have an additional problem, generated by the close link between justice and consent. If the relevant motivation is not forthcoming, then the contract cannot function. This problem, as we saw, was especially acute in the case of Barry's theory. Since on his account justice is so closely tied to a certain kind of motivation, once this motivation fails to be triggered, justice as impartiality simply will not apply.

One way of understanding this problem of motivation is by considering the role of the procedure in social contract theory. Contractarianism derives a procedure for selecting terms of justice from some background conception of fairness or impartiality. It then puts forward this procedure as a stand-alone, self-justifying device for testing the fairness of rules of justice. Thus Rawls justifies his terms of justice by the fact that they would be agreed from the original position, and Barry justifies his norms by virtue of the fact that they are not reasonably rejectable. But these procedures are detached from any richer ethical justification, for example an account of why contractors would value justice or fairness. And this detachment of the procedure from a background justification places an excessive emphasis on procedure, creating problems when the

procedure fails to function. If people are not motivated to adopt an impartial perspective, then the ideal rules of impartial global justice will fail to be generated. And the stand-alone contract has no mechanism for defining alternative terms of justice that achieve partial or second best distributions. The impartial perspective is an ideal conception of moral agency abstracted from the very values and goods from which it was derived.<sup>281</sup>

As a concluding thought, we should consider why social contract theories seemed to offer such good prospects for addressing the problem of motivation in the first place. Their reputation for generating compliance with terms of justice was earned through their apparent success in the domestic sphere. For at this level, there is likely to be a far greater coincidence between the need for stability, and the moral goal of ensuring impartial justice. Social contract theory for the domestic sphere seems to solve both the problem of conflict, and to ensure fair principles. But the apparent facility for addressing both of these problems did not extend beyond the national level. The overlap between the need for stability and the goal of securing individual justice seemed to break down when it came to questions of global justice. The confidence social contract theorists seem to have in the coincidence between these two functions leads many of them to tie motivation to justice in a rigid way. The epitome of this tendency can be found in the work of Barry, and his notion of the desire for fairness. These high expectations are not fulfilled at the global sphere, and the rigidity of the link between the two makes it impossible to effect a partial retreat from the relevant terms of justice. There is no scope for ratcheting down the requirements of impartial justice, short of rejecting them wholesale.

## **5. The Limits of Liberal Universalism**

The critique of social contract theories presented in this chapter should now be considered in conjunction with the discussion of right-based theories in chapters Two and Three. For by now our broader critique of liberal universalist

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<sup>281</sup> This argument draws on Charles Taylor's critique of contractarianism, discussed in more detail in Chapter Seven.

theories should be taking a more coherent form, and we need to start extracting the common elements.

The main weakness of liberal universalism examined in Chapter Three, it should be recalled, related to its inability to incorporate a commitment to the significance of particularist ties and values. The concern to include such values was triggered by the practical problem of motivation as defined in Chapter Two.<sup>282</sup> But this concern could not be addressed by theories of thin universalism: these theories either encountered the same problem of motivation (in the case of basic rights theories), or were based on untenable mixtures of universalist and particularist grounds. Such mixed premises produced both theoretical incoherence and practical confusion. The failure of thin universalism to produce a conception of duties to refugees that was both internally coherent and practically feasible left us with three options. We could consider changing either the content of the ethical theory; or our account of motivation; or the foundations of the theory.

On the first possibility, Chapter Three already represented an attempt to change the content of the theory, examining theories that tried to ratchet down the demands of liberal universalism. None of these theories succeeded in redefining the demands of morality in a way that was practically feasible and internally coherent. Yet any further modification of the content of liberal universalist theory would be highly problematic. Given the thesis' goal of finding a normatively adequate conception of duties to refugees, we need to retain a substantive commitment to universal rights. We saw in Chapter Two that a conception of individuals as free and equal was the best way of grounding that commitment. So while it is recognised that this commitment to a liberal universalist conception generates unfeasible requirements, a rejection of this substantive conception would imply abandoning the normative criterion, as set out in the Introduction.

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<sup>282</sup> And also by the recognition of cultural pluralism - although this second factor is not as important as the motivation question, given our central concern with extending duties to refugees.



The second option was to search for an alternative account of motivation, which would generate compliance with these substantive liberal universalist duties. If the problem of motivation were solved in this way, then there would be no need to modify the substantive content of universalist ethics. The possibility of revising the account of motivation whilst retaining a commitment to liberal universalism was considered in this chapter. Social contract theories represented an attempt to show how people would be motivated to comply with terms of justice. But linking motivation to justice in this way led to two possible outcomes, both of which were problematic: either people were motivated to comply with morally deficient terms of justice; or the terms were more ethically palatable but failed to motivate compliance for the international sphere. Social contract theories held out the promise of ensuring motivation to respect the demands of liberal universalism. In order to achieve this coincidence of ethics and motivation, they structured their theories so that the procedure for deriving terms of justice presupposed willingness to comply. Paradoxically, this tight relationship between justice and motivation meant that once the relevant motivation was not forthcoming, the procedure would break down and it would be impossible to derive any terms of justice at all.

Before going on to consider the third possible route for finding an adequate conception of duties to refugees, it is worth drawing out the common theme that unites the criticisms of liberal universalism in Three and Four. In Chapter Three, I reached the conclusion that liberal universalism could not incorporate a commitment to particularism; in this chapter it was argued that it could not provide an adequate account of why people should be motivated to respect the terms of impartial justice. But the discussion has done more than simply produce a list of separate flaws in these accounts. The strand running through the critique is the set of problems flowing from the assumed dichotomy between personal and impartial perspectives. I suggested in Chapter Three that the reason why particularist and universalist values could not be coherently combined related to their very different assumptions about moral agency and the source of moral beliefs. Liberal universalism assumes that the moral agent must adopt an impartial perspective, abstracting from her particular values and

interests. If one is committed to this conception of two separate perspectives, it will not be possible for particularist considerations to legitimately over-ride impartial ones - at least not for questions of basic or core rights. The two must be characterised as in conflict with one another.

The accounts of motivation discussed in this chapter likewise seem to suffer from their commitment to the personal-impartial divide. The morally driven social contract theories simply fail to explain why the individual would be motivated to comply with the global application of rules of justice as impartiality or fairness. And this is linked again to a separation of the requirements of an impartial perspective and the personal sphere. In Rawls' theory, the gap between the two was clearly evident: motivation was kept separate from moral duty through the procedural division between the rationality of the parties and the veil of ignorance. Barry merged the two in his procedure, but retained a conception of impartial moral agency. The difference was that he assumed that people simply would be motivated to respect the requirements of impartial morality. But this empirical claim was unfounded, and merely served to beg the question of how to explain why people were less motivated to extend duties to non-nationals.

So the common strand in the critique revolves around a faulty conception of moral agency. And this brings us to the third possible option for providing an adequate conception of duties to refugees: challenging the foundations of liberal universalism. The discussion thus far seems to suggest that the best way of overcoming the problems of liberal universalist accounts would be to challenge the assumed dichotomy between the personal and impartial perspectives. This will require unpacking in more detail the assumptions about moral agency and motivation that underlie these theories. More specifically, we must examine assumptions about the role of impartial reason in defining and motivating morality, and how this conception of reason is related to the personal or particular perspective. These issues are dealt with in the next chapter.

## **PART II**

# **CONSTRUCTING A NON-RATIONALIST ACCOUNT**

## **Chapter Five**

### **The Role of Reason in Moral Motivation**

The critique of liberal universalist theories developed in the last three chapters has focused on the failure of these theories to meet the three criteria for an adequate account of duties to non-nationals. None of the theories discussed can offer a normatively desirable first order account, that is both practically feasible and internally coherent. After outlining the problem of practical feasibility encountered by pure liberal universalism, the discussion examined whether this problem could be addressed by altering the content of liberal theory, or changing its account of motivation. As I argued at the end of the last chapter, neither of these tactics worked, and it is necessary to turn to the third, more radical route. This will involve challenging the liberal universalist account of the sources of moral norms and moral motivation. In particular, I will challenge the notion of a dichotomy between an impartial perspective, in which the moral agent is motivated by reason; and a personal perspective, which comprises the person's partial interests, ties and particular characteristics.

This chapter pursues such a critique of the dichotomy model by challenging liberal universalist assumptions about the role of reason in defining and motivating moral action. The chapter will argue that the failure of these theories to provide an adequate theory of motivation can be traced to the importance they attach to reason in both motivation and in defining morality. By exaggerating the role of reason in motivation, they fail to provide a plausible account of moral agency, and to account for the significance of particular ties. And by inflating the role of reason in defining morality, they fail to account for the diversity of moral norms in different cultures, and the influence of intersubjective values and beliefs on conceptions of justice. The non-rationalist account outlined in this chapter will be far better placed to explain the significance of personal characteristics and ties in motivating moral action, and the role of intersubjective values in defining the moral perspective.

The chapter is divided into three main sections. The first two sections address the question of moral motivation. Section one will examine the rationalist account of motivation. It will question the plausibility of this theory, and show how different rationalist theories attempt to overcome the problem. Section two considers problems with the traditional Humean alternative to rationalism, concluding with a defence of a theory of the interdependence of reason and desire in motivating action. Section three moves on to the related question of the role of reason in defining morality. It argues that moral norms cannot be derived from reason alone. What is required in addition is either an assumption about the circumstances of justice and prudential reasons to enter some arrangement of mutual benefit; or a substantive commitment to some conception of equal or just distribution, which is not derivable solely from reason. In conclusion, section three suggests an alternative account of the role of reason in motivation and morality, according a more modest but nonetheless significant status to reason. This alternative account will be developed in more detail in Chapter Six.

It should be noted that parts of the discussion of rationalist theories will cover similar ground to the themes dealt with in Chapter Four, in particular in the discussion of some of the problems with neo-Kantian social contract theories. However, the critique in this chapter is on a second order level, unlike the predominantly first order discussion of Chapter Four, and will employ rather different arguments. The challenge to liberal universalism in this chapter is not drawn directly from a critique based on the criteria of coherence, normative desirability and practical feasibility. These criteria still comprise the necessary conditions for an adequate conception of duties to refugees. But we have found that liberal universalist theories cannot meet these criteria whilst retaining the assumptions about moral agency outlined at the end of the last chapter. So it is now necessary to challenge these second order assumptions - to fundamentally revise liberal theories of moral motivation and moral agency - in order to construct an account that can meet the three criteria. So this chapter will criticise liberal universalism at a more philosophical level. On the basis of this critique I shall proceed to construct an alternative account of moral agency, from which I

can then derive a conception of duties to refugees that meets the three criteria for an adequate account.

## 1. Reason and Moral Motivation in Kantian Thought

Before proceeding with the critique of liberal universalist assumptions about the role of reason in moral motivation, 1.1 will briefly define some of the terms used in this Chapter. By way of introducing the problem, it will then set out some general concerns about the rationalist theory of motivation. 1.2 will elaborate the problem with rationalism through a brief discussion of Kant's moral theory. And in 1.3 I will show how the problem of motivation persists in contemporary Kantian theories. I shall argue that the weakness of social contract accounts of motivation can be traced to problematic assumptions about the role of reason in moral motivation. The section concludes by arguing that these criticisms strongly suggest that we should reject the rationalist theory of motivation.

### 1.1 *Rationalism: some initial doubts*

The main target of criticism in this chapter is a group of theories that will be labelled "rationalist". On the definition used in this thesis, a rationalist theory is one that accords a central role to reason in motivating moral action.<sup>283</sup> Such theories are usually contrasted with theories of motivation that accord a central role to feeling or sentiment.<sup>284</sup> In this context, "reason" will denote the activity of reasoning - i.e. the exercise of logical or cognitive categories and rules to

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<sup>283</sup> Rationalism in ethical theory has also often been used to denote the claim that there can be *a priori* intuitions of moral truths, which are derived from reason (rather than from experience, or sentiment). However, I would like to employ the narrower definition of rationalism as referring to a certain sort of theory of motivation. This is so I can distinguish between rationalist theories of motivation, and the claim that morality is derived from reason - a theory that I term cognitivism.

<sup>284</sup> The question as to whether morality is motivated by reason or sentiment is usually framed around the rival accounts offered by Hume and Kant, both of which will be discussed in the course of the chapter.

deliberate from premises to conclusions.<sup>285</sup> And practical reason will refer to rational deliberation from premises to conclusions about what one should do.<sup>286</sup>

Rationalism in this sense should be carefully distinguished from cognitivism - the claim that moral judgements have universal validity. Admittedly, those committed to a rationalist theory of motivation are in most cases also committed to cognitivism. For rationalists, the capacity for reason is usually said to be an attribute of all individuals, and all mentally sound persons are at least potentially capable of being motivated by the requirements of morality. And if it is the universal faculty of reason that enables us to act in accordance with the requirements of reason, then it follows that moral obligation is binding on all rational agents. Hence accepting a rationalist theory of motivation implies a commitment to cognitivism.<sup>287</sup>

But although rationalists must be cognitivists, it is important to stress that cognitivists are not necessarily rationalists. Indeed, the reason for clarifying the distinction between rationalism and cognitivism is that a cognitivist may not be committed to a rationalist theory of motivation. She may be committed to the view that some moral judgements are universally valid, but hold that the agent is motivated to respect the requirements of morality through sentiment or egoism or fear of divine retribution. In other words, the motivation to comply with universally valid norms derives from a separate characteristic in the individual, unrelated to the source of moral norms. In this case, the existence of a motivation to comply with moral norms would be contingent on the existence of the relevant desire or interest in the individual. And there would be no guarantee that the individual would be motivated by recognising the validity of moral norms. The

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<sup>285</sup> I shall not commit myself to a conception of reason as any particular set of *a priori* categories - this is not required in the context of a critique of rationalist theories of motivation, in which the target of criticism is the role attributed to reason as an activity, rather than the categories of which it is comprised.

<sup>286</sup> See G. E. M. Anscombe, "On Practical Reasoning", in *Practical Reasoning*, ed. Joseph Raz (Oxford and New York: Oxford University Press, 1978), p. 33.

<sup>287</sup> See, for example, Harold I. Brown on the close tie between rationalism and universalism. Brown, *Rationality* (London and New York: Routledge, 1990), pp. 5-14.

non-rationalist cognitivist is therefore committed to externalism.<sup>288</sup> These categories may seem somewhat pedantic, but they will emerge as important distinctions in the discussion that follows. So having clarified the categories, let us now consider the claims of rationalist theories of motivation.

According to the rationalist view, it is reason (rather than desire) that moves us to act in accordance with the requirements of morality. Moral motivation is not dependent on the presence of interest or desire, but is guaranteed by the agent's rationality and her beliefs about the requirements of morality. The motivation to act in accordance with the requirements of morality "comes from the requirements themselves."<sup>289</sup> According to Thomas Nagel, the agent is motivated precisely because she recognises that this is the morally correct action. Motivation is not contingent on any independent component of human nature, such as a Hobbesian fear of death, or sympathy, as in the case of Hume. It is the moral nature of the requirements that motivates, rather than the existence of other conditions or dispositions.<sup>290</sup> In this sense, the rationalist account is internalist: a moral conviction and appropriate beliefs about the world provide sufficient reasons for action. As we saw, the rationalist account is also cognitivist, in that at least some moral convictions are universally valid judgements.<sup>291</sup>

We have already seen how this emphasis on reason is a central feature of theories of impartial justice. According to these accounts, the moral agent is

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<sup>288</sup> On a classic account of externalism and the problems associated with the position, see William K. Frankena, "Obligation and Motivation in Recent Moral Philosophy", in *Essays in Moral Philosophy*, ed. A. I. Meldin (Seattle: University of Washington Press, 1958), pp. 40-81; and Bernard Williams, "Internal and External Reasons", in his *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), pp. 101-13. For a more recent critique of externalism, see Thomas E. Wren, "The Possibility of Convergence between Moral Psychology and Metaethics", in *The Moral Domain: Essays on the Ongoing Discussion between Philosophy and the Social Sciences* (Cambridge Mass, MIT Press, 1990), pp. 15-37. Thomas Nagel also discuss the problem of externalism in his *The Possibility of Altruism* Princeton, NJ: Princeton University Press, 1978), pp. 7-9.

<sup>289</sup> Nagel, *The Possibility of Altruism* (op. cit.), p. 12.

<sup>290</sup> *Ibid.*, pp. 13-14.

<sup>291</sup> The distinction between these categories is not crucial to the argument, but may be useful for locating these theories in contemporary moral philosophy debates. For a clear introduction to these debates, see McNaughton, *Moral Vision: An Introduction to Ethics* (Oxford: Blackwell, 1988), pp. 46-50 and 106-17.



abstracted from her particular situation and characteristics and is moved by reason, rather than personal desires or attachments. Whether this form of abstraction involves subjecting one's maxims to the test of universalisability, deliberating behind a veil of ignorance, or considering which norms would be the object of reasonable agreement, the rationalist account claims that the agent is moved to respect the requirements of morality through reason. Rational deliberation on the requirements of morality is sufficient to motivate the agent, so motivation is possible without any additional sentiment or self-interest. What is being claimed by the rationalist, then, is that reason alone can provide the agent with reasons for respecting the requirements of morality. The agent is motivated to act morally simply by exercising certain cognitive capacities, specifically by engaging in practical reasoning about what action she ought to take.

It should be emphasised that on this account, the role of reason is not simply instrumental to realising pre-given desires (for example, personal interests or goals). For if reason were simply a device for working out how to achieve certain given ends, then it could not claim motivating force. In this case, it would be the original desires, rather than reason, that motivated action. And it is precisely this point that critics of rationalism find implausible. Anscombe, for example, argues that practical reasoning simply involves reasoning from a given premise or set of premises to conclusions about what one should do. It is the general moral premises from which one reasons that contain the conception of moral duty. While it is possible that an agent could employ reason to deliberate from general moral premises to a conclusion about what moral action to take, she will only be motivated to engage in this type of reasoning if she has already accepted the moral premise in question. And as Anscombe writes, "it is clear that such general premises will only occur as premisses of practical reasoning in people who want to do their duty."<sup>292</sup> A similar point is made by Williams when he argues that rational deliberation cannot motivate us to perform a moral duty, unless we are already motivated to engage in this form of deliberation and to accept the conclusions it may yield. In other words, we must be committed to the

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<sup>292</sup> Anscombe, "On Practical Reasoning" (*op. cit.*), p. 45.

value of this type of deliberation in order to be motivated by its conclusions. A reliance on practical reason as a source of motivation merely begs the question of what motivates us to engage in practical reasoning in the first place.

This point can be elaborated through considering Nagel's account of moral agency. He argues that adopting a moral perspective involves abstracting from and thus (temporarily) abandoning the personal point of view.<sup>293</sup> While Nagel holds that the agent does this out of respect for reason alone, the agent can surely only be motivated to abandon her personal perspective for reasons present to her in the personal perspective. But if this is the case, then it is not abstract reason alone that motivates action in accordance with the requirements of impartial ethics. Rather, we are motivated to adopt an impartial perspective by a reason or set of reasons already present in our personal perspective. The problem arises because the exercise of reason requires abstracting from certain personal characteristics or ties. If reason alone can motivate the individual to engage in this form of abstraction, then it is difficult to see how the person will initially be motivated to obey the dictates of reason. The switch from personal to impartial perspective requires the exercise of reason, yet this exercise of reason is not possible unless one has already adopted this viewpoint. Adopting the impartial perspective would appear to be both the precondition and the outcome of the exercise of reason.

What this suggests is that the rationalist account of motivation cannot be established merely by pointing to the role of reason in practical deliberation. The rationalist will have to show how reason can actually motivate us to accept the relevant premises of moral argument. In other words, if practical reason is understood as the use of logical rules to deliberate from premises to conclusions about what one ought to do, then moral motivation depends on one or both of the following conditions. First, as Anscombe suggests, it depends on the agent being motivated to accept the general moral premises from which she then reasons to

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<sup>293</sup> For his discussion of abstraction and moral motivation, see Thomas Nagel, *The Possibility of Altruism* (*op. cit.*), pp. 99-115; and his *Equality and Partiality* (Oxford and New York: Oxford University Press, 1991), pp. 10-20.

practical conclusions. And second, it depends on the agent being motivated to commit herself to accepting the practical conclusions of a process of deliberation from these premises. It should be stressed that the question here is not so much that of how rational deliberation determines what we should do in the sense of laying down moral rules (although this question is clearly linked). Rather, the emphasis in this section is on how such deliberation can provide us with reasons to respect the requirements of morality. In short, it concerns the relationship between reason, morality and the will.

### 1.2 *Kant and the problem of moral motivation*

Rationalist theories of motivation need to overcome this sort of criticism by showing how reason can influence the agent's will. There have been a number of attempts to provide some form of rational link between reason and moral agency, although none of them ultimately succeed. A good route for understanding these accounts is through considering the problems faced by Kant's theory of motivation, and subsequent attempts of neo-Kantians to overcome this problem. The intention here is not so much to provide a complete account of Kant's moral theory, which would require a far more detailed treatment of his concepts of reason. Rather, it is useful to sketch the problem of motivation in Kant insofar as it can help shed light on the problems faced by contemporary rationalist accounts. It will also provide a good basis for categorising such theories, according to how they attempt to address this problem of motivation.<sup>294</sup>

Kant asserts that the will can become moral or a "good will" through the exercise of reason. Pure reason can exert influence over the will through qualifying its subjective rules of action or maxims. It is through subjecting these

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<sup>294</sup> The discussion that follows draws partly on critiques provided by Rudiger Bubner and Albrecht Wellmer, although it differs from these discussions in its exclusive focus on the role of reason in *motivation* (these accounts discuss this question along with the related issues of the role of reason in defining morality). See Rudiger Bubner, "The Possibilities of Practical Reason", in *Essays in Hermeneutics and Critical Theory*, ed. Rudiger Bubner, trans. Eric Matthews (New York: Columbia University Press, 1988), pp. 147-94); and Albrecht Wellmer, "Ethics and Dialogue: Elements of Moral Judgement in Kant and Discourse Ethics, in *The Persistence of Modernity: Essays on Aesthetics, Ethics, and Postmodernism*, ed. Albrecht Wellmer, trans. David Midgley (Cambridge, Massachusetts: MIT Press, 1991), pp. 113-231.

maxims to the directives of reason that the agent's will becomes good. The device through which subjective maxims are qualified by reason is the Categorical Imperative, which sorts through existing maxims to select those which are universalisable.<sup>295</sup> The Categorical Imperative commands us to "Act only on that maxim through which you can at the same time will that it should become a universal law."<sup>296</sup> Or in its negative formulation, the requirement is that "I ought never to act except in such a way *that I can also will that my maxim should become a universal law.*"<sup>297</sup> This formula provides a process of selection or test to establish which subjective rules of action qualify as moral. The good will comprises that which is left over from the will once all non-universalisable maxims have been discarded as rules for action.

Leaving aside the difficulties raised by the Categorical Imperative as a device for testing maxims, Kant's account faces a serious problem explaining how reason can transfer its influence to the will. In Kant's system, the reason shaping the will must be pure, in the sense of being untainted by the contingent and particularist considerations of the empirical world.<sup>298</sup> Pure reason belongs to the intelligible or noumenal world, and must be unconstrained by the phenomenal world if it is to be immune from the influence of partial and changing interests. By contrast, the practical reason normally exercised by the agent in the empirical world is influenced by such particularist considerations. The challenge is to show how this practical reason can be influenced by pure reason - to construct a bridge between the intelligible and phenomenal worlds, in order that practical reason may become moral.

The connection between pure and practical reason is established through Kant's notion of free action. Free action denotes a series of empirical events whose cause is not empirically conditioned, but free. It is through such free

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<sup>295</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* [1785], ed. and trans. Herbert James Paton as *The Moral Law* (London and New York: Routledge, 1989), p. 68.

<sup>296</sup> *Ibid.*, p. 84.

<sup>297</sup> *Ibid.*, p. 67. The different versions of the statement have been the subject of much debate - see, for example, Herbert James Paton's *The Categorical Imperative* (pp. 157-64); and Wellmer, "Ethics and Dialogue" (*op. cit.*), pp. 121-44.

action that the purity of reason in the noumenal realm is supposedly transferred to the realm of practical action. So *pure* practical reason - practical reason unconstrained by partial and contingent factors - is only possible if we assume the possibility of unconditioned causality. In the absence of such a concept of freedom, the will could not be rendered good.

But this still begs the question of how the agent is motivated to apply pure reason to the practical sphere. Such motivation must be generated in the phenomenal world, if it is to influence the action of actual wills. Yet on Kant's account, the phenomenal self is subject to partial and changing interest, so the motive to subject one's maxims to the test of the Categorical Imperative would not be pure in the desired sense. It must be the empirical will that decides to undergo the influence of pure reason, for otherwise pure reason could have no influence on conduct. But this presupposes the existence of an empirical disposition to be motivated to respect the requirements of the Categorical Imperative, a disposition which is in some sense prior to the influence of pure reason.<sup>299</sup> Kant would reject this, claiming that pure reason must be capable of motivating the agent, without any pre-existing desire of the will to be so motivated. He retains a separation between the motivational constitution of the empirical will, and the structure of morality, but claims that the latter may nonetheless shape the former. And in so doing, his account of pure practical reason remains somewhat obscure. Kant argues that we must simply presuppose the possibility of the freedom required to render practical reason pure.<sup>300</sup> But he gives no cogent justification as to why we should presuppose any such thing.

The question of how practical reason becomes pure is in fact a version of the problem encountered in the critique of rationalism in the previous section 1.1. If reason is to be attributed motivational force, then there must be some account of how reason can influence the will. Yet the will can only accept such influence if it is already motivated in the relevant sense. Kant's attempt to overcome this

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<sup>298</sup> Kant, *Groundwork* (*op. cit.*), p. 88.

<sup>299</sup> If this disposition is contingent (for example, if it depends on the existence of a separate interest or desire) then the account would be externalist.

circularity through the notion of free action is obscure at best, and simply fails to provide a plausible account of motivation.

### 1.3 *Neo-Kantian accounts*

Before turning to non-rationalist accounts, it is useful to consider how some contemporary neo-Kantians have attempted to address the problem. This will also provide an opportunity to review the critique of social contract theories in Chapter Four, from the point of view of the current critique of rationalism. Have any theorists managed to bridge this gap between empirical will and moral obligation through the notion of motivating reason - in other words, been able to provide a tenable rationalist account? The different responses offered to this problem can be categorised along the lines established in Chapter Four to distinguish between different theories of justice. The various accounts of the relationship between personal and impartial perspectives discussed in that chapter are parallel to the account of the relationship between moral obligation and the will.

We should start by recalling how Hobbes derived moral duty from an egoistic conception of the will.<sup>301</sup> On this account, there is no gap between reason, the will, and the requirements of morality. Reason is understood as prudential rationalist - as instrumental to maximising self-interest - and moral duty requires no more than the rational pursuit of these egoistic ends. The gap between will and morality is closed, but at the price of accepting a morally deficient theory of justice as mutual advantage.

A similar conception of rationality is adopted by Rawls, who also equates prudential reason with the individual will. Yet Rawls is not content with a theory of justice as mutual advantage, preferring a more Kantian, impartial conception of justice as fairness. Since prudential reason alone will not yield the appropriate

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<sup>300</sup> Kant, *Groundwork* (*op. cit.*), p. 89

terms of justice, Rawls is obliged to introduce an external filter for sieving out morally unacceptable considerations from the choice of rules of justice. The veil of ignorance serves as a replacement for the Categorical Imperative, ruling out considerations that are partial and particularist. The individual's will is therefore constrained by a test of impartiality in the original position. Yet as Barry points out, the original position is entirely divorced from the actual motivation of the parties, understood as prudential rationality. This is why the real test of Rawls' agreement seems to be whether the terms of justice can withstand the "strains of commitment" - the motivation to cooperate with terms once the veil of ignorance is lifted. In essence, Rawls' account exacerbates the problem faced by Kant, through widening the gap between the will and the requirements of morality. His concept of reason fails to provide any sort of bridge between the egoistic will and the perspective from the veil of ignorance, since it is simply instrumental to realising self-interest.

Now as we saw in Chapter Four, the Rawlsian account is able to close the gap between the will and morality - at least in Rawls' later work - by abandoning its cognitivist claims. Since reason cannot lead the will to respect morality, then the individual's will must be conditioned to be moral through some other means. Rawls establishes an empirical link between the will and the requirements of morality, through showing how both will and morality are shaped by the same social matrix. Commitment to moral norms is acquired through a particular social context and this same environment also shapes the individual's will. The veil of ignorance therefore loses its status as the embodiment of universalist impartiality, and becomes a device for representing the values of particular cultures - liberal democratic societies. In the later Rawls, then, morality influences the will not through reason, but through a particular process of socialisation. Motivation to respect the requirements of morality is not generated solely by the exercise of reason, but through some non-rationalist account of a will shaped by shared values.

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<sup>301</sup> Needless to say, Hobbes cannot be classified as a Kantian - but it is useful to recall his conception of justice and motivation, as it has been used as a component of some neo-Kantian accounts.

A rather different neo-Kantian account of the relationship between will and morality is offered by Barry. Barry appears to retain a more theoretical conception of reason i.e. one that denotes the employment of cognitive capacities to deliberate from premises to conclusions, rather than a prudential conception of reason as an instrument for maximising self-interest. Yet Barry, as we saw, fails to acknowledge any gap between the requirements of morality and actual will. Reason is employed by the agent to deliberate on terms of justice in order to find rules that could not be reasonably rejected by anyone. Both the agent reflecting on these terms, and the subjects who are being considered as potential rejecters of the terms, are assumed to be motivated by a desire for fairness. And this desire corresponds exactly to both existing will, and the requirements of morality. In other words, there is a perfect coincidence of will and morality, achieved through the exercise of reason. But this coincidence is not achieved through pure reason influencing the will, as in Kant's account. Rather, it seems to be the case that the existing will *as it stands* is motivated to accept the requirements of reason. There is no gap between morality and the will because people do actually want to be moral. This account, it was argued in Chapter Four, is open to the objection of empirical implausibility. It is simply not true that people are motivated in this way, at least not for questions of duties to non-nationals.

A third neo-Kantian solution is to abandon the requirements of a link between the will and some specified conception of moral duty, as in the case of discourse ethics.<sup>302</sup> These theories do not specify the content of moral duty, but only the procedure for deriving norms. They also claim that this procedure is not based on particular conceptions of morality, but is built into the structure of language. Discourse ethics thus denies any commitment to first order moral values. On this account, moral rules are not philosophically grounded but are the outcome of agreement through rational dialogue aimed at achieving consensus. The terms of this dialogue replace Kant's Categorical Imperative, and supposedly also the commitment to a particular first order conception of justice as impartiality.

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<sup>302</sup> This route has been best developed by Jürgen Habermas, whose theory of discourse ethics will be discussed later in the chapter.



Now discourse ethics is of course only relevant to this discussion if it can be classified as a liberal universalist theory, and more specifically if it can guarantee a commitment to some conception of duties to refugees. The answer to this question is complex, and I can only touch on it here. Put in the briefest terms, if discourse ethics *is* liberal universalist in the relevant sense, then it will face the same Kantian problem of a gap between will and the requirements of universalist moral duty. For on this reading, the procedure will necessarily generate agreement on a universally valid conception of duties to refugees, and thus create a problem of motivation. On the other hand, if it is *not* a liberal universalist theory - and its procedure does not guarantee agreement on duties to refugees - then the problem of motivation and the relationship between morality and the will does not arise, since there is no prescribed conception of moral duties. But in this case, discourse ethics should be considered as irrelevant to the discussion. For it would not guarantee that the outcome of dialogue in a particular community will produce our desired first order conception of duties beyond borders.<sup>303</sup> In short, either discourse ethics is a purely formal procedure, immune from substantive moral commitments, and therefore does not count as a cognitivist theory; or it is a moral theory facing the same set of problems encountered by Kantian accounts. This issue will be tackled in section three on cognitivist theories.

In summary, the rationalist accounts considered fail to bridge the gap between will and morality in a convincing way. Reason in both its prudential and its theoretical sense is ill-equipped to motivate the will to respect the requirements of morality. We shall now turn to Humean theories and the “belief-desire” theory of motivation to see if it provides a more satisfactory account.

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<sup>303</sup> Such a conception may well be the likely conclusion of a discourse on these matters in liberal democracies. But the outcome would be contingent on the participants being from a liberal society, and hence the outcome would not be guaranteed by the dialogue *per se*, but because of the beliefs of people from this particular liberal culture. And if the theory accepts that the outcome is contingent in this sense, then it will not be cognitivist.

## 2. The Humean Alternative and Charvet's Interdependence thesis

If the rationalist theory is flawed, the obvious next step is to consider the traditional Humean rival. This section starts by considering Hume's account of moral motivation in 2.1., but finds that it overlooks the role of reason and intersubjective beliefs in motivation. In 2.2, I sketch an alternative account that avoids the problems of both rationalist and Humean accounts, through conceiving of reason and desires as interdependent. The account will be filled out and substantiated by the discussion of the psychology of morality in Chapter Six. But before moving on to this question, as I argue in 2.3, we need to clear up a further moral philosophical question: the implications of the interdependence thesis for the question of the source of moral norms, i.e. the question of cognitivism.

### 2.1 Hume and the belief-desire theory

In contrast to the rationalist account, belief-desire theorists reject the role of reason in motivation, asserting that action can only be motivated through desire. On this account, beliefs are merely passive representations of the world: they may supply information relevant to action, but cannot in themselves motivate action. Desires, on the other hand, are active and seek to change the world to conform to their aspirations, thus motivating action to bring about such change. As Hume writes: "Reason being cool and disengaged, is no motive to action, and directs only the impulse received from appetite or inclination, by showing us the means of attaining happiness or avoiding misery."<sup>304</sup> In Hume's view, people are motivated to be moral out of a specific type of desire or sentiment, sympathy. Not only is the existence of sympathy a necessary condition for moral motivation,

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<sup>304</sup> David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Moral*, ed. L. A. Selby-Bigge (Oxford and New York: Oxford University Press, 1975), p. 294. Strictly speaking, belief-desire theorists are split into two main camps: moral realists and subjectivists. Moral realists hold that the good exists independently of human desires and attitudes. Non-cognitivist realists are thus committed to the view that while moral requirements may be binding, our recognition of this will not necessarily motivate us to respect them. Motivation will be dependent on the presence of an independent desire. Non-cognitivist realism has significant problems in explaining motivation. If the existence (or not) of a motivating desire is quite independent of the recognition of moral duty, the question of whether or not one is motivated to respect the requirements of morality simply becomes a matter of chance. Hume's internalist theory, considered below, provides a more plausible account.

it defines what morality is. This sentiment is logically prior to ethics, in that the disposition to sympathy creates or defines moral duty. In other words, the desire is not simply a condition of motivating moral action, but it determines what is of value. On the basis of our desires, we project onto the world the property of value. Moral value is thus not independent of or prior to motivation, as on the rationalist view, but is simply a projection of desires.

One problem with this account is the role it ascribes to desire in determining what is of value. If desire creates value, then the property of being valuable is no more than an ascription by a particular subject. There is no independent quality of “valuableness” or “good” which can be said to be a property of the object, beyond the fact that an individual desires it. The property of value is simply a mental state of the subject, a projection of the individual’s desire onto objects. If this is the case, then the Humean theory will have problems accounting for the possibility of being mistaken about what is valuable. G. E. M. Anscombe uses the example of a person who desires to collect bits of bone three inches long for no reason other than that he thinks this is a desirable thing to do.<sup>305</sup> The collection of bits of bone is not instrumental to any other ends, but is perceived to be of intrinsic value to the individual. If desire creates value, then we would be committed to the view that collecting pieces of bone is a valuable activity, at least for this individual. But we would clearly want to question the value of collecting three-inch pieces of bone, even if we acknowledge the person’s desire to do so. In order to ascribe value, we would need to define some quality or objective of this activity independent of the individual’s desire that would justify its value. For example, we might argue that the pieces of bone had aesthetic value, or the act of collecting them was therapeutic for the individual. In the absence of such an additional reason or belief, the ascription of value by desire, as Charvet observes, renders the foundations of the value quite arbitrary.<sup>306</sup> More specifically, we would need to link desire to an independent conception of what it is rational or worthwhile to

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<sup>305</sup> G. E. M. Anscombe, *Intention* (Oxford: Blackwell, 1957), pp. 75-6.

<sup>306</sup> John Charvet, *The Idea of an Ethical Community* (Ithaca: Cornell University Press, 1995), p. 28.

desire. This may require a theory of needs or some teleological account of the conditions for well-being or human flourishing. This would provide a test of value independent of the individual's desire, thus avoiding the arbitrariness and subjectivism of the Humean account. But it would also mean rejecting the purely desire-based account: for if desires could be shown to be irrational (according to the relevant conception of rationality/the good), then they would not be the sole determinants of value in the world.

The second glaring weakness of the Humean account is its inability to account for the role of reason and belief in modifying or eliminating desire. To return to the case of the bone collector, we might want to influence his desire by demonstrating that this activity would not further his interests or well-being. Having determined that his ascription of value to this activity was irrational, we might attempt to make him understand that he was mistaken about the value of collecting pieces of bone. And it would not be unreasonable to expect our arguments to influence the person's desire to collect three-inch pieces of bone. By supplying reasoned argument or additional information, in this case about the contribution of this collection to the individual's well-being, we might expect to be able to eliminate or at least modify the person's desire to collect pieces of bone. If this is a possibility, then the role of belief would go beyond that of simply guiding pre-existing or intrinsic desires. Reason and belief about what is valuable would be capable of modifying desires. On this account, beliefs and reason would provide criteria independent of desires which would at least in part determine what is of value. These beliefs and reason would also have a role in influencing desires. For if our beliefs about what is valuable change, so too will our desires. It follows that if beliefs and reason have a role in ascribing value, they must also influence desires. This would depart from the Humean account, which limits the role of reason to that of affecting beliefs about how best to *realise* our desires. On this alternative conception, reason would be capable of affecting both instrumental *and* intrinsic desires.

These two problems with the Humean account - its reliance on subjective states and its full-scale denial of any role to reason - in part account for the

persistence of rationalist accounts. The pure Humean account implies a retreat into a form of subjectivism or emotivism, according to which neither reason, nor intersubjective beliefs, play any role in modifying subjective desires.<sup>307</sup> Now while this form of subjectivism is plainly unacceptable, neither do we want to return to the rationalist theories criticised in section one. What is needed is a theory of motivation that conceives of desires and reason as interdependent, a conception that can be found in the work of John Charvet.

## 2.2 *The interdependence of reason and desire*

Charvet builds on both of these criticisms of what he terms the "desire-fulfilment" theory, developing a theory of motivation that characterises beliefs and desire as interdependent. He criticises both rationalism and desire-fulfilment theory for conceiving of desire and reason as independent of one other. Belief-desire theorists, as we have seen, deny the role of reason in shaping desires in any more than an instrumental sense. While rationalists deny the role of desire in motivating moral action. By insisting on this separation of belief and desire in moral action, both rationalists and Humeans render the interdependence of the two in rational action unintelligible.<sup>308</sup> Charvet concedes the Humean argument to a point, agreeing that motivation requires the existence of a desire, and that beliefs play a role in guiding desires. But he departs from the belief-desire theory in attributing a more fundamental influence to beliefs: the role of these beliefs is not limited to that of providing information to help satisfy pre-existing desires. Beliefs play a more formative role in the development and shaping of desires from their very inception. Indeed, desire *arises* in the individual "as a specific desire directed onto some object."<sup>309</sup> Desire can only operate under the influence of beliefs. In turn, the belief system does not operate in isolation from desires,

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<sup>307</sup> For a discussion of this point, see Barry Stroud, *Hume* (London and New York: Routledge, 1988), pp. 180-4; and Annette Baier, *A Progress of Sentiments: Reflections on Hume's Treatise* (Cambridge, Mass and London: Harvard University Press, 1991), pp. 180-1 - although both defend Hume against the accusation of emotivism.

<sup>308</sup> Charvet, *The Idea of an Ethical Community* (*op. cit.*), p. 22.

<sup>309</sup> *Ibid.*, p. 29.

but is concerned with “the progress and satisfaction of its owner’s desires.”<sup>310</sup> The two systems are therefore distinct but interdependent. As Charvet writes, “[t]he impulsive force must be given a specific and directed form by belief and the activity of the belief must be guided by desire.”<sup>311</sup>

The claim here is that while the presence of a desire is indeed necessary for motivation, such desires are not fixed, but may be modified by both beliefs and reason. Beliefs and reason are therefore not simply instrumental in satisfying desires, but themselves influence and shape desires. Desires are *mediated* by the individual’s cognitive structure and beliefs about the world.

Now it might be objected that this account offers no basic improvement on the Humean account. If motivation requires the existence of desire, then as we saw in section 1.3, it is also the case that the individual must have a desire to adopt certain beliefs and to exercise reason in the first place. If this is true, then the beliefs and reason that modify desires are themselves motivated by desire. And in this case, desire can only be modified if the agent has a pre-existing desire to do so, in which case reason and beliefs are merely instrumental to realising desires.

This is true in a superficial sense, but it is also misleading in that it overlooks the diversity and complexity of the types of desire in question. Desires are not necessarily egoistic, and insofar as they have as their end the welfare of others or of society at large, they may be subject to modification by changing beliefs or engaging in reasoning about what is best for others. Even prudential self-interest, for example the desire to be rich all of one’s life, may lead one to

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<sup>310</sup> *Ibid.*, p. 29

<sup>311</sup> *Ibid.*, p.29-30. It should be noted that on Charvet's account, desires are themselves generated by the basic needs and drives of the organism, specifically its need for survival, reproduction and a more vague need to flourish in a particular environment. The interdependent systems of belief and desires initially arise as a function of the need to satisfy these drives. As I shall argue below, on my theory the two desires that are most relevant for explaining moral motivation - the desire for affirmation and the empathic disposition - must also be seen as generated by the basic organic needs of human-beings. Both desires can be understood as derived from the mutual dependence of human-beings on one another in order to survive, and they thus presuppose certain innate human needs (although in my argument the needs that generate moral motivation are relational

modify existing desires through reason and beliefs about what is required to realise this desire. Deliberation on the best course for ensuring one is rich in old age may lead one to modify a desire to spend this week's salary on a holiday. In cases such as this, the more fundamental interest in promoting the welfare of others or of oneself in the long term can generate motivation to subject at least some of one's desires to rational scrutiny. And the outcome of this deliberation may result in the modification of one's desires. Thus reason will have changed desires and thereby affected what one will be motivated to do. But it will still be true to say that it is the *desire* that motivated the individual to act.

What this of course means is that we must distinguish between two main categories of desire.<sup>312</sup> As we have seen, some desires are abstract and general, for example the desire to promote the welfare of one's society, or the desire to be respected by others. These desires may generate additional, more specific desires which are understood by the agent to be instrumental to realising general desires. For example, the desire for respect may generate a desire to have one's work praised, or to be viewed as a good father. While these derivative desires may be modified by beliefs about how to gain respect in different contexts, the general desire is likely to remain more or less fixed.

In the case of moral motivation, two basic desires seem to be especially significant. These will be developed at length in Chapter Six, so I shall only provide a quick sketch here. First there is a desire for recognition or affirmation, which under normal circumstances will motivate the individual to internalise the intersubjective codes to which she is exposed.<sup>313</sup> Reason helps the individual to establish a link between this desire for affirmation and the required moral action.

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rather than individualistic).

<sup>312</sup> Nagel introduces a similar distinction, i.e. between motivated and unmotivated desires. However, he draws a quite different conclusion. Nagel claims that where a desire has been motivated through rational deliberation, the action motivated by this "motivated desire" is an action motivated by reason. He concludes that reason can motivate action, without the presence of an "unmotivated desire". See *The Possibility of Altruism* (*op. cit.*), p. 32. However, as Charvet argues, his argument involves the implausible claim that reason can influence desires without any desire for it to do so. See *The Idea of an Ethical Community* (*op. cit.*), p. 25.

<sup>313</sup> This is not to say that the individual necessarily internalises these norms uncritically, or that she might not rebel against them. I shall return to these questions in Chapter Seven, section three.

An agent motivated by this desire will engage in rational deliberation, reasoning from premises about the moral values she has internalised, to conclusions about what she should do. The second type of desire is the disposition to empathy, which motivates the individual to be concerned about the well-being of others.<sup>314</sup> This disposition may be mediated through reason, which can indicate how best to act on this general concern, and help to channel empathy into more sophisticated forms of sympathetic identification. In addition, the disposition to empathy may also be mediated by intersubjective beliefs about how best to channel empathy, whether it be through charity work, political activism, prayer, or visiting a sick friend.

The relationship between these two types of desire, and how they are mediated by reason and beliefs, will be elaborated in the next chapter. For the purposes of the present discussion, what is important to note is the role of reason in motivation. Reason is vital for specifying how to realise basic desires, and may also modify derivative desires. It can do so directly, if rational deliberation leads the agent to modify her derivative desires. Or it can do so indirectly, by modifying beliefs that in turn modify such desires.

### *2.3 Implications of the interdependence thesis for cognitivism*

The interdependence thesis clearly denies reason the motivational force that it is attributed by rationalist theories. The function of reason is relegated to that of mediating desires and beliefs, so that while it may influence desires, it cannot in itself motivate action. Now while reason on this account has a less important role than in the rationalist account, it is nonetheless an important ingredient of practical deliberation, and thus of moral action. It may even still be claimed that reason plays a crucial part in defining morality. In other words, one could accept the interdependence thesis while still defending a cognitivist account

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<sup>314</sup> I am terming this disposition a “desire”, although it might more accurately be defined as an “affective state”. The point is that it is an affective state that usually involves a desire to bring about some sort of change in the external world, and is thus equivalent to a desire in its motivational force. This will become clearer in the more detailed psychological discussion in the next chapter.



of morality as valid for all rational agents. Let us consider how such a cognitivist account could be compatible with a rejection of rationalism.

The account outlined in 2.2 argued that both reason and beliefs may mediate desires and thus play a role in moral motivation. The source of moral motivation, it was argued, should be understood as a set of general and abstract basic desires, which are then given more precise direction and specification by beliefs and reason. Beliefs and reason show how these desires may be fulfilled, and in turn help create and modify derivative desires. Beliefs in this context could include beliefs about the natural and social world (facts), as well as *moral* beliefs (norms).

Now the first thing to note is that the question of the *source* of these moral beliefs was left open. In fact, they may be understood as deriving from two possible sources. Moral beliefs may either be held to be universally valid claims, or they may consist of values that are particular to a given group of people. Secondly, it was not clearly specified in the account above exactly how *reason* could influence these beliefs. Again, there are two main possibilities. If one accepts that moral beliefs are universally valid claims, then one is likely to be committed to the view that these moral beliefs are derived from reason. This view, which I have termed cognitivism, would hold that reason defines some or all moral duties. Alternatively, if one holds that moral beliefs are derived from shared values, then reason is likely to have a less significant role in shaping moral beliefs, for example it may be simply useful for ironing out inconsistencies between different values, or demonstrating their practical unfeasibility.<sup>315</sup> In short, the interdependence thesis seems to leave open the matter of whether moral beliefs are universally valid or derived from shared values.<sup>316</sup>

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<sup>315</sup> In this case it would have a function similar to Rawls' reflective equilibrium. See the Introduction to this thesis, section one.

<sup>316</sup> Of course, if the former is the case, it is still open whether such beliefs are derived from a universally shared capacity for reason, or some other source (e.g. divine revelation, or intuition). I shall focus on the reason-based argument, which I consider to be the most plausible account, and the only serious rival to my non-rationalist account.

The answer to this question is important to the present discussion for two reasons. Firstly and most obviously, the question of the source of moral norms will have a bearing on the foundational status of liberal universalism. If we reject cognitivism, this will imply that the claims of liberal universalism are not universally valid, but specific to particular historical-cultural contexts. This is of course a central issue for any moral theory. But at the same time, it is not directly relevant to the problem of motivation to perform duties to non-nationals, which was after all the starting-point for this analysis. The foundational status of moral norms is only relevant insofar as it affects the question of motivation.

However, the question of cognitivism does have a more direct bearing on the question of motivation in a second sense. As I mentioned in 1.1, there are problems with combining a non-rationalist account of motivation with a cognitivist theory of morality. It implies driving a wedge between the sources of moral motivation and belief. Thus while it may be held that moral duties are defined through reason, the motivation to respect the requirements of morality would be contingent on the existence of an independent disposition - a desire for affirmation, disposition to empathy, and so on. Now while such an externalist position is not necessarily untenable, it does seem to be counter-intuitive, and will create problems explaining how a commitment to moral norms can generate motivation to comply with these norms. In fact, my non-rationalist account will avoid this externalist position. In the next section I shall reject the cognitivist account for a number of different reasons, thus placing my account firmly in the internalist camp.

In summary, while I have outlined a non-rationalist account of motivation based on the interdependence thesis, we still need to clarify the issue of the *sources* of moral norms. For the question of whether these norms are intersubjective (and derived from shared beliefs) or universally valid (and derived from reason) will have important implications for the relationship between moral norms and motivation.

### 3. The Role of Reason in Defining Morality

The cognitivist claims that it is through reason that the individual comes to recognise her moral duty. The human capacity for reason enables her to derive certain universally valid principles for guiding action. By contrast, the non-cognitivist holds that reason plays a less decisive role in defining morality. Reason merely modifies beliefs and desires through applying certain logical rules of coherence, consistency, and so on. Both these positions, it has been argued, are in principle compatible with the interdependence thesis, although combining the interdependence thesis with a cognitivist account would commit one to an externalist view of the relationship between morality and motivation.

This section will examine whether the cognitivist position is tenable. It will consider two different types of account of the role of reason in defining morality. According to the first, moral rules are established through some form of reasoning from the agent's own wants or interests to the recognition of a duty to respect similar wants in all rational beings. This broadly Kantian account should be distinguished from the second account, offered by discourse ethics, which derives universally moral rules from the structure of language, or "presuppositions of argumentation". The section will argue that in the case of both Kantian and discourse ethics accounts, the derivation of moral rules also requires the existence of certain beliefs about the value of persons. These beliefs cannot be derived purely from reason, but are contingent on particular intersubjective values.

#### 3.1 *Attempts to define morality through reason: the Kantian route*

One way in which theorists have attempted to derive morality from reason is through reasoning from the presuppositions of rational action to a principle of the universal right to freedom. In order to derive moral norms in this way, the agent would have to draw a number of inferences about moral duty, based on a conception of herself as a rational agent. Bernard Williams suggests a version of

this form of reasoning, involving three steps.<sup>317</sup> First, the rational agent recognises her interest in freedom, and thus her interest in the absence of constraints on this freedom. Second, she claims a right to the conditions necessary for exercising this freedom. And third, she accepts the same right of other individuals, grounded in their similar interest in freedom. If this account is correct, then all rational agents are committed to accepting the principle of an equal right of humans to freedom. And this principle is derived from a process of reasoning from subjective interest to the obligation to respect the right of all rational beings to freedom. In other words, the moral duty is derived simply from the agent's recognition of her interest in freedom, qua rational being. All that is required to get from this premise of oneself as interested in freedom to the conclusion that there is a universal right to freedom is the recognition of others as relevantly similar, and rational deliberation will generate this practical conclusion.

As Williams argues, however, the steps from premise to conclusion require more than rational deliberation. While the first and third steps seem to be sound, it is the second step that is more problematic. The first step, it should be recalled, involved the agent recognising her interest in freedom, and thus in being free from constraint. The existence of such an interest seems to be plausible as a premise. And the third step involved a universalisation of the right to freedom. If the interest in freedom qua rational being grounds a right to freedom, then it follows that all rational beings with a similar interest should have a similar right. What grounds a right for one person must ground a right for others.<sup>318</sup> The problem arises with the second step: the inference from the fact of having an interest, to the claim that others should respect one's right to having this interest realised.

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<sup>317</sup> Williams points out that this version is simpler than Kant's account, avoiding many of the difficulties specific to Kant's account. He suggests that it is more akin to contemporary Kantian accounts - particularly Alan Gewirth's account in his *Reason and Morality* (Chicago: University of Chicago Press, 1978). See Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana, 1985), p. 55. But it also highlights the basic problem with the claim of Kantian accounts to derive moral norms from reason.

<sup>318</sup> It should be recalled that this interest is not grounded in the fact of its being *my* interest. In other words, it is not an "agent-relative" reason, but an objective description of myself *as one who wants freedom*.

The difficulty here is not so much that considerations like these are not used to ground rights in liberal theory. The point is that the inference from interest to right cannot be made simply through rational deliberation. Rather, it involves making a normative claim about the value of freedom. The simple fact of not wanting someone else to interfere with my freedom does not in itself generate any prescription about rights and duties - as Williams puts it, it is not "enough to lead each agent into morality."<sup>319</sup> There is no reason why others should recognise my freedom as a good, merely because I desire it. I can only conclude that they are morally bound to do so on the assumption that they should be committed to a conception of the self as worthy of freedom. In this case, I will indeed be committed to respecting similar characteristics in others, and thus recognising the rights of all rational beings. But again, this rests on a substantive moral belief about the value of freedom.<sup>320</sup>

To illustrate this point, one could consider other sorts of characteristics apart from a capacity for autonomy that might also be deemed morally relevant, and thus ground alternative universal norms. For example, some cultures might value bravery or moral virtue, others humility before God, or deference to one's elders in all practical decisions. A more familiar example might be a society that values physical and economic security above freedom. Now in these cases, rational deliberation from subjective interests to universal norms would establish rather different moral obligations. For example, it might justify norms forbidding sexual freedom, or a hierarchical conception of rights based on age. Alternatively, in the case of the society that values security, members of this community might conclude through rational deliberation that there should be substantial constraints on freedom in order to promote the goal of national security or to increase national prosperity. It is quite plausible that the agent would consider capacities or interests such as these to be the morally relevant characteristic of human-beings, and if so it would be rational to universalise these beliefs. The rationality that allows one to reason from premises to conclusions is

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<sup>319</sup> Williams, *Ethics and the Limits of Philosophy* (*op. cit.*), p. 64.

no more than a set of formal rules, which only derive substantive content from moral premises. I am not denying that many, including myself, are committed to a conception of the individual as a free and rational agent. But the point is that this commitment is not derived from rational deliberation. It is premised on a substantive belief about the morally relevant features of human-beings.

There is one alternative route for reasoning from subjective interest to rights without necessarily being committed to a view of persons as free. One could justify individual rights solely from considerations of mutual interest. In this case, the subject would not have to assume that her interest in freedom was morally worthy of respect by others, but simply posit that it would be in the mutual advantage of all to establish a system of reciprocal rights and duties to maximise the interests of all. This would of course require the empirical assumption that all participants in this contract did in fact have an interest in freedom, but it would not require a substantive normative commitment to the value of such freedom. Needless to say, this would lead us back to the Hobbesian conception of justice as mutual advantage, with its simplistic psychological assumptions and morally unacceptable terms of justice.<sup>321</sup>

In summary, the attempt to derive moral norms through reasoning from subjective maxims to universal norms requires an additional commitment to certain morally relevant features of human-beings. Since this substantive value could not be derived from reason itself, its source must lie in a commitment to a conception of the self as rational and free. And it is precisely this type of discussion over the morally relevant features of the self that is the object of first order debate between different moral systems. The alternative is to deny commitment to a particular conception of the self and return to the contingencies of a system of rules based on overlapping self-interest. Since neither account is satisfactory, we shall now turn to the second main variety of cognitivism.

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<sup>320</sup> Alasdair MacIntyre advances a similar argument against Alan Gewirth's derivation of rights from the agent's desire for freedom. See *After Virtue: A Study in Moral Theory* (London: Duckworth, 1997), pp. 66-7.

### 3.2 *Cognitivism and discourse ethics*

Discourse ethics attempts to derive universally valid moral principles – or at least one such moral principle – from the structure of language. The universal validity of norms is established through a procedure that is presupposed in the rules of argumentation, rather than through a process of reasoning from subjective interests to universal maxims. The relationship between the validity of norms and discourse can be understood at two levels. First, participation in discourse presupposes that the agent accepts certain rules of argumentation, such as logical rules of consistency, the sincerity of speakers, equal rights of all to participate in discourse, question any assertion, and so on.<sup>322</sup> From these presuppositions, Habermas argues that one can derive a principle of universalisation (U), to which all participants of argumentation are implicitly committed. As he writes,

Every person who accepts the universal and necessary communicative presuppositions of argumentative speech and who knows what it means to justify a norm of action implicitly presupposes as valid the principle of universalization...<sup>323</sup>

This principle (U) is a principle of argumentation, which grounds the universal validity of norms. For a norm to be universally valid, it must fulfil the condition established in (U), as follows:

(U) *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and the consequences are preferred to those of known alternative possibilities for regulation).<sup>324</sup>

The principle (U) thus signifies a second level at which discourse is related to validity claims. Not only does discourse imply acceptance of (U), but norms that are agreed under the conditions stipulated in (U) are universally valid. The two levels of universal validity correspond to second order and first order moral principles. (U) is a second order principle which grounds the validity of

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<sup>321</sup> For criticisms of this account, see Chapter Four, section two of the thesis.

<sup>322</sup> See Jürgen Habermas, “Discourse Ethics: Notes on a Program of Philosophical Justification”, in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), pp. 87-9.

<sup>323</sup> *Ibid*, p. 87.

moral norms. It establishes a universally valid *procedure* for agreeing substantive first order moral rules, a procedure which is supposedly free of substantive first order commitments. (U) is derived from the structure of language, and is thus neutral between different substantive norms. By contrast, the first order norms that are agreed through this procedure derive their validity from rational agreement between participants. The outcome of particular discourses is not determined in advance, but will vary depending on the particular social matrix of participants. Habermas does not see the task of the moral theorist as specifying substantive moral rules for societies, as, for example, Rawls does when he claims that his contractors will accept his two principles of justice. Habermas' principle (U) does not in itself generate any rights beyond the freedom to participate in discourse. Any additional rights must be justified through discourse.<sup>325</sup> Nonetheless, the outcome of such discourse is understood to have validity *qua* conforming with (U).

This of course means that discourse must meet a number of conditions, as set out in the hypothetical "ideal speech situation" (ISS). The ISS is characterised by the even distribution of chances to perform various speech acts. This prevents any constraints on argumentative reasoning or participation. Moreover, the participants are motivated to arrive at consensus through the search for *valid* norms, and are thus open to be convinced by the force of the better argument. Consensus is rationally motivated only if it is achieved through the participants' free acceptance of arguments on the grounds of their rational cogency. Habermas does not claim that the ISS is often or perhaps even ever attained in practice. But these conditions are nonetheless presupposed when we engage in discourse, and it is precisely deviation from the ISS that gives rise to doubts about the validity of consensus.<sup>326</sup> Even in cultures where such principles of discourse do not seem to feature at all in the derivation of moral norms, Habermas claims that they are nonetheless still implicitly embedded in speech.<sup>327</sup>

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<sup>324</sup> *Ibid.*, p. 65.

<sup>325</sup> *Ibid.*, p. 86.

<sup>326</sup> On this point, see Thomas MacCarthy, *The Critical Theory of Jürgen Habermas* (Cambridge: Polity Press, 1984), p. 309.

<sup>327</sup> *Ibid.*, pp. 324-5.



*Prima facie*, Habermas' procedure appears to be fairly similar to the Scanlonian formulation of "reasonable agreement" discussed in Chapter Four. Indeed, Habermas acknowledges that Scanlon's formulation is a step in the right direction, avoiding the Rawlsian split between rationality and moral motivation.<sup>328</sup> Scanlon's contractors are motivated to reach rational agreement by the desire to justify their actions to others, or what Barry terms the desire for reasonable agreement. Nonetheless, Habermas argues that the Scanlonian approach is still committed to a contractarian assumption of individual participants engaging in monological deliberation. This implies a conception of the self as "unencumbered" and reason as something exercised by isolated individuals, outside of social interaction. Habermas prefers a conception of the self as intersubjectively mediated, and rational deliberation as a dialogical exercise, through which participants revise or clarify perceptions of their interests by subjecting them to rational criticism from others.<sup>329</sup> Engaging in discourse also has an important practical function of avoiding the (possibly unintentional) distortion of others' interests. Discourse prevents participants from making inaccurate assessments of the interests of others, a problem that is encountered in monological interpretations of the Categorical Imperative.

In short, discourse ethics claims to address the weaknesses of the Kantian account, while retaining a cognitivist commitment to universally valid moral norms. It grounds its commitment to a principle of universalisation in the structure of language, rather than a transcendental account of the morally relevant capacities of all rational beings. And it justifies substantive moral norms through a dialogical process which rejects the individualist assumptions of most liberal accounts of the self, and guards against the potentially distorting tendencies of the Categorical Imperative.

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<sup>328</sup> Hence Habermas characterises his argument as a "transcendental justification". *Ibid.*, p. 76.

<sup>329</sup> Habermas, "Discourse Ethics" (*op. cit.*), pp. 66-7.

### 3.3 Critique of Habermas' justification of (U)

There have been many criticisms levelled at Habermas' discourse ethics, but for our purposes the central concern is his derivation of (U) from the structure of language.<sup>330</sup> Habermas' claims about the presuppositions of argumentation are certainly plausible as an account of the rules embedded in speech acts. It does indeed seem to be the case that when we engage in discourse we implicitly accept a number of rules that have normative implications for our behaviour and intentions, the sorts of arguments that are acceptable, and the consideration we should give to other arguments. However, these norms should be understood as norms constitutive of the practice of discourse, rather than moral norms.

Now it may be true, as Habermas points out, that argumentation is such an inescapable feature of human interaction that this practice is not something we can choose whether or not to engage in. Since language is an all-pervasive, indeed a constitutive element of social interaction, we cannot opt in or out of commitment to the rules embedded in language depending on whether we choose to speak. There is simply no alternative mode of rational interaction. In this sense, the commitment to the presuppositions of argumentation is inescapable not only to those who have decided to engage in argumentation, but is inescapable for any rational agent interacting with others. Nonetheless, the point is that these rules are not in themselves moral. They may prescribe norms for discourse, but there is no in-built relation between these rules of discourse and moral obligation. If I violate these norms of speech, then I am perhaps being irrational but I am not behaving in an immoral fashion. I could indeed be accused of acting immorally if I preclude black people from participating in discussion on rules of justice. But the immoral nature of my act derives from my disrespect of black people, not from my failure to act in accordance with rules of argumentation. While there

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<sup>330</sup> For a selection of critiques, see MacCarthy, *The Critical Theory (op. cit.)*, especially pp. 272-328; Steven Lukes, "Of Gods and Demons: Habermas and Practical Reason", in *Habermas: Critical Debates*, ed. John B. Thompson and David Held (London: Macmillan, 1982), pp. 134-148; J. M. Bernstein, *Recovering Ethical Life: Jürgen Habermas and the Future of Critical Theory* (London and New York: Routledge, 1995), especially pp. 38-135; Axel Honneth and Hans Joas, eds., *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action* (Cambridge: Polity, 1991).

may, in cases like these, be a coincidence between violation of rules of argumentation and moral norms, the coincidence is contingent.

We can clarify this gap between norms of discourse and moral norms through considering the way in which they diverge in their prescriptions. The gap is especially evident as concerns the relation between moral validity and the requirements of equal respect for participants of discourse. We saw that the aim of discourse as presupposed in any serious discussion was to find true, or universally valid norms. Now it does not follow from this objective of discourse that we should be committed to a rule of argumentation that guarantees equal rights of participation. What *does* seem to follow from the objective of truth is that we should subject our convictions to scrutiny from all possible viewpoints and arguments. But this does not imply a requirement to engage in argumentation with all potential participants. As Wellmer writes, “the obligation to enter into genuine discourse can therefore only stretch as far as the obligation to achieve a genuine and universal rational consensus, and it is therefore also not identical in meaning with universally conceived obligations to cooperation.”<sup>331</sup> In other words, the presuppositions of argumentation are not sufficient to produce moral norms of equal participation. The aim of finding true norms may commit us to consider all possible rational objections, but it does not generate any commitments about with whom, or when, or on what subjects, I ought to engage in discourse.<sup>332</sup> Again, it is worth quoting Wellmer, who argues that norms of rationality do not in themselves have any moral content.

Obligations to rationality refer to the acknowledgement of arguments, moral obligations to the acknowledgement of persons... Overstating the point a little, we might say that obligations to rationality are concerned with arguments regardless of who voices them, whereas moral obligations are concerned with people regardless of

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<sup>331</sup> Wellmer, "Ethics and Dialogue" (*op. cit.*), p. 187.

<sup>332</sup> Admittedly, the rules of argumentation may well generate instrumental grounds for ensuring equal participation. Equal participation may be the best or only means of ensuring that all rational objections are considered. But again, the coincidence between moral norms and rules of discourse is merely contingent. The rules of equal participation would not in this case be embedded in the presuppositions of argumentation, but would be justified on instrumental grounds that were only contingently related to the structure of argumentation.

their arguments.<sup>333</sup>

Now the only way Habermas can bridge this gap between presuppositions of argumentation and equal participation is through a rather unusual conception of moral validity. We saw that if the goal of truth is a presupposition of argumentation, then it generates a requirement to consider all rational objections, but not necessarily to accord an equal right of participation in discourse. Habermas can, however, claim to derive such a moral norm from the goal of truth if he defines truth as consensus. In other words, if the truth of moral norms is grounded in their being the object of rational consensus, then he can claim that the search for truth generates a requirement to ensure the agreement of all participants. Truth, then, would be established through a process that necessitates the participation of all rational beings, hence the search for truth would generate rules of equal participation.

It should be noted that this line of argument involves shifting the level of justification from the claim that (U) is presupposed in argumentation, to the rather different claim that valid norms are those agreed on under conditions set out in (U). To understand this shift, we should recall the distinction made towards the beginning of this section between two senses in which discourse is related to claims of validity. First, (U) was valid as a meta-principle, presupposed in the structure of communication. As we have seen, Habermas cannot directly derive (U) from these presuppositions, except on the assumption of a rather unusual theory of truth as rational consensus. Second, substantive moral norms agreed to in conditions stipulated in (U) were defined as universally valid. It is this second grounding of validity in the fact of rational agreement that concerns us here. Given that Habermas' justification of (U) relies on a consensus theory of truth its defence must now rest on the plausibility of the second claim. He must justify the validity of substantive norms through the fact that they generate rational consensus, i.e. a consensus theory of truth.

Further examination of the consensus theory of truth, however, unearths

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<sup>333</sup> Wellmer, "Ethics and Dialogue" (*op. cit.*), p. 185.

more problems. The consensus theory claims that the truth of moral norms is dependent on their securing the rational agreement of all affected by their implementation. The role of rational consensus is not simply to prevent coercive imposition of norms or guarantee the compliance of subjects. If this were the case, then (U) would simply be a principle of legitimation, guaranteeing the agreement and cooperation of participants in discourse. Negotiated agreements or compromise would be acceptable forms of consensus.<sup>334</sup> In Habermas' theory, consensus plays a more fundamental role, grounding the universal validity or truth of norms. It cannot be based on compromise, because that would imply that participants were accepting a judgement or norm that they did not believe to be valid, but was simply the best available basis for reaching consensus. The consensus theory of truth therefore has to imply the possibility of real consensus on validity claims.

Part of the attraction of the consensus theory of truth seems to be based on an apparent parallel between the role of rational consensus in scientific knowledge and in moral norms. Habermas argues that consensus plays a similar justificatory role in moral questions as rational agreement does in science. There is, however, a problem with this supposed symmetry between truth claims in scientific knowledge and moral norms. Rational agreement plays a far more significant role in grounding truth claims in science than it does in the moral domain. In the scientific community, we may suppose that consensus on truth claims is based on common acceptance of detailed criteria for what constitutes knowledge. A large part of these criteria will be rules of rationality, such as consistency, coherence and the provision of relevant evidence. As Bubner writes, "rationality is one of the inalienable defining characteristics of knowledge", indeed knowledge is not conceivable "without certain elements of rationality

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<sup>334</sup> And this is indeed the function of agreement in many social contract theories, as we saw in Chapters Four and Five. Nagel and Rawls (at least in his later work) seem to accord just such a political legitimising role to agreement - it serves as a procedure to guard against power distortions and to avoid conflict. Nagel in particular distinguishes between what he considers to be moral terms, and those which will secure the rational consensus of all contractors. See his *Equality and Partiality* (*op. cit.*), especially chapters three and four.

which must be guaranteed in the structure of all knowledge.”<sup>335</sup> But the same does not hold of moral judgements. In the moral domain, there is far less agreement on the criteria for what constitutes a valid judgement. Reason does play a role in ironing out inconsistencies, clarifying reasons for beliefs and ensuring general coherence. But these functions of reason will in many cases not affect the fundamental moral commitments of individuals or communities. And they will certainly not guarantee consensus on moral norms. Discourse may influence the individual’s moral beliefs by forcing her to justify and render coherent her judgements, through exposing them to rational criticism. Engaging in discourse with others with different interests and beliefs may also convince her to modify some of her judgements. But the outcome may well be a clarification of differences in moral judgement, rather than a consensus. There is no good reason - apart from a gut preference for simplicity in moral theory - to suppose that normatively neutral rules of reason will produce a consensus of convictions. In other words, discourse will not necessarily eliminate or even diminish moral conflict.

Now if one accepts the possibility of perennial pluralism in moral norms, then the consensus theory of truth must be rejected in favour of one of two alternatives. Firstly, one could hold that there are universal moral truths regardless of whether they generate consensus or not. For example, one could hold that universal moral truth exists independently of rational convictions, for example as divine law. This route is clearly unacceptable to Habermas. The second alternative would be to abandon the claim of the universal validity of moral judgements derived from rational consensus (although not necessarily the validity of (U)). In this case, one could still defend the value of rational consensus, but as a principle of legitimation rather than as a ground for truth claims. This is the route adopted by Rawls when he characterises agreement on his conception of justice as “political, not metaphysical”.<sup>336</sup> But Habermas

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<sup>335</sup> Rudiger Bubner, “Habermas' Concept of Critical Theory,” in *Habermas: Critical Debates*, ed. John B. Thompson and David Held (London: Macmillan, 1982), p. 55.

<sup>336</sup> John Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs*, 14:3 (1985), pp. 223-51.

refuses to take this route, defending a conception of moral validity grounded in the fact of rational consensus. On this account, the persistence of conflict between different moral convictions must indicate a failure of rational argument, or else imply that the issues under discussion are not truly moral questions. Lack of consensus on questions of justice must be attributed to the non-ideal conditions of speech or the subject matter of speech, rather than to a divergence of moral judgements.

The problem for Habermas seems to stem from his attempt to combine a principle of legitimation with a principle of universal validity. He seems to be basing his notion of consensus on a characteristically liberal intuition that only rationally agreed principles are morally legitimate. But the notion of the moral value of consensus in the liberal tradition, as we have seen, is firmly rooted in a conception of individuals as free and equal. It is this substantive commitment to freedom that grounds the validity of rational consensus. Rationally agreed norms are not valid in the sense of expressing true or universally valid judgements; but they are valid in the sense of guaranteeing the individual's right to rational scrutiny and uncoerced consent to the principles governing social interaction. This notion of consensus grounded in a commitment to individual liberty allows for the possibility of conflict over substantive moral principles - indeed many liberal theories of justice are seen as a response to the problem of conflict between different moral judgements. But failure to reach consensus on basic moral convictions does not undermine the value of agreement achieved through negotiated compromise. The point about agreement on the liberal account is not that it grounds truth but that it ensures uncoerced compliance, and hence political legitimacy.

Habermas' mistake in conflating this principle of legitimacy with a theory of universal moral validity can perhaps be understood if we consider his justification of the second order principle (U). This principle claims universal validity in virtue of the fact that it is presupposed in argumentation. But the validity of (U) - if it is to be accepted - should not be confused with the validity of norms generated through (U). As we have seen, these latter are best understood

as valid in the sense of being legitimate, rather than in the sense of being expressive of moral truth. Yet if we reject the consensus theory of truth, then there is no longer any good reason to accept (U) as universally valid. For if (U) cannot be justified on the grounds that norms agreed through the procedure specified in (U) are universally valid, then it must be justified on the grounds that it follows from the rules of argumentation, including the goal of truth. As we saw, the justification of this derivation was dependent on a conception of truth as rational consensus. Only on this understanding of truth could the goal of seeking true norms be achieved through the rule of equal participation in speech. And once we reject the consensus theory of truth, (U) cannot be derived from the presuppositions of argumentation.

Neither language, nor rational consensus, can in themselves guarantee the derivation of universally valid moral norms. In both justifications of validity - for the second order principle (U) and for the first order norms generating rational consensus - Habermas' argument rests on a commitment to the value of persons as free and equal.

#### **4. Reason in Morality and Motivation**

Having rejected rationalist theories of motivation in the first part of the chapter, it is perhaps not surprising that we have also found the cognitivist accounts discussed to be untenable. In the case of rationalism, the criticisms centred on the question of how reason could motivate action without the presence of a desire. Kantian and neo-Kantian accounts all faced a version of this problem, leading us to consider the traditional Humean alternative. This too was found wanting, and the argument defended instead a theory of the interdependence of beliefs, reason and desire in motivation. The rejection of rationalism in principle left open the question of the role of reason in defining morality. A proponent of the interdependence thesis could either adopt a cognitivist account (although this would commit her to externalism), or she could deny that moral duty is defined through reason. The third part of the chapter considered two main cognitivist theories, one constructed along Kantian lines, the second the discourse ethics of



Habermas. While the structure of my critique was different for each, the thrust of the argument was similar in both cases: neither reason, nor the structure of language, can in themselves establish moral norms. Any derivation of moral norms is also dependent on commitment to more substantive conceptions of the good. The criticism was levelled against two types of cognitivism, but I believe it would apply to any such account.

It should be stressed that the rejection of moral cognitivism does not imply that there is no role for reason in moral motivation. As we saw, rational deliberation can modify desires and beliefs, thus helping shape conceptions of duty and indirectly influencing motivation. We shall also see in the next chapter that the individual's cognitive capacities play an important part in moral development, through mediating both desires and beliefs of the individual to enable her to internalise intersubjective codes and deliberate on her own convictions. But reason - at least on this very narrow conception - plays an essentially neutral role in sorting through the coherence and consistency of beliefs, and helping to direct desires.

Finally, we should briefly consider the broader implications of this chapter's conclusion for our conception of duties to refugees. *Prima facie*, the non-rationalist, non-cognitivist account would not seem to be a promising starting-point for constructing a conception of duties to refugees. We should recall, however, that universalist liberal theories were unable to define universal duties in such a way as to account for the significance of particular ties, or to motivate compliance with duties. This chapter has helped clarify the source of this problem of motivation, through critically examining rationalist theories of motivation. The proposed alternative, the interdependence thesis, provides the basis for a more sophisticated and empirically plausible theory of motivation. On this account, since motivation is generated by the individual's emotional disposition and *mediated* by cognitive elements, we need not feel so anxious about rejecting cognitivism. If moral motivation is contingent on the agent's emotional disposition, then the possession of the relevant desires is the most important precondition for moral action. In this case, the question of whether the

agent exercises the relevant capacity for reason - while still important - is nonetheless secondary to the issue of her emotional disposition. Since the emphasis is now on an emotional disposition, the account need not rely so heavily on the role of reason to guarantee performance of moral duty.

Moreover, the emotional disposition - where effectively developed - already delimits the range of possible moral principles. So abandoning cognitivism does not have to imply a slide into absolute relativism. We are no longer dependent on a notion of universal reason, or cognitivism, to prevent the type of moral scepticism feared by rationalists. Some notion of duties to others is guaranteed by the development of the relevant emotional disposition in the individual. If this is the case, then this account of the role of desires in moral motivation can safeguard us against a radical relativist position. The next chapter will provide a more detailed elaboration of this emotional disposition, and how it generates moral motivation.

## Chapter Six

### The Psychology of Moral Development

A number of contemporary philosophers have drawn on psychological theories to substantiate their moral theories. In particular, rationalist and cognitivist theorists have invoked theories of cognitive development to provide empirical support for their philosophical claims about motivation and moral norms.<sup>337</sup> However, less attention has been devoted to elaborating psychological accounts that would substantiate the type of non-rationalist theory outlined in the last chapter. Thus while there is a large body of psycho-analytical and social psychological theory that could potentially be drawn on to support the claims made in Chapter Five, the links with these psychological accounts have not been clearly and systematically drawn out in existing literature. As in the case of moral philosophy, the cognitivist account of moral development has largely dominated the field in the past couple of decades. And non-rationalist theories have failed to develop satisfactory parallel psychological accounts to reinforce their claims about moral agency.<sup>338</sup>

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<sup>337</sup> In particular, Habermas' use of Lawrence Kohlberg to substantiate his theory of discourse ethics prompted a wider discussion of cognitive developmental theories of moral development in political and moral philosophy, as well as discussions of moral philosophy in the literature on development psychologists. See Jürgen Habermas, "Moral Consciousness and Communicative Action", in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), pp. 116-94; Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), Chapter Ten. See also Thomas E. Wren (ed.), *The Moral Domain: Essays on the Ongoing Discussion between Philosophy and the Social Sciences* (Cambridge Mass: MIT Press, 1999); and Gertrud Nunner-Winkler, "Knowing and Wanting: On Moral Development in Early Childhood", in *Cultural-Political Interventions in the Unfinished Project of Enlightenment*, ed. Axel Honneth et al. (Cambridge, Mass: MIT Press, 1992), pp. 219-43.

<sup>338</sup> There have been some attempts to begin to build an alternative account, which will be elaborated in the course of this chapter. There is also a growing school of feminist theories of moral development that posit the existence of an "ethics of care" as an alternative to the cognitivist account. These theories share some common elements with the account I shall construct in this chapter. However, the feminist theorists tend to restrict their claims to apply only to the moral development of women, contrasting "care" or "sentiment" based accounts of feminine ethics with typically male, cognitivist approaches. By contrast, my account is intended to apply to both men and women. For feminist accounts, see Gilligan, Carol, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass : Harvard University Press, 1982); Carol Gilligan, "Remapping the Moral Domain: New Images of Self in Relationship", in *Mapping the Moral Domain*, ed. Carol Gilligan, Janie Victoria Wood and Jill McLean Taylor (Cambridge, Mass: Harvard University Press, 1988), pp. 3-19; and Eva Feder Kittay and Diana T. Meyers, eds., *Women and Moral Theory* (Totowa, NJ: Rowman and Littlefield, 1987).

This chapter seeks to fill this lacuna by providing a psychological account of moral development that will elucidate and substantiate the philosophical account of the last chapter. It should be recalled that the last chapter emphasised the role of affective states in moral motivation. This thesis of the interdependence of reason and desire makes a psychological account especially crucial. Philosophical analysis in itself cannot shed much light on the source or nature of these affective states, or explain how they are related to reason and beliefs. What is required is a psychological theory that provides an explanation of: (1) the features of the individual's emotional make-up that are relevant to moral motivation; and (2) how these are mediated by reason. This account should also give us a better idea of the relationship between the personal and ethical perspectives. The ultimate aim of the discussion is, it should be recalled, to demonstrate how the individual is motivated through this combination of personal disposition, reason and inter-subjective norms to extend duties to refugees.

The chapter provides such a psychological account through elaborating a theory of the development of moral motivation in the individual. The first section of the chapter will start by considering some issues raised by the role of psychology in the broader discussion of political theory and moral philosophy. I shall then consider the prevalent cognitivist account of moral development in section two. I shall argue that its exclusion of affective elements in explaining moral agency and motivation renders it both empirically implausible, and incomplete as an account of moral development and agency. Section three will elaborate an alternative conception of moral development, based on the disposition to empathy. Drawing on Kleinian psychoanalytic theory, it will suggest how the infant develops a capacity for other-regardingness, which is then mediated through its cognitive structure and intersubjective values to motivate more sophisticated forms of sympathy. However, empathy and its related, mediated forms of sympathy will not be sufficient to account for all conceptions of moral duty. The account of empathy will be supplemented in the final section by an explanation of the motivation to internalise intersubjective norms that are not obviously related to the empathic disposition.

## 1. Psychology and Moral Motivation

Before reviewing different theories, it is important make a few remarks about the role of this psychological discussion in the overall argument of the thesis, and especially in relation to the moral philosophy discussion of the last chapter. In 1.2 I shall go on to consider the relationship between psychological accounts of the self and social theory.

### 1.1 *Psychology and moral philosophy*

Theories of moral motivation are necessarily based on a number of assumptions about human psychology. The rationalist and Humean theories discussed in the last chapter all assumed certain facts about the individual's capacity for altruism and the source of this capacity in reason or sentiment. These accounts are in turn (usually implicitly) dependent on theories about the development of the individual's capacity for morality. While it is clearly not the task of moral philosophers to formulate or even necessarily recount such theories, there are risks in failing to examine the plausibility of one's psychological assumptions. Moral philosophy accounts of motivation may achieve conceptual coherence and accord with certain intuitions we have about motivation. But in the absence of a more comprehensive theory of psychology, which provides an account of the development and source of the desires and beliefs relevant to morality, moral philosophy accounts will remain essentially superficial and fragmented. A related problem will be an inability to modify theories in accordance with changes in prevalent theories of psychology, which change at least partly in response to new findings in empirical research. Indeed, one of the reasons for the implausibility of the rationalist account of moral motivation is its failure to correspond with widespread intuitions about psychology, many of which have been shaped by psycho-analytic theory and social psychology in the past half century.<sup>339</sup>

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<sup>339</sup> This is certainly true of British moral philosophy this century, despite calls for more attention to psychology (see, for example, G. E. M. Anscombe, "Modern Moral Philosophy", *Philosophy* 13:124 (1958), pp. 1-19; and William K. Frankena, "Obligation and Motivation in Recent Moral

Clearly, there are a number of different theories of psychology that could provide rival accounts of the development of morality and moral motivation. And moral philosophers will tend to choose a theory of psychology that broadly fits their prior philosophical assumptions about morality.<sup>340</sup> The choice of moral theory will thus influence the selection of psychological theory, with the theorist keen to find empirical substantiation for her conception of morality. In the language of Rawlsian reflective equilibrium, one could characterise this as a search for the background theory of psychology that most closely fits certain philosophical convictions about the sources of moral motivation.

But quite apart from the “fit” with our account in Chapter Five, there are important criteria for accepting or rejecting a theory of psychology that are independent of its compatibility with the chosen philosophical framework. The theory of psychology must be coherent, internally consistent, and empirically plausible. The criterion of empirical plausibility implies the need for adequate empirical evidence, through clinical work or controlled scientific experiments. The scientific appraisal of primary empirical research is clearly beyond the scope of this thesis. But we can draw on theories developed by psychologists in the field of moral development who have carried out and evaluated such research. If such theories are considered in their own right according to the criteria mentioned, then the grounds for choosing a theory of psychology will not be exclusively dependent on one’s philosophical prejudices.<sup>341</sup> Thus although moral philosophers will not approach psychological theory with total impartiality, this is not to say that psychological research does not have an important influence in shaping our views on these questions. There are a number of criteria for evaluating the adequacy of psychological theories, quite apart from whether or

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Philosophy”, in *Essays in Moral Philosophy*, ed. A. I. Melden (Seattle: University of Washington Press, 1958), pp. 40-81). It is less true of continental philosophy which has tended to be more open to theories of psychology and psychoanalysis.

<sup>340</sup> It is also the case that moral psychologists premise their empirical research on more or less explicit philosophical assumptions about moral norms, as indeed we shall see in the case of Lawrence Kohlberg’s theory.

<sup>341</sup> Habermas discusses this potential problem of circularity in his “Moral Consciousness and Communicative Action”, in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), p. 118.

not they accord with the relevant philosophical account. Thus psychology does not merely substantiate philosophy, but can in itself undermine the plausibility of moral philosophical accounts where these are based on dubious psychological assumptions.

My evaluation of different psychological theories will therefore involve three main criteria. First, I aim to find a theory that broadly accords with the interdependence thesis of moral motivation, and more generally my commitment to an account of moral agency that rejects a dichotomy between personal and impartial perspectives. The other two criteria relate to the adequacy of the psychological account on its own terms. The second criterion is empirical plausibility; and the third is internal coherence. All of these criteria must be met in order for a theory to be considered an adequate account. I shall not reject theories simply on the grounds of the first criterion, but will also need to show that the theory in question fails on the second or third count. This way, the discussion will be assessing theories of psychology at least partly on their own merits, rather than simply reiterating the philosophical arguments of the previous chapter.

## *1.2 Self and society*

The second point in need of clarification concerns the notion of the “self” and its relation to society. In attempting to construct a psychological theory of moral development, I am already committing myself to certain ontological assumptions about the self as in some sense separable from her social context. I am assuming that it is possible to conceive of a self apart from her socially defined needs, values and beliefs. While these social features of the individual’s identity are necessarily constituted by her interaction with the social matrix, the conception of the self developed in this chapter is more abstract and minimal. The “self” denotes the pre- or non-social elements of the subject, notably her affective and cognitive features, which enable and motivate her to interact with others and to develop the characteristics and capacities that are shaped through social intercourse. Thus while the individual’s identity is developed through

interaction, one can nonetheless posit the existence of an entity that is in some sense prior to society.<sup>342</sup> The self may be prior in a temporal sense, insofar as the unborn child or young infant may be said to have affective and cognitive features which have not yet been influenced by social norms and practices. But there is also a sense in which part of the individual will remain non-linguistic, and unmediated by society. Whether this is understood as the self's basic cognitive and affective structure, or a more complex unconscious world, most theorists would agree that it is meaningful to conceive of such a non-social self.<sup>343</sup>

The importance of developing such a conception of the self is two-fold. First, it will enable us to construct an account of the individual's basic motivational structure. This will be vital for explaining why the infant is motivated to internalise and act in accordance with intersubjective norms, and to continue to be motivated to be moral throughout her life. As we saw in Chapter Five, different accounts of moral motivation may stress the respective importance of desires or cognitive capacities in this process, but all require some conception of a self as in principle separable from social norms. Otherwise the theory could offer no coherent account of why the self would be disposed to, and capable of, moral action.<sup>344</sup>

The second reason for developing a conception of the self is to help account for the possibility of an individual evaluating and criticising existing social practices. This does not imply that the self can abstract from her social matrix and objectively scrutinise the values of her community, as deontological

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<sup>342</sup> On this I am broadly in agreement with C. Fred Alford, *The Self in Social Theory: A Psychoanalytic Account of its Construction in Plato, Hobbes, Locke, Rawls and Rousseau* (New Haven and London: Yale University Press, 1991), Chapter One.

<sup>343</sup> "Self" in this context is not defined in an individualistic sense, and so is not open to sorts of criticism advanced by Mead of individualistic theories of the self as prior to society. Mead seems to be referring to the conscious self - see George Herbert Mead, *Mind, Self, and Society* (Chicago: University of Chicago Press, 1934).

<sup>344</sup> This does not mean that such a theory of the self could provide an adequate basis for analysing moral norms or behaviour - this would of course require a social analysis. So I am not arguing for methodological individualism in the human sciences, but rather for some account of how individual motivation is possible.



theorists often suggest.<sup>345</sup> But it does provide scope for some capacity to order different values and goods, a capacity that is at least partly dependent on affective and cognitive features of the self. These features of the self will never be clearly separable from social interaction. Nonetheless, some combination of socially mediated emotion and reason may provide the subject with a critical angle or lever for evaluating conventional practices. Such evaluation may take the form of an immanent critique which draws on internal tensions or conflicts within a practice or set of beliefs. Or it may be based on a gut emotional reaction which provides a non-rational basis for rejecting certain practices.<sup>346</sup> (These questions will be developed more thoroughly in Chapter Seven.)

In short, constructing a conception of the self does not imply an ontology of the individual as “unencumbered” or “asocial”, but a conception of a subject whose basic desires and cognitive make-up are mediated from the outset through social interaction. But it is a self that must be conceived of as - at least in principle - separable from its social context. While its characteristics may not be factually ascertained through observation of people as they appear in society, the existence of such a self must be posited if we are to explain motivation and the possibility of social critique.<sup>347</sup>

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<sup>345</sup> See Michael J. Sandel’s critique of Rawls, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

<sup>346</sup> The first route for establishing the possibility of critique is more typically Hegalian, or, in the terminology of contemporary political philosophy, “communitarian”. See, for example, Charles Taylor, *Sources of the Self: The Making of Modern Modernity* (Cambridge, Mass: Harvard University Press, 1989); Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988); and Michael Walzer, *Interpretation and Social Criticism* (Cambridge, Mass and London: Harvard University Press, 1987). The second route is broadly Humean, and would also be favoured by many psychoanalytic accounts, as we shall see in section three of this chapter.

<sup>347</sup> See Honneth and Joas, *Social Action and Human Nature* (*op. cit.*), p. 7; and Alford, *The Self in Social Theory* (*op. cit.*), Chapter One. It should be stressed that this account does not imply that a conception of the self can be clearly definable in isolation from its social context: the theorist can of course only construct an approximation of the pre-social characteristics of a self. Even if one could posit the existence of some kind of skeletal universalist structure independent of society, it would be impossible to pin down exactly what its elements were. See Honneth and Joas, *Social Action and Human Nature* (*op. cit.*), p. 7.

## 2. The Cognitive Developmental Account

Lawrence Kohlberg's theory of moral development is probably the most widely acclaimed and thoroughly researched cognitive-developmental account. It is especially interesting for the purposes of our discussion because Kohlberg explicitly espouses a liberal universalist normative framework, i.e. that of Rawls in his *Theory of Justice*. The bearing of Kohlberg's empirical research on moral theory has also been the subject of extensive discussion, largely prompted by Habermas' use of his theory to provide empirical substantiation to discourse ethics. While Habermas has modified parts of Kohlberg's account, he has argued that its theory of the development of cognitivist morality closely fits his own theory of communicative action.<sup>348</sup> It therefore seems appropriate to consider the problems with this psychological theory, as a complement to our critique of cognitivism in the previous chapter. I shall provide a brief exegesis of Kohlberg's account in 2.1, and then proceed to criticise it in 2.2 on grounds of empirical plausibility.

### 2.1 Kohlberg's theory of moral development

Kohlberg characterises moral development as the ontogenetic progression of the individual through six different stages of moral judgement. The stages form an "invariant sequence" through which every child must proceed in the correct order, although individuals may regress from a higher to a lower stage, and at any one time their moral judgements may combine elements from more than one stage.<sup>349</sup> The stages of development apply to the moral judgements of all individuals, regardless of cultural context. Thus "moral development is not merely a matter of learning the verbal values or rules of the child's culture but reflects something more universal in development, something that would occur in any culture."<sup>350</sup> In cases where individuals or cultures do not reach the higher

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<sup>348</sup> See Habermas, "Moral Consciousness and Communicative Action" (*op. cit.*), p. 117.

<sup>349</sup> Lawrence Kohlberg, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (San Francisco: Harper and Row, 1981), p. 120.

<sup>350</sup> *Ibid.*, p. 122.

stages of moral development, this reflects “differences in stage or developmental status”, rather than the existence of a plurality of moral systems.<sup>351</sup>

Kohlberg explains the progression through these stages primarily in terms of cognitive development. As the child’s cognitive structure becomes more sophisticated, it structures its environment in more complex ways. The development of the cognitive capacity results in a succession of different stages of equilibrium between the cognitive self and the environment it is structuring. The equilibria thus correspond to new levels of cognitive structural organisation, and represent new “structured wholes” or “total ways of thinking”.<sup>352</sup> Psychological development is explained as a function of this process, i.e. as the interaction of the child’s developing cognitive structure and the environment.

Kohlberg argues that these stages of cognitive development correspond to stages of moral development. At each successive stage of cognitive organisation of the environment, the individual is able to progress to a corresponding stage of moral development.<sup>353</sup> There are six stages of moral judgement, grouped under three main levels: pre-conventional, conventional and post-conventional morality. It is worth quoting Kohlberg’s account.

#### A. Preconventional Level

At this level the child is responsive to cultural rules and labels of good and bad, right or wrong but interprets these labels in terms of either the physical or the hedonistic consequences of action (punishment, reward, exchange of favors) or in terms of the physical power of those who enunciate the rules and labels. [...]

#### B. Conventional Level

At this level, maintaining the expectations of the individual’s family, group, or nation is perceived as valuable in its own right, regardless of immediate and obvious consequences. The attitude is not only one of *conformity* to personal expectations

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<sup>351</sup> *Ibid.*, p. 126. Unfortunately I do not have space to discuss these universalist assumptions here. But if it is rejected as an account of moral development for children from western liberal societies - which it will be - then the discussion of its application to other cultures becomes redundant in any case.

<sup>352</sup> Kohlberg, *Philosophy of Moral Development (op. cit.)*, p. 120

<sup>353</sup> *Ibid.*, p. 136.

and social order but also of loyalty to them, of actively *maintaining*, supporting, and justifying the order and of identifying with the people or group involved in it. [...]

### C. Postconventional Autonomous, or Principled Level

At this level, there is a clear effort to define moral values and principles that have validity and application apart from the authority of the groups or people holding these principles and apart from the individual's own identification with these groups.<sup>354</sup>

Pre-conventional morality, then, is characterised by obedience to rules and avoidance of punishment (stage one) and serving one's own interests (stage two). At the conventional level, morality is defined as conforming to expectations and gaining approval (stage three) and upholding the social and legal order (stage four). And level C comprises the stages of post-conventional morality, where moral judgements are oriented to principles of justice and welfare (stages five and six).

While Kohlberg sees moral development as parallel to cognitive development, he does not claim that cognitive capacity alone guarantees the corresponding moral judgements. It is possible that a person at a given cognitive stage will not have reached the equivalent moral stage. Cognitive development is a necessary but not sufficient condition for moral development. However, this creates a gap between his theory of psychology and his account of moral development: the latter cannot be wholly explained through a theory of cognitive development. Kohlberg therefore draws on a second element relevant to moral development - the capacity for "role taking".<sup>355</sup> Role taking enables the individual to develop a capacity for a more social form of cognition, which goes beyond logical or intellectual ability. Role taking involves the capacity "to react to others as like the self and to react to the self's behaviour from the other's point of view."<sup>356</sup> Moral development thus depends not only on the individual's logical or pure cognitive capacity, but also on a form of social learning that involves the ability to adopt the perspective of another. The development of the capacity for

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<sup>354</sup> *Ibid.*, p. 379-81.

<sup>355</sup> *Ibid.*, p. 141.

role taking is in turn dependent on various environmental factors that provide opportunities to practise this skill, such as the level of communication and participation in family life.<sup>357</sup>

Nonetheless, Kohlberg is at pains to stress that the emergence of this capacity is not dependent on a particular pattern of *emotional* development.<sup>358</sup> If role taking is not purely cognitive, neither is it dependent on the child's emotional disposition. Kohlberg dismisses the significance of affective elements in moral judgement early in his discussion. While he acknowledges that moral judgements can in fact involve affective as well as cognitive states, he does not consider emotional elements to be in any sense determinant of moral judgement. Rather, the quality "of affects involved in moral judgements is determined by its cognitive-structural development."<sup>359</sup> In other words, while affective elements may accompany moral judgements, the quality or moral significance of these affects derives from their being generated by cognitive judgements. This exclusion of the role of affective elements also characterises his account of role taking. Role taking seems to be an ability developed through learning, a skill involving essentially cognitive rather than affective elements. Acquiring this social skill is a question of practice rather than emotional disposition.

## 2.2 *Critique of Kohlberg's account*

Kohlberg's neglect of the role of affective elements creates two main problems for his account. First, the exclusive reliance on cognitive capacities leaves a gap in his account, with Kohlberg unable to explain how cognitive development alone is sufficient to guarantee moral maturity. Second, the omission of affective elements - and more particularly the disposition towards sympathy - contradicts the findings of a body of recent empirical research on

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<sup>356</sup> *Ibid.*, p. 141

<sup>357</sup> *Ibid.*, p. 142.

<sup>358</sup> *Ibid.*, p. 142.

<sup>359</sup> *Ibid.*, p. 140

moral development in young children. I shall consider each of these points in turn.

On the first question, we have seen that he introduces the notion of role playing in order to explain the gap between cognitive ability and moral development. He argues that where an individual has developed cognitive capacities but has not achieved the corresponding level of moral development, what is missing is the relevant role taking skills. But this fails to address the problem. It would be possible for an individual to be both cognitively able and adept at role taking, and still be morally deficient. Robert Selman, on whose work Kohlberg bases his notion of role taking, stresses that such perspective taking "is a 'neutral' social cognitive capacity and that higher levels of perspective taking can be used for good or evil, for decency or deception."<sup>360</sup> While Kohlberg initially introduces role taking in order to account for the gap between cognitive and moral development, in another essay he too acknowledges that "a certain cognitive-logical stage...and a certain stage of social cognition or role taking...are necessary but not sufficient for the parallel moral judgment stage."<sup>361</sup> The admission suggests that the incorporation of a theory of role playing does not after all bridge the gap between his theory of psychological development and his claims about moral development. In short, his psychology of moral development is incomplete.

Rather than bridge this gap through providing a full psychological account, however, Kohlberg reverts to a series of claims about the philosophical justification of his stage model of moral development. He draws on deontological theories of justice, especially that of Rawls, to defend a conception of morality which has the features of formalism, cognitivism and universalism<sup>362</sup> - in short, a theory that is in line with the cognitivist accounts reviewed in Chapter

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<sup>360</sup> Selman, Robert and William Dama, "The Necessity (but Insufficiency) of Social Perspective Taking for Conceptions of Justice at Three Early Levels", in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), p. 72.

<sup>361</sup> Kohlberg, *Philosophy of Moral Development (op. cit.)*, p. 190-1.

<sup>362</sup> See Habermas' discussion in "Moral Consciousness and Communicative Action" (*op. cit.*), pp. 119-122.

Five. As he writes: “The general criterion I use in saying that a higher stage’s mode of judgement is more adequate than a lower stage is that of morality itself, not of conceptions of rationality or sophistication imported from other domains.”<sup>363</sup> Thus there is no psychological criterion for justifying the claim that higher stages are superior to lower ones. The point is simply that moral argument suggests that the deontological conception of justice is universally valid. By introducing this philosophical defence, Kohlberg is thus drawing on three types of justification for his theory: (a) empirical research which supports the fact that all children develop through his stage model; (b) a cognitive development theory that seeks to explain this progression; and (c) a moral philosophical justification of stage six as a superior conception of morality. Steps (a) and (b) are clearly necessary for establishing the empirical truth of his theory of psychology. But it is not clear how (c) can strengthen his claims about psychological development.

Now we saw in Chapter Five that moral philosophical arguments of the cognitivist variety do not succeed in grounding claims to universal validity. There is little point in rehearsing the philosophical arguments used by Kohlberg to establish the validity of this form of moral theory, which draw on the sorts of cognitivist theories already discussed. The purpose of this chapter is to examine the plausibility of different *psychological* theories of moral development. Kohlberg’s recourse to arguments of moral philosophy will not be an acceptable substitute for an adequate psychological theory of moral development. While moral philosophical accounts are closely related to psychological theory, psychological accounts must nonetheless provide coherent and complete explanations of moral development in their own right. Arguments of variety (c) are conceptually useful in defining the concept “morality” assumed in theories of moral psychology. But they cannot be used to explain the development of moral capacity or motivation. Kohlberg’s theory does not provide a complete psychology of moral development. It provides a partial explanation of moral development as the development of cognitive and role taking capacities, but also recognises that such cognitive abilities are not sufficient to guarantee the right

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<sup>363</sup> Kohlberg, *Philosophy of Moral Development (op. cit.)*, p. 169.

moral judgements. And in order to defend the superiority of the higher stages of moral judgement - which do not after all seem to correspond directly to cognitive development - he resorts to moral philosophical arguments about the universal validity of justice as fairness.

The incomplete nature of Kohlberg's psychological theory is especially problematic given the absence of an adequate explanation of the affective components of moral judgement. As we saw, Kohlberg acknowledges their presence in mental events, but does not accord them a role in influencing moral judgements. They may accompany moral judgements, but they derive their moral significance from their being generated by cognitive structural elements. Yet the absence of an affective component in Kohlberg's theory seems strange if we consider his account of moral motivation. He claims that his empirical research does not suggest a significant gap between moral judgements and action at different levels. Children committed to a given stage will tend to be motivated to act in accordance with the requirements of that stage. Yet his claims about the sources of motivation - at least for the later stages of moral development - are strikingly non-rationalist. He gives a description of six different stages of moral motivation, which correspond roughly to the stages of moral judgement. Here is a slightly shortened account of the stages:

Stage 1. Action is motivated by avoidance of punishment, and "conscience" is irrational fear of punishment.

Stage 2. Action is motivated by desire for reward or benefit. Possible guilt reactions are ignored and punishment viewed in a pragmatic manner.

Stage 3. Action is motivated by anticipation of disapproval of others, actual or imagined hypothetical (for example, guilt).

Stage 4. Action is motivated by anticipation of dishonor; that is, institutionalized blame for failures of duty, and by guilt over concrete harm done to others....

Stage 5. There is concern about maintaining respect of equals and of the community (assuming their respect is based on reason rather than emotions). There is also concern about own self-respect; that is, to avoid judging self as irrational, inconsistent, nonpurposive.



Stage 6. There is concern about self-condemnation for violating one's own principles.<sup>364</sup>

The motivation for the first stages is self-interested: young children obey rules for essentially egoistic reasons, to avoid punishment and disapproval. The account at the early stages is therefore thoroughly externalist. While the child "is responsive to cultural rules and labels of good and bad"<sup>365</sup>, the motivation to comply with these moral rules does not stem from the recognition of duty, but derives from a separate, egoistic source. Moral rules are imposed on the child from the outside, as it were, obeyed through fear of punishment or expectation of gratification. In the conventional stages, moral motivation is essentially similar, although the child's cognitive development provides her with a broader conception of punishment and reward, which takes the form of social approval and disapproval rather than physical pain or gratification. Cognitive development also enables her to anticipate such disapproval. In the higher stages, however, Kohlberg's theory of moral motivation shifts to an internalist account, in which recognition of moral obligation triggers motivation. At stage six, "[t]he reason for doing right is that, as a rational person, one has seen the validity of principles and has become committed to them."<sup>366</sup>

Now this account of motivation entirely overlooks the significance of the emotional disposition - and especially the role of empathy - at each stage of moral development. A number of development psychologists have questioned this omission, drawing on empirical research that suggests an empathic tendency is present from early infancy.<sup>367</sup> In an overview of recent themes in development

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<sup>364</sup> *Ibid.*, pp. 121-2.

<sup>365</sup> *Ibid.*, p. 379.

<sup>366</sup> *Ibid.*, p. 412.

<sup>367</sup> Martin L. Hoffman, "The Development of Altruistic Motivation," in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), pp. 137-152; Nunner-Winkler, "Knowing and Wanting" (*op. cit.*); Jerome Kagan, *The Nature of the Child* (New York: Basic Books, 1984); Jerome Kagan and Sharon Lamb, eds., *The Emergence of Morality in Young Children* (Chicago: University of Chicago Press, 1987); and Tom Kitwood, *Concern for Others: A New Psychology of Conscience and Morality* (London and New York: Routledge, 1990). Some feminists have also challenged the accuracy of Kohlberg's findings in relation to moral development in girls. See in particular Gilligan, *Mapping the Moral Domain* (*op. cit.*).

psychology, Jerome Kagan observes that cognitivist assumptions about moral development have been seriously undermined by recent empirical work, showing that by their second year “children from many cultures show uncertainty with regard to broken or flawed objects, empathy with the distress of another, and anxiety over possible task failure.”<sup>368</sup> Even those who are more clearly on the cognitive developmental side are now arguing that there seems to be a gap in the cognitivist account of early moral development, i.e. the omission of an empirically observable disposition to empathy.<sup>369</sup> Rather than obeying moral rules from purely egoistic motives, infants and young children seem to show a genuine concern for others, and a desire to relieve their distress. As Nunner-Winkler writes, “empathy and sympathy - a spontaneous interest in the welfare of the other - are already noninstrumental motives of moral action for the young child.”<sup>370</sup> This disposition to empathy is subsequently channelled into more complex forms of sympathy and moral duty. The child’s cognitive development enables her to mediate the emotional disposition to empathy, so that it can eventually motivate broader obligations - for example, to assist members of one’s community, or alleviate poverty, or provide aid to refugees. If such empathic tendencies are present in infancy and can be channelled into more complex moral duties, there is no reason to suppose that it is not also a significant source of motivation in the later stages of moral development.

In fact, contrary to his rationalist claims, Kohlberg’s account of motivation at the post-conventional level does seem to presuppose certain emotional elements. The notion of self-condemnation at stage six must surely be understood as something more than a purely cognitive state. The distress caused by failure to live up to one’s own principles cannot be explained solely in cognitive terms, as a break down in logical consistency. The type of embarrassment caused by inconsistent reasoning or intellectual weakness is qualitatively distinct from the shame and guilt caused by a failure to do one’s duty. Establishing a link between moral failure and feelings of guilt seems to

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<sup>368</sup> Kagan, *The Emergence of Morality in Young Children* (*op. cit.*), p. x.

<sup>369</sup> Hoffman, "Altruistic Motivation" (*op. cit.*); Nunner-Winkler, "Knowing and Wanting" (*op. cit.*).

require additional assumptions about the relationship between commitment to certain principles and one's emotional disposition. It would be far more plausible to explain the distress caused by moral inconsistency in terms of a deeper emotional need for social recognition, or guilt at causing distress to others. But the link between the urge to do one's duty and the presence of such desires is not elaborated or explained by Kohlberg. Rather, as we have seen, he is keen to downplay the role of emotions and cling to a rationalist account of motivation.

We saw in this section that Kohlberg's account of moral development is incomplete, and seems to suffer from the denial of any significant affective component. The same can be said for his theory of motivation, which switches from an egoistic account at the early stages of development to a rationalist account at the postconventional stages. He omits any account of the role of empathy in moral development and motivation, or the role of other desires that seem to be implied by his notion of guilt and conscience at the later stages of morality. And this leaves his account essentially incomplete, and empirically questionable. We shall now turn to the second category of theories, which provide a more plausible account of the role of emotion in moral development and motivation.

### **3. Psycho-Analytic Theory and the Other-Regarding Self**

If cognitive developmental theory is problematic because of its exclusive reliance on cognitive capacities, then it makes sense to turn to theories of psychology that place greater emphasis on affective states. Psycho-analytic theory is likely to provide a better account of these affective elements of motivation. It is based on a conception of an unconscious self as a set of pre-linguistic, non-rational mental states. The images and desires contained in the unconscious are not ordered into logical categories, but can be understood as a continuation of the earliest mode of conscious thought - the pre-linguistic mental states of the infant. The unconscious continues to be deeply affected by these

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<sup>370</sup> Nunner-Winkler, "Knowing and Wanting" (*op. cit.*), p. 227.

early infantile experiences of external objects, which shape subsequent unconscious feelings about oneself, one's relationships, and about the world in general. The unconscious can be characterised as a set of relations between different images that have been internalised - or "internal objects" - which have very powerful emotional associations.<sup>371</sup> The relations between these internal objects and one's feelings about them, which begin to be formed through experiences in infancy, are crucial in shaping the person's character and motivation.

Psychoanalytic theory claims that most of the individual's mental life is not accessible to the conscious mind. Unconscious feelings and desires can motivate action without passing through a conscious stage of rational deliberation.<sup>372</sup> Thus it is possible for psychoanalytic theorists to explain (at least some elements of) motivation as generated by the unconscious mind. Unconscious mental states may also be mediated by reason and beliefs and thence directed onto more specific objects.

This section will consider whether psycho-analytic theory, with its notion of the unconscious, can provide an account of moral development and motivation that avoids the empirical and explanatory deficiencies of Kohlberg's account. It will begin in 3.1 with a brief look at Freud's theory of moral development, but find that - as in the case of Kohlberg's theory - Freud is unable to provide an explanation for the disposition towards concern or empathy in young children. Moreover, it is premised on an overly narrow definition of morality that fails to include sympathy-related forms of moral action. I shall then turn to the work of Melanie Klein (3.2), who provides a more sophisticated and plausible account of the capacity for concern, or what I shall term the "empathic disposition". Having outlined her account of moral development, I shall consider in 3.3 and 3.4 how this empathic disposition is mediated by the cognitive structure and

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<sup>371</sup> Hence an important branch of psychoanalytic theory is known as "object-relations" theory - see the entry under "Object Relations School" in R. D. Hinshelwood, *A Dictionary of Kleinian Thought* (London: Free Association Books, 1991), pp. 367-73.

<sup>372</sup> Indeed, this is why Kitwood thinks the term "reasons for action" is misleading. Kitwood, *Concern for Others* (*op. cit.*), p. 93.

intersubjective beliefs to generate motivation to extend more complex forms of sympathy to others.

### 3.1 *Freud and the psychology of moral development*

On Freud's account, the individual's motivation to conform to moral rules is initially generated through fear of authority, and subsequently through guilt. Freud characterised this process in terms of the relationship between super-ego and ego. The super-ego represents the internalisation of authority figures by the individual - initially parents, and subsequently religious and moral rules. The super-ego represents the moral conscience of the individual, which manifests itself to the individual as a critic of the ego. It points out the inadequacies of the person, and chastises her for her sexual and aggressive urges, producing a sense of guilt.<sup>373</sup> This feeling of guilt motivates the individual to impose constraints on the satisfaction of her desires. According to Freud, it is this permanent conflict between internalised authority and natural desires that produced the sorts of neurotic conditions he was treating in his patients.

At the social level, Freud argued that there was a basic conflict between individual desires and moral obligations. Moral norms constrain the individual's pursuit of her egoistic desires, obliging her to conform and repress her unsatisfied drives. The individual's natural egoism is thus in conflict with the requirements of social interaction, which oblige her to sacrifice her sexual and aggressive urges to ensure social harmony. There is no compromise or resolution between these two forces, since, as Rieff observes, "the individual can neither extirpate his instincts nor wholly reject the demands of society".<sup>374</sup> Individuals in society thus face an ongoing struggle between the demands of civilisation and individual happiness.<sup>375</sup>

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<sup>373</sup> Sigmund Freud, "Civilization and its Discontents" [1929], in *Civilization, Society and Religion* (London: Penguin, 1985), p. 316-7.

<sup>374</sup> Philip Rieff, *Freud: The Mind of the Moralist* (London: Methuen, 1960), p. 28.

<sup>375</sup> Freud, "Civilization and its Discontents" (*op. cit.*), p. 306, and pp. 334-5.

In his essays on society and civilisation, Freud argued that it was only through ensuring respect for (at least some) regulative norms that certain benefits of civilisation could be assured, notably the absence of physical pain and conflict.<sup>376</sup> Yet while Freud considered such rules to be a largely unavoidable feature of civilisation, he was critical of the stringent moral and religious codes of his day.<sup>377</sup> Prevalent moral and religious codes were too rigorous in their constraint of natural urges, producing strong feelings of inadequacy and guilt.<sup>378</sup> To avoid inflicting this guilt on the individual, Freud stressed the importance of taking into account people's desires in defining moral duty. Such desires, he argued, are an intrinsic part of human nature, and by overlooking them one risked simply increasing their force. Where moral obligations are seen as detached from and in opposition to personal inclination, obedience to the moral law will require the repression of these desires. When this is taken to extremes, the results may be counter-productive to the very aspirations of morality: "temptations are merely increased by constant frustration, whereas an occasional satisfaction of them causes them to diminish, at least for the time being."<sup>379</sup> According to Freud, the search for moral purity or asceticism was a response to a particularly remorseless super-ego.<sup>380</sup> The person burdened with a harsh superego may become either unhealthily masochistic, or else rebel against the demands of the superego and indulge in delinquency. In the latter case, the guilt caused by the inordinate demands of morality as represented by the super-ego may lead the individual to seek relief from her guilt through disobedience and the resulting punishment. In

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<sup>376</sup> Freud argues that the state of nature does not guarantee satisfaction. Freud, "The Future of an Illusion", in *Civilisation, Society and Religion* (London: Penguin, 1985), p. 194. As Wollheim points out, in Freud's account these benefits are derived not so much from pleasure, as from the absence of pain. See Richard Wollheim, *Freud* (London: Fontana, 1971), p. 225.

<sup>377</sup> Freud was ambivalent on the value of civilisation, suggesting that it could be both harmful for the individual but also necessary for the functioning of society. See "Civilisation" (*op. cit.*), p. 340. But he was unequivocally critical of certain forms of belief systems that imposed stringent rules on individuals, and particularly religion. See his "Future of an Illusion", (*op. cit.*); and Wollheim, *Freud* (*op. cit.*), p. 223.

<sup>378</sup> Rieff, *Freud* (*op. cit.*), pp. 276-280.

<sup>379</sup> Freud, "Civilization and its Discontents" (*op. cit.*), p. 318.

<sup>380</sup> Richard Wollheim, "From Voices to Values: The Growth of Moral Sense", in *The Thread of Life*, ed. Richard Wollheim (Cambridge: Cambridge University Press, 1986), pp. 202-3.

this case, as Wollheim observes, morality “motivates what it denounces as its own infraction,” thus having a counter-productive effect.<sup>381</sup>

This concept of the interplay of super-ego and ego is plausible as an account of a certain type of fear or guilt based motivation to obey rules. Indeed, the dangers of excessively stringent moral obligations was raised as a problem for theories of impartial morality in the Introduction. But it is also based on a rather narrow conception of morality. Freud’s theory implies a coercive, punitive conception of moral duty, one that was perhaps characteristic of Victorian values and may still be a feature of some religious systems. But it is not a conception that finds widespread currency today. Most significantly for the current discussion, this notion of coercive moral constraints does not seem to take into account forms of moral duty based on sympathy. Moreover, partly because of his narrow definition of morality, Freud fails to appreciate that young children can and do display a capacity for concern. This capacity for empathy, as we saw in the last section, is evident in infants and young children from early on, certainly prior to the internalisation of authority figures in the super-ego that Freud describes. In short, Freud’s account faces the same empirical weakness as that of Kohlberg; and it employs a narrow definition of morality that provides only a partial description of moral agency.<sup>382</sup>

On the normative level, we should note that Freud’s account assumes a sharp distinction between the self and society, positing a conception of the self as a set of egoistic desires that are defined independently of, or prior to, social interaction. Moral action is only possible because guilt and fear of suffering motivate the individual to check her egoistic desires, this process taking the form of the internalisation of moral norms through the super-ego. Intersubjective

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<sup>381</sup> Wollheim, "Voices to Values" (*op. cit.*), p. 204; Ernest Wallwork, *Psychoanalysis and Ethics* (New Haven: Yale University Press, 1991), p. 290. Interestingly, Freud associated unhealthy ascetism in the individual with Kantian ethics. He considered that the Kantian conception of rational and impartial ethics established a set of demands and a conception of moral agency that would be readily absorbed by a harsh super-ego, and would increase the individual’s feelings of guilt. See Wallwork, *ibid.*

<sup>382</sup> For more extensive accounts of these short-comings of his moral theory, see Wallwork, *Psychoanalysis and Ethics* (*op. cit.*), pp. 234-90; Wollheim, "Voices to Values" (*op. cit.*), pp. 197-225.

values do not shape the individual's desires, except in the instrumental sense of directing a need for survival or desire satisfaction to the internalisation of social rules. Thus while he acknowledges the role of emotions, Freud's account nonetheless shares an important feature with the cognitivist developmental account. It posits a conflict between individual desires and moral obligations. Moral norms constrain the individual's pursuit of her egoistic desires, obliging her to conform and repress her unsatisfied drives.

Thus Freud's account is unsatisfactory for normative as well as empirical and conceptual reasons. His theory of unconscious drives may accord a greater role to affective states than was the case with Kohlberg's theory. But his failure to provide an account of the development for concern for others leaves his theory of moral agency incomplete, and reproduces the old problem of the assumed dichotomy between personal (egoistic) inclinations and the requirements of morality.

### 3.2 *Klein and the desire for reparation*

Kleinian psychoanalytic theory avoids this dichotomy model, and would seem to provide better prospects for constructing a psychology of moral development. Although trained in the Freudian school, Melanie Klein's theory significantly departed from that of Freud, and her account of the self and its relation to others can be characterised as "relational" rather than individualistic. While Freud considered that the individual's drives originated as tensions within the body, for Klein they were "emotions - passions - directed towards others, real or imaginary, from the very beginning of life."<sup>383</sup> Now these unconscious emotions were not necessarily egoistic drives that needed to be constrained by the super-ego. Rather, where the infant was able to develop positive object relations, she would develop a capacity for concern for others, which could provide a source of moral motivation. Klein's theory therefore provides the basis for a

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<sup>383</sup> C. Fred Alford, *Melanie Klein and Critical Social Theory: An Account of Politics, Art and Reason Based on her Psychoanalytic Theory* (New Haven and London: Yale University Press, 1989), p. 25.



more positive and sympathetic account of moral development, which emphasises the role of love and empathy. On this account, the source of the capacity for morality is not located in an external set of duties which we obey from fear, but in our personal disposition, our preferences and sentiments.<sup>384</sup> The capacity for concern initially develops in the infant through her relationship with her mother or other primary carer.<sup>385</sup>

The infant is dependent on the mother to satisfy his need for nourishment and care, and when this desire is being gratified he feels intense love for her. But, as Klein writes, “when the baby is hungry and his desires are not gratified, or when he is feeling bodily pain or discomfort, then the whole situation suddenly alters. Hatred and aggressive feelings are aroused and he becomes dominated by the impulses to destroy the very person who is the object of all his desires...”<sup>386</sup> Initially, the infant perceives the loved and the hated mother as two separate objects - a phenomenon described by Kleinians as “splitting”.<sup>387</sup> Splitting involves the separation of objects into totally good and wholly bad parts. Thus the loved mother appears as a good object, whom the infant loves and wants to keep, while the hated mother is a bad object who is threatening and persecuting, and towards whom the infant feels aggression.<sup>388</sup> Under favourable conditions the child will gradually come to build up an internal experience of a good mother, and the fear of the bad object, characterised by Klein as a kind of paranoia, will diminish. As this occurs, the infant will be able to integrate the good and the bad objects, and recognise his mother as a whole person who is the object of both love and aggression. Through integrating his ambivalent feelings, the child is able to

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<sup>384</sup> Admittedly, these relational desires can be understood as ultimately derived from the individual's dependence on others for survival, and thus are in a sense egoistic. But the desires generated by this form of dependence arise as fundamentally relational rather than individualistic impulses. Unlike on the Freudian or Kohlbergian account, the sentiments and desires stemming from the organism's dependence on others involve a mesh of self-interested and other-regarding impulses which are psychologically and conceptually inextricable.

<sup>385</sup> For the sake of simplicity, I shall assume that the primary carer will be the mother, although I am not precluding that this role could be competently performed by another woman or man.

<sup>386</sup> Melanie Klein, *Love, Guilt and Reparation and Other Works 1921-1945* (London: Vintage, 1998), pp. 306-7.

<sup>387</sup> For a more precise definition of these terms, see Hanna Segal, *Introduction to the Work of Melanie Klein* (London: Hogarth Press/Institute of Psychoanalysis, 1973), p. 128.

develop positive object relations in his unconscious mind, thus laying the foundations for a more trusting and confident experience of the world.

This integration of good and bad objects, however, produces a new anxiety in the baby and a fear of loss, as she becomes (at least unconsciously) aware of her destructive intentions towards the object of her love. This ushers in what Klein terms the “depressive position”, in which the infant feels guilt and distress at her own ambivalent feelings towards her mother. This anxiety about her destructive feelings generates a desire to repair the damage done or intended to the good object. And it is this desire for reparation that characterises love in the depressive position. As Klein explains:

Side by side with the destructive impulses in the unconscious mind both of the child and of the adult, there exists a profound urge to make sacrifices, in order to help and to put right loved people who in phantasy have been harmed or destroyed. In the depths of the mind, the urge to make people happy is linked up with a strong feeling of responsibility and concern for them, which manifests itself in genuine sympathy with other people and in the ability to understand them, as they are and as they feel.<sup>389</sup>

According to Klein, the capacity for concern is developed in the context of the infant’s relationship with her mother, specifically the anxiety caused by the integration of loved and hated object. This generates a form of concern for the well-being of the mother, which can be characterised as an empathic disposition (although Klein did not use this term). Elements of such an empathic disposition seem to be present in the infant from birth, when she is able to feel love for her mother as the provider of care and nourishment. But it is only in the depressive position, in response to the desire for reparation, that love takes on the quality of a more active concern for the other. As R. D. Hinshelwood writes, “With this step comes a new capacity for love. Concern, sorrow and love for the whole object are *for* the object itself, not merely for the gratification it gives.”<sup>390</sup> The

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<sup>388</sup> This feeling of persecution is in fact a projection of the infant’s own aggressive feelings towards the bad object.

<sup>389</sup> Klein, *Love, Guilt and Reparation* (*op. cit.*), p. 311.

<sup>390</sup> Hinshelwood, *Dictionary of Kleinian Thought* (*op. cit.*), p. 141.

disposition to other-regarding concern develops at the point at which the infant starts to recognise her mother as a whole object, usually from the age of about six months. And it is only later on, in around the fifth year, that the Freudian super-ego emerges. Klein does not deny the emergence of a moral conscience through this Freudian process of internalising authority figures. But she considers the prior relationship with the mother to be more significant in shaping subsequent relations with others.

Now while Klein's account of the desire for reparation can help explain the capacity to feel concern for the mother, it is not *prima facie* evident how this will help us to explain moral concern for a broader group of objects. In fact, three main steps will be required to move from an account of the desire for reparation to the capacity for sympathy for a wider and more abstract set of objects. First, we need to explain how the desire for reparation can continue to motivate empathy or concern beyond the temporal phase of the early relationship between infant and mother. Second, we must establish that this concern can be applied to a wider set of objects, in other words that the scope of concern can be extended. And third, we need to show how the desire for reparation can be channelled into more complex forms of sympathy, as well as socially defined conceptions of duty, i.e. how its content can change. The remainder of the section will consider the first two steps, while the third step will be discussed in section 3.3.

In terms of the extension of the desire for reparation to other objects, it is important to stress the profound influence of the initial relation of the infant to her mother on the child's subsequent relationships. The depressive anxiety experienced in the early relationship with the mother shapes the individual's relations with other objects in the external world - initially family members, and eventually a wider circle of people. The individual's relationships to some extent replicate the initial relation to the mother, combining elements of love and aggression, and generating guilt and a desire for reparation. Thus a similar pattern of guilt and concern will occur in the individual's relation to society at large. The replication of this pattern of relations can be explained through the notion of the internal world, which, as we have seen, comprises a set of relations

between internal objects. These object relations in the unconscious mind continue to affect how we view the world and our relationships with others. As Segal observes, the depressive position can be characterised as a “a specific configuration of object relations, anxieties and defences which persist throughout life.”<sup>391</sup> The depressive position does not simply denote a developmental stage, but continues to influence relations with others, motivating reparative action in subsequent relationships. As we shall see, this desire for reparation can be extended to a more abstract group of objects, for example one’s community or nation, or a specific needy group such as the poor or sick. The more detailed specification of the scope and relevant characteristics of the group in question will be dependent on the particular shared values of one’s society, as will be explained in the next section.

Before moving to the question of how empathy is channelled into the performance of moral duty, it is important to stress the appeal of Klein’s relational account. As we saw in the discussion of Kohlberg’s theory, a number of development psychologists are keen to stress the important role of empathy in moral development.<sup>392</sup> The early empathic disposition observed by these psychologists is pre-linguistic and nonrational, and cannot be explained with reference to conscious reason and cognitive capacities. Explaining a pre- or non-cognitive disposition by definition requires making assumptions about the nonrational and unconscious affective features of the self. The Kleinian account offers an account of the emergence of these features, an account which is in principle consistent with the more conventional scientific research of development psychologists who stress the role of empathy in moral development. In the absence of a fuller development psychology account of this pre-rational disposition, the Kleinian account seems to offer the most plausible and full explanation of the early development of the capacity for empathy.<sup>393</sup>

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<sup>391</sup> Segal, *Melanie Klein (op. cit.)*, p. ix

<sup>392</sup> See note 367, *supra*.

<sup>393</sup> Winnicott also offers an account of early moral development, but his theory is essentially compatible with the Kleinian account, although it places relatively more emphasis on the child’s external environment than her internal states. See D. W. Winnicott, *Maturational Processes and the Facilitating Environment: Studies in the Theory of Emotional Development* (London: Hogarth Press, 1979).

### 3.3 *Mediation through the cognitive structure*

The previous section suggested how the desire for reparation can generate concern for others. The reparative action initially triggered in the depressive position also set a pattern for subsequent relations with a wider circle of people. Now while the empathic disposition is present in most individuals from early on, it can only be channelled into more complex forms of sympathy as the individual develops her cognitive capacities. The empathic tendency is mediated through the child's cognitive structure and through her society's intersubjective beliefs to motivate various forms of altruistic action. In the discussion that follows, I shall start by considering the influence of cognitive mediation, and then examine the role of intersubjective beliefs.

It should be recalled that although the discussion on cognitive development theory criticised Kohlberg's neglect of affective elements in explaining moral development, it did not deny that cognitive elements of the self play an important role in moral judgement. The individual's cognitive capacities are clearly vital in helping direct and modify the empathic disposition. Without the influence of cognitive capacities, feelings of empathy would be unable to progress beyond infantile anxiety at the distress of others. In order to develop into forms of compassion and sympathy, empathy must be channelled in more intelligent ways. The question becomes that of how the affective disposition already explained by Kleinian theory can be mediated by the sorts of cognitive capacities described by Kohlberg and the like.

The development psychologist Martin Hoffman offers an account of this interaction, in an attempt to "pull together what is known about the individual's affective response to another person's distress, on the one hand, and cognitive development and role taking, on the other."<sup>394</sup> Hoffman does not espouse a Kleinian account, nor does he provide an alternative theory of the source of empathy. But he argues on the basis of his observations and empirical research

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<sup>394</sup> Hoffman, "Altruistic Motivation", p. 138.

that empathy seems to be a key element in explaining altruistic behaviour. However, since empathy is “a response to cues about the affective states of others”, it must also be dependent on the individual’s cognitive development.<sup>395</sup>

Hoffman attempts to clarify this interaction, distinguishing three main steps in cognitive development that will influence the empathic disposition. First, the infant must develop a sense of the other as a separate physical object. This cognitive capacity, usually developed in the second half of the first year, is a precondition for recognising that the object of empathy is a separate person.<sup>396</sup> Empathy can thus be channelled into a basic form of sympathy, understood as concern for a separate other, rather than a more general feeling of distress that does not distinguish between the self and other as experiencing distress. At this first stage, the infant is as yet unable to conceive of the other’s inner states (her thoughts, perceptions and needs) as different from her own. This is only possible at the second stage, where the child develops a sense of the other as having her own perspective. At this level, usually reached after the second year, the child can develop the capacity for basic role taking, and make a more active effort to put herself in the other’s place. She can thus orient her concern towards understanding and addressing the specific concerns of the other.<sup>397</sup> At the third stage the individual develops an understanding of the other as having her own continuous personal identity, and thus as the subject of a whole series of inner states that extend beyond the immediate situation. Hoffman argues that this is likely to occur at around six to nine years. Empathy can at this stage be channelled into concern for the other’s longer term distress, her past suffering and future prospects, and whether or not these conform to an acceptable standard of well-being.<sup>398</sup> So while at all of these stages it is the empathic disposition that motivates the individual to act, she can only truly be concerned and act on the distress of others once she has acquired the relevant cognitive capacities.<sup>399</sup>

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<sup>395</sup> *Ibid.*, p. 139.

<sup>396</sup> *Ibid.*, p. 145.

<sup>397</sup> *Ibid.*, pp. 141, 146.

<sup>398</sup> *Ibid.*, p. 147.

Hoffman has extended this account of the interaction of empathy and cognitive development to explain the possibility of commitment to certain moral values or ideological goals. In his later work, he went on to suggest a fourth level of cognitive development, at which the individual is able to understand social concepts and thus channel empathic feelings into concern for the distress of specific groups, for example victims of poverty or violence.

The combination of empathic affect and the perceived plight of an unfortunate group may be the most developmentally advanced form of empathic distress. It may also provide a motive base, especially in adolescence, for the development of certain moral and political ideologies centered around alleviation of the plight of unfortunate groups.<sup>400</sup>

This account of empathy mediated by cognitive development may thus explain certain types of moral and ideological commitments to specific groups, or even to the rest of humanity.

#### 3.4 *Mediation through intersubjective values and beliefs*

While there is clearly a link between empathy, cognitive development and more complex moral commitments to alleviate suffering, Hoffman's account nonetheless omits a third important component of moral action: the role of intersubjective values and beliefs. These can be understood as the shared beliefs, values and moral norms of the child's community, which shape her conceptions of virtue and moral duty, as well as her understanding of the social world and the conditions for well-being. These intersubjective beliefs and values will influence the empathic disposition in two main ways. First, shared moral norms and values may directly influence how the individual channels empathy. A society that defines charity as a virtue, or has a strong tradition of redistributive justice, may encourage the individual to channel her empathic disposition into helping the poor, or voting for progressive taxation. The relevant values need not be shared by the whole society, but may be espoused by a subset of the community, for

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<sup>399</sup> *Ibid.*, p. 149

<sup>400</sup> Martin L. Hoffman, Martin L., "Empathy, its Limitations, and its Role in a Comprehensive Moral Theory", in *Moral Development through Social Interaction* ed. William M. Kurtines and Jacob L. Gewirtz (New York and Chichester: John Wiley and Sons, 1984), p. 287.

example a religious group or social class. These values have a formative influence on the individual, shaping her beliefs about how she ought to realise her empathic disposition or desire for reparation.

Richard Wollheim seems to have this form of intersubjective mediation in mind when he argues that the desire for reparation can be matched symbolically to intersubjective values. As a philosopher influenced by the work of Kleinian psychoanalytic theory, he argues that moral development involves the individual finding a parallel or “match” between the desire for reparation and her society’s moral codes. Society provides the child with a channel or, in Wollheim’s language, a “metaphor” for reparative action, so that the internalisation of shared values is itself motivated by the desire for reparation.

For what the community does is to fix, or pin down, the otherwise unregulated discernment of match or correspondence. The metaphors of reparation, which is what reparative action sets itself to satisfy, come to the moral agent, even before that is what he is, encoded in *sittlichkeit* or custom. Even if the agent remakes these correspondences, reinvents them, which is what he will want to do if he is any way a critic of his society and its ways, they provide him with the initial exemplars of match.<sup>401</sup>

This notion of correspondence is not fully elaborated by Wollheim, but nonetheless gives some indication as to how reparation and morality could be linked.

The second way in which intersubjective beliefs and values may mediate empathy is through their influence on the individual’s cognitive development. This type of influence is more indirect than the first: shared beliefs mediate the individual’s cognitive categories, which in turn influence her empathic disposition. While we have so far been assuming that the individual’s cognitive structure is neutral between different values, there are a number of ways in which its categories may be influenced by the particular social matrix. If we consider Hoffman’s three stages of cognitive development, we can see that the types of distinctions made by the child at different levels are likely to be influenced by her

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<sup>401</sup> Wollheim, “Voices to Values” (*op. cit.*), p. 217.



society's understanding of the social world, of human flourishing and the good life.

At the first stage of cognitive development, the recognition of the separateness of persons is likely to be unmediated by intersubjective beliefs, occurring as it does in the pre-linguistic stage, and before the infant is able to internalise social practices. However, stages two and three provide more scope for the influence of particular beliefs and values. At stage two, as the child learns to conceive of others as having separate needs and desires, she is likely to be influenced by intersubjective beliefs about which of these inner states are worthy of attention and categorisation. For example, in a culture that is stoical about suffering and where showing pain is a sign of weakness, children may be less inclined to discern this type of suffering in others. If certain levels of pain do not deserve concern and attention, such forms of suffering will not be treated as significant in the same way as other relevant forms of distress. These levels of pain are less likely to feature as categories influencing the individual's perception of distress in others.

The influence of shared values is even more important at stage three, where the child learns to conceive of others' inner states as persisting over time, thus triggering sympathy for their past or future condition. At this level, shared conceptions of the good life and conditions for human flourishing will feature heavily in determining the relevant features of others that may or may not generate sympathy. For example, in some cultures a life of self-imposed poverty may be esteemed or envied as the path to redemption; or dying in battle may be admired as a glorious sacrifice for the nation. Juvenile delinquency may evoke sympathy or criticism; and the lives of a dissolute poet or a religious martyr may trigger condemnation or sympathetic admiration, or perhaps no strong reaction at all. In these cases, conceptions of the good life will influence how the individual defines and recognises distress in others.

Finally, at Hoffman's fourth level, the categories used to explain social phenomena - class, profession, ethnic groups, religion and so on - will influence how the child characterises the object of sympathy. Again, these categories will

vary according to intersubjective values, as well as the society's interpretation of history and society.

Intersubjective values and beliefs will thus influence the individual's cognitive development through shaping the categories she employs for distinguishing relevant inner states, and subsequently the conditions for well-being and conceptions of the good life, as well as the social concepts used to characterise different groups. These cognitive categories will in turn mediate the individual's empathic disposition, allowing for more precise specification of the objects of her concern. In the case of liberal values, intersubjective conceptions of justice encourage the individual to abstract from what are considered to be morally arbitrary features of individuals, such as nationality, race or religion. The scope of those to whom sympathy is extended will be influenced by shared liberal beliefs. The liberal tradition of moral thought identifies well-being with the exercise of a capacity for reason and autonomy. Again, this conception of well-being will influence the individual's definition of relevant categories of distress. I shall return to these issues in the final chapter.

In summary, both cognitive capacities and intersubjective values and beliefs help direct the empathic disposition. First, following Hoffman's account, it is clear that cognitive structures mediate empathy to create more intellectually sophisticated forms of sympathy. Second, shared values also provide more detailed conceptions of moral duty that channel sympathy. And third, intersubjective values and beliefs shape the child's cognitive categories, thereby indirectly influencing the interaction of empathic disposition and cognitive structure. It should be stressed that in all of these cases, motivation is generated by the individual's emotional disposition, and then mediated by cognitive and cultural elements. The account of how empathy is channelled is therefore consistent with the interdependence thesis outlined in Chapter Five.

#### **4. Internalising Intersubjective Norms**

The account of empathy developed in the last section aimed to explain how the individual is capable of sympathy and related forms of moral concern. The empathic disposition and its mediated forms are central to explaining the personal disposition to recognise and be motivated to respect moral duties. But the theory of moral motivation is still incomplete in two senses. First, it remains to be explained why the individual is motivated to internalise the intersubjective values that mediate her empathic disposition. Why should she be inclined to latch on to shared values as a guide for channelling empathy, rather than relying on her own affective instincts and cognitive structure? In answering this question, it is not enough to describe *how* the self is constituted by shared values, as some communitarian thinkers have done.<sup>402</sup> Rather, one needs to show how the individual's needs and desires dispose her to engage in the type of social interaction that enables this internalisation to occur.

The second reason the theory is incomplete is that it can only account for a limited - albeit important - category of moral action. Empathy mediated by cognitive elements can explain motivation to be guided by moral norms and values related to forms of sympathy, concern and altruism. But it cannot explain conformity with norms of justice that are not sympathy based - or at least it will not be able to explain them under the rubric of *moral* motivation.<sup>403</sup> Now while a conception of duties to non-nationals is likely to fall within the category of sympathy based morality, I am nonetheless keen to show that the nonrationalist account of moral motivation can explain motivation to respect all types of moral

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<sup>402</sup> See, for example, Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, Mass: Harvard University Press, 1989); Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, trans. Joel Anderson (Cambridge: Polity Press, 1995). I will be examining communitarian accounts of the ontology of the self in the next chapter.

<sup>403</sup> This limitation of sympathy-based accounts can be traced back to Hume's ill-fated attempt to define justice as an "artificial virtue". Since the motivation to obey rules of justice could not in all cases be generated by sympathy, Hume argued that they must derive instead from the individual's self-interest in agreeing to a set of rules to regulate human interaction in order to avoid conflict. See David Hume, *A Treatise of Human Nature* [1739], ed. Ernest C. Mossner (London: Penguin, 1969), pp. 529-36. This account creates a "free rider" problem, and suggests that the motivation to obey rules of justice cannot be explained simply in terms of the self-interest of individuals. See Barry Stroud, *Hume* (London and New York: Routledge, 1988), pp. 202-18. My account is not open to the free rider problem, as its theory of motivation is "relational" rather than individualistic. But as we shall see in the next chapter, it must still confront the question of how to

duty, including forms of justice for regulating conflict. I shall therefore devote this last section of the chapter to a brief examination of the source of this type of moral motivation.

#### 4.1 *The desire for affirmation*

Both of the gaps in the empathy-based account referred to above can be bridged through an account of the individual's motivation to internalise intersubjective norms. As I suggested in Chapter Five, two main affective elements of the self are relevant to morality: the empathic disposition and the desire for affirmation. The desire for affirmation motivates the individual to internalise available intersubjective norms and values, thus explaining motivation to respect norms that are not evidently related to sympathy-based morality.

In order to explain the desire for affirmation, we need to return to the Kleinian account of the development of the capacity for concern. Now while this description of individual development focused on the emergence of the empathic disposition, it said little about the external environment required to ensure the relevant development. Klein's work emphasises the infant's development from the perspective of her internal states, rather than the external environment that enables this development. This question of the required external conditions - what Donald Winnicott calls the "facilitating environment" - is crucial for understanding the self's interaction with her social matrix.<sup>404</sup> The infant requires a certain level of love and affirmation if she is to be capable of integrating good and bad objects and more generally of forming constructive relationships and developing a sense of concern for others. This affirmation enables her to develop a basic confidence in herself and her environment.

Affirmation is not only instrumental to developing a capacity for concern; it is also a more basic requirement for individual well-being. Affirmation

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account for motivation to obey norms that are not directly linked to sympathy.

<sup>404</sup> See D. W. Winnicott, *Maturational Processes and the Facilitating Environment: Studies in the Theory of Emotional Development* (London: Hogarth Press, 1979).

reassures the individual that she is wanted, or belongs. The search for this form of reassurance influences the individual's relation to her environment. The need for affirmation generates a certain pattern of interaction between the infant and her environment. It motivates the infant to internalise the standards and rules conveyed by her parents as the criteria for achieving affirmation. Conformity with these standards - whether this involves fitting shapes into the correct slots, learning a new word or being gentle with a younger sibling - will tend to provoke an affirming response from parents or carers, thus fulfilling the need for affirmation and approval from her loved objects. As Axel Honneth writes, "By putting oneself in the normative point of view of its interaction partner, the other subject takes over the partner's moral values and applies them to its practical relation to itself."<sup>405</sup>

The need for affirmation, like the desire for reparation, is not simply a temporal stage in the child's development. It is an ongoing emotional need that motivates the individual to gain approval and respect from friends, relatives, school teachers, and eventually a wider social and professional community. Yet the relationship between the emotional need for affirmation in love relations and the need for more impersonal forms of social affirmation is highly complex. It is worth briefly considering how it has been dealt with in recent literature on "recognition". A critical examination of these accounts will help clarify the steps needed to link affirmation to the internalisation of social norms. While broadly sympathetic with these accounts, I shall argue that they nonetheless fail to draw a satisfactory link between the personal desire for affirmation, and how this desire is socially mediated into a struggle for recognition.

A number of contemporary Hegelians - notably Charles Taylor and Axel Honneth - have attempted to explain the desire for recognition in the social and legal spheres in terms of a basic human need. The emotional need for recognition in love relations is broadened out to a parallel need for recognition in the sphere of legal rights, and in the ethical sphere. But it is not clear on these accounts how

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<sup>405</sup> Honneth, *Struggle for Recognition* (*op. cit.*), p. 77.

securing social esteem or being recognised as a legal rights-holder is related to the emotional need for affirmation. Honneth, for example, provides a cogent description of the individual's need for recognition in the sphere of love relations, based on Winnicott's theory of child development. He asserts that recognition in this personal sphere is a "precondition for the development of all further attitudes of self-respect".<sup>406</sup> But the question of how such a need influences the struggle for social and legal recognition remains obscure in Honneth's account. In what sense is the individual emotionally dependent on wider forms of social recognition for her well-being, and how is social recognition related to more intimate recognition in love relations?

Both Honneth and Taylor seem to assume that the need for social and legal recognition can be explained through an ontological account of the self as constituted through interaction with others. Drawing on Hegel and Mead, Honneth argues that the individual's identity is constituted by an ever wider circle of partners. The individual is dependent on recognition from these other people and groups in order to develop a self-conscious identity. But this ontological account simply *describes* a process in which the individual's self-conscious identity (or "self-relation" in Honneth's terms) is formed through intersubjective relations. It does not explain why the self should be disposed to engage in such interaction in order to achieve this form of self-relation. Nor does it explain why the individual should be motivated to strive for respect and recognition from her community. It is a plausible ontology of the individual, but ultimately fails to explain what psychological factors drive the individual in this process. What is absent is an account of the role of the affective elements of the self in the struggle for recognition.

Honneth's failure to link his psychoanalytic account to the social and legal spheres seems to be especially problematic in view of his account of the consequences of a breakdown in these forms of respect. He argues that this failure of recognition triggers an emotional reaction in the individual. Indeed, the

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<sup>406</sup> *Ibid.*, pp. 106-8.

possibility of such an affective reaction is a crucial assumption in his theory of how social resistance is motivated by the need for recognition.<sup>407</sup> But despite the importance for his account of linking emotional need with the social sphere, he offers no explanation of how insult and disrespect would generate an affective reaction. The closest he comes to elucidating the emotional significance of social recognition is in a passage on social approval.

In order to acquire a successful relation-to-self, one is dependent on the intersubjective recognition of one's abilities and accomplishments. Were one never to experience this type of social approval at some stage of one's development, this would open up a psychological gap within one's personality, into which negative emotional reactions such as shame or rage could step.<sup>408</sup>

The leap from ontological description to emotional need in this passage is unjustified. A description of the importance of social recognition for cognitive development cannot explain the emotional need for recognition, nor the motivation to develop this form of self-conscious identity. As we saw in the case of Kohlberg's account of motivation, cognitive failure alone cannot generate the affective reaction of shame or guilt. Instead, Honneth needs to show how this account of individual development in the sphere of love relations influences the struggle for recognition in the social sphere.

We can begin to elucidate such a link by considering why shame cannot be explained simply by reference to social disrespect. On Honneth's account, the level of shame experienced seems to be a function of the extent of disrespect shown. Now social insult is clearly an intersubjectively defined form of disrespect. Unlike more intimate forms of personal violation such as those described by Honneth, the extent of shame felt at an insult will vary according to particular social conditions. Thus in a society that values courage, the accusation of cowardice will evoke more shame than in a society that sets store by prudence. Nonetheless, the extent to which individuals are dependent on social esteem also seems to vary in relation to their development in the sphere of love relations. The

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<sup>407</sup> As he writes, the central question for his account is: "how is it that the experience of disrespect is anchored in the affective life of human subjects in such a way that it can provide the motivational impetus for social resistance and conflict, indeed, for a struggle for recognition?" *Struggle for Recognition (op. cit.)*, p. 132.

link between the need for personal and social affirmation is by no means simple, but it seems clear that the level of affection received in the personal sphere can significantly affect the desire for recognition in the social sphere. For example, a lack of attention from parents may generate a strong need for social recognition, channelled into either delinquency or professional ambition. Alternatively, affirmation through one's personal relations could increase a person's confidence to claim respect from others. Thus the relationship between the need for recognition in the personal and social spheres can take different forms. The point of these examples is not so much to explain the precise nature of this relationship, but simply to argue that the two spheres are not independent of one another. They are not "parallel" or "equivalent" in the sense suggested by Honneth - but rather, they influence one another in important ways.

What this suggests is that social recognition is closely linked to the emotional need for affirmation. The desire for respect and esteem is likely to vary at least partly as a function of the individual's need for affirmation in the sphere of love relations. But this does not mean that the precise content of socially defined norms is not also relevant in determining the consequences of a breakdown in social respect. Shared values and norms will define the standards and criteria for recognition in the social and legal spheres. And the individual seeking affirmation - be it from her professional, religious or social community - will internalise the relevant standards in order to gain this affirmation. The desire for affirmation motivates the individual to latch onto intersubjective norms in much the same way as it motivates the child to respect the standards conveyed by her parents. She has a basic need for this form of approval in order to feel confident about herself. This basic need is best characterised as an affective element of the self, which motivates the internalisation of intersubjective norms.

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<sup>408</sup> *Ibid.*, p. 136.



#### 4.2 *The personal disposition to impartial morality*

In conclusion, two affective elements of the self explain moral motivation: the empathic disposition and the desire for affirmation. The former provides the motivation to extend concern to others, thus explaining the possibility of sympathy based morality. And the desire for affirmation motivates the individual to internalise intersubjective norms and values, that both mediate the empathic disposition, and generate commitment to non-sympathy based moral norms. Both of these affective elements are shaped by the individual's cognitive structure, as well as her society's shared beliefs and values.

This account should be contrasted to both the cognitive developmental and the Freudian theories of moral development criticised in section two. These accounts characterised moral duty as a constraint on the pursuit of self-interest. For Freud, morality required repressing natural drives; and for the cognitive developmental theorists, the moral agent was rationally motivated to abstract from her personal perspective to adopt an impartial point of view. The alternative nonrationalist theory of motivation developed in this chapter offers a very different conception of the relationship between personal and moral perspectives. Morality is not a constraint on self-interest, but is itself motivated by affective features of the self. The empathic disposition suggests that concern for others is an integral part of the person's emotional makeup, helping shape her desires and interests. Far from being constrained by reason, this affective element is mediated by the individual's cognitive structure to produce more complex forms of sympathy. The practical implication is that this personal disposition should be cultivated as a distinctively moral capacity, rather than constrained by reason.

Yet reason does play an important role in mediating affective elements to motivate more complex forms of moral duty. And the desire for affirmation motivates the individual to internalise intersubjective values that in turn influence the empathic disposition. Understood in this way, the relationship between the personal and moral perspective is not one of (necessary) conflict. The adoption of an impartial perspective is itself motivated by the personal disposition, as

mediated by cognitive and intersubjective elements. It is precisely the individual's emotional disposition that motivates her to engage in the form of deliberation required by theories of impartial ethics.

We should conclude by considering what bearing this account has on the role of the impartial perspective in moral agency. The first point to stress is that the impartial perspective does not tell us much about motivation, or the sources of morality. According to the theory of moral motivation sketched in this chapter, in the impartial perspective the moral agent is deprived of the very features or dispositions that generate motivation to be moral. Moreover, as she is required to abstract from the particular values of her society, she is also stripped of the intersubjective conceptions of morality and reason required for rational moral judgement. It is these inter-subjective values which provide her with the framework for engaging in practical reason and making moral choices. In the impartial perspective the individual is bereft of the personal and inter-subjective tools required for moral agency.

Yet while the concept of an impartial perspective may be a misrepresentation of moral agency, it still has an important role in moral reasoning. The notion of the impartial viewpoint is a neat device for describing a form of abstraction required for a particular first order conception of justice in the liberal tradition. It conveys a particular conception of equal liberty that should determine patterns of distribution and justice. The act of adopting this type of "impartial" perspective can help the agent to evaluate the moral desirability of different principles or acts, on the basis of whether they are consistent with the conception of justice in question. Whether this conception is best represented through the Kantian Categorical Imperative, the Golden Rule, Scanlonian impartiality or a Rawlsian original position, it will require a certain kind of abstraction and practical reasoning.<sup>409</sup> Abstraction will require bracketing off certain characteristics and ties that are not considered by the theory to be

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<sup>409</sup> For an overview of these different conceptions of universalisation, see J. L. Mackie's *Ethics: Inventing Right and Wrong* (London: Penguin, 1977), pp. 88-89.

morally relevant.<sup>410</sup>

But engaging in this form of abstraction should not be identified with moral agency. It is simply a useful device for helping the agent to work through the consistency of her actions or principles with the theory of equality in question. The impartial perspective is not the source of our moral values, as we saw in Chapter Five. Nor is it the adoption of an impartial viewpoint that motivates moral action, as was argued in this chapter. Rather, our motivation to engage in this form of abstraction derives from the empathic disposition and the desire for affirmation.

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<sup>410</sup> I have taken this notion of abstraction as “bracketing” certain characteristics from Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), p. 40.

## **Chapter Seven**

### **Community and Universal Duties**

The critique of cognitivism developed in the last two chapters exposed a number of weaknesses in universalist theories. It rejected the rationalist theory of motivation underpinning most of these accounts, instead locating the sources of moral motivation in the affective features of the self. And it questioned cognitivist claims about the role of reason in defining morality, opting for a conception of morality as shaped through intersubjective conceptions of the good. However, at the end of the last chapter, it was also suggested that this theory of morality and moral motivation was compatible with a commitment to a first order conception of impartial morality. The impartial perspective may not define morality, or motivate respect for moral duty, as claimed by the cognitivist and rationalist accounts. But it is a conception of moral agency central to the tradition of liberal political thought, and may be internalised through the types of processes described in the account of moral development in Chapter Six. The claim, then, is that this second order non-rationalist account of morality and moral motivation may be compatible with a first order commitment to liberalism.

It is the purpose of this chapter to examine just how this second order account and a first order liberal universalism could be combined. This is an important step in elucidating the implications of the non-rationalist account for the question of duties to non-nationals. For if second order non-rationalism precludes commitment to first order universalism, then the account of the last two chapters will clearly fail to meet the normative criterion established in the first chapter: it will not be compatible with a first order commitment to recognising duties to refugees. Not surprisingly, I will argue that it is possible to combine the two positions.

The chapter will start by locating the non-cognitivist account in the debate between liberals and their communitarian critics. Section one will argue that

while the conception of the individual outlined in the last chapter can be labelled an ontological communitarian account, this does not commit one to according special weight to community ties. The communitarian conception of the individual may in principle be compatible with a conception of duties to all individuals, regardless of nationality. However, in section two I shall show that the second order account does undermine the foundational primacy of universal rights vis-à-vis other shared values. Thus the weight attached to universal duties will not be dependent on their universal validity, but is instead contingent on the particular historical social matrix. The discussion will consider criteria for establishing a hierarchy between these goods so as to encourage the relative priority of universal over special duties. In the third section, I shall tie together the discussion of the last three chapters, and consider its implications for the problem of motivation to extend duties to refugees.

## 1. The Communitarian Thesis

### 1.1 *Ontological communitarianism*

The term “communitarian” has been applied to the work of a number of contemporary political philosophers who have criticised individualist theories of justice, notably for their conception of the individual as in some sense methodologically or morally prior to her community. They have argued that liberals are committed to a conception of the individual as “radically disembodied”<sup>411</sup>, whose interests and identity are defined pre-socially, and who autonomously chooses her own values and ends.<sup>412</sup> Communitarian theories stress the relevance of community in shaping the individual’s identity and conception of the good. For many theorists, this ontological account is used to justify normative claims about the moral relevance of community, and its

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<sup>411</sup> Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 54.

<sup>412</sup> Sandel, *ibid.*; Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), pp. 232-3; Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, Mass: Harvard University Press, 1989), p. 514.

contribution to human flourishing.<sup>413</sup> This may in turn generate more specific prescriptions about the political and social institutions required to protect or promote community.

It should, however, be stressed that ontological accounts of the individual's relationship to society are in principle distinct from moral and political theories of community. While the debate between liberals and communitarians is often couched in terms of opposing normative theories, those who embrace a communitarian ontology have divergent views on the prescriptive implications of the communitarian critique of liberalism.<sup>414</sup> In the course of the discussion, I shall therefore distinguish between two sorts of communitarianism. The ontological thesis is essentially a theory of the factors that shape the individual's identity and ends, and will have implications for questions of methodology, as well as the foundations of moral and political philosophy. Prescriptive communitarianism, on the other hand, refers to more normative communitarian theories about the moral significance of community. Prescriptive communitarianism may also refer to political theories of the social institutions necessary to achieve these moral goals.

The writers most famously associated with ontological communitarianism include Michael Sandel, Alasdair MacIntyre, Michael Walzer and Charles Taylor. In the work of Sandel, the self is not prior to her values and goals, but instead constituted by the inter-subjective values of her community, an account which he terms "the constitutive conception of community".<sup>415</sup> As we saw in Chapter Six, Charles Taylor adopts a Hegelian account of the individual's identity as

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<sup>413</sup> For examples of this kind of prescriptive communitarianism, see Charles Taylor, "The Politics of Recognition", in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1994), pp. 25-73; and Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983).

<sup>414</sup> The distinction between ontological and prescriptive communitarianism has been clarified by Charles Taylor, "Cross-Purposes: the Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA and London: Harvard University Press, 1989), pp. 159-182; and Axel Honneth, "The Limits of Liberalism: On the Political-Ethical Discussion Concerning Communitarianism", in *The Fragmented World of the Social: Essays in Social and Political Philosophy* (New York: State University of New York Press, 1995), pp. 231-46.

<sup>415</sup> Sandel, *Liberalism and the Limits of Justice* (*op. cit.*), p.150.

constituted through interaction with others. Similar conceptions of the communitarian sources of values are defended by Alasdair MacIntyre and Michael Walzer.<sup>416</sup> Despite variations, we can summarise the central claims as a conception of the self as “encumbered”, or constituted by a set of intersubjective values and goals, which are shaped and perpetuated through the shared goods and practices of a community of people. For the sake of simplicity we shall refer to the individual as constituted by her “social matrix.”

This account of the encumbered individual is compatible with the account of moral agency outlined in the previous chapter. While my account defended a conception of the unconscious self as in some sense separate from society, it acknowledged that the individual’s self-conscious identity, goals, values and beliefs are constituted by the social matrix. And the account of moral development emphasised the fundamental role of intersubjective values in shaping the individual’s conception of morality. This account of the sources of moral motivation can therefore be classified as a communitarian conception of the self.

But as mentioned above, many communitarian accounts take a step beyond this descriptive claim about the individual as constituted by her social matrix, arguing that this ontological account is a basis for attributing special moral relevance to the community. Since the individual is constituted by her community’s language, values and conception of rationality, it is argued, these relationships and institutions should be accorded an ethical status denied by individualistic theories of moral agency. In terms of political theory, the normative implication is that since our social context is constitutive of our identity and well-being, the practices and ties which comprise this social matrix should be maintained and even strengthened. Given the commitment of this thesis to ontological communitarianism, we need to consider whether the account of the last two chapters also commits us to prescriptive communitarianism.

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<sup>416</sup> MacIntyre, *After Virtue* (*op. cit.*), especially Chapter 15; and Walzer, *Spheres of Justice* (*op. cit.*) and *Interpretation and Social Criticism* (Cambridge, Mass and London: Harvard University Press, 1987).

The step from the description of the self as constitutively attached to her community to the political prescription that the community should be preserved or reinforced can be justified in two main ways. The first route, which is discussed in 1.2, argues for the preservation of the existing practices of communities. The second argument, considered in 1.3, argues for the strengthening of the processes through which individuals are constituted.

### *1.2 Ontological communitarianism and the politics of recognition*

The first account of the link between ontological and prescriptive theses holds that the conception of the self as constituted by a particular culture provides grounds for protecting the practices of this culture. On this account, the communitarian ontology justifies political and legal arrangements to preserve a particular community and its way of life. This type of argument takes as its starting point a Hegelian notion of recognition similar to that discussed in the last chapter. The individual's self-conscious identity is defined through interaction with others, and thus recognition by others is essential for positive individual development and self-realisation. The need for this type of recognition is not limited to the formative stages of development, but continues throughout the individual's life. The sphere of recognition also extends from an initial dependence on the family or carers, to the need for forms of social and legal recognition. As the individual begins to interact with a wider social sphere, her self-conscious identity is constituted by the intersubjective ethical values of her community. She becomes dependent on legal and social recognition from this wider sphere in order to achieve self-respect and affirmation.

Now we saw in the last chapter that Honneth's attempt to move from an account of the psychological need for affirmation to the struggle for legal and social recognition was incomplete. Honneth failed to elucidate how the need for affirmation in love relations would generate a "parallel" struggle for recognition in other spheres.<sup>417</sup> Nonetheless, I argued that there clearly was an important link

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<sup>417</sup> See Chapter Six, section 4.1.



between individual psychology and socially defined forms of recognition, and thus there were strong grounds for linking a person's well-being with the need for social recognition. Yet on Honneth's account, all that this establishes is that individuals have reason to struggle for certain forms of recognition. Under the right social conditions, the need for recognition may motivate people to fight for legal rights and social respect, usually in the form of a struggle for the recognition of *group* rights. Historical struggles for the rights of social classes, racial minorities, religious groups or national minorities can all be characterised as the struggle by groups for social and legal recognition. For Honneth, the struggle for recognition may imply the need for forms of collective rights, but as a means of ensuring the recognition of individuals. This account of the need for group recognition is not enough to establish a claim about the intrinsic moral relevance of community. Collective rights are valued as a means to individual recognition.

In his essay on the "Politics of Recognition", Charles Taylor takes the demands of recognition further, arguing that the need for recognition justifies policies to protect the distinct cultures of different groups.<sup>418</sup> The argument here is not simply a version of Honneth's claim about individuals' need for legal and social recognition. It is the more group-oriented claim that communities with distinct practices require a form of collective recognition that goes beyond the legal and social recognition owed to their individual members. The justification of group recognition is not grounded in the needs of its current members, but seems to be based on a non-individualist conception of the value of particular traditions and practices. This point is emphasised in Taylor's argument for the preservation of cultures that are struggling for survival. Taylor argues that there is a justification for over-riding certain individual rights in order to ensure the survival and reproduction of a culture that is in danger of extinction. Drawing on the debate about the cultural rights of French-speaking Canadians, he argues that the Quebecois were justified in introducing legislation to restrict freedom of choice regarding language. Since the French language was in danger of extinction, it was right, for example, that French-speaking Quebecois be legally

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<sup>418</sup> Taylor, "The Politics of Recognition" (*op. cit.*).

obliged to educate their children in French. Linking this point back to his communitarian ontology, Taylor's argument can be formulated as follows. Certain practices - in this case the speaking of French - are constitutive of the identity of Quebecois people. The recognition of the practice of speaking French is therefore a necessary condition for the self-realisation (positive self-relation) of French Quebecois people. Since the only means of ensuring the continued recognition of the practice is through legal provisions obliging French Quebecois children to attend French speaking schools, then such legislation is a pre-condition for self-realisation.

Before examining the coherence of this argument, it is worth considering the practical consequences of this form of "politics of recognition". The claim that community practices constitutive of people's identity should be preserved has a number of implications not just for group rights but also for the rights of non-members. If recognition is really dependent on the preservation of existing practices, then this would presumably justify protecting such practices from erosion or dilution by values and practices external to that community. This would imply the need to defend the community from the outside influence of other communities, and also to restrict the entry of groups that might jeopardise the survival of these practices. The need for recognition would thus justify special duties to preserve the community's way of life, and by extension, undermine the moral relevance of universal duties to those outside of the community. If one accepts Taylor's argument about the link between ontological and prescriptive communitarianism, the communitarian account of the individual outlined in Chapters Five and Six could commit us to a potentially restrictionist refugee policy. Taylor does not argue that the need for preservation should necessarily override individual rights, in fact in a subsequent piece he asserts that preservation of a culture may conflict with more important shared values.<sup>419</sup> Nonetheless, if such group rights to preservation do necessarily follow from a

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<sup>419</sup> Charles Taylor, "Charles Taylor Replies", in *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question*, ed. James Tully (Cambridge: Cambridge University Press, 1994), p. 251.

commitment to ontological communitarianism, this could justify a more restrictionist refugee policy.<sup>420</sup>

Fortunately, the communitarian account of the individual need not commit one to any such conclusion. Taylor's argument for deriving a collective right to preserve practices from the need for recognition is problematic on two fronts, one theoretical, the other empirical. First, it is not clear that the individual's need for recognition does justify group rights on any other than individualist grounds. Presumably even Taylor would agree that the value of a community's practices is contingent on the contribution of such practices to the flourishing of its members. Even if one accepts a communitarian ontology, one can quite consistently reject the notion that there is a transcending value attached to a particular culture, over and beyond the value derived from the people who make up the community. While the recognition of group rights may be instrumental for securing the recognition of its members, this does not ground a right to maintain these practices regardless of the wishes of members of the community. Thus although current members of the community may be concerned to pass down their practices to future generations, it is not clear that this over-rides the wishes of future generations, who may be critics of existing practices. The notion of intersubjectively defined identities does not preclude the possibility of change, and where such change occurs the members of a group may feel that recognition requires modifying or rejecting past practices. As Habermas writes, "the protection of forms of life and traditions in which identities are formed is supposed to serve the recognition of their members; it does not represent a kind of preservation of species by administrative means."<sup>421</sup>

The problem can be expressed more clearly if one considers the possibility of conflict between the preservation of existing group practices, and the forms of recognition required by members. As we saw with Honneth's account, a sense of

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<sup>420</sup> Walzer appears to take this route when he defends restricting the entry of large numbers of refugees who do not have ethnic or ideological affinities with the receiving community. See Walzer, *Spheres of Justice* (*op. cit.*), pp. 49-50.

grievance can motivate a struggle for recognition which generates social conflict and change. On this account, individuals' need for recognition is best met through social change, rather than preserving existing practices. And this brings us back to the point that group practices are not intrinsically valuable, but derive their worth from their contribution to the well-being of their members. If one accepts the instrumental value of group rights, and also accepts the possibility of critique of existing practices, then it seems wrong to suggest that the need for recognition implies a commitment to the preservation of community practices. There is certainly a case for recognising and promoting particular community practices that are constitutive of individual well-being, and for making such practices available for future generations. But this recognition of the group will not necessarily over-ride the changing forms of struggle for recognition of its members. Indeed, Honneth argues that his communitarian ontology implies an ongoing struggle for new forms of social and legal recognition that involve rejecting existing practices. Whether or not we accept this account, the point is that Taylor and Honneth derive different prescriptions from a similar ontology. A commitment to protect existing communities does not necessarily follow from accepting communitarian ontology.<sup>422</sup>

The second point concerns not so much the coherence of Taylor's argument, as its empirical premises. Even if the protection of community practices can in principle be justified on these instrumental grounds, such protectionism would only be possible if there were in fact clearly definable communities. Yet the practices and values that constitute the individual are likely to be diverse and often conflicting, and derived from a number of different (possibly overlapping) communities. Any one individual is likely to be constituted by a unique configuration of values and practices, for example through religion, her family's moral and political values, exposure to other

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<sup>421</sup> Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State", in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1992), p. 130.

<sup>422</sup> In fact, Taylor's claims about cultural preservation seem strange in the light of his own views on the importance of reflection and critical evaluation for individual flourishing. As we shall see later in the chapter, other of his writings seem to imply a commitment to a more substantive liberal conception of autonomy.

cultures through travel or education, as well as the more obvious influences of language, national and local political and administrative structures, and a shared interpretation of her community's history and culture. There is rarely a single, dominant community, which can be said to be the sole source of the individual's values, especially in multi-cultural societies. Still less plausible is the claim that a community is bounded, and cut off from the influence of other communities. In reality, different communities are constantly influencing one another through media, culture, migration, trade, and so on.<sup>423</sup> In short, there is often no easily definable salient or ultimate community, let alone one exclusive group from which individuals can be said to derive their values. And even assuming there were, in all but the most extreme cases this community will not be bounded but fluid and partly shaped by the values and actions of other communities. The need for group recognition will in many cases fail to provide clear grounds for privileging certain sources over others.

There are evidently exceptions to this pluralist conception of the sources of identity. Some groups (or their leaders) claim that certain distinctive shared traits of their members - usually a distinct history or beliefs or physical characteristics - generate special moral or political claims. Such claims about group identity are often made in order to mobilise support for political goals - secession, imperialism or the restriction of immigration. As with the argument for preserving cultural practices, it is not clear why the communitarian ontology would commit one to recognising the claims of such groups, especially if such claims would conflict with the recognition of their individual members or the well-being of non-members. A second type of claim for group recognition, which often overlaps with the first variety, occurs where a group becomes politically relevant because they are perceived to have been the victims of unfair treatment in the past. In the case of minority groups with special needs, groups that have suffered discrimination or who are economically disadvantaged, there may be a clear case for singling out particular social groups for special treatment. Minority

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<sup>423</sup> See Ayse S. Caglar, "Hyphenated Identities and the Limits of 'Culture'", in *The Politics of Multiculturalism in the New Europe: Racism, Identity and Community*, ed. Tariq Modood and Pnina Werbna (London and New York: Zed Books, 1997), pp. 169-85.

rights or affirmative action for selected groups may be justified on the grounds that such policies will redress a historical imbalance of treatment. Singling out particular social groups as the subject of collective rights is considered to be the best means of realising *de facto* equality. This would provide a justification, for example, for according certain group rights to Quebecois. But accepting the legitimacy of this form of group right does not mean one has to accept a communitarian argument that accords intrinsic value to the group's culture. A liberal could also quite happily endorse collective rights designed to ensure the equal rights of all individuals.<sup>424</sup> If these are the only sorts of collective rights implied by the communitarian ontology, there is no reason to suppose that it could not be compatible with first order liberalism.

To summarise, communitarian ontology does not seem to commit us to recognising the intrinsic values of existing community practices. The need for recognition does not justify prioritising recognition of groups over individuals. And even if recognition of groups were justified, given the fact of pluralism, there would often be no empirical grounds for drawing clear-cut boundaries between groups or singling out the practices of certain groups for special treatment.

### 1.3 *Communitarian ontology and participation*

The second type of argument for prescriptive communitarianism emphasises the *processes* through which the individual is constituted, rather than the specific practices that are constitutive of its members. What is important on this account is not so much the preservation of the values of a given group of people, but rather the relations between an individual and the processes through which her values are formed and revised. This would imply according special moral weight to the processes through which the individual is constituted by the social matrix. On this account, the communitarian ontology would be used to justify political arrangements to promote certain forms of interaction between members of the community. It might provide grounds for encouraging

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<sup>424</sup> K. Anthony Appiah, "Identity, Authenticity, Survival", *Multiculturalism and the Politics of Recognition*, ed. Amy Gutman (Princeton, NJ: Princeton University Press, 1992), p. 161.

participation in social and political practices, or playing a more active role in community life.<sup>425</sup>

As with the first type of communitarianism, this could be used as an argument for justifying the moral relevance of special ties. The importance of cultivating special bonds and participating in shared practices would, on this account, give rise to duties to fellow participants, which would outweigh the importance of ties with those not participating in the said practices. However, the argument for participation could also justify ties with new members of the community, or even be a basis for encouraging interaction with different kinds of communities. If it is again based on a Hegelian conception of recognition, then it could be argued that recognition would be better achieved through interaction with a wider set of individuals or groups. There is nothing in the concept of recognition as shaping identity that implies there should be limits on the scope of interaction. If interaction is valued independently of the substance of shared norms - which on the participatory account it is -, then there seem to be no good grounds for restricting the participation of new-comers. Perhaps the claim would be that a history of interaction with certain groups creates a special pattern of interaction that would be disrupted by outsiders. But then this is already claiming something more for the significance of interaction, i.e. that it generates group practices that should be preserved. And this of course takes us back to the first argument for protecting existing practices, and we have seen that a justification for this form of group recognition cannot be derived from the ontological account of the individual as constituted by intersubjective recognition.

More generally, if the account of the self as constituted by the social matrix is a fact about human beings, then these processes will carry on occurring regardless of whether we make a point of nurturing them or not. In order to defend the claim that we should actively promote such ties, we would need an account of how the acknowledgement or strengthening of these ties would contribute to personal well-being. It is not enough to say that because certain

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<sup>425</sup> See, for example, Henry Tam, *Communitarianism: A New Agenda for Politics and Citizenship* (London: Macmillan, 1988), pp.196-218.

values and practices define the person, these values or the processes through which they define the person should therefore be protected or extended. What is missing is a defence of the contribution of this constituting process for human well-being. Thus a community that was committed to a substantive first order conception of the value of community life would have grounds for defending a political theory of communitarianism. But an individualist liberal society in which people did not attach value to community life would not be able to justify such a prescriptive communitarianism, even though the sources of their commitment to individualist liberal values could be explained through an ontological communitarian account. Prescriptive communitarian claims do not follow directly from the communitarian ontology, but need to be justified as first order moral goods.

To conclude, it is not clear how a prescriptive communitarian thesis can be established on the basis of a description of the self as encumbered or situated in an inescapable framework. The conception of the self as constituted by the social matrix does not in itself provide a moral justification for strengthening or protecting either the substance of the relevant values and practices, or the processes through which they are shaped and internalised.

## **2. The Status of Universal Duties**

Although my ontological account does not necessarily commit me to prescriptive communitarianism, it does nonetheless delimit the range of possible moral theories I can embrace. Most importantly for this discussion, as I shall show in 2.1, it undermines the claim of justice to foundational supremacy. This section discusses the implications of this attack on justice (2.2 and 2.3), arguing that liberal universalism may nonetheless be accorded a special moral status amongst first order goods. The section concludes in 2.4 by considering how the communitarian ontological account can explain the possibility of individuals rejecting shared values, and different forms of social critique.



## 2.1 *Undermining the foundational and political primacy of justice*

One consequence of defending a communitarian ontology will be a rejection of the universalist and cognitivist claims of procedural liberalism. In Chapter Five, the conception of the individual as constituted by the social matrix was contrasted to the cognitivist account of the individual as a rationally motivated agent, capable of defining moral duty through reason. The alternative relational account of the moral agent is clearly incompatible with this notion of the individual as an autonomous chooser of her own ends. It is also incompatible with a theory of the foundational primacy of justice over the good. If we accept an account of the individual as constituted, justice can have no *a priori* claim to primacy over competing conceptions of the good. It is worth examining why this should be the case.

The liberal conception of the individual is closely linked to the liberal claim about the primacy of justice. As Michael Sandel argues, on the liberal deontological account, the individual is conceived of as prior to her own ends, as the autonomous chooser of her values and goals.<sup>426</sup> Thus political institutions must be so structured as to allow individuals the maximum possible freedom in choosing their own ends. This freedom of choice is guaranteed through the deontological conception of justice, which views justice as a neutral, regulating principle that ensures all individuals have the freedom to choose their own goals and values. On this account, justice has primacy over particular conceptions of the good. By maintaining a neutral stance between different goods, the claim is that justice respects people's capacity to choose their own goals and values. Unlike in teleological theories where the right is determined by the good, on this liberal account the right should be conceived of as prior to the good.

Moreover, on the deontological liberal account, justice is not only accorded moral primacy: it also has a privileged form of justification. Unlike conceptions of the good that are contingent on particular historical and social

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<sup>426</sup> Sandel, *Liberalism and the Limits of Justice* (*op. cit.*), p. 9.

factors, justice has a special foundational claim to universal validity. As we saw in Chapter Five, cognitivist theories hold that justice is a universal regulating principle applicable to all societies, grounded in the shared capacity of human beings for reason (or in Habermas' case in their participation in discourse). The priority of justice thus follows from a particular conception of the individual as a rational agent, or as a participant in discourse; and it is accorded primacy over the good, reflecting a conception of the individual as capable of choosing her own ends.

It should be clear why this account of justice as primary is not compatible with a communitarian ontology. On the communitarian account, the individual is not a chooser of ends, but is constituted by her social matrix. And far from representing a neutral principle of right, the liberal notion of justice is shaped through shared conceptions of human flourishing and the good. On this communitarian ontological account, justice has no privileged foundational status, and no *a priori* claim to primacy.

If justice is denied this ontological primacy, are there alternative grounds for according it the status of regulating principle? After all, denying the foundational primacy of justice may not imply rejecting its *moral* primacy.<sup>427</sup> Two possible routes could be pursued in order to defend the moral primacy of justice, without embracing its ontological primacy. These correspond to the two strands of Rawls' political conceptions of justice as fairness. As we saw in Chapter Four, Rawls argues that his conception of justice is political in the sense of being:

- (a) a response to empirical conditions of conflict between individuals of roughly equal strength for moderately scarce goods; and
- (b) worked up from the shared values of members of a liberal democratic society.

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<sup>427</sup> As Taylor points out, Sandel's ontological thesis does not entail advocating a communitarian moral or political theory, but simply a different "structure of the field of possibilities". See Taylor, "Cross-Purposes: The Liberal-Communitarian Debate" (*op. cit.*), p. 183.

The first, empirical proposition might provide grounds for attributing political primacy to justice; the second could justify the moral primacy of justice amongst other goods. Both of these possible justifications will be examined in turn.

The political case for according primacy to justice was based on a characterisation of society as a competition between individuals of roughly equal strength for moderately scarce resources. These “circumstances of justice” necessitated a regulating principle to avoid conflict. In order to justify the primacy of this regulating principle over conflicting claims, justice would have to be accorded supreme status over all other goods. A political justification of the primacy of justice would therefore involve the claim that the circumstances of justice are the salient problem confronting society, and that addressing this problem must take priority over other goals.<sup>428</sup> Such a defence would need to show that solving this problem of conflict was a prerequisite for realising other rights or goals, such as stability, or freedom.

There are two main obstacles to grounding the primacy of justice in the political necessities created by the circumstances of justice. First, if justice is to derive its primacy on the basis of the “circumstances of justice”, its primary status will clearly be contingent on empirical conditions. That is to say, the right is prior to the good insofar as there is an actual or potential conflict between different conceptions of the good and regulation of this conflict is the most urgent political task confronting us. As Hume, the original “circumstances of justice” theorist, observes: “Encrease to a sufficient degree the benevolence of men, or the bounty of nature, and you render justice useless.”<sup>429</sup> Now we saw in the discussion of social contract theories that the circumstances of justice assumed three conditions: egoistically motivated individuals, of roughly equal strength, competing for scarce resources. These conditions may indeed be said to be characteristic of distributional problems in some societies. In war-torn societies

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<sup>428</sup> Indeed, this is what Rawls means when he says that justice is “the first virtue of social institutions.” John Rawls, *Theory of Justice* (Oxford and New York: Oxford University Press, 1971), p. 3.

<sup>429</sup> David Hume, *A Treatise of Human Nature* [1739], ed. Ernest C. Mossner (London: Penguin, 1969), p. 548.

or failed states, conflict and instability may generate a struggle for scarce resources, rendering the need for some regulatory principle the salient and most urgent political goal. Even in more stable societies, the need to regulate conflict may be the most important task for a great many political institutions. For example, institutions to deal with criminal justice or taxation must all provide criteria necessary for deciding between competing claims. Regulating the conflicts of interests between criminals and victims, or between tax-payers and the recipients of government services, requires mutually acceptable principles for deciding on how to distribute benefits and burdens.

But this type of trade-off situation is not always the dominant feature of social interaction. Nor can it be characterised as the sole problem confronting political theorists. For a start, many goods are not subject to the sort of competition between individuals assumed by theories of regulative justice. What Joseph Raz terms “collective goods”, for example, clean air, public galleries or the benefits of living in a tolerant society, are not subject to this form of zero-sum distribution between individuals. Making these goods available to all is not a question of regulating competing claims, but of ensuring that they are preserved and remain accessible to those who benefit from them. The political questions raised by the need for such goods have little to do with distributional problems.

More fundamentally, it is simply wrong to characterise all members of society as egoistic individuals cooperating for self-interested reasons. We saw in Chapter Six that this was an untenable theory of motivation, relying on simplistic individualistic assumptions. It ignores the role of shared values in shaping interests, as well as the possibility of being motivated through concern at the plight of others. Rather than encouraging the development of such social virtues, theories of regulative justice dismiss them as largely irrelevant to the problem of guaranteeing cooperation. The favoured notion of egoistic cooperation is not only descriptively untrue, it also has negative practical implications. By encouraging people to conceive themselves as self-interests individuals, it actively endorses and perpetuates selfish behaviour. As Bernstein writes, “the idea of morality as a

system of rules of cooperation draws its image of morality from what is a defective case, and then idealizes that case as composing the whole.”<sup>430</sup>

The second problem, as we saw in Chapter Four, is that consideration of the circumstances of justice alone will not provide sufficient grounds for deriving a conception of justice as fairness. The need to regulate conflict between individuals of roughly equal strength competing for scarce resources is more likely to produce a conception of justice as mutual advantage than justice as fairness. For Rawls, what swung the choice in favour of a more morally palatable theory of justice was the shared values of the contractors. When we talk about the primacy of justice, or justice as regulating all other goods, we are surely referring to this notion of justice as fairness rather than the establishment of a mutually beneficial *modus vivendi*. The circumstances of justice do not describe a necessary or permanent empirical condition, let alone one that provides an exhaustive inventory of the problems confronting political theory. Even assuming for the sake of argument that it did, it would not produce a justification for the primacy of justice as fairness.

This brings us to the second Rawlsian ground for according justice a primary status: its morally privileged position in the value system of the relevant society. Here the argument is less clear-cut. As we saw, in his later work Rawls argues that the precise terms of justice are worked up from the shared values of contractors, who are the inheritors of liberal values and democratic political institutions.<sup>431</sup> These citizens of liberal societies will select principles of justice that conceive of individuals as morally equal and as autonomous choosers of their own ends. Now according to the communitarian ontological thesis, subjects embracing this conception of human autonomy must be understood as constituted by the social matrix. They have acquired this conception – indeed their whole moral outlook has been shaped - by the intersubjective values and practices of their society. If they endorse the moral primacy of justice, it is as a product of the

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<sup>430</sup> J. M. Bernstein, “Moral Norms and Ethical Identities: On the Linguistification of the Sacred,” in *Recovering Ethical Life: Jurgen Habermas and the Future of Critical Theory*, ed. J.M. Bernstein (London and New York: Routledge, 1995), p. 120.

<sup>431</sup> See Chapter Four, section 3.3.

value system and moral framework through which they are constituted. The moral primacy of justice in this sense may be reconcilable with ontological communitarianism. On this account, justice is not valued because it has an independent source of justification, as is claimed by deontological theories. Nor does this account imply accepting a characterisation of society as a conflict for scarce resources. Rather, justice may be qualitatively distinguished from other goods as conveying a conception of humans as autonomous and equal, a conception that is integral to our self-understanding.

## 2.2 *The diversity of goods*

Yet while the moral primacy of justice in this sense may be compatible with the ontological communitarian account, its status as trump over other goods is challenged by the empirical fact of diverse goods in liberal societies. Once we start examining the range of goods that define what is of value in our lives, it becomes more and more difficult to define any single and permanent ordering of goods. Recognising the diversity of values therefore delivers yet another blow to the primacy of justice. To understand why this should be the case, we shall look at Charles Taylor's account of the sources of western liberal values.

In his *Sources of the Self*, Taylor provides an account of the individual as situated in intersubjectively defined structures of beliefs and values, or "inescapable frameworks".<sup>432</sup> It is with reference to these frameworks that individuals can understand and articulate their beliefs about the good, their moral convictions and values. These frameworks also enable the individual to make a series of what Taylor calls "qualitative distinctions."<sup>433</sup> We employ these distinctions to differentiate between the value of actions or virtues or forms of life, some of which we mark out as morally higher or more worthwhile. These morally worthwhile virtues or actions are what Taylor terms "goods." It is only

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<sup>432</sup> Taylor, *Sources of the Self* (*op. cit.*), p. 3.

<sup>433</sup> Charles Taylor, "The Diversity of Goods", in *Philosophy and the Human Sciences: Philosophical Papers 2*, ed. Charles Taylor (Cambridge: Cambridge University Press, 1985), pp. 234-8; and *Sources of the Self* (*op. cit.*), pp. 53-98. The account that follows is primarily drawn from Taylor's discussion in Part One of *Sources of the Self*.

through recognising qualitative distinctions of these kinds that we will be able to understand and thus realise the goods embedded in our frameworks. A full understanding of what sorts of actions, goals, virtues and ways of life are morally worthwhile will require articulating these various qualitative distinctions. This articulation, Taylor argues, is only possible through tracing the historical evolution of our shared understanding of goods. Such an historical enterprise is necessary because one can only define and articulate goods through understanding how they have evolved. Tracing the historical evolution of articulations of goods is also the only means of retrieving those goods that have been suppressed by modern moral philosophy.<sup>434</sup> Taylor's conception of the self as constituted by an inescapable framework therefore implies the need to articulate the components of this framework, in order to achieve self-understanding and moral enrichment. Articulation is vital to human well-being, because it is only through reflection and examination of our qualitative distinctions that our moral convictions can make sense. It can also help to motivate us to realise the goods we have articulated.<sup>435</sup>

Given the need for articulation, Taylor is critical of deontological liberalism for attempting to abstract from our frameworks and thus suppressing an understanding of the goods they affirm. Procedural liberal theories of the kind espoused by Kant, Nagel, Rawls, Scanlon and Habermas are all guilty of this type of suppression. According to Taylor, these "strange, cramped theories" have the "paradoxical effect of making us inarticulate on some of the most important issues of morality."<sup>436</sup> They attempt to cover up the more messy and troublesome reality of a diversity of goods that often prescribe conflicting courses of action or ways of life. The attempt of procedural liberalism to divorce the individual from her constitutive frameworks is not only doomed to failure, it is also profoundly damaging to the moral life of the individual. It thwarts her moral awareness and understanding of what is worthwhile in life, "making us inarticulate on some of the most important issues of morality."<sup>437</sup> Taylor calls instead for an articulation

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<sup>434</sup> Taylor, *Sources of the Self* (*op. cit.*), p. 103.

<sup>435</sup> *Ibid.*, p. 92.

<sup>436</sup> *Ibid.*, p. 89.

<sup>437</sup> *Ibid.*, p. 89.

of the goods embedded in our frameworks, in order for us to understand and thus realise the goods concerned.

This stress on the need for articulation is of interest to the current argument for two reasons. First, his account of the diversity of goods and how they might be ordered may help us understand the relationship between universal and special duties. It will not provide us with clear-cut formulae of the kind promised by deontological theory, but it can point us in the direction of a more sophisticated conception of duties to non-nationals. Secondly, Taylor argues that articulating the goods underlying our commitment to procedural liberalism can help motivate respect for the requirements of universal rights. I shall return to this second point in section 3. The remainder of this section will be devoted to elaborating the first question.

Taylor identifies commitment to liberal universalism as a substantive first order conception of morality reflecting a particular conception of human flourishing. The form of modern liberalism that we have inherited gives central weight to the values of freedom, reason and avoidance of suffering. We saw in the critique of cognitivist theories in Chapter Five that the norms of rights and justice based on these values cannot be derived solely from reason, but reflect commitment to certain conceptions of the good. These ideas about the good can be traced back to the early modern period and have evolved through Deist and Enlightenment forms to the contemporary conceptions of universal justice and human rights with which we are familiar.<sup>438</sup> But liberal conceptions coexist in modern western culture with other, potentially conflicting strands of moral thought, including those that accord moral weight to particular ties or community life. As we uncover the “layers of suppression”, Taylor argues, we will begin to discover a wide range of different goods.<sup>439</sup> The central conflict in western culture over the past two centuries has been between the goods associated with

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<sup>438</sup> *Ibid.*, p. 495.

<sup>439</sup> The diversity and frequent incompatibility of different goods is likely to be characteristic of all cultures, although Taylor is not concerned with (and would probably view himself as unqualified to speak for) cultures other than his own. Instead, he traces the evolution of the articulation of different moral goods for “modern, Western people.” *Sources of the Self* (*op. cit.*), p. 111.



Enlightenment ideals of universal rights or duties of benevolence, and goods associated with the Romantic strand of western thought. As Taylor writes, “A series of disputes of this form runs through modern culture, between what appear to be the demands of disengaged freedom, and equality and universality, on the one hand, and the demands of nature, or fulfilment, or expressive integrity, or intimacy, or particularity, on the other.”<sup>440</sup>

Taylor argues that it is simplistic and misguided to assume we should have to choose between different goods. In the case of justice, “The fact that the theory designating one [of these conceptions] is valid need not mean that designating the other is confused and invalid.”<sup>441</sup> Different conceptions of justice may be appropriate for different contexts, and likewise we may prioritise different goods or values over justice for certain moral questions.

Taylor is certainly not the first to locate the contemporary conflict between universal and special duties in the debate between rationalist liberalism and romanticism. Indeed, in Chapter One I traced the origins of the current conflict between refugee rights and national interests to a similar tension between notions of universal rights and nationalism. However, what I did not discuss in this first chapter - and what most other accounts of the history of ideas do not address - is the issue of the foundational status of these values, and their relative moral status. What is distinctive about Taylor's account of the history of ideas is his conception of the source of these values, and his acceptance of the phenomenon of value conflict. Taylor conceives of shared values as intersubjectively defined and so particular to different groups and historical eras. So both the rationalist liberal and the romanticist or nationalist strands in western thought were shaped by the historically contingent evolution of political and moral thought in western culture. He also recognises the moral relevance of both strands of thought, which are constitutive of the identities of members of western societies.

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<sup>440</sup> *Ibid.*, p. 101.

<sup>441</sup> Charles Taylor, “After MacIntyre” in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, ed. John Horton and Susan Mendus (Cambridge: Polity, 1994), p. 38

In descriptive terms, this clears up a number of confusions. It explains why members of liberal democracies have a strong commitment to national ties, and why these could be felt to have special moral significance even where they conflict with universal rights claims. And by understanding our commitment to liberal rights as shaped by shared values, it becomes clearer how people could be motivated via the desire for affirmation to internalise these norms. So this account of the sources of liberal values can avoid the rationalist's problematic dichotomy between the individual's contingent will and the requirements of reason. Yet characterising liberal universalism as historically contingent does seem to create a new set of problems. It might imply demoting the status of universal duties. If impartial justice is denied foundational and absolute moral primacy, surely there is no guarantee that it will feature on the top of the list of valued goods.

What Taylor provides, however, is some indication as to how one might evaluate and order these different goods. While he refuses to attribute any foundational or overarching moral primacy to universal justice, Taylor does suggest that liberal values could have the status of higher-order goods. Such goods are singled out from the plurality of goods in virtue of their importance in giving direction to our lives, determining action or helping us to order other goods. As Taylor writes, they are “goods which not only are incomparably more important than others but provide the standpoint from which these must be weighed, judged, decided about.”<sup>442</sup> These higher order, or “hyper”-goods may be seen as having moral primacy in many situations, although their primacy is not *a priori* or foundational as in the case of procedural liberalism. Hyper-goods are not derived and justified independently of other goods. Rather, they have the status of one good amongst many, which may often - but do not necessarily - trump other goods. So while higher order goods would usually be considered to trump other goods and values, there may be situations in which an individual does not consider a hyper-good to be primary. He may, for example, be a committed universalist for many issues, but nonetheless decide on reflection to give a

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<sup>442</sup> Taylor, *Sources of the Self* (*op cit.*), p. 63.

donation to the local hospital rather than to help victims of famine in another country, because of a commitment to helping his community. This notion of higher-order goods is worth unpacking in the context of liberal universalism and duties to non-nationals.

### 2.3 *Liberal universalism as a higher-order good*

There are a number of senses in which liberal universalism could be said to have the status as a higher-order good in liberal cultures, depending on which type of liberal theory one embraces. For the precise status of liberty as a higher order good will vary according to the specific conception of how liberty contributes to human well-being or flourishing. A teleological liberal theory, for example, might hold that human-beings are distinguished from other species by their capacity for reflection, and from this justify a system of rights that guarantees the maximum scope for exercising this capacity.<sup>443</sup> Liberal theories based on conceptions of interests or needs would ground rights in the shared interests of all human beings in security, subsistence and liberty, or some equivalent list.<sup>444</sup> The needs-based account may also be combined with a theory of basic or preconditional rights that are instrumental for realising all other goods and rights.<sup>445</sup> Each of these accounts provides a moral justification for marking out liberal universalism as a higher-order good, a good that is uniquely important to human flourishing. According to these theories, given its vital function in contributing to the good life, liberty should take precedence over other goods in most or even all circumstances. These types of justification for liberalism are likely to be familiar and intuitively persuasive for those brought up in liberal

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<sup>443</sup> One can find this type of approach in the work of Honneth. See "The Limits of Liberalism" (*op cit.*); and *Struggle for Recognition* (*op cit.*). Weinstock also argues that this should be the normative implications of Taylor's conception of the self. See Daniel M. Weinstock, Daniel M., "The Political Theory of Strong Evaluation," in *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question*, ed. James Tully (Cambridge: Cambridge University Press, 1994), pp. 171-193.

<sup>444</sup> See, for example, Alan Gewirth, "Can Utilitarianism Justify any Moral Rights?", in *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982), pp. 43-5.

<sup>445</sup> As we saw in Chapter Three, Shue justifies rights as preconditional to the enjoyment of all other rights and goods. See Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton, NJ: Princeton University Press, 1980).

cultures. Conceptions of human interests and flourishing similar to these have shaped our beliefs about the value and goals of human life.

The special status of liberal values as higher-order goods thus reflects their central role in shaping the identities, values and goals of those socialised in liberal cultures. While we are deeply committed to these conceptions, this commitment does not reflect the objective superiority or validity of liberalism. Rather, it is a product of the trajectory of political and moral thought over the past two millennia, a trajectory which was both historically contingent and, at least initially, particular to European culture. There was no inevitability about liberalism emerging as the salient good in contemporary western culture: perhaps the emphasis could equally have been on some alternative good, such as universal benevolence and the avoidance of suffering; or a teleology with more specific content, such as a form of virtue ethics or communism; or alternatively a welfare based conception of well-being that accorded a lesser status to individual rights.<sup>446</sup> But whatever the reasons for the current configuration of values and beliefs in western liberal societies, these goods are not something we can now opt in or out of. The commitment to liberal values may be historically contingent, but this does not render it any less constitutive of the identities of members of liberal societies. This is surely the case with conceptions of liberal rights, whose persistence and extension of scope seems to point to a special sort of appeal. The extension of rights in liberal political theory from their initial application to wealthy white males, to universal coverage of all human beings (plus or minus unborn children, the mentally handicapped and insane, and so on), is not something that is easily revocable. Whatever the reasons for their extension (and it is beyond the scope of this discussion to examine these) once extended they are difficult to retract.

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<sup>446</sup> I do not have space here to go into the historical reasons why the liberal conception prevailed over others. For accounts of the emergence of these concepts see MacIntyre, *After Virtue* (*op. cit.*), and *Whose Justice, Which Rationality?* (London: Duckworth, 1988); and Taylor, *Sources of the Self* (*op. cit.*). More specifically on the evolution of rights theories, see Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge University Press, 1986). For a classic Marxist account, see C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford and New York: Oxford University Press, 1962).

One reason for this lies in the moral grounding of such rights in a first order commitment to a conception of human interests or flourishing. Once the relevant characteristics - be they reason, material needs or interest in happiness - are attributed to all human beings, it becomes logically inconsistent to limit the application of rights. Indeed, a genuine and consistent denial of the moral claims of liberal rights theories would be extremely difficult for those with minimal intelligence and mental health who have been socialised in liberal democracies. While these societies clearly value a range of other goods - such as those associated with particular ties and community life, protecting the environment or promoting the arts, and so on -, the liberal conception of the individual nonetheless shapes discourse and practice in the economic, social and political spheres of liberal democracies. It is a deep-seated (although often unarticulated) conviction that does not necessarily take precedence in all political questions, but is one which members of liberal societies automatically factor in to political decisions, and at least take into account even where other goods seem to over-ride these considerations. For those who have successfully internalised liberal values, the denial of their universal ascription would be logically incoherent. Nowadays western liberals cannot consistently defend a conception of individuals as free and equal whilst denying the right to freedom of the subjects of colonial rule, or illiterate rural communities, or refugees.<sup>447</sup>

Of course there are a number of possible justifications for limiting the duties generated by universal rights. One could argue that rights would be more effectively realised through a division of responsibility into national units, or that intervention to ensure the rights of other peoples may be counterproductive in the longer-run.<sup>448</sup> Or it could be claimed that realising universal rights would conflict with other goods, such as ensuring a good standard of living for fellow nationals, or encouraging a greater sense of responsibility for members of one's own community. Yet the point remains that in contemporary liberal thought, the

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<sup>447</sup> The only routes for retracting the rights of certain groups would be through a form of cultural relativism that denied that liberal norms should be extended to those in non-liberal cultures; or through denying the moral claims of liberal rights discourse altogether. These two possibilities are considered in section 3. below.

<sup>448</sup> Some of these arguments were examined in Chapters Two (section 3.1) and Three (1.1).

moral grounds for the ascription of rights is based on a conception of relevant human characteristics that does not include race, nationality or religion. Once people are committed to such a conception of rights as grounded in shared characteristics - and the vast majority of those within liberal democracies will find resonance in such a conception - then there is a strong moral case to be made for recognising universal duties. The types of considerations used to justify women's rights or impartial justice at the national level would equally imply commitment to universal rights. The consistent application of rights theories, then, logically commits one to a universal conception, at least in principle.<sup>449</sup>

The universalist implications of rights theories are reinforced by a second characteristic of liberal rights. The extension of rights is difficult to retract not only on grounds of moral consistency, but also because of the effect of the actual ascription of rights in mobilising people to protect these rights. Once rights have been ascribed, rights holders tend to be extremely resistant to attempts to have them rescinded. Those who have acquired and exercised certain types of individual freedom seem to become rather rapidly accustomed to a conception of themselves as autonomous choosers, or as the instigators of social change. Once mobilised in this way, right-holders are likely to be more critical than before of attempts to limit their freedoms.<sup>450</sup> This characteristic of rights, what one might term their tendency to be self-reinforcing, makes it difficult to obtain consent for pursuing goals that may involve restricting individual rights. In liberal democracies, the restriction of rights usually only secures widespread consent where vital goods are under immediate threat.<sup>451</sup> Richard Rorty makes a similar point about the tenacity of rights, rejecting the claim that denying the metaphysical foundations of liberal values will undermine commitment to these

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<sup>449</sup> Andrew Linklater has made a similar point about what he terms one of the "ambiguities of citizenship": insofar as citizenship rights for particular groups are justified on universalist grounds, this gives such concepts "radical potential" to be extended to include other excluded groups. See *The Transformation of Political Community* (Cambridge: Polity Press, 1998), p. 193

<sup>450</sup> This may be one reason why the language of individual rights seems to have more widespread appeal than related goals such as development or full employment. The struggle for freedom seems to be especially strong where liberty is defined in terms of individual rights, perhaps because the immediate benefits of such rights are more tangible to individuals.

<sup>451</sup> In Britain, for example, public opinion seems to support the possibility of tax increases only in times of perceived crises in public services.

goods. He locates the appeal of liberal values in its ability "to tell stories about future outcomes which compensate for present sacrifices".<sup>452</sup> A conception of liberal values as contingent may not be able to promise an afterlife or redemption, but it can paint "plausible *political* scenarios", enabling people to believe that "things might get better, and to see no insuperable obstacles to this story's coming true."<sup>453</sup>

These considerations, while far from conclusive, help to explain why liberal universalism may be expected to continue to have the status of a higher-order good for many or most members of liberal democratic societies. Recognising the historical contingency of liberal universalism need not imply that it is easily swept aside. Liberal rights have universalist implications that are difficult consistently to deny, and those exercising such rights tend to be tenacious in their defence.

### **3. Moral Alienation and Internal Critique of Liberal Universalism**

Despite the robust nature of rights discourse in liberal cultures, there are clearly a number of circumstances under which individual or groups in liberal societies may fail to be moved by, or positively reject, liberal rights. In cases where members of liberal democracies do appear to have abandoned liberal rights theories altogether, it may be attributed to a failure to internalise intersubjective norms. Those who have been socialised in liberal societies and who nonetheless reject liberal values in favour of religious fundamentalism, extreme nationalism or generalised violence may be said to lack the psychological predisposition to empathy or the desire for affirmation that motivate individuals to internalise shared values.<sup>454</sup> Where whole groups of society reject these shared liberal

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<sup>452</sup> Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press, 1989), p. 86.

<sup>453</sup> *Ibid.*, p. 86.

<sup>454</sup> I am also assuming that these individual do not suffer from extreme forms of economic deprivation or social ostracism - these factors could be a cause of moral alienation, even in cases where individuals had developed the relevant psychological disposition and had been socialised in liberal societies. I shall return to this question later in the section.

values, we may attribute this form of alienation to a lack of social recognition of the group in question, again linked to the psychological need for affirmation.

The causes of such forms of alienation are extremely complex, and it is beyond the scope of the current discussion to provide a complete theory. The account of moral development set out in Chapter Six indicated that the sources of moral alienation may be found in a failure to meet the psychological needs of the infant or child, thus resulting in the child's incapacity to feel concern for others or to be motivated to internalise shared values in a positive way. Alternatively, it may be caused by a subsequent failure to meet psychological needs in their socially mediated forms, i.e. where they have been channelled into a need for social or legal recognition. This form of total rejection of shared values - which should be distinguished from a critique of existing practices - can therefore be characterised as a form of social pathology. It should also be distinguished from the issue of societies affected by acute poverty or violence. In these cases, the inability to meet the basic needs of citizens may generate a different sort of motivation to reject liberal values, based on the very real threat to one's material and physical security. This is an interesting case, but one that I am assuming does not characterise most members of western liberal democracies.

The case of outright rejection of liberal values needs to be distinguished from the rather different question of internal critique of existing values. It was suggested in the Introduction that members of a particular culture may challenge existing norms and values through highlighting tensions between different goals, or through demonstrating the inadequacy of existing norms and values in the face of changing conditions. The first type of internal critique is most likely to be generated by tensions in the practical demands of different goals. The classic example of this form of tension within the liberal tradition is between the values of freedom from constraint and equality, and there have been recurrent debates on the correct balancing of the two values.<sup>455</sup> Commitment to an extreme

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<sup>455</sup> See, for example, Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1988), especially Chapters Seven and Eight; and Steven Lukes, "Equality and Liberty: Must they Conflict?", in *Political Theory Today*, ed. David Held (Cambridge: Polity, 1991), pp. 48-66.



prioritisation of one of these values over the other may justify, respectively, right-wing libertarianism, or radical redistribution of wealth. Other examples might include conflicting views on the preconditions for ensuring liberty, or conflict between liberty and other goods. The second type of critique may be triggered by the inadequacy of existing norms in responding to new challenges. For example, an environmental crisis or economic decline may call for the re-evaluation of previously accepted goals.

The point of these examples is not so much to demonstrate the diversity of goods, but to illustrate how the values of a particular society may allow significant scope for rational critique and social struggle. Where such forms of internal critique gain sufficient credence, they may in turn generate social change. Demands for equal treatment of women, or judicial reform, or the alleviation of poverty are likely to be viewed as legitimate by many citizens partly because they invoke a conception of the equal worth of all individuals, the right to impartial treatment, or the value of enabling people to fulfil their potential. These forms of critique are not external to the sorts of goods that are valued in liberal societies, but gain resonance precisely because they draw on shared beliefs. There may be disagreements on how these goods are prioritised, and even different grounds for holding these beliefs (e.g. religious or secular). But most of us can intuitively understand the appeal of the goods in question, even if on reflection we do not accord them priority over others.

Obviously, the emergence of perceived tensions and inconsistencies in goals does not guarantee social critique: individuals must be willing and able to engage in critique. The impetus to criticise existing norms and practices stems from a combination of social conditions and the individual characteristics of critics. Regarding individual traits, the willingness and capacity for critique seems to depend on three main elements: the individual's affective disposition, her cognitive capacities, and the unique configuration of values and beliefs that constitute her. The influence of the individual's cognitive capacities is fairly obvious, especially in the case of intellectuals. Those with greater insight or conceptual ability will be in a better position to highlight and explain tensions

between different concepts. But not all critics have exceptional cognitive capacities, or articulate critique in the form of new theories. The impetus and capacity to find flaws in available concepts is also a function of the individual's particular experiences and social influences, which may make her better placed to criticise certain goods. A person who has suffered extreme deprivation, or has been exposed to a different social and economic system may draw on these experiences as a source of critique. Thirdly, there is also an important affective element involved, which can both motivate the individual to engage in criticism; and even influence the substance of her critique. I shall briefly consider the psychological sources of these forms of critique, looking in turn at the role of individual psychology in motivating critique, and in influencing the substance of critique.

The first question of what personal psychological factors motivate individuals to criticise their society is immensely complex, and I can only hint at the types of affective elements that may play a role. We say in the last chapter how the desire for affirmation may be channelled into a struggle for social or legal recognition. Where this psychological need is especially strong, it may provide the motivation to challenge existing social arrangements in order to gain recognition for oneself or the relevant group of which one is a member. But there are other ways in which the desire for affirmation could generate social critique. An academic could seek affirmation through the widespread recognition of the originality of her thought, or a campaigner for social justice could seek recognition through demonstrating her commitment to a worthy cause. In the case of militants, radical critique may be at least partly motivated by the wish to provoke a reaction - what one might term a desire for negative recognition. In using these examples, it is not my intention to reduce the explanation of social critique to a theory of individual psychology. The more modest aim is to show that certain affective dispositions are probably a necessary - but not sufficient - condition for such critique.

The second point concerns the influence of affective elements in motivating individuals to oppose particularly cruel practices. Those who have

successfully developed a sense of concern for others are likely to instinctively recoil at forms of torture, rape or mutilation, especially when they are directly exposed to such practices. There are some exceptions to this. First, even where people have developed a concern for others through their early relationships, this may be mediated through intersubjective beliefs into a strong sympathy for members of their community but not outsiders. This may decrease the force of revulsion at cruel practices, since conscious emotional responses are likely to be influenced by shared values. Second, in other cases cruelty may be considered to be justified as a means to more important collective goals. Again, an instinctive emotional reaction may be repressed and thus fail to motivate critique. And finally, under circumstances of extreme fear, deprivation or insecurity, one might expect the struggle to avoid starvation or massacre to take precedence over considerations generated by the empathic disposition.

These qualifications do of course suggest that social context can play a significant role in shaping emotional reactions to the extreme suffering of others. Nonetheless, the exceptions described are fairly extreme cases of exclusivist cultures or societies in crisis. One can still posit a conception of a "healthy" or "well-attuned" individual who, given a stable social environment, would develop a capacity for sympathy for those who are suffering from particularly cruel treatment. If this is the case, then one could further claim that this form of instinctive sympathy with the suffering of others may generate a critique that is not derived from available social norms and values. Pressing the point a little, one might argue that the empathic disposition constitutes a form of thin universalism, albeit contingent on developing the right psychological disposition, and given adequate social conditions. It offers the personal resources for rejecting particularly cruel practices, regardless of cultural context.

#### **4. Conclusion: Motivating Universal Duties**

This chapter has covered a range of rather different issues, in order to tie up some of the loose ends of the non-rationalist account outlined in Chapters Five and Six, and to draw out the implications of this account for political theory. It

has considered the question of whether the non-rationalist account could be combined with a commitment to liberal universalist values; the status of liberal rights in relation to other values and norms; and the possibility of critique and outright rejection of norms within liberal societies. The first two of these three issues are especially important to the argument of this thesis, and it is worth recapitulating the claims I made.

In the first section of the chapter, I located the non-rationalist account in the context of communitarian political thought. The discussion rejected the notion that the ontological account of moral agency outlined in the previous two chapters committed one to prescriptive communitarianism. Those socialised in liberal democratic societies would be likely to retain a strong commitment to the notion of universal rights. Nonetheless, the account did concede in section two that on this ontological account, liberal universalist values would lose their foundational and political primacy. The account of liberalism as historically contingent and culturally specific implied denying it any privileged form of justification or absolute moral supremacy over other goods. Even according to liberal universalism the status of higher-order good will not provide as robust a grounding as the claims to universal validity and moral primacy made by cognitivist theories. So in what sense has the account of the last three chapters advanced the goal of motivating duties to refugees?

We need at this point to return to Taylor's claims about the need for articulation. Taylor argues that there has been a tendency in liberal theory to suppress the goods that underlie notions of universal rights, and that this has made us lose sight of the sources of our commitment to such values. The demands of these universalist values are difficult to sustain, for their sources are suppressed by "the dominance of proceduralist meta-ethics, which makes us see these commitments through the prism of moral obligation, thereby making their negative face all the more dominant and obtrusive and pushing the moral sources further out of sight."<sup>456</sup> Taylor stresses the need for better articulation of the

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<sup>456</sup> Taylor, *Sources of the Self* (*op. cit.*), p. 518.

sources of liberal values, in order to help sustain our commitment to these ambitious moral norms and goals. He argues that articulating the goods embedded in our frameworks will help motivate respect for them: “articulation can bring us closer to the good as a moral source, can give it power.”<sup>457</sup>

This claim needs more detailed substantiation, which can be provided by returning to the non-rationalist theory of motivation. The first point to stress is that articulating the goods underlying commitment to universal rights might help to motivate duties to those in distress. If duties to refugees can be understood as an extension of sympathy, then the empathic disposition may generate increased commitment to refugee rights. More extensive public discussion of the types of values that shape our commitment to universal rights would help people to clarify the grounds for their moral beliefs, hopefully triggering sympathy-based motivation.

Secondly, by emphasising that this conception of duties is a shared value, articulation may help link respect for these duties to the desire for affirmation. If respecting norms is seen as a means of securing affirmation, it will encourage a more thorough internalisation of such norms. In a sense this point is rather trite - most people could readily accept the influence of respected figures and prevalent social norms in motivating ethical behaviour. But my account of the desire for affirmation provides a fuller psychological explanation for this. It also helps explain how articulation could assist moral motivation. Articulating a shared commitment to the ethical goal of helping those in distress could encourage people to internalise this standard as a means of securing affirmation.

If we further accept a linkage between the need for individual and group recognition - or at least group recognition as a means of ensuring individual recognition - then there may also be a strong case for articulating shared values to those outside one's community of values. External recognition of these shared characteristics may strengthen the commitment of members to the goods in

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<sup>457</sup> *Ibid.*, p. 92.

question. In this sense, it might be possible to build a conception of duties to refugees as constitutive of a nation's identity, and thus an integral component of national interest. I shall consider this possibility in the Conclusion.

# Conclusion

## 1. Summary of the Argument

### 1.1 *Revisiting the criteria for an adequate conception*

In its search for an adequate conception of duties to refugees, this thesis has examined a range of political, philosophical and psychological theories. The initial review of liberal universalist theories in the first part of the thesis revealed theoretical problems that necessitated a more extensive exploration of conceptions of moral agency and motivation. So although its starting-point was an essentially practical problem - the goal of promoting a more generous refugee policy - the thesis developed a more general critique of rationalist and cognitivist assumptions in liberal political theory. The critique of rationalism and the alternative non-rationalist account offered in Chapter Five were substantiated by an examination of psychological theories of moral development. These discussions of philosophical and psychological theory, I argued, were essential in order to address the policy problem of extending duties to refugees.

The need for this more profound critique of moral agency becomes clear if one considers the failure of liberal universalism to meet the criteria for an adequate account of duties to refugees. By way of recapitulation, I shall therefore briefly summarise the main steps of the argument in relation to these criteria.

In the Introduction I set out three main criteria for assessing the adequacy of a conception of duties to non-nationals: normative desirability, practical feasibility, and internal coherence. I then proceeded to evaluate a range of contemporary liberal universalist accounts of duties to non-nationals on these three criteria. First, in Chapter Two I argued that utilitarian accounts failed to meet the criterion of normative desirability. They produced conceptions of duties to refugees that conflicted with liberal notions of justice and rights. By contrast, pure right-based universalist accounts met this normative criterion, but failed the

test of practical feasibility. They generated overly stringent and thus unrealistic ethical obligations. Chapter Three considered whether thin universalist accounts could retain a right-based universalist account whilst addressing the problem of feasibility. I argued that such accounts either failed to address the problem of feasibility, or else produced conceptually incoherent accounts. The third set of universalist theories to be considered were social contract theories, which claimed to address the problem of motivation. I argued in Chapter Four that social contract theories failed either on the grounds of normative desirability (as in the case of Hobbesian theories), or alternatively on the criterion of feasibility (as in the case of more ethically driven theories of justice).

The second part of the thesis attempted to elucidate the underlying weakness in liberal political theory that generated these tensions. In particular, it focused on the theoretical sources of the problem of practical feasibility, defined more specifically as the problem of moral motivation. For this more abstract discussion of moral motivation, the argument required a rather different set of criteria. While the three initial criteria of normative desirability, practical feasibility and internal coherence were appropriate for the evaluation of normative prescriptions, the discussion of moral agency and motivation was more abstract and less directly related to prescriptive questions. Hence the adequacy of conceptions of moral agency and motivation depended on the criteria of empirical plausibility and internal coherence. The criteria of normative desirability and practical feasibility would only kick in once the normative implications of these conceptions of moral agency had been elaborated.

Focusing on these criteria of plausibility and coherence, the thesis considered the adequacy of liberal conceptions of moral agency from two perspectives. First, in Chapter Five it examined the adequacy of the rationalist and cognitivist philosophical assumptions underlying liberal conceptions of moral motivation and agency. I argued that both the rationalist account of moral motivation and the cognitivist theory of morality were untenable. They inflated the importance of reason in motivating moral action and in defining moral norms. Second, Chapter Six provided a more detailed critique of the empirical



plausibility of the rationalist/cognitivist account of moral agency, through considering psychological theories of moral development and motivation. I offered a more descriptively plausible account of the development of motivation to extend duties to others, and showed how this moral disposition could be channelled into recognising duties to refugees. Finally, in Chapter Seven I clarified this non-rationalist account in relation to communitarian political theories, and showed how a non-rationalist theory of moral agency and motivation was compatible with a substantive commitment to refugee rights.

The argument has thus come full circle back to the practical question of duties to refugees. The non-rationalist account, I have argued, is better equipped to fulfil the three practical criteria of an adequate account. It should certainly meet the requirement of internal coherence, which I hope has been demonstrated through the discussion of the last three chapters. The criteria of normative desirability and practical feasibility require more consideration, and I shall deal with each in turn.

## *1.2 Normative desirability*

First, on the question of normative desirability, I suggested in Chapter Seven that embracing a non-rationalist account did not commit one to prescriptive communitarianism. Although rejecting the cognitivist premises of liberal universalism, the non-rationalist account could be combined with a commitment to a substantive conception of universal duties. As I argued in the last chapter, recognising the historical and cultural contingency of liberal values does not imply that such commitments are easily cast aside. Rather, these liberal beliefs are constitutive of the identities of those socialised in liberal democratic cultures, and pervade political and moral discourse in these societies. Acknowledging how these ideas have shaped and continue to shape our values and beliefs will not undermine their influence on conceptions of moral duty, but should instead help strengthen our commitment to them. Thus the rejection of a cognitivist derivation of universal duties does not imply abandoning notions of refugee rights, but would hopefully help us to articulate and realise our shared values.

Of course, the compatibility of the non-rationalist account with a substantive commitment to universal duties is contingent on the existence of the relevant beliefs and values in the society in question. Societies that are not committed to liberal universalist values may reject the right-based conception of duties to refugees, and in such cases there will be no Archimedean point from which to criticise non-liberal practices.<sup>458</sup> This does create a tension between the first order beliefs of those from liberal societies, and the second order non-rationalist account of moral agency. On the one hand, the depth of our commitment to liberal universalist conceptions of human flourishing makes it practically impossible to see non-liberal practices as anything other than morally aberrant. Yet at the same time, we should recognise at a more abstract level that these liberal beliefs are particular to our historical cultural context.<sup>459</sup> While we would be in some sense denying our identity to reject these deep-seated beliefs, we should acknowledge that our commitment to them is not derived from some essential characteristic of human beings or the structure of language, but from a particular tradition of moral and political thought.

This claim about the historically contingent sources of moral beliefs may suggest a retreat into some form of cultural relativism. Cultural relativism is the view that the validity of moral beliefs depends on the norms and practices - or value system - of a particular group, and that there is no universal standpoint from which to evaluate the worth of different value systems.<sup>460</sup> But the relativist thesis

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<sup>458</sup> Although of course, non-liberal societies may have an equally or even more generous conception of duties to refugees. See, for example, Gaim Kibreab, *African Refugees: Reflections on the African Refugee Problem* (Trenton, NJ: Africa World Press, 1985), p.68 - although Kibreab doubts that the African tradition of hospitality is sustainable under conditions of extreme poverty.

<sup>459</sup> Richard Rorty expresses this recognition of a split between first order liberal values and their historical contingency as a form of irony (see his *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989), particularly pp. 73-95. While I am in agreement with many of Rorty's claims - especially as regards the contingency of liberal beliefs, and the dichotomy between substantive ethical or political commitment and metaphysical foundations - I do not find the concept of irony in the private sphere helpful to the current argument. It implies a form of private cynicism vis-à-vis liberal values, rather than the sort of public acceptance of shared values espoused by Charles Taylor. I argue instead for the positive celebration of shared values, and a public recognition of their historical and cultural roots in liberal democratic societies, which - as I shall argue below - can help motivate the extension of liberal duties.

<sup>460</sup> For discussions of human rights and the question of relativism, see Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (Newbury Park: Sage, 1990); John Charvet "The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human

only holds on the empirical assumption that the world is split into separate, bounded communities. In fact, cultures have influenced one another in a multitude of ways, spreading values and beliefs through migration, conquest, trade and more recently through various forms of media and communications.<sup>461</sup> So although values and beliefs may be derived from particular communities rather than from the essential characteristics of human beings, this does not mean there can be no evaluation between cultures. Where there is an overlap of values, or where a set of beliefs is shared by more than one society, some form of evaluation will be possible.

A second reason for questioning the relativist thesis is that the non-rationalist account was committed to a qualified universalism, based on the psychological disposition to empathy. It was argued that under favourable conditions the individual should develop a capacity for concern that would encourage her to reject extreme forms of cruelty. The empathic disposition alone did not yield specific and detailed moral norms, but would generate a more general tendency to feel concern at the extreme suffering of other human beings. However, the development of this form of empathy in individuals is dependent not only on the individual's personal psychological development, but also on the existence of certain political and social conditions - notably the absence of extreme forms of deprivation or fear. The scope of this psychological universalism was therefore limited in practice, contingent on both individual development and socio-political context. Nonetheless, the psychological account of the development of empathy could provide a conception of a "well-attuned", ideal typical individual, denoting a person who had been able to develop such a disposition.<sup>462</sup> In short, the rejection of the rationalist cognitivist assumptions of

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Rights", *Millennium* 27:3 (1998), pp. 523-41; and John R. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, in association with the Royal Institute of International Affairs), Chapter 3.

<sup>461</sup> See Ayse S. Caglar, "Hyphenated Identities and the Limits of 'Culture'", in *The Politics of Multiculturalism in the New Europe: Racism, Identity and Community*, ed. Tariq Modood and Pnina Werbna (London and New York: Zed Books, 1997), pp. 169-85.

<sup>462</sup> I shall not pursue the arguments for and against this form of universalism here. It is not directly relevant to the thesis, which is after all concerned with conceptions of duties to refugees in liberal cultures. So the question of the extent to which those from other cultures would be or

liberal universalism need not undermine our commitment to refugee rights. Nor need it imply that we cannot or should not evaluate the practices of other groups. The non-rationalist account could therefore meet the criterion of normative desirability.

### *1.3 Practical feasibility*

If one were to choose between the liberal universalist and the non-rationalist accounts solely on the grounds of normative desirability, then it would not be evident why one should prefer the non-rationalist account. After all, it was not on this first order criterion that I rejected liberal universalist accounts. Rather, the problem with liberal universalism that emerged in the course of the first part of the thesis was that of feasibility: liberal universalist theories defined moral duties that seemed overly stringent, and insisted that the individual must respect these duties from an impartial perspective. It also claimed that this impartial perspective was in conflict with and should serve to constrain the personal, particular perspective.

Now at one level, the non-rationalist account could be accused of a similar problem of feasibility. For insofar as it retains the same first order conception of universal duties, its moral requirements must surely be just as demanding as those of the universalist conception. The difference between the two accounts is not so much in terms of the moral duties it has defined, but in the way it relates these duties to moral agency and motivation. On the rationalist account, the moral perspective was defined as an impartial, rational viewpoint, in which the individual is abstracted from her personal and social characteristics and ties. This assumed dichotomy created difficulties explaining how a person would be motivated to respect the requirements of morality. The non-rationalist account, by contrast, asserted that the individual is motivated to respect liberal norms precisely by virtue of her personal characteristics and shared beliefs. The individual's empathic disposition and her desire for affirmation motivate her to

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should be committed to some form of moral universalism does not directly arise, although it would of course be relevant for the question of the scope of commitment to these values.

extend sympathy to others, and to internalise the intersubjective values of her community. Her psychological disposition to act morally is mediated through her cognitive capacities and the shared beliefs and norms that she acquires through socialisation. In liberal societies, these beliefs and norms are likely to include a liberal conception of autonomy and human flourishing, generating a moral commitment to respect individual human rights.

The non-rationalist account of motivation is not simply a better description of moral agency, but also helps address the problem of practical feasibility. It rejects the notion of a necessary split between self-interest and moral duty, instead positing the existence of two types of affective dispositions that motivate moral action. The first was the psychological desire for affirmation, which implies that the individual has an interest (often an unconscious one) in being moral and in respecting the norms of her community. Internalising shared values and acting in a way that is recognised and approved by the relevant community is important for the well-being and self-confidence of the individual.<sup>463</sup> And second, the empathic disposition is generated by a form of anxiety that is alleviated through extending sympathy and assistance to others. Showing concern for the plight of others does not run counter to self-interest, but is a way of overcoming feelings of guilt experienced at the suffering of others. This account of the psychological sources of moral motivation thus rejects any necessary dichotomy between self-interest and moral duty, helping to explain why and how people could be motivated to respect universal duties.

The rejection of a split between interest and duty is not only relevant to the question of individual motivation, but is also applicable to conceptions of national interest and refugee rights. In the Introduction to the thesis I suggested that it was simplistic to assume that there was a conflict between national interests and refugee rights. Rather, shared values and beliefs play an important role in shaping conceptions of individual and collective interest. Such values can not only shape conceptions of what is in the self-interest of the nation, for

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<sup>463</sup> I argued in the last chapter that this does not imply total submission to prevalent norms - see Chapter Seven, section three.

example by influencing national policy objectives to achieve social stability or full employment. But more importantly for the issue of refugee rights, the intersubjective values of a community can also generate an interest in extending moral duties to non-nationals. In other words, there can be a national interest in recognising the rights of refugees, even if this does not contribute to narrowly defined economic or political interests.

While I was somewhat tentative in presenting this hypothesis at the beginning of the thesis, I can now substantiate the claim through drawing on the discussion of the sources of individual moral motivation. First, we should consider how the notion of an empathic disposition could be relevant to the question of national interests and duties to non-nationals. The empathic disposition was characterised as a tendency to feel concern and sympathy, generated by anxiety about the suffering of others. Clearly this psychological disposition is characteristic of individuals rather than groups, and it would be methodologically unsound to attribute such a disposition to a *group* of people, over and beyond the psychology of its individual members. Nonetheless, individual members of a society are likely to be motivated by this form of anxiety, and may channel the anxiety into efforts to influence national policies towards refugees. Insofar as members of a society can be said to have an interest in extending sympathy to refugees, an interest generated by the need to alleviate distress at the suffering of others, then this empathic disposition could be said to influence conceptions of national interest.<sup>464</sup>

Far more significant for the question of conceptions of national interest, however, is the role of the desire for affirmation. I argued that the desire for affirmation motivates people to adhere to shared values and norms as a means of gaining positive recognition, love and respect. Now individuals seek affirmation not only for their individual characteristics and actions, but can also have an interest in ensuring the positive recognition of *shared* characteristics and actions. Where individuals have a strong sense of membership of a particular group,

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<sup>464</sup> I shall discuss the possible channels for influence in the next section.

where they are conscious of a common history and shared values, then the positive recognition of these characteristics by others can be an important source of affirmation. By articulating and acting on common values and beliefs the group both emphasises the characteristics that are common to its members, and seeks the affirmation of these characteristics from those outside of the group. In the case of nations, the desire for group affirmation will not necessarily generate benign behaviour - imperialism and ethnic conflict could both be said to be manifestations of a desire for group affirmation. Yet where the shared values and beliefs of the nation are shaped by a liberal commitment to universal human rights, then the group may be affirmed through securing international recognition of its human rights policy, or its generous treatment of refugees. This positive recognition of the shared liberal values of a nation may be an important source of affirmation for the members of the group. Again, this implies that extending duties to refugees may not conflict with the interests of the nation-state, but may positively contribute towards the well-being of its members. The effectiveness of these factors in motivating a more generous refugee policy is of course contingent on a range of other factors, and it would be naïve to be overly optimistic about the possibilities for changing current conceptions. Nonetheless, the analysis of moral motivation does suggest a number of practical approaches that could encourage more generous treatment of refugees. In this final section, I shall outline some of the practical implications of the non-rationalist account of moral motivation.

## **2. Implications for Refugee Policy**

What, then, are the implications of this account of moral motivation for refugee policy? We need at this point to return to the conceptual impasse in the policy debate, as set out in the Introduction. It was observed that the prevalent conception of the refugee problem was that of a conflict between national interests and refugee rights. Given that granting asylum to refugees was considered to run directly counter to the national interest, liberal universalist notions of duties to refugees seemed utopian and were at risk of being perceived as irrelevant to the policy debate. The task of the theoretical analysis was to

salvage liberal universalist values from this fate, through re-working liberal assumptions about motivation and the relationship between self-interest and duty.

On the basis of this analysis, it is possible to suggest ways in which we might begin to re-conceptualise the problem and thereby avoid this perceived conflict between duties to refugees and duties to compatriots. Most of the critique of this assumed dichotomy was levelled against liberal universalism's attachment to a similar dichotomy at the level of individual moral agency. But as I hope to have shown, and will further elaborate below, the question of individual moral agency on the one hand, and the ethics of national policy on the other, are closely inter-linked. What follows, then, is a brief outline of the possible ways in which citizens of liberal democracies could be encouraged to re-conceptualise the refugee question, and adopt a more liberal (i.e. generous) approach to refugee rights.

### *2.1 Refugee rights and individual/group affirmation*

The first way of transcending the assumed conflict between refugee rights and national interests is to encourage the development of group identities that incorporate a commitment to liberal universalist values. There are two main ways in which groups may play a role in encouraging a more generous approach to the rights of non-nationals. First, where liberal universalist norms are seen as constitutive of a group's identity, then the realisation of these values should be a source of affirmation for members of the group. It should strengthen the group's explicit attachment to these values, reinforcing the sense of common purpose and thereby providing positive affirmation to group members. In this sense, the group's commitment to refugee rights and its achievement of these goals could be perceived as a source of fulfilment, rather than as running counter to the interests of its members. Second, individual members of a group can also derive affirmation from their personal actions in promoting liberal universalist goals. If such actions are commended by other group members, there should be an incentive for individuals to engage in activities to promote refugee rights. This source of affirmation is not so much linked to the sort of fulfilment derived from



a sense of common purpose: rather, it relates to the desire for affirmation of one's personal characteristics or behaviour, and the influence of this desire on an individual's acts.

I have chosen to refer to "groups" instead of states, since in liberal democracies there are likely to be a number of different, mainly sub-national spheres that could provide a source of affirmation for individuals.<sup>465</sup> Religious communities provide perhaps the most obvious example of this. For example, in the past (and to some extent still today) the Christian Church has played an important role in encouraging sympathy to those in need, and affirming members for their good deeds (or chastising them for bad ones). The Church provides a good example of the two types of affirmation mentioned above. First, its commitment to duties of universal benevolence and the alleviation of suffering represents a set of shared norms and collective goals that help shape the values and interests of its members. The Church's achievements in this sphere - for example its charitable activities - are a source of pride and affirmation for its members. Second, it encourages its individual members to act in what it considers to be a morally commendable way, providing spiritual or social affirmation to those who extend duties to those in need.<sup>466</sup>

There are other important spheres that can provide a source of affirmation for the ethical behaviour of members. The values and activities of political parties, pressure groups and other associations with normative goals may incorporate a commitment to liberal universalist goals. They may provide a source of moral motivation to members through engendering a sense of collective purpose, and through affirming the actions of individual members. Institutions

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<sup>465</sup> Janna Thompson describes a similar pattern of sub-national groups which are constitutive of the individual's values and goals, which she refers to such groups as "overlapping communities". See Thompson, *Justice and World Order: A Philosophical Enquiry* (London and New York: Routledge, 1992), pp. 169-71. However, she uses these as a basis for constructing a Rawlsian conception of overlapping consensus - a route which I do not want to take.

<sup>466</sup> Of course, the Church's influence has declined substantially over the last century, but it can still exert some influence when it intervenes in the policy debate - not just over its members but also over non-members who respect some of its values. See, for example, media coverage of the Church of England's contribution to the asylum debate ("Don't get emotive on asylum - archbishop", *The Guardian*, 24 April 2000).

such as schools, parent-teacher associations, professional organisations or groups of colleagues may also endorse liberal universalist goals, again shaping the values and interests of members and motivating action to respect the rights of refugees. Other relevant groups may include social classes, ethnic groups, neighbours, friends or extended family, all of which may be committed to liberal values and thus motivate collective or individual actions to assist refugees. In a looser sense, those whose values are influenced by a particular soap opera or pop group can also be understood to be members of a community of shared values, and thus may be motivated to act in accordance with the values conveyed through these media.

This account of the influence of communities on moral motivation is still somewhat vague. We need to consider how these kinds of group influence can be translated into practical action to promote a more generous refugee policy, and what sorts of measures could be taken to increase this form of influence. I shall keep my comments brief. On the first question, sub-national groups may have an impact on refugee policy either through their direct actions, or through influencing policy makers to adopt more liberal policies. In the first case of direct action, groups or their individual members could be engaged in charity work, or give donations to assist refugees. In the second case, groups and their members could influence policy through voting and various forms of political activity and lobbying.<sup>467</sup> One would also expect policy makers themselves to be influenced and affirmed by the groups of which they are members - be they the person's political party, professional association, church or constituency -, some of which may be committed to liberal universalist values.

On the second question of how to increase this form of influence, the most obvious routes would be through education and media. Campaigners for refugee rights should encourage schools to educate children on refugee issues and to develop a sense of responsibility for guaranteeing refugee rights. In particular, through the teaching of history, religious or citizenship studies, children should be

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<sup>467</sup> For a history of how local campaigns and activism have influenced policy on refugees, see Tony Kushner and Katherine Knox, *Refugees in an Age of Genocide* (London and Portland, OR: Frank Cass, 1999). They argue that this form of public pressure has been the most significant

encouraged to develop a sense of collective identity that incorporates a conception of duties to refugees. This type of identity formation could also be influenced by the media, for example through news reporting and popular entertainment. It is clearly important to involve popular and respected public figures who may influence public perceptions of these issues. Finally, there is a need to explore ways of affirming individuals and groups that extend duties to refugees. In the case of individuals and groups there are a range of possible means of openly affirming action to promote refugee rights, including awards, media coverage, and positive encouragement from popular role models.

These suggestions for encouraging the extension of duties to refugees may seem familiar, and indeed one can find examples of all of these approaches in liberal democratic societies. But the psychological and philosophical analysis provided in this thesis can help explain why such techniques, many of which intuitively seem to be appropriate, can indeed have an impact on moral motivation. These forms of positive recognition of individuals and groups respond to a psychological need for affirmation, a need that many campaigners have instinctively understood, but which is not captured by prevalent (cognitivist) theories of moral motivation. A detailed psychological investigation along the lines sketched in Chapter Six would doubtless yield more specific proposals for mobilising public support. Further research on the psychology of moral motivation could therefore be helpful in better targeting campaigns to extend duties to refugees.

## 2.2 *National identity and liberal universalist values*

In addition to the sorts of influence exerted by these communities, there may be scope for political leaders to help develop a sense of national identity that incorporates a more liberal approach towards refugees. Where a nation defines itself partly through adherence to certain values, then the realisation of these ethical goals can constitute a source of national pride. This seems to have been one of the ideas behind the Foreign Secretary Robin Cook's much derided

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determine in generating more generous policies.

attempt to introduce an “ethical dimension” to British foreign policy. The notion of linking national pride to respect for human rights is also evident in the rhetoric of United States foreign policy, and seems to influence some of the policies of smaller states that are keen to promote an image of themselves as more neutral and humanitarian members of the international community.<sup>468</sup> Canada, Sweden and Norway are good examples of this latter tendency, and are all reputed for their relatively generous provisions for refugees. Whether or not these states live up to their liberal reputation is of course debatable. But the point is that once the national identity is partly defined by a commitment to these values, then the sharp line between national interest and moral duty becomes blurred. Moreover, such rhetoric can serve to strengthen the commitment of the public to liberal values and goals. By articulating shared liberal universalist values and encouraging pride in these aspirations, politicians and public figures can mobilise support for more generous treatment of non-nationals.<sup>469</sup>

In terms of more concrete strategies for promoting liberal universalist policies, once ethical goals are explicitly articulated, they provide a standard against which to evaluate and criticise the government in question. This can provide a good lever for exerting pressure on policy makers. Robin Cook’s “ethical dimension” could be said to have had this type of effect on British foreign policy. His actions on human rights are now constantly evaluated and criticised by pressure groups according to whether they meet his own criteria. This in turn gives him an additional motive for ensuring that they do; and when he has taken measures to this end, he makes a point of publicising them, again articulating and reinforcing the government’s commitment to these values. The resulting changes in the government’s human rights policy may not be radical, but surely represent

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<sup>468</sup> Vice President George Bush invoked this idea in a 1984 speech (although it should clearly not be taken at face value!): “One of our country’s finest traditions is the help and haven given to refugees throughout the world...Our tradition of refugee assistance reflects deep principles and abiding commitments”. Cited in Göran Rystad, “Victims of Ideological Oppression or Ideological Weapons? Aspects of US Refugee Policy in the Postwar Era”, in Göran Rystad ed., *The Uprooted: Forced Migration as an International Problem in the Postwar Era*, ed Göran Rystad (Lund: Lund University Press, 1990), p. 220.

<sup>469</sup> Scanlan and Kent make this point in their discussion of United States immigration policy. See John A. Scanlan and O. T. Kent, “The Force of Moral Arguments for a Just Immigration Policy in a Hobbesian Universe”, in *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed.

an improvement on previous practice.<sup>470</sup> The improvement could be greater if political leaders emphasised the importance of human rights as a component of Britain's identity. If the link between national identity and liberal universalism were more forcefully drawn, the national interest would become more integrally bound up with respect for liberal universalist values than is currently the case. I should add that if the Home Secretary Jack Straw were to make public statements about adopting an ethical approach to refugee policy, we might expect a similar dynamic of pressure groups influencing him to respect this commitment, as well as an erosion of the notion of a conflict between refugee rights and national interests. Although it would also be likely provoke a strong backlash from other groups who were strongly committed to the dichotomy conception of refugee rights and national interests. I shall return to these issues later in section 2.4.

Finally, at the international level there is also scope for exerting influence on national policies, through affirmation from those outside the state. Liberal democratic states are especially sensitive to international criticism of their treatment of refugees, and refugee rights activists often use this form of critique as a means of applying pressure on states to respect refugee law. The discussion of the role of affirmation in moral motivation suggests the need for a shift of emphasis in this respect. Rather than adopting an exclusively critical approach, it may be more effective to explicitly affirm states where they are displaying generosity in their treatment of refugees. Where their policies fall short of the relevant standards, refugee rights activists should express concern about the state's failure to meet its own ethical and historical standards, rather than failure to conform to a set of externally imposed, "universal" criteria.

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Mark Gibney (New York and London: Greenwood, 1989), pp. 61-107.

<sup>470</sup> Although they do of course raise a new set of problems related to the consequences of more robust policies to promote human rights abroad, as in the case of the 1999 Kosovo campaign. The current discussion, however, focuses more narrowly on the challenge of generating motivation to extend universal duties, regardless of the consequences of this form of extension for other areas of foreign policy.

### 2.3 *Sympathy and duties to refugees*

I suggested in the discussion of the psychology of moral motivation that the empathic disposition could be channelled into more sophisticated forms of sympathy, including recognising duties to refugees. The notion of appealing to sympathy in order to motivate action to assist those in need is certainly not new – charities and pressure groups often adopt this type of approach in publicity and fund-raising campaigns. Consider, for example, the impact of photographs of starving children or victims of land mines in mobilising public support for these causes.

But while these methods are widely used by many human rights and development campaigners and non-governmental organisations, they could be more effectively employed to encourage the extension of duties to refugees. For although there is often substantial media coverage and public campaigning for the victims of human rights abuses or conflict, there are relatively few attempts to link these cases to the question of granting asylum to refugees. Indeed, there seems to be a sharp distinction between media treatment of conflict and persecution on the one hand, and the question of how refugees should be treated once they reach countries of asylum on the other. Debate on the treatment of asylum seekers and refugees tends to revolve around the financial costs of processing claims, social security benefits for asylum seekers, and social tensions arising from the presence of large numbers of refugees in receiving communities. These are certainly important issues, and the problem of “non-genuine” asylum seekers needs to be addressed. But any discussion of the refugee question should also be placed firmly in the context of the causes of flight, and the sorts of persecution or violence from which many asylum-seekers are fleeing. As a newspaper editorial observed, “The connection has to be drawn in the public mind between horrific atrocities we see on our television screens, and the frightened families who end up in the bed and breakfast at the end of our street.”<sup>471</sup> The type of sympathy incited by media coverage of famines or ethnic

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<sup>471</sup> *The Guardian*, 10 February 1999.

conflict should also be harnessed to encourage the extension of sympathy to asylum-seekers and refugees. These linkages between the causes of flight and the treatment of refugees in countries of asylum could be emphasised not only by media coverage and publicity campaigns, but also in school education, and in the public statements of politicians.

There is a second aspect of the empathic disposition that may be of some help in encouraging sympathy to refugees. It should be recalled that empathy is generated by anxiety about the suffering of others, suffering that is (unconsciously) felt to have been caused or intended by the agent. So where relevant, it may be useful to point out any degree of responsibility the receiving country has for bringing about a situation that generates refugees. For example, where a history of colonisation, intervention during the Cold War, or economically damaging trade terms have had a negative impact on development and stability in the country, there may be an additional case for adopting a liberal stance towards refugees. I am not arguing here for a heavy emphasis on collective guilt, but simply for a more general awareness of the causes of human rights abuse and conflict, and the extent to which they may have been influenced by the actions of other states. A sense of at least partial responsibility can give rise to a greater level of anxiety at the suffering of those fleeing these situations. Again, in practical terms this implies a more comprehensive analysis of the causes of refugee flows in the media and education.

#### *2.4 Moral motivation and the current British policy debate on asylum*

I mentioned above the (albeit limited) attempts of the current British government to develop an ethical dimension in its foreign policy. Unfortunately, similar attempts to emphasise the ethical dimension of refugee policy have been noticeable for their absence. Indeed, recent debates on questions of asylum and immigration have if anything shifted away from any explicit affirmation of Britain's duties to refugees, with both main political parties competing to demonstrate their readiness to restrict access to asylum systems. It is not the place here to explain the political reasons for this move towards a more explicit

endorsement of restrictionism.<sup>472</sup> Of more relevance to the current discussion is the question of what bearing my theory of moral motivation has on the current British policy debate. In particular, how can the theory help explain the present unwillingness to recognise and extend duties to refugees? And could some of the practical measures to motivate more generous treatment of refugees outlined above help to counter the current trend?

Current anxieties about the costs of asylum seekers clearly reflect very real public concerns, and should not simply be disregarded. Nonetheless, the current media and political debate has undoubtedly exaggerated the real "costs" and engendered a sense of crisis that obscures or marginalises more ethical impulses and values. I argued in Chapter Seven that the empathic disposition and the motivation to extend duties through a desire for affirmation will emerge only under two conditions. First, it will emerge where the individual has had adequate care in her personal relations, enabling her to develop the psychological disposition to empathy and a desire for affirmation. And second, these affective dispositions may be constrained where the individual or society is exposed to deprivation or insecurity. The first psychological condition is likely to be met for the vast majority of the public. However, it appears that current concerns about the social and economic impact of asylum-seekers have generated a level of anxiety that is akin to a (perceived) threat to socio-economic stability. Anxieties about "floods" of foreigners threatening current standards of living or national culture are of course likely to be irrational: they are not for the most part grounded in a realistic assessment of the impact of current levels of influx on British society. But irrational or not, such anxieties serve to constrain the psychological disposition to empathy, and to undermine the force of shared liberal values as a source of affirmation. Under these conditions, arguments about duties to refugees become obscured by what are perceived to be more urgent and

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<sup>472</sup> I have argued elsewhere that it reflects the government's concern to reassure the electorate that it will protect the privileged socio-economic rights of national vis-à-vis outsiders, especially in the face of current anxieties about welfare reform, globalisation and the changing role of the state. See "European Values and the Asylum Crisis", *International Affairs* 76:3 (2000) pp. 537-57.



pressing claims about the survival of current social practices and standards of living.

If one accepts the assumption that such fears are ill-grounded under present conditions - that current levels of influx are not likely to have any significant impact on national wealth or social conditions - then two sets of policy prescriptions emerge as especially important. First, the government, media and other influential individuals or groups should seek to defuse current anxieties about the costs of asylum-seekers and refugees. This implies providing better public information on refugee and migration issues, including on the costs of asylum systems in relation to overall levels of public expenditure, and the positive economic effects of many forms of immigration. The government should also continue to reassure the electorate that costs will remain manageable, through making asylum systems more efficient, and through enhanced regional cooperation to manage influx and alleviate migratory pressures in regions of origin.<sup>473</sup>

These efforts to reassure the public about the limited costs of asylum should not imply introducing more restrictive policies. Rather, they should be understood as a means of allaying the types of anxieties that have rendered the current debate on refugee policy so polarised. By reassuring the public that influx does not represent a fundamental threat to their well-being, the government could encourage a greater willingness to recognise duties to refugees.

In tandem with this attempt to allay public concerns, the government should gradually adopt a more positive message about national duties to refugees. This should involve invoking the two strands of moral motivation - the empathic disposition and the desire for affirmation - in order to generate more tolerance of refugees and asylum-seekers. Thus the second policy prescription would be to encourage people to make a link between the plight of asylum-seekers and the causes of flight, and to encourage the recognition of a shared commitment to

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<sup>473</sup> See Boswell, "European Values and the Asylum Crisis" (*op. cit.*), pp. 554-7.

protect refugees. I have already sketched some of the possible ways of generating this form of moral motivation. The point to stress here is that given the level of anxiety about the impact of influx on nationals, this approach will need to be adopted with caution. If the government presses the point too hard it may be perceived as imposing excessively stringent demands, and thus run the risk of its policy being counter-productive. Hence the need for a gradual change in rhetoric, in combination with measures to reassure the public that the costs will not be inordinate.

Finally, it may well be the case that policy makers will also be able to invoke an economic argument for immigration. It has been argued that Britain will increasingly need foreign workers to meet labour supply shortages and to compensate for ageing populations.<sup>474</sup> It is debatable how far this demand for labour will coincide with the profile of asylum-seekers, or indeed whether immigration would be a long-term solution to the pension crisis.<sup>475</sup> Moreover, such an argument in favour of immigration would be contingent on continued economic growth and full employment, and as such would not provide a particularly stable ground for admitting refugees. Nonetheless, insofar as the economic argument could help alleviate anxiety about the socio-economic costs of asylum, it should certainly be employed to strengthen the case for admitting refugees.

### **3. Conflicts between Refugee Rights and National Interests**

I would like to finish by making some more general points about refugee rights and conflict. I argued in the thesis that where liberal universal values are constitutive of a person's identity, respecting their claims and being recognised for so doing can be a source of personal affirmation. Moreover, most people have a psychological disposition to extend some form of sympathy to others, which can be channelled into a recognition of the duties defined by liberal universalism. As I hope to have shown, this implies reconceiving the relationship between interest

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<sup>474</sup> "Europe's Need for Immigrants", *The Economist* (6 - 12 May 2000).

and morality, specifically a rejection of the notion of any necessary conflict between moral duty and self-interest.

But even if these sorts of measures are effective in increasing sympathy towards refugees, there will still be some limit on the numbers that can be admitted. By changing conceptions of duties to refugees one may be able to shift where this threshold is considered to lie, or hopefully to dispense with the notion of any clear, objectively definable threshold at all. In industrialised liberal democratic states (although not necessarily in poorer and less stable receiving states) I believe that there is scope for absorbing more refugees than are currently admitted, and so this attempt to change conceptions of duties to refugees could have some effect. This is why I characterised current anxieties about the costs of refugees in Britain as largely ill-founded, and advocated policies to counter this misperception and encourage a more generous policy. But there must eventually be limits to the capacity of even industrialised states. Where there is undeniable evidence of a serious conflict between the interests of nationals and refugees, and there is little scope for changing public perceptions of this conflict, then liberal universalists should avoid chastising failure to live up to the ideal of absolute impartiality. I have argued that imposing stringent demands on the nationals of receiving countries may be counter-productive – it makes the liberal universalist case appear unsympathetic to the interests and concerns of people, as well as unrealistic. My suggested modification of the ontological and psychological claims of liberal universalism implies adopting a different approach.

Where duties to refugees seem to conflict with other goals, we should not present ourselves with a stark choice between a “moral” or a “self-interested” course of action. This is the traditional liberal universalist approach, which posits a conflict between the two and castigates any failure to realise universal duties as unethical. This polarised approach to moral duty is precisely what makes the liberal universalist position appear so harsh and uncompromising where it is perceived as conflicting with other goals. My suggested alternative is to conceive

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<sup>475</sup> Christina Boswell, "Asylum: Total Failure", in *The World Today* 56:8 (2000), p. 5.

of these conflicts as a normal and predictable feature of the diversity of values – values which were shaped through the evolution of particular traditions of political and moral thought. In so doing, we provide a better basis for attempting to realise both sets of values. We do not necessarily have to choose between self-interest and moral duty, but can explore ways of realising both sets of claims. So that even where other claims seem to over-ride universal duties to refugees, and we fail to meet the standards of liberal universalism, this does not imply resignation to a self-interested or non-ethical course of action. Rather, we should seek other, “second best” solutions to refugee problems. I mentioned some of these in the Introduction and Chapter One – the protection of refugees in regions of origin, forms of temporary protection in industrialised states, or internationally monitored repatriation.<sup>476</sup> While the liberal universalist would be likely to reject such measures as failing to meet ideal standards, the advantage of the communitarian ontological account of the sources of moral values is that it can recognise the existence of diverse and often conflicting values. Rather than presenting us with a trade-off calculation, it provides scope for seeking to maximise a range of different values.

Liberal universalism leaves us with a dual choice: either act consistently with moral norms, or accept that your behaviour is unethical and self-interested. It is little wonder that the ethical arguments for recognising duties to non-nationals appear unappealing and utopian. The revised, non-rationalist account of duties to refugees offers a superior set of options: aim to realise the higher order goods of liberal universalism, as these have a special place in our society’s values and beliefs; respecting these duties does not necessarily conflict with self interest, but can be a source of affirmation and a means of channelling an empathic disposition; and if these higher order values do conflict with other goals and ties, explore ways of realising both sets of values. I hope to have shown why this

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<sup>476</sup> These policies were discussed in Chapter One, section 2.4. They include measures to address the causes of flight (conflict prevention, development, intervention, and so on); mechanisms for ensuring that refugees are protected in their regions of origin (protection of internally displaced persons, safe havens or measures to protect and assist returning refugees); or alternative forms of protection that fall short of the provisions of the Geneva Convention – for example the temporary protection regimes adopted in Europe and North America to protect refugees from the former

second account avoids the descriptive and practical limits of liberal universalism, and why it would provide a better conceptual framework for encouraging a more generous policy towards refugees.

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Yugoslavia. See Christina Boswell, "The Conflict Between Refugee Rights and National Interests", *Refugee Survey Quarterly* 18:2 (1999), pp. 64-84.

## Bibliography

- Ackerman, Bruce A., *Social Justice in the Liberal State* (New Haven, Conn: Yale University Press, 1980).
- Adler, Jonathan E., "Moral Development and the Personal Point of View," in *Women and Moral Theory*, ed. Eva Feder Kittay and Diana T. Meyers (Totowa, NJ: Rowman and Littlefield, 1987), pp. 205-234.
- Aga Khan, Sadruddin, "Study on Human Rights and Massive Exoduses", UN Commission on Human Rights (E/CN.4/1503, 1981).
- Aiken, William and High LaFollette, eds., *World Hunger and Morality* (Upper Saddle River, NJ: Prentice Hall, 1996).
- Alford, C. Fred, *Melanie Klein and Critical Social Theory: An Account of Politics, Art and Reason Based on her Psychoanalytic Theory* (New Haven and London: Yale University Press, 1989).
- Alford, C. Fred, *The Self in Social Theory: A Psychoanalytic Account of its Construction in Plato, Hobbes, Locke, Rawls, and Rousseau* (New Haven and London: Yale University Press, 1991).
- Anderson, Benedict R. O'G., *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso: NLB, 1983).
- Anscombe, G. E. M., "Modern Moral Philosophy," *Philosophy* 13:124 (1958), pp. 1-19.
- Anscombe, G. E. M., *Intention* (Oxford: Blackwell, 1963).
- Anscombe, G. E. M., "On Practical Reasoning," in *Practical Reasoning*, ed. Joseph Raz (Oxford and New York: Oxford University Press, 1978), pp. 33-45.
- Appiah, K. Anthony, "Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction," in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1994), pp. 149-63.
- Archibugi, Daniele and David Held, eds., *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995).
- Archibugi, Daniele, David Held and Martin Köhler, eds., *Re-Imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge: Polity Press, 1998).

- Arendt, Hannah, *The Origins of Totalitarianism* (New York London: Harcourt Brace Jovanovitch, 1968).
- Arneson, Richard, "The Priority of the Right Over the Good Rides Again," in *Impartiality, Neutrality and Justice*, ed. Paul Kelly (Edinburgh: Edinburgh University Press, 1998), pp. 60-86.
- Arthur, John, "Rights and the Duty to Bring Aid," in *World Hunger and Morality*, ed. William Aiken and High LaFollette (Upper Saddle River, NJ: Prentice Hall, 1996), pp. 39-50.
- Ashley, Richard, "The Poverty of Neorealism," in *Neorealism and its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), pp. 255-300.
- Baier, Annette, *A Progress of Sentiments: Reflections on Hume's Treatise* (Cambridge, Mass and London: Harvard University Press, 1991).
- Baier, Kurt, "Justice and the Aims of Political Philosophy," *Ethics* 99:4 (1989), pp. 771-790.
- Barber, Benjamin, "Justifying Justice: Problems of Psychology, Politics and Measurement in Rawls," in *Reading Rawls: Critical Studies of A Theory of Justice*, ed. Norman Daniels (Oxford: Blackwell, 1975), pp. 292-318.
- Barry, Brian, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1975).
- Barry, Brian, "Humanity and Justice in Global Perspective," in *Ethics, Economics, and the Law*, ed. J. Roland Pennock and John W. Chapman, *Nomos XXIV* (New York: New York University Press, 1982), pp. 219-52.
- Barry, Brian, "Can States be Moral? International Morality and the Compliance Problem," in *International Ethics in the Nuclear Age*, ed. Robert J. Myers (Lanham and London: University Press of America, 1987), pp. 85-110.
- Barry, Brian, *Theories of Justice* (Berkeley and Los Angeles: University of California Press, 1989).
- Barry, Brian, "Justice as Reciprocity," in *Liberty and Justice: Essays in Political Theory*, ed. Brian Barry (Oxford: Clarendon Press, 1991), pp. 211-41.
- Barry, Brian, "The Quest for Consistency: A Skeptical View", in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin, (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 279-87.
- Barry, Brian, *Justice As Impartiality* (Oxford: Clarendon Press, 1995).
- Barry, Brian, "Spherical Justice and Global Injustice," in *Pluralism, Justice and*

- Equality*, ed. David Miller and Michael Walzer (Oxford and New York: Oxford University Press, 1995), pp. 67-80.
- Barry, Brian, "Circumstances of Justice and Future Generations", in *Obligations to Future Generations*, ed. R. I. Sikora and Brian Barry (Cambridge: The White Horse Press, 1996), pp. 204-48.
- Barry, Brian and Robert E. Goodin, eds., *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (Hemel Hempstead: Harvester Wheatsheaf, 1992).
- Barutciski, Mikhael, "The Reinforcement of Non-Admission Policies and the Subversion of UNHCR", *International Journal of Refugee Law* 8:1/2 (1996), pp. 49-110.
- Basch, Michael F., "The Concept of the Self: An Operational Definition", in *Developmental Approaches to the Self*, ed. Benjamin Lee and Gil G. Noam (New York and London: Plenum Press, 1983), pp. 1-58.
- Bauböck, Rainer, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot: Edward Elgar, 1994).
- Bauböck, Rainer, "Legitimate Immigration Control", in *Legitimate and Illegitimate Discrimination: New Issues in Migration*, ed. Howard Adelman (York, Canada: York Lanes Press, 1995), pp. 3-40.
- Bauer, Joanne R. and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999).
- Baxter, Brian, "The Self, Morality and the Nation-State," in *Ethics and International Relations*, ed. Anthony Ellis (Manchester: Manchester University Press, 1986), pp. 114-26.
- Beck, Robert C., *Motivation: Theories and Principles* (Upper Saddle River, NJ: Prentice Hall, 1983).
- Bedjaoui, Mohammed, "The Right to Development," in *International Law: Achievements and Prospects*, ed. Mohammed Bedjaoui (Paris: UNESCO; Dordrecht and Boston: Martin Mijhoff, 1991), pp. 1177-1203.
- Beitz, Charles R., "Justice and International Relations," *Philosophy and Public Affairs* 4:4 (1975), pp. 360-89.
- Beitz, Charles R., *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979).
- Beitz, Charles R., "Cosmopolitan Ideals and National Sentiment", *Journal of Philosophy* 80 (1983), pp. 591-600.



- Beitz, Charles R., "Justice and International Relations," in *International Ethics*, ed. Charles R. Beitz, Marshall Cohen, Thomas Scanlon and A. John Simmons (Princeton, NJ: Princeton University Press, 1985), pp. 282-311.
- Beitz, Charles R., "Sovereignty and Morality in International Affairs," in *Political Theory Today*, ed. David Held (Oxford: Polity, 1991), pp. 236-54.
- Beitz, Charles R., "Cosmopolitan Liberalism and the States System," in *Political Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown (London and New York: Routledge, 1994), pp. 123-36.
- Beitz, Charles R., Marshall Cohen, Thomas Scanlon and A. John Simmons, eds., *International Ethics* (Princeton, NJ: Princeton University Press, 1985).
- Bellamy, Richard, *Liberalism and Modern Society: A Historical Argument* (University Park, PA: The Pennsylvania State University Press, 1992).
- Belsey, Andrew, "World Poverty, Justice and Equality," in *International Justice and the Third World*, ed. Robin Attfield and Barry Wilkins (London and New York: Routledge, 1992), pp. 35-49.
- Bentham, Jeremy, "Anarchical Fallacies," in *Human Rights*, ed. A. I. Melden (Belmont: Wadsworth, 1970), pp. 28-39.
- Berlin, Isaiah, *Four Essays on Liberty* (Oxford and New York: Oxford University Press, 1969).
- Berlin, Isaiah, "The Pursuit of the Ideal," in *The Proper Study of Mankind*, ed. Isaiah Berlin (London: Pimlico, 1998), pp. 1-16.
- Bernstein, J. M., "Moral Norms and Ethical Identities: On the Linguistification of the Sacred," in *Recovering Ethical Life: Jurgen Habermas and the Future of Critical Theory*, ed. J. M. Bernstein (London and New York: Routledge, 1995), pp. 88-135.
- Block, Alice and Carl Levy, eds., *Refugees, Citizenship and Social Policy in Europe* (London: Macmillan, 1999).
- Bocock, Robert, *Sigmund Freud* (London: Tavistok Publications/Ellis Horwood, 1983).
- Booth, Ken and Steve Smith, *International Relations Theory Today* (Oxford: Polity Press, 1994).
- Boswell, Christina, "The Conflict between Refugee Rights and National Interests: Background and Policy Strategies," *Refugee Survey Quarterly* 18:2 (1999), pp. 64-84.
- Boswell, Christina, "European Values and the Asylum Crisis", *International*

*Affairs* 76:3 (2000) pp. 537-57.

Boswell, Christina, "Doing Justice to Refugees: Challenges and Limits of the Current Debate", *International Journal of Human Rights* 4:2 (2000), pp. 79-88.

Boswell, Christina, "Asylum: Total Failure," *The World Today* 56:8 (2000), pp. 4-6.

Boucher, David and Paul Kelly, eds., *The Social Contract from Hobbes to Rawls* (London and New York: Routledge, 1994).

Bramsted, E. K. and K. J. Melhuish, ed., *Western Liberalism: A History in Documents from Locke to Croce* (London and New York: Longman, 1978).

Brown, Chris, *International Relations Theory: New Normative Approaches* (Hemel Hempstead: Harvester Wheatsheaf, 1992).

Brown, Chris, "'Really Existing Liberalism' and International Order," *Millennium* 21:3 (1992), pp. 313-328.

Brown, Chris, ed., *Political Restructuring in Europe: Ethical Perspectives* (London and New York: Routledge, 1994).

Brown, Chris, "'Turtles All the Way Down': Anti-Foundationalism, Critical Theory and International Relations," *Millennium* 23:2 (1994), pp. 213-236.

Brown, Chris, "Cultural Pluralism, Universal Principles and International Relations Theory," in *National Rights, International Obligations*, ed. Simon Caney, David George, and Peter Jones (Boulder, CO. and Oxford: Westview, 1996), pp. 166-82.

Brown, Chris, "Universal Human Rights: A Critique," in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), pp. 103-27.

Brown, Chris, "Cultural Diversity and International Political Theory," *Review of International Studies* 26:2 (2000), pp. 199-213.

Brown, Harold I., *Rationality* (London and New York: Routledge, 1990).

Brown, S. M., "Hobbes: The Taylor Thesis" in *Thomas Hobbes: Critical Assessments, Vol. II: Ethics*, ed. Preston King (New York and London: Routledge, 1993), pp. 99-115.

Brubaker, Rogers, *Citizenship and Nationhood in France and Germany* (Cambridge, Mass: Harvard University Press, 1992).

Brubaker, Rogers, "Comments on 'Modes of Immigration Politics in Liberal

- Democratic States,” *International Migration Review* 29:4 (1995), pp. 903-8.
- Bubeck, Diemut, “Care, Justice and the Good,” in *Impartiality, Neutrality and Justice*, ed. Paul Kelly (Edinburgh: Edinburgh University Press, 1998), pp. 154-75.
- Bubner, Rüdiger, “Habermas' Concept of Critical Theory,” in *Habermas: Critical Debates*, ed. John B. Thompson and David Held (London: Macmillan, 1982), pp. 42-56.
- Bubner, Rüdiger, “The Possibilities of Practical Reason,” in *Essays in Hermeneutics and Critical Theory*, ed. Rudiger Bübner, trans. Eric Matthews (New York: Columbia University Press, 1988), pp. 147-94.
- Bull, Hedley, “The Grotian Conception of International Society,” in *Diplomatic Investigations*, ed. Herbert Butterfield and Martin Wight (London: George Allen and Unwin, 1966), pp. 51-73.
- Bull, Hedley, *The Anarchical Society* (London: Macmillan, 1977).
- Burke, Edmund, *Reflections on the Revolution in France* [1790], ed. Connor Cruise O'Brien (London: Penguin, 1986).
- Burton, John W., *World Society* (London: Cambridge University Press, 1972).
- Caglar, Ayse S., “Hyphenated Identities and the Limits of ‘Culture’,” in *The Politics of Multiculturalism in the New Europe: Racism, Identity and Community*, ed. Tariq Modood and Pnina Werbna (London and New York: Zed Books, 1997), pp. 169-85.
- Caney, Simon, “Individuals, Nations and Obligations,” in *National Rights, International Obligations*, ed. Simon Caney, David George, and Peter Jones (Colorado and Oxford: Westview Press, 1996), pp. 119-38.
- Caney, Simon, David George and Peter Jones, eds., *National Rights, International Obligations* (Boulder, CO. and Oxford: Westview, 1996).
- Carens, Joseph H., “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49:2 (1987), pp. 251-73.
- Carens, Joseph H., “Complex Justice, Cultural Difference, and Political Community,” in *Pluralism, Justice and Equality*, ed. David Miller and Michael Walzer (Oxford and New York: Oxford University Press, 1995), pp. 45-66.
- Carr, Edward Hallett, *Nationalism and After* (London: Macmillan, 1945).
- Charvet, John, “Contractarianism and International Political Theory,” in *Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London

and New York: Routledge, 1994), pp. 175-90.

Charvet, John, *The Idea of an Ethical Community* (Ithaca: Cornell University Press, 1995).

Charvet, John, "The Possibility of a Cosmopolitan Ethical Order Based on the Idea of Universal Human Rights," *Millennium* 27:3 (1998), pp. 523-41.

Charvet, John, *Theory and Practice of Human Rights*, Summer School Lectures, London School of Economics and Political Science (unpublished, 1999).

Cochran, Molly, "The Liberal Ironist, Ethics and International Relations Theory," *Millennium* 25:1 (1996), pp. 29-52.

Cochran, Molly, *Normative Theory in International Relations* (Cambridge: Cambridge University Press, 1999).

Coles, Gervase, "Approaching the Refugee Problem Today," in *Refugees and International Relations*, ed. Gil Loescher and Laila Monahan (Oxford: Clarendon Press, 1990), pp. 373-410.

Collinson, Sarah, *Europe and International Migration*, (London and New York: Pinter Publishers for the Royal Institute of International Affairs, 1994).

Coole, Diana, "Women, Gender and Contract: Feminist Interpretations," in *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London and New York: Routledge, 1994), pp. 191-210.

Cottingham, John, *The Rationalists* (Oxford and New York: Oxford University Press, 1988).

Cox, Robert W., "Social Forces, States and World Orders: Beyond International Relations Theory," in *Neorealism and its Critics*, ed. Robert O. Keohane, (New York : Columbia University Press, 1986), pp. 204-54.

Cranston, Maurice, "Are There Any Human Rights?," *Daedalus* 112:4 (1983), pp. 1-17.

Cunliffe, S. Alex and Michael Pugh, "UNHCR as Leader in Humanitarian Assistance: A Triumph of Politics over Law?," in *Refugee Rights and Realities*, ed. Frances Nicolson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 175-99.

Daniels, Norman, ed., *Reading Rawls: Critical Studies of "A Theory of Justice"* (Oxford: Blackwell, 1975).

Darwall, Stephen, "Is There a Kantian Foundation for Rawlsian Justice?," in *John Rawls's Theory of Social Justice: An Introduction*, ed. H. Gene Blocker and Elizabeth H. Smith (Ohio: Ohio University Press, 1980), pp. 311-45.

- Defoe, Daniel, *A Brief History of the Poor Palatine Refugees, Lately Arriv'd in England* (London: 1709).
- Deigh, John, *The Sources of Moral Agency: Essays in Moral Psychology and Freudian Theory* (Cambridge: Cambridge University Press, 1996).
- DePalma, David J. and Jeanne M. Foley, eds., *Moral Development: Current Theory and Research* (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975).
- Döbert, Rainer, Jürgen Habermas and Gertrud Nunner-Winkler, "The Development of the Self," in *Critical Theories of Psychological Development*, ed. John M. Broughton (New York and London: Plenum Press, 1987), pp. 275-301.
- Donaldson, Thomas, "Kant's Global Rationalism," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 136-157.
- Donelan, Michael, "States, Food and the World Common Interest," in *The Condition of States: A Study in International Political Theory*, ed. Cornelia Navari (Buckingham and Bristol: Open University Press, 1991), pp. 216-228.
- Donnelly, Jack, "Human Rights and Development: Complementary or Competing Concerns?," *World Politics* 36:2 (1984), pp. 255-283.
- Donnelly, Jack, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989).
- Donnelly, Jack, "Human Rights: A New Standard of Civilization?," *International Affairs* 74:1 (1998), pp. 1-24.
- Doppelt, Gerald, "Is Rawls' Kantian Liberalism Coherent and Defensible?," *Ethics* 99:4 (1989), pp. 815-851.
- Dummett, Ann, "The Transnational Migration of People seen from within a Natural Law Tradition," in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 169-80.
- Dunne, Tim and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge and New York: Cambridge University Press, 1999).
- Durkheim, Emile, *Moral Education: A Study in the Theory and Application of the Sociology of Education* (New York: Free Press, 1961).
- Durkheim, Emile, *Sociology and Philosophy*, trans. D. F. Pocock (New York: The Free Press, 1974).

- Dworkin, Ronald, "Justice and Rights," in *Theories of Rights*, ed. Jeremy Waldron (Oxford and New York: Oxford University Press, 1984), pp. 153-67.
- Dworkin, Ronald, *Taking Rights Seriously* (Guildford: Duckworth, 1996).
- Ellis, Anthony, "Utilitarianism and International Ethics," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 158-179.
- Elster, John and John E. Roemer, eds., *Interpersonal Comparisons of Well-Being* (Cambridge: Cambridge University Press, 1991).
- d'Entreves, A. Passerin, *Natural Law*, (London: Hutchinson, 1970).
- Eriksen, E. H., *Childhood and Society* (New York: Norton, 1950).
- European Commission, *Communication on Immigration and Asylum Policies* ((COM(94) 23 final) Brussels 1994).
- Evans, Phil, *Motivation* (London: Methuen, 1975).
- Fassmann, Heinz and Rainer Münz, eds., *European Migration in the Late Twentieth Century* (Laxenburg: International Institute of Applied Systems Analysis, 1994).
- Feinberg, Joel, "In Defence of Moral Rights," *Oxford Journal of Legal Studies* 12:2 (1992), pp. 149-69.
- Finnis, John Mitchell, *Natural Law and Natural Rights* (Oxford and New York: Oxford University Press, 1980).
- Finnis, John Mitchell, Joseph M Boyle, and Germain Grisez, *Nuclear deterrence, Morality and Realism* (Oxford: Clarendon Press, 1987).
- Fishkin, James, *The Limits of Obligation* (New Haven and London: Yale University Press, 1982).
- Fishkin, James, "Theories of Justice and International Relations: The Limits of Liberal Theory," in *Ethics and International Relations*, ed. Anthony Ellis (Manchester: Manchester University Press, 1986), pp. 1-12.
- Forbes, Ian and Mark Hoffman, *Political Theory, International Relations and the Ethics of Intervention* (London: Macmillan, 1993).
- Frankena, William K., "Obligation and Motivation in Recent Moral Philosophy," in *Essays in Moral Philosophy*, ed. A. I. Melden (Seattle: University of Washington Press, 1958), pp. 40-81.

- Freeden, Michael, *Rights* (Milton Keynes: Open University Press, 1991).
- Freud, Sigmund, "The Future of an Illusion" [1927], in *Civilisation, Society and Religion* (London: Penguin, 1985), pp. 179-242.
- Freud, Sigmund, "Civilisation and its Discontents" [1929], in *Civilisation, Society and Religion* (London: Penguin, 1985), pp. 243-340.
- Fromm, Erich, *The Fear of Freedom* (London: Routledge & Kegan Paul, 1960).
- Frost, Mervyn, *Towards a Normative Theory of International Relations* (Cambridge: Cambridge University Press, 1986).
- Frost, Mervyn, "The Role of Normative Theory in International Relations," *Millenium* 23:1 (1994), pp. 109-118.
- Frost, Mervyn, *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996).
- Frost, Mervyn, "A Turn Not Taken: Ethics in IR at the Millenium," *Review of International Studies* 24 (1998), pp. 119-32.
- Gaete, Rolando, *Human Rights and the Limits of Critical Reason* (Aldershot: Dartmouth, 1993).
- Galston, William A., *Justice and the Human Good* (Chicago: University of Chicago Press, 1980).
- Garward, John A., *The English and Immigration, 1880-1910* (Oxford and New York: Oxford University Press, 1971).
- Gauthier, David P., *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clarendon Press, 1969).
- Gauthier, David P., *Morality and Rational Self-Interest* (Englewood Cliffs, NJ: Prentice-Hall, 1970).
- Gauthier, David P., *Morals By Agreement* (Oxford: Clarendon Press, 1986).
- Geddes, Andrew and Adrian Favell, eds., *The Politics of Belonging: Migrants and Minorities in Contemporary Europe* (Aldershot: Ashgate, 1998).
- Gellner, Ernest, *Nations and Nationalism, New Perspectives on the Past* (Oxford: Blackwell, 1983).
- Geras, Norman, *The Contract of Mutual Indifference: Political Philosophy After the Holocaust* (London and New York: Verso, 1998).
- Gewirth, Alan, *Reason and Morality* (Chicago and London: University of

Chicago Press, 1978).

Gewirth, Alan, "The Basis and Content of Human Rights," in *Human Rights: Essays on Justification and Applications*, ed. Alan Gewirth (Chicago: University of Chicago Press, 1982), pp. 41-78.

Gewirth, Alan, "Can Utilitarianism Justify Any Moral Rights?," in *Human Rights: Essays on Justification and Applications*, ed. Alan Gewirth (Chicago: University of Chicago Press, 1982), pp. 143-62.

Gewirth, Alan, "Ethical Universalism and Particularism," *Journal of Philosophy* 85:6 (1988), pp. 283-302.

Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgement* (Oxford: Clarendon Press, 1990).

Gibney, Mark, *Strangers or Friends: Principles for a New Alien Admission Policy* (New York: Greenwood Press, 1986).

Gibney, Mark, ed., *Open Borders? Closed Societies?: The Ethical and Political Issues* (New York and London: Greenwood, 1989).

Gibney, Matthew J., "Liberal Democratic States and Responsibilities to Refugees" (unpublished, Oxford, 1998).

Gilligan, Carol, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass : Harvard University Press, 1982).

Gilligan, Carol, Janie Victoria Ward and Jill McLean Taylor, eds., *Mapping the Moral Domain: A Contribution of Women's Thinking to Psychological Theory and Education* (Cambridge, Mass: Harvard University Press, 1988).

Glover, Jonathan, *Causing Death and Saving Lives* (London: Penguin, 1977).

Glover, Jonathan, ed., *Utilitarianism and its Critics* (New York: Macmillan Pub. Co; London: Collier Macmillan Publishers, 1990).

Goodin, Robert E., *Protecting the Vulnerable: A Reanalysis of our Social Responsibilities* (Chicago: University of Chicago Press, 1985).

Goodin, Robert E., "What Is So Special About Our Fellow Countrymen?," *Ethics* 98:4 (1988), pp. 663-686.

Goodwin-Gill, Guy S., *The Refugee in International Law* (Oxford: Clarendon Press, 1996).

Gordenker, Leon, *Refugees in International Politics* (London: Croom Helm, 1987).



- Gough, J. W., *The Social Contract: A Critical Study of its Development* (Oxford: Clarendon Press, 1936).
- Greenspan, P. S., *Practical Guilt: Moral Dilemmas, Emotions and Social Norms* (Oxford and New York: Oxford University Press, 1995).
- Grotius, Hugo, *Grotius on the Rights of War and Peace* [1625], trans. William Whewell (Cambridge: Cambridge University Press, 1953).
- Guild, Elspeth, *The Developing Immigration and Asylum Policies of the EU, Adopted Conventions, Resolutions, Recommendations, Decisions, and Conclusions: Compilation and Commentary* (London: Kluwer Law International, 1996).
- Gunnell, John G., *Political Theory: Tradition and Interpretation* (Lanham: University Press of America, 1987).
- Gunsteren, Herman R. van, "Admission to Citizenship", *Ethics* 98:4 (1988), pp. 731-41.
- Gutman, Amy, "Introduction," in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1994), pp. 3-24.
- Haan, Norma, Eliane Aerts and Bruce A. B. Cooper, *On Moral Grounds: The Search for Practical Morality* (New York and London: New York University Press, 1985).
- Habermas, Jürgen, "Justice and Solidarity: On the Discussion Concerning Stage Six," in *The Moral Domain: Essays in the Ongoing Discussion between Philosophy and the Social Sciences*, ed. Thomas E. Wren (Cambridge Mass: MIT Press, 1990), pp. 224-51.
- Habermas, Jürgen, "Discourse Ethics: Notes on a Program of Philosophical Justification," in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), pp. 43-115.
- Habermas, Jürgen, "Moral Consciousness and Communicative Action," in *Moral Consciousness and Communicative Action*, ed. Jürgen Habermas (Cambridge: Polity Press, 1990), pp. 116-94.
- Habermas, Jürgen, "Citizenship and National Identity: Some Reflections on the Future of Europe," *Praxis International* 12:1 (1992), pp. 1-19.
- Habermas, Jürgen, "Struggles for Recognition in the Democratic Constitutional State," in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton: Princeton University Press, 1994), pp. 107-48.
- Habermas, Jürgen and Peter Dews, eds., *Autonomy and Solidarity: Interviews*

with Jürgen Habermas (London New York: Verso, 1992).

- Hammand, Peter J., "Interpersonal Comparisons of Utility: Why and How they Are and Should be Made," in *Interpersonal Comparisons of Well-Being*, ed. John Elster and John E. Roemer (Cambridge: Cambridge University Press, 1991), pp. 200-254.
- Hammar, Thomas, ed., *European Immigration Policy* (Cambridge: Cambridge University Press, 1985).
- Hampshire, Stuart, *Morality and Conflict* (Oxford: Blackwell, 1983).
- Hampton, Jean, "Should Political Philosophy be done without Metaphysics?," *Ethics* 99:4 (1989), pp. 791-814.
- Hansen, Jens Vedsted, "Non-Admission Policies and the Right to Protection: Refugees' Choice versus States' Exclusion," in *Refugee Rights and Realities*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 269-88.
- Hardin, Russell, *Morality Within the Limits of Reason* (Chicago and London: University of Chicago Press, 1988).
- Harding, Jeremy, *The Uninvited: Refugees at the Rich Man's Gate* (London: Profile Books; London Review of Books, 2000).
- Hare, R. M., *Moral Thinking: Its Levels, Method and Point* (Oxford: Clarendon Press, 1981).
- Hart, H. L. A., "Are There Any Natural Rights?," in *Political Philosophy*, ed. A. Quinto (Oxford and New York: Oxford University Press, 1967), pp. 53-66 .
- Hassner, Pierre, "Refugees: A Special Case for Cosmopolitan Citizenship," in *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*, ed. Daniele Archibugi, David Held and Martin Köhler (Cambridge: Polity Press, 1998), pp. 273-86
- Hathaway, James C., *The Law of Refugee Status* (Toronto and Vancouver: Butterworths, 1991).
- Hathaway, James C., "New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of International Protection," *Journal of Refugee Studies* 8:3 (1995), pp. 288-300.
- Hathaway, James C., *Towards the Reformulation of International Refugee Law: Research Report 1992-97* (Center for Refugee Studies, York University, Canada, 1997).
- Hathaway, James C. and John A. Dent, *Refugee Rights: Report on A Comparative*

- Survey* (Toronto: York Lanes Press, 1995).
- Hegel, Georg Wilhelm Friedrich, *Hegel's Philosophy of Right*, trans. T. M. Knox (Oxford and New York: Oxford University Press, 1967).
- Held, David, *Introduction to Critical Theory: Horkheimer to Habermas* (London: Hutchinson, 1980).
- Held, Virginia, Sidney Morgenbesser and Thomas Nagel, eds., *Philosophy, Morality, and International Affairs: Essays* (Oxford and New York: Oxford University Press, 1974).
- Helton, Arthur C., "What is Refugee Protection?," *International Journal of Refugee Law*, Special Issue (1990), pp. 119-29.
- Hinshelwood, R. D., *A Dictionary of Kleinian Thought* (London: Free Association Books, 1991).
- Hobbes, Thomas, *Leviathan* [1651] (London: J. M. Dent and Sons, 1957).
- Hobsbawm, Eric J., *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990).
- Hocke, Jean-Pierre, "Beyond Humanitarianism: The Need for Political Will to Resolve Today's Refugee Problem," in *Refugees and International Relations*, ed. Gil Loescher and Laila Monahan (Oxford: Clarendon Press, 1990), pp. 37-48.
- Hoffman, Martin L., "The Development of Altruistic Motivation," in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), pp. 137-152.
- Hoffman, Martin L., "Empathy, its Limitations, and its Role in a Comprehensive Moral Theory," in *Moral Development through Social Interaction*, ed. William M. Kurtines and Jacob L. Gewirtz (New York and Chichester: John Wiley and Sons, 1984), pp. 283-302.
- Hoffman, Mark, "Normative International Theory: Approaches and Issues," in *Contemporary International Relations: A Guide to Theory*, ed. A. J. R. Groom and Margot Light (London and New York: Pinter Publishers, 1994), pp. 27-44.
- Hoffmann, Stanley, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse, N.Y: Syracuse University Press, 1981).
- Hogan, Robert and E. Dickstein, "Moral Judgment and Perceptions of Injustice," *Journal of Personality and Social Psychology* 23 (1972), pp. 409-413.

- Hogan, Robert, "Moral Development and the Structure of Personality," in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), pp. 153-167.
- Honneth, Axel, ed., *Philosophical Interventions in the Unfinished Project of Enlightenment: Studies in Contemporary German Social Thought* (Cambridge, Mass: MIT Press, c, 1992).
- Honneth, Axel, "Moral Development and Social Struggle," in *Cultural-Political Interventions in the Unfinished Project of Enlightenment*, ed. Axel Honneth, et al. (Cambridge, Mass: MIT Press, 1992).
- Honneth, Axel, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, trans. Joel Anderson (Cambridge: Polity Press, 1995).
- Honneth, Axel, "The Limits of Liberalism: On the Political-Ethical Discussion Concerning Communitarianism," in *The Fragmented World of the Social: Essays in Social and Political Philosophy* (New York: State University of New York Press, 1995), pp. 231-46.
- Honneth, Axel and Hans Joas, *Social Action and Human Nature* (Cambridge: Cambridge University Press, 1988).
- Honneth, Axel and Hans Joas, eds., *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action* (Cambridge: Polity, 1991).
- Horton, John and Susan Mendus, eds., *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre* (Cambridge: Polity Press, 1994).
- Hume, David, *A Treatise of Human Nature* [1739], ed. Ernest C. Mossner (London: Penguin, 1969).
- Hume, David, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals* [1777], ed. L. A. Selby-Bigge (Oxford and New York: Oxford University Press, 1975).
- Hunter, Kenneth W. and Timothy C. Mack, eds., *International Rights and Responsibilities for the Future* (Westport, CO and London: Praeger, 1996).
- Hyndman, Jennifer, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis and London: University of Minnesota Press, 2000).
- Iggers, Georg G., *The German Concept of History: The National Tradition of Historical Thought from Herder to the Present* (Middletown, CO: Wesleyan University Press, 1983).

- Jacobsen, Karen, "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review* 30:3 (1996), pp. 655-78.
- Joly, Daniele, "A New Asylum Regime in Europe," in *Refugee Rights and Realities*, ed. Frances Nicolson and Patrick Twomey (Cambridge: Cambridge University Press, 1999) pp. 336-56.
- Jones, Ernest, *The Life and Work of Sigmund Freud* (Harmondsworth: Penguin, 1964).
- Jones, Peter, *Rights* (London: Macmillan, 1994).
- de Jong, Cornelis D., "Elements for a More Effective EU Response to Situations of Mass Influx," in *International Journal of Refugee Law* 8: 1/2 (1996), pp. 156-68.
- Joppke, Christian, *Immigration and the Nation-State* (Oxford and New York: Oxford University Press, 1999).
- Kagan, Jerome, *The Nature of the Child* (New York: Basic Books, 1984).
- Kagan, Jerome and Sharon Lamb, eds., *The Emergence of Morality in Young Children* (Chicago: University of Chicago Press, 1987).
- Kagan, Shelly, *The Limits of Morality* (Oxford: Clarendon Press, 1989).
- Kant, Immanuel, *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1977).
- Kant, Immanuel, *Groundwork of the Metaphysic of Morals* [1785], ed. and trans. Herbert James Paton as *The Moral Law* (London and New York: Routledge, 1989).
- Kaplan, Morton A., *Justice, Human Nature and Political Obligation* (New York and London: Macmillan Publishing Co., 1976).
- Keasey, Charles Blake, "Implicators of Cognitive Development for Moral Reasoning," ed. David J. DePalma and Jeanne M. Foley (Hillsdale, NJ: Lawrence Erlbaum Associates, 1975), pp. 39-56.
- Kedourie, Elie, *Nationalism* (London: Hutchinson, 1960).
- Kelly, Paul, ed., *Impartiality, Neutrality and Justice* (Edinburgh: Edinburgh University Press, 1998).
- Kemp, John, *Reason, Action and Morality* (London: Routledge and Kegan Paul, 1964).

- Kent, Randolph, "Emergency Aid: Politics and Priorities," in *Refugees and International Relations*, ed. Gil Loescher and Laila Monahan (Oxford: Clarendon Press, 1990), pp. 63-84.
- Keohane, Robert O. and Joseph S Nye, *Power and interdependence: World Politics in Transition* (Boston: Little, Brown, 1977).
- Keohane, Robert O., ed., *Neorealism and its Critics* (New York: Columbia University Press, 1986).
- Kibreab, Gaim, *African Refugees: Reflections on the African Refugee Problem* (Trenton, NJ: Africa World Press, 1985).
- King, Preston, ed., *Thomas Hobbes: Critical Assessments* (London and New York: Routledge, 1993).
- Kittay, Eva Feder and Diana T. Meyers, eds., *Women and Moral Theory* (Totowa, NJ: Rowman and Littlefield, 1987).
- Kitwood, Tom, *Concern for Others: A New Psychology of Conscience and Morality* (London and New York: Routledge, 1990).
- Klein, Melanie, *Love, Guilt and Reparation and Other Works 1921-1945* (London: Vintage, 1998).
- Kohlberg, Lawrence, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice* (San Francisco: Harper and Row, 1981).
- Kohlberg, Lawrence and Daniel Candee, "The Relationship of Moral Judgement to Moral Action," in *Moral Development through Social Interaction*, ed. William M. Kurtines and Jacob L. Gewirtz (New York and Chichester: John Wiley and Sons, 1984), pp. 52-73.
- Koser, Khalid and Richard Black, "Limits to Harmonisation: The 'Temporary Protection' of Refugees in the European Union," *International Migration* 37:3 (1999), pp. 521-43.
- Kourula, Pirrko, *Broadening the Edges: Refugee Definition and International Protection Revisited* (The Hague, Boston and London: Martin Nijhoff, 1997).
- Krasner, Stephen D., *Defending the National Interest: Raw Materials Investment and U.S. Foreign Policy* (Princeton: Princeton University Press, 1978).
- Krasner, Stephen D., "Sovereignty, Regimes, and Human Rights," in *Regime Theory and International Relations*, ed. Volker Rittberger (Oxford: Clarendon Press, 1993), pp. 139-167.
- Kratochwil, Friedrich, "On the Notion of "Interest" in International Relations," *International Organization* 36:1 (1982), pp. 1-30.

- Kukathas, Chandran and Philip Pettit, *Rawls: A Theory of Justice and its Critics* (Cambridge: Polity Press, 1993).
- Kushner, Tony and Katherine Knox, *Refugees in an Age of Genocide* (London and Portland, OR: Frank Cass, 1999).
- Kymlicka, Will, *Contemporary Political Philosophy* (Oxford and New York: Clarendon Press, 1990).
- Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford and New York: Clarendon Press, 1995).
- Lambert, Hélène, "Building a European Asylum Policy under the 'First Pillar' of the Consolidated Treaty Establishing the European Community," *International Journal of Refugee Law* 11:2 (1999), pp. 329 - 37.
- Layton-Henry, Zig, "Great Britain," in *European Immigration Policy*, ed. Thomas Hammar (Cambridge: Cambridge University Press, 1985), pp. 89-126.
- Lee, Benjamin and Gil G. Noam, eds., *Developmental Approaches to the Self* (New York and London: Plenum Press, 1983).
- Lerts, Eliance and Bruce A.B. Cooper Norma Haan, *On Moral Grounds* (New York and London: New York University Press, 1985).
- Linklater, Andrew, *Men and Citizens in the Theory of International Relations*, (London: Macmillan in association with LSE, 1990).
- Linklater, Andrew, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (Columbia: University of South Carolina Press, 1998).
- Linklater, Andrew, "Cosmopolitan Citizenship", *Citizenship Studies*, 2:1 (1998), pp. 23-41.
- Locke, John, *Second Treatise of Government* [1690], ed. Richard Cox (Wheeling, Illinois: Harlan Davidson, 1982).
- Loescher, Gil, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford and New York: Oxford University Press, 1993).
- Loescher, Gil and Laila Monahan, ed., *Refugees and International Relations* (Oxford: Clarendon Press, 1990).
- Luard, Evan, ed., *International Protection of Human Rights* (London: Thames and Hudson, 1967).
- Luard, Evan, *International Society* (London: Macmillan, 1989).

- Lukes, Steven, "Of Gods and Demons: Habermas and Practical Reason," in *Habermas: Critical Debates*, ed. John B. Thompson and David Held (London: Macmillan, 1982), 134-48.
- Lukes, Steven, "Equality and Liberty: Must they Conflict?," in *Political Theory Today*, ed. David Held (Cambridge: Polity, 1991), pp. 48-66.
- MacDonald, Margaret, "Natural Rights," in *Theories of Rights*, ed. Jeremy Waldron (Oxford and New York: Oxford University Press, 1984), pp. 21-40.
- MacIntyre, Alasdair, *A Short History of Ethics* (London: Routledge, 1967).
- MacIntyre, Alasdair, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981).
- MacIntyre, Alasdair, *Is Patriotism a Virtue?* (Lawrence: University of Kansas, 1984).
- MacIntyre, Alasdair, *Whose Justice? Which Rationality?* (London: Duckworth, 1988).
- Mackie, David, *Ethics: Inventing Right and Wrong* (London: Penguin, 1985).
- MacMillan, John and Andrew Linklater, eds., *Boundaries in Question: New Directions in International Relations* (London and New York: Pinter Publishers, 1995).
- MacPherson, C. B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford and New York: Oxford University Press, 1962).
- Malthus, Thomas Robert, *An Essay on the Principles of Population: Or, a View of its Past and Present Effects on Human Happiness, etc* (London: Reeves and Turner, 1888).
- Mann, Michael, "A Political Theory of Nationalism and its Excesses," in *Notions of Nationalism*, ed. Sukumar Periwal (Budapest: Central European University Press, 1995), pp. 44-64.
- Mann, Michael, "The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing," *New Left Review* 235 (1999), pp. 18-45.
- Mapel, David R., "The Contractarian Tradition and International Ethics," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 180-200.
- Mapel, David R. and Terry Nardin, "Convergence and Divergence in International Ethics," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp.



297-322.

- Mapel, David R. and Terry Nardin, eds., *International Society: Diverse Ethical Perspectives* (Princeton: Princeton University Press, 1998).
- Marrus, Michael, *The Unwanted: European Refugees in the 20th Century* (Oxford and New York: Oxford University Press, 1985).
- Marrus, Michael, "The Uprooted: An Historical Perspective," in *The Uprooted: Forced Migration as an International Problem in the Post-War Era*, ed. Göran Rystad (Lund: Lund University Press, 1990), pp. 47-58.
- Marx, Karl, "On the Jewish Question" [1843] in *Karl Marx: Early Texts*, ed. David McLellan (Oxford: Blackwell, 1971), pp. 85-114.
- Marx, Reinhard, "Non-Refoulement, Access to Procedures, and Responsibility for Determining Refugee Claims," *International Journal of Refugee Law* 7:3 (1995), pp. 383-406.
- Matravers, Matt, "What's 'Wrong' in Contractualism," in *Impartiality, Neutrality and Justice*, ed. Paul Kelly (Edinburgh: Edinburgh University Press, 1998), pp. 108-19.
- Mayall, James, "International Society and International Theory," in *The Reason of States: A Study in International Political Theory*, ed. Michael Donelan (Boston and Sydney: George Allen & Unwin, 1978), pp. 122-141.
- Mayall, James, *Nationalism and International Society* (Cambridge: Cambridge University Press, 1990).
- McCarthy, Thomas, *The Critical Theory of Jürgen Habermas* (Cambridge: Polity Press, 1984).
- McNaughton, David, *Moral Vision: An Introduction to Ethics* (Oxford: Blackwell, 1988).
- Mead, George Herbert, *Mind, Self, and Society* (Chicago: University of Chicago Press, 1934).
- Medina, Vicente, *Social Contract Theories: Political Obligation or Anarchy?* (Maryland: Rowman and Littlefield Publishers, 1990).
- Melden, A. I., ed., *Human Rights* (Belmont: Wadsworth, 1970).
- Melden, A. I., *Rights and Persons* (Oxford: Blackwell, 1977).
- Mill, John Stuart, "Utilitarianism" [1861], in *On Liberty and Other Essays*, ed. John Gray (Oxford and New York: Oxford University Press, 1991), pp. 131-75.

- Miller, David, "The Ethical Significance of Nationality," *Ethics* 98:4 (1988), pp. 647-62.
- Miller, David, *On Nationality* (Oxford and New York: Oxford University Press, 1995).
- Miller, David and Michael Walzer, eds., *Pluralism, Justice and Equality* (Oxford and New York: Oxford University Press, 1995).
- Mills, Kurt, *Human Rights in the Emerging Global Order: A New Sovereignty?* (London: Macmillan, 1998).
- Mischel, Theodore, ed., *The Self: Psychological and Philosophical Issues* (Oxford: Blackwell, 1977).
- Money-Kyrle, Roger, *The Collected Papers of Roger Money-Kyrle*, ed. Donald Meltzer and Edna O'Shaughnessy (Strath Tay: Clunie Press, 1978).
- Morgenthau, Hans Joachim, *Scientific Man vs. Power Politics* (1947).
- Morgenthau, Hans Joachim, *Politics among Nations: The Struggle for Power and Peace* (1954).
- Morrice, David, "The Liberal-Communitarian Debate in Contemporary Political Philosophy and its Significance for International Relations," *Review of International Studies* 26:2 (2000), pp. 233-51.
- Murdoch, Iris, *The Sovereignty of Good* (London: Routledge and Kegan Paul, 1970).
- Nagel, Thomas, *The Possibility of Altruism* (Princeton, NJ: Princeton University Press, 1978).
- Nagel, Thomas, *The View from Nowhere* (Oxford and New York: Oxford University Press, 1986).
- Nagel, Thomas, *Equality and Partiality* (Oxford and New York: Oxford University Press, 1991).
- Nagel, Thomas, "Hobbes' Concept of Obligation," in *Thomas Hobbes: Critical Assessments, Vol II: Ethics*, ed. Preston King (London and New York: Routledge, 1993), pp. 116-29.
- Nardin, Terry, *Law, morality, and the Relations of States* (Princeton, N.J: Princeton University Press, 1983).
- Nardin, Terry, "Ethical Traditions in International Thought," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge:

Cambridge University Press, 1992), pp. 1-22.

Nardin, Terry, "Alternative Ethical Perspectives on Transnational Migration," in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (Hemel Hempstead: Harvester Wheatsheaf, 1992), pp. 267-78.

Nardin, Terry and David Mapel, eds., *Traditions of International ethics* (Cambridge New York: Cambridge University Press, 1992).

Nicholson, Frances and Patrick Twomey, eds., *Refugee Rights and Realities* (Cambridge: Cambridge University Press, 1999).

Nielsen, Kai, "Global Justice, Capitalism and the Third World," in *International Justice and the Third World*, ed. Robin Attfield and Barry Wilkins (London and New York: Routledge, 1992), pp. 17-34.

Nozick, Robert, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974).

Nunner-Winkler, Gertrud, "Moral Relativism and Strict Universalism," in *The Moral Domain: Essays in the Ongoing Discussion between Philosophy and the Social Sciences*, ed. Thomas E. Wren (Cambridge Mass: MIT Press, 1990), pp. 109-126.

Nunner-Winkler, Gertrud, "Knowing and Wanting: On Moral Development in Early Childhood," in *Cultural-Political Interventions in the Unfinished Project of Enlightenment*, ed. Axel Honneth, et al. (Cambridge, Mass: MIT Press, 1992), pp. 219-43.

Nussbaum, A., *A Concise History of the Law of Nations* (Princeton: Princeton University Press, 1961).

O'Neill, Onora, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989).

O'Neill, Onora, "Transnational Justice," in *Political Theory Today*, ed. David Held (Cambridge: Polity, 1991), pp. 276-304.

O'Neill, Onora, "Justice, Gender and International Boundaries," in *International Justice and the Third World*, ed. Robin Attfield and Barry Wilkins (London and New York: Routledge, 1992), pp. 50-76.

O'Neill, Onora, "Justice and Boundaries," in *Political Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown (London: Routledge, 1994), pp. 69-88.

O'Neill, Onora, "Ending World Hunger," in *World Hunger and Morality*, ed. William Aiken and Hugh LaFollette (New Jersey: Prentice Hall, 1996), pp. 85-112.

- O'Neill, Onora, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996).
- Paton, H. J., *The Categorical Imperative: A Study in Kant's Moral Philosophy* (1947).
- Pennock, J. Roland and John W. (eds.) Chapman, eds., *Equality, Vol. IX* (New York: Atherton, 1967).
- Peters, R. S., *The Concept of Motivation* (London: Routledge, 1958).
- Pogge, Thomas W., *Realizing Rawls* (Ithaca and London: Cornell University Press, 1989).
- Poliakov, Léon, *The Aryan Myth: A History of Racist and Nationalist Ideas in Europe* (London: Chatto and Windus, 1974).
- Quine, Willard Van Orman, "Two Dogmas of Empiricism," in *From a Logical Point of View*, ed. Willard Van Orman Quine (Cambridge, Massachusetts: Harvard University Press, 1953), pp. 20-46.
- Raphael, D. D., *Moral Philosophy* (Oxford and New York: Oxford University Press, 1981).
- Rawls, John, *A Theory of Justice* (Oxford and New York: Oxford University Press, 1972).
- Rawls, John, "Kantian Constructivism in Moral Theory," *Journal of Philosophy*, 77:9 (1980), pp. 515-72.
- Rawls, John, "Social Utility and Primary Goods," in *Utilitarianism and Beyond*, ed. Amartya K. Sen and Bernard Williams (Cambridge: Cambridge University Press, 1981), pp. 159-85.
- Rawls, John, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14:3 (1985), pp. 223-51.
- Rawls, John, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7:1 (1987), pp. 1-25.
- Rawls, John, "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs*, 17:4 (1988), pp. 251-76.
- Rawls, John, *Political Liberalism* (New York: Columbia University Press, 1993).
- Rawls, John, "The Law of Peoples," in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 41-82.
- Rawls, John, *The Law of Peoples* (Cambridge, Mass and London: Harvard University Press, 1999).

- Raz, Joseph, ed., *Practical Reasoning, Oxford Readings in Philosophy* (Oxford and New York: Oxford University Press, 1978).
- Raz, Joseph, "The Claims of Reflective Equilibrium," *Inquiry* 25 (1982), pp. 307-30.
- Raz, Joseph, *The Morality of Freedom* (Oxford: Clarendon Press, 1988).
- Renteln, Alison Dundes, *International Human Rights: Universalism versus Relativism* (Newbury Park: Sage, 1990).
- Ridley, Aron, *Neitzsche's Conscience: Six Character Studies from the 'Genealogy'* (Ithaca: Cornell University Press, 1998).
- Rieff, Philip, *Freud: The Mind of the Moralist* (London: Methuen, 1960).
- Riley, Patrick, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, Massachusetts: Harvard University Press, 1982).
- Robinson, Vaughan, ed., *The International Refugee Crisis: British and Canadian Responses* (London: Macmillan, 1993).
- Rorty, Richard, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989).
- Rorty, Richard, "Human Rights, Rationality and Sentimentality," in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 111-35.
- Rosen, Allen D., *Kant's Theory of Justice* (Ithaca: Cornell University Press, 1993).
- Rosenblum, Nancy, *Liberalism and the Moral Life* (Cambridge, Mass and London: Harvard University Press, 1989).
- Ruggie, John Gerard, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," in *Neorealism and its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), pp. 131-57.
- Runstrom-Ruin, Cecilia, *Beyond Europe: The Globalization of Refugee Aid* (Lund: Lund University Press, 1993).
- Rystad, Göran, "Victims of Oppression or Ideological Weapons? Aspects of US Refugee Policy in the Postwar Era," in *The Uprooted: Forced Migration as an International Problem in the Post-War Era*, ed. Göran Rystad (Lund: Lund University Press, 1990), pp. 195-226.

- Sabine, George H., *A History of Political Theory* (London: George G. Harrap & Co., 1951).
- Salomon, Kim, *Refugees in the Cold War: Toward a New International Refugee Regime in the Early PostWar Era* (Lund: Lund University Press, 1991).
- Sandel, Michael J., *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
- Scanlan, John A. and O. T. Kent, "The Force of Moral Arguments for a Just Immigration Policy in a Hobbesian Universe: The Contemporary American Example," in *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed. Mark Gibney (New York and London: Greenwood, 1989), pp. 61-107.
- Scanlon, Thomas M., "Rawls' Theory of Justice," in *Reading Rawls: Critical Studies of A Theory of Justice*, ed. Norman Daniels (Oxford: Blackwell, 1975), pp. 169-205.
- Scanlon, Thomas M., "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Kuma Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 103-28.
- Schlesinger, Arthur M., "National Interests and Moral Absolutes," in *International Ethics in the Nuclear Age*, ed. Robert J. Myers (Lanham and London: University Press of America, 1987), pp. 15-37.
- Schochet, Gordon J., "Intending (Political) Obligation: Hobbes and the Voluntary Basis of Society," in *Thomas Hobbes and Political Theory*, ed. Mary G. Dietz (Kansas: University Press of Kansas, 1990), pp. 55-73.
- Schulze, Hagen, *States, Nations and Nationalism: From the Middle Ages to the Present*, trans. William E. Yuill (Oxford: Blackwell, 1996).
- Segal, Hanna, *Introduction to the Work of Melanie Klein* (London: Hogarth Press/Institute of Psychoanalysis, 1973).
- Selman, Robert and William Dama, "The Necessity (but Insufficiency) of Social Perspective Taking for Conceptions of Justice at Three Early Levels," in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), pp. 57-73.
- Sen, Amartya and Bernard Williams, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1981).
- Sen, Amartya, "Plural Utility," in *Utilitarianism and its Critics*, ed. Jonathan Glover (New York: Macmillan Pub. Co; London: Collier Macmillan Publishers, 1990), pp. 78-88.

- Sen, Amartya, *Choice, Welfare and Measurement* (Cambridge, Mass: Harvard University Press, 1997).
- Shapiro, Ian, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge University Press, 1986).
- Shue, Henry, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton, NJ: Princeton University Press, 1980).
- Shue, Henry, "Mediating Duties," *Ethics* 98:4 (1988), pp. 687-704.
- Shute, Stephen and Susan Hurley, eds., *On Human Rights* (New York: Basic Books, 1993).
- Shweder, Richard A., Manomohan Mahapatra, and Joan G. Miller, "Culture and Moral Development," in *The Emergence of Morality in Young Children*, ed. Jerome Kagan and Sharon Lamb (Chicago: University of Chicago Press, 1987), pp. 1-83.
- Sidgwick, Henry, *The Method of Ethics* (Indianapolis and Cambridge: Hackett Publishing Company, 1981).
- Simpson, Sir John Hope, *Refugees: A Review of the Situation Since September 1938* (Oxford and New York: Oxford University Press, 1939).
- Simpson, Sir John Hope, *The Refugee Problem: Report of a Survey* (Oxford and New York: Oxford University Press, 1939).
- Singer, Peter, "Insiders and Outsiders," in *Practical Ethics*, ed. Peter Singer (Cambridge: Cambridge University Press, 1979), pp. 247-63.
- Singer, Peter, "Famine, Affluence and Morality," in *International Ethics*, ed. Charles R. Beitz, Marshall Cohen, Thomas Scanlon and A. John Simmons (Princeton, NJ: Princeton University Press, 1985), pp. 247-61.
- Singer, Peter, ed., *Ethics* (Oxford and New York: Oxford University Press, 1994).
- Singer, Peter and Renata, "The Ethics of Refugee Policy," in *Open Borders? Closed Societies? The Ethical and Political Issues*, ed. Mark Gibney (New York and London: Greenwood, 1989), pp. 111-30.
- Smith, Adam, *The Theory of Moral Sentiments*, ed. D. D Raphael and Alec Lawrence Macfie (Oxford: Clarendon Press, 1976).
- Smith, Anthony D., *Theories of Nationalism* (London: Duckworth, 1971).
- Sojberg, Tommie, *The Powers and the Persecuted: The Refugee Problem and the Intergovernmental Committee on Refugees* (Lund: Lund University Press, 1991).

- Sorell, Tom, *Hobbes*, (London and New York: Routledge and Kegan Paul, 1986).
- Statt, Daniel, *Foreigners and Englishmen: The Controversy over Immigration and Population, 1660-1760* (Newark: University of Delaware Press, 1995).
- Steiner, Hillel, "Territorial Justice," in *National Rights, International Obligations*, ed. Simon Caney, David George and Peter Jones (Boulder, CO. and Oxford: Westview, 1996), pp. 139-48.
- Stoessinger, John George, *The Refugee and the World Community* (Minneapolis: University of Minneapolis Press, 1956).
- Stroud, Barry, *Hume* (London and New York: Routledge, 1988).
- Tam, Henry, *Communitarianism: A New Agenda for Politics and Citizenship* (London: Macmillan, 1988).
- Taylor, Charles, "What is Human Agency?," in *The Self: Psychological and Philosophical Issues*, ed. Theodore Mischel (Oxford: Blackwell, 1977), pp. 103-35.
- Taylor, Charles, "Rationality," in *Rationality and Relativism*, ed. Martin Hollis and Steven Lukes (Oxford: Blackwell, 1982), pp. 87-105.
- Taylor, Charles, *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985).
- Taylor, Charles, "The Diversity of Goods," in *Philosophy and the Human Sciences: Philosophical Papers 2*, ed. Charles Taylor (Cambridge: Cambridge University Press, 1985), pp. 230-47.
- Taylor, Charles, *Sources of the Self: The Making of Modern Identity* (Cambridge, Mass: Harvard University Press, 1989).
- Taylor, Charles, "Cross-Purposes: the Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA and London: Harvard University Press, 1989), pp. 159-182.
- Taylor, Charles, "Language and Society," in *Communicative Action: Essays on Jürgen Habermas's The Theory of Communicative Action*, ed. Axel Honneth and Hans Joas (Cambridge: Polity Press, 1991), pp. 22-35.
- Taylor, Charles, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Charles Taylor and Amy Gutman (Princeton, NJ: Princeton University Press, 1994), pp. 25-73.
- Taylor, Charles, "Justice After Virtue," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, ed. John Horton and Susan Mendus (Cambridge: Polity, 1994), pp. 16-43.



- Taylor, Charles, "Charles Taylor Replies," in *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question* (Cambridge: Cambridge University Press, 1994), pp. 213-57.
- Tesón, Fernando R., "The Rawlsian Theory of International Law," *Ethics and International Affairs* 9 (1995), pp. 79-93.
- Thompson, Janna, *Justice and World Order: A Philosophical Enquiry* (London and New York: Routledge, 1992).
- Thompson, John B. and David Held, eds., *Habermas: Critical debates, Contemporary Social Theory* (London: Macmillan, 1982).
- Thomson, Judith Jarvis, *The Realm of Rights* (Cambridge, Massachusetts: Harvard University Press, 1990).
- Tilly, Charles, *The Formation of National States in Western Europe* (Princeton: Princeton University Press, 1975).
- Toulmin, Stephen Edelston, *Reason in Ethics* (Cambridge: Cambridge University Press, 1968).
- Tuck, Richard, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).
- Tuitt, Patricia, "Rethinking the Refugee Definition," in *Refugee Rights and Realities*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), pp. 106-18.
- Tuitt, Patricia, *False Images: The Law's Construction of the Refugee* (London: Pluto Press, 1996).
- Tully, James, ed., *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question* (Cambridge: Cambridge University Press, 1994).
- Turiel, Elliot, "The Development of Social Concepts: Mores, Customs, and Convention," in *Moral Development: Current Theory and Research*, ed. David J. DePalma and Jeanne M. Foley (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1975), pp. 7-37.
- United Nations High Commissioner for Refugees, *The State of the World's Refugees: In Search of Solutions* (Oxford and New York: Oxford University Press, 1995).
- United Nations High Commissioner for Refugees, *The State of the World's Refugees: A Humanitarian Agenda* (Oxford and New York: Oxford University Press, 1997).

- United Nations High Commissioner for Refugees, *People of Concern*, Report of a Conference on Refugees (Geneva: 21-3 November 1996).
- Vernant, Jacques, *The Refugee in the Post-War World* (London: George Allen and Unwin, 1953).
- Vernon, Raymond and Ethan B. Kapstein, "National Needs, Global Resources," *Daedalus* 120, no. 4 (1991), pp. 1-22.
- Vetlesen, Arne Johan, *Perception, Empathy and Judgment: An Inquiry into the Preconditions of Moral Performance* (Pennsylvania: Pennsylvania State University Press, 1994).
- Vincent, John R., "The Hobbesian Tradition in Twentieth Century International Thought," *Millennium* 10:2 (1981), pp. 91-101.
- Vincent, John R., *Human rights and International Relations* (Cambridge: Published in association with the Royal Institute of International Affairs by Cambridge University Press, 1986).
- Vincent, John R., "The Idea of Rights in International Ethics," in *Traditions of International Ethics*, ed. Terry Nardin and David R. Mapel (Cambridge: Cambridge University Press, 1992), pp. 250-269.
- Vitoria, F. de, *Vitoria: Political Writings*, ed. A. Pagden (Cambridge: Cambridge University Press, 1991).
- Waever, Ole, Barry Buzan, Morten Kelstip and Pierre Lemiare, eds., *Identity, Migration and the New Security Agenda in Europe* (London: Pinter Publishers, 1993).
- Waldron, Jeremy, ed., *Nonsense upon Stilts: Bentham, Burke and Marx in the Rights of Man* (London: Methuen, 1987).
- Waldron, Jeremy, ed., *Theories of Rights* (Oxford and New York: Oxford University Press, 1984).
- Waldron, Jeremy, *Liberal Rights: Collected Papers, 1981-91* (Cambridge: Cambridge University Press, 1993).
- Wallwork, Ernest, *Psychoanalysis and Ethics* (New Haven and London: Yale University Press, 1991).
- Walvin, James, *Passage to Britain: Immigration in British History and Politics* (Harmondsworth: Penguin in association with Belitha Press, 1984).
- Walzer, Michael, *Interpretation and Social Criticism* (Cambridge, Mass and London: Harvard University Press, 1987).
- Walzer, Michael, "The Communitarian Critique of Liberalism," *Political Theory*

18:1 (1990), pp. 6-23.

Walzer, Michael, *Interpretation and Social Criticism* (Cambridge, Mass and London: Harvard University Press, 1987).

Walzer, Michael, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983).

Walzer, Michael, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994).

Weiner, Myron, *The Global Migration Crisis: Challenges to States and Human Rights* (New York: Harper Collins College Publishers, 1995).

Weinstock, Daniel M., "The Political Theory of Strong Evaluation," in *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question*, ed. James Tully (Cambridge: Cambridge University Press, 1994), 171-193.

Weis, Paul, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed* (Cambridge: Cambridge University Press, 1994).

Wellmer, Albrecht, "Ethics and Dialogue: Elements of Moral Judgement in Kant and Discourse Ethics," in *The Persistence of Modernity: Essays on Aesthetics, Ethics, and Postmodernism*, ed. Albrecht Wellmer, trans. David Midgley (Cambridge, Massachusetts: MIT Press, 1991), pp. 113-231.

Whelan, Frederick G., "Citizenship and Freedom of Movement: An Open Admission Policy," in *Open Borders? Closed Societies?: The Ethical and Political Issues*, ed. Mark Gibney (New York and London: Greenwood, 1989), pp. 3-40.

Wicclair, Mark R., "Rawls and the Principle of Nonintervention," in *John Rawls's Theory of Social Justice: An Introduction*, ed. H. Gene Blocker and Elizabeth H. Smith (Ohio University Press, 1980), pp. 289-308.

Wiggins, David, "Claims of Need," in *Needs, Values, Truth*, ed. David Wiggins (Oxford: Blackwell, 1991), pp. 1-57.

Wiggins, David, "Universalizability, Impartiality, Truth," in *Needs, Values, Truth*, ed. David Wiggins (Oxford: Blackwell, 1991), pp. 59-86.

Wight, Martin, "Why Is There No International Theory?," in *Diplomatic Investigations: Essays In The Theory Of International Politics*, ed. Herbert Butterfield and Martin Wight (London: George Allen & Unwin, 1966), pp. 17-34.

Williams, Bernard, "Morality and the Emotions," in *Morality and Moral Reasoning: Five Essays in Ethics*, ed. John Casey (London: Methuen, 1971),

pp. 1-24.

Williams, Bernard, *Problems of the Self: Philosophical Papers 1956-1972* (Cambridge: Cambridge University Press, 1976).

Williams, Bernard, "Persons, Character and Morality," in *Moral Luck: Philosophical Papers 1973-1980*, ed. Bernard Williams (Cambridge: Cambridge University Press, 1981), pp. 1-19.

Williams, Bernard, "Internal and External Reasons," in *Moral Luck: Philosophical Papers 1973-1980*, ed. Bernard Williams (Cambridge: Cambridge University Press, 1981), pp. 101-13.

Williams, Bernard, *Ethics and the Limits of Philosophy* (London: Fontana, 1985).

Williams, Bernard, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, ed. J. J. C. Smart and Bernard Williams (Cambridge: Cambridge University Press, 1993), pp. 77-150.

Winnicott, D. W., *Maturational Processes and the Facilitating Environment: Studies in the Theory of Emotional Development* (London: Hogarth Press, 1979).

Wolf, Ernest S., "'Irrationality' in a Psychoanalytic Psychology of the Self," in *The Self: Psychological and Philosophical Issues*, ed. Theodore Mischel (Oxford: Blackwell, 1977), pp. 203-23.

Wolff, Jonathan, "Rational, Fair and Reasonable," in *Impartiality, Neutrality and Justice*, ed. Paul Kelly (Edinburgh: Edinburgh University Press, 1998), pp. 35-43.

Wollheim, Richard, *Freud* (London: Fontana, 1971).

Wollheim, Richard and James Hopkins, eds., *Philosophical Essays on Freud* (Cambridge: Cambridge University Press, 1982).

Wollheim, Richard, "From Voices to Values: The Growth of Moral Sense," in *The Thread of Life*, ed. Richard Wollheim (Cambridge: Cambridge University Press, 1986), pp. 197-225.

Wollstonecraft, Mary, *Vindication of the Rights of Women* [1792], ed. Miriam Brody (London: Penguin, 1992).

Wren, Thomas E., ed. *The Moral Domain: Essays in the Ongoing Discussion between Philosophy and the Social Sciences* (Cambridge Mass: MIT Press, 1990).

Wren, Thomas E., "The Possibility of Convergence between Moral Psychology and Metaethics," in *The Moral Domain: Essays in the Ongoing Discussion*

*between Philosophy and the Social Sciences*, ed. Thomas E. Wren (Cambridge, Mass: MIT Press, 1990), pp. 15-37.

Wright, Derek, *The Psychology of Moral Behaviour* (Harmondsworth: Penguin, 1971).

Zolberg, Aristide, "The Formation of New States as a Refugee-Generating Process," *Annals, American Academy of Political and Social Science* 467 (1983), pp. 24-38.

Zolberg, Aristide, "Keeping Them Out: Ethical Dilemmas of Immigration Policy," in *International Ethics in the Nuclear Age*, ed. Robert J. Myers (Lanham and London: University Press of America, 1987), pp. 261-97.

Zolberg, Aristide and Astri Suhrke and Sergio Aguayo, *Escape From Violence: Conflict and the Refugee Crisis in the Developing World, Beyond Progress and Development. Macro-Political and Macro-Social Change* (Oxford and New York: Oxford University Press, 1989).