



## *Justice for Earthlings*

*Essays in Political Philosophy*

In the past few decades social changes have impacted how we understand justice, as societies become both more multicultural and more interconnected globally. Much philosophical thought, however, seems to proceed in isolation from these developments. While philosophers from Plato onwards have portrayed justice as an abstract, universal ideal, Miller argues that principles of justice are always rooted in particular social contexts, and connects these ideas to the changing conditions of human life. In this important contribution to political philosophy, it is argued that philosophers need to pay more attention to the way that people actually think about what's fair, and only defend principles that are feasible to apply in the real world. To understand equality of opportunity, for example, we must explore the cultural constraints that people face when presented with life choices. *Justice for Earthlings* also explains how national boundaries make justice at a global level different from social justice.

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# Justice for Earthlings

Essays in Political Philosophy

DAVID MILLER



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- ‘Taking Up the Slack? Responsibility and Justice in Situations of Partial Compliance’ in C. Knight and Z. Stemplowska (eds.), *Responsibility and Distributive Justice* (Oxford University Press, 2011).







## *Introduction*

This book collects a number of my essays about justice written over the period 2000–2010. It was a good decade for writing about justice, judging by the stream of books and articles that academic political philosophers produced, but not so good for justice itself. Justice in this context means justice in the distribution of rights and opportunities, income and wealth, goods and services – what is often called social justice, though the term has become problematic, as we shall shortly see. The philosophers who write about justice nearly all understand it as requiring some form of equality, and there has been intense debate about exactly which form should be chosen; there is also intense debate about how widely the justice net should be cast, whether the aim should be equality within each separate political community or equality worldwide. Whichever way the idea of justice is understood, however, the real world seems to have moved in entirely the opposite direction. Levels of interpersonal inequality have relentlessly increased, both nationally and globally, mainly because in both developed and developing countries a class of super-rich persons has emerged, easily able to outflank the policies states have traditionally employed to reduce inequality among their citizens. Alongside this, there is evidence that public opinion, even in countries with strong traditions of social democracy, has become more tolerant of inequality. Fewer people now think that it is part of the state's business to redistribute income and wealth in favour of the poor. There is certainly anger at the present time directed against rich bankers and financiers who are thought to have inflicted harm on others by virtue of their risky behaviour, but this does not extend to sports stars and celebrities whose extravagant lifestyles are seen as appropriate reward for having won out in the lottery of life.

In this context, it is puzzling, to say the least, that philosophical enquiry into distributive justice should have largely been directed at exploring new and increasingly radical forms of egalitarianism. The

prime contender here is the position that has come to be known as 'luck egalitarianism'. What justice requires, on this view, is that people should all enjoy the same level of advantage unless they have made choices that lead to their having either less or more than others. 'Advantage' here is a term of art that can be interpreted in different ways, but for simplicity's sake assume that it means resources such as income and wealth. Then the luck egalitarian principle holds that the only thing that should affect the level of material resources that someone now has are the choices they have made over time about how to live, what work to undertake and so forth. The effects of all forms of unchosen luck are to be neutralized by 'compensation'. Unchosen luck will include the circumstances someone is born into, the talents they are born with, the effects of other people's behaviour on their prospects and so forth. A moment's reflection will reveal how extraordinarily demanding this principle is, whether applied nationally or globally. To put it fully into practice would require some agency capable of monitoring the situation of each individual person and working out how far their present resource level could be attributed to 'luck' on the one hand and 'choice' on the other, and then calculating, counterfactually, what their position *would* have been if the effects of luck had been neutralized and only choice remained. Then the agency would have to extract resources from the beneficiaries of 'good luck' in order to provide compensation to the beneficiaries of 'bad luck'.

A philosopher sympathetic to the position I have just outlined would no doubt protest that this misrepresents her views unfairly. The luck egalitarian principle is not supposed to guide practice directly. What it does instead is to define justice at the most abstract level. Once the meaning of the principle has been clarified philosophically, we can then turn our attention to society and to politics, and work out how far we can implement it and by what means. No doubt there will be limitations imposed both by our inability to gather the kind of evidence that would be needed fully to realize that principle, and by people's reluctance to make the transfers that would be demanded of them, but these limitations should not influence the way we think about justice itself. If we allow them to do so, our theory of justice will be contaminated by irrelevant contingencies. It will become more conservative and less demanding than it should be, by allowing human frailties to affect our understanding of what is supposed to be the highest normative standard by which human beings and human societies can be judged.

As the title of the book may suggest, the essays it includes all challenge the way of understanding justice presented in the last paragraph. They represent justice as a human invention that accordingly is shaped by the circumstances of human life. Were these circumstances to change radically, what we would see would not be the arrival of perfect justice, but its disappearance in any form we could recognize. Even if we held on to the word, we would mean something different by it. Furthermore, it is not one thing: no single principle, such as the luck egalitarian principle just outlined, can possibly capture the richness of human thinking about justice. Even the most influential theory of the past half century, put forward by John Rawls in his book *A Theory of Justice*, has turned out to be a partial theory, insofar as it is only plausible as an account of what justice demands of the public institutions of a self-contained nation-state. As Rawls himself admitted, if we want to understand what justice requires on a smaller scale – in social institutions such as families, schools and colleges, and churches – we would have to extend and modify his theory. The same is true if our aim is to understand justice at international or global level. If we want to say what justice must mean for Earthlings, therefore, we have to begin by thinking about the many different relationships in which these creatures stand towards one another, from the most intimate to the most distant. We will find that different principles fit different cases, as I shall explain in greater detail shortly. Any overarching theory that tries, Plato-like, to discover a single form of justice present in all these diverse instances will either be hopelessly inaccurate, leaving many aspects of justice unaccounted for, or else so vague as to be useless as a guide to practice.<sup>1</sup>

<sup>1</sup> This may be an appropriate point at which to explain how the present book stands in relation to Ronald Dworkin's recently published *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), since readers might imagine, looking at our titles, that it was intended as a riposte to Dworkin. This is not in fact the case, though as it happens the two books do represent sharply contrasting ways of thinking about justice. Dworkin's hedgehogs are not the spiky yet cuddly creatures beloved of gardeners, but thinkers who, following the suggestion of the Greek poet Archilochus, search for unity in the sphere of value: once we have interpreted and defined our values properly, they claim, there will be no conflicts between them. Thus not only is it possible, according to Dworkin, to capture all of justice under the aegis of a single principle (equality of concern and respect for everyone), but justice so understood can be shown to be consistent both with other political values such as liberty and

To defend such an approach to justice we must also confront some basic questions about the nature and purpose of political philosophy itself. What is our aim when we think about politics from a philosophical perspective? This topic is taken up in the first and last essays in the book. The opening essay attacks the idea that the aim is to discover fundamental principles whose truth holds regardless of any facts we might discover about human beings or human societies. The principles we formulate and defend are meant to be action-guiding. And the actions they are meant to guide, the essay claims, are those of our fellow citizens, who come already equipped with their own beliefs about justice and other political values. This imposes feasibility constraints on the principles that can justifiably be advanced. It is not that they must be immediately acceptable to everyone; it is rather that good reasons can be given for accepting them, on the basis of beliefs that people hold to begin with, and in the light of the actual circumstances they find themselves in, rather than some imaginary world whose natural and social laws are different from our own.

Since these conditions might seem self-evident if political philosophy is to have any practical value, one might wonder how the idea of a fact-independent political philosophy took hold. The last essay in the book suggests a diagnosis, which is that such a political philosophy is born of disappointment at developments in the real world. I suggested above that there was paradox in the fact that while equality in the world itself appeared to be in retreat, many political philosophers espoused egalitarian theories of ever-increasing radicalism. This position is only sustainable if one is prepared to declare that the mechanisms that are producing increasing levels of inequality are irrelevant from a normative point of view. Clearly, if principles are independent of all facts, they must be independent of these facts as well. Political philosophy so understood cannot respond constructively to changes that are occurring in the world outside, so it has to retreat to a position of pure, principled opposition. I call this ‘political philosophy as lamentation’ (for what cannot be achieved) and suggest that there is at

democracy, and with the ethical values that define a good life. My Earthlings are more like Dworkin’s foxes. They find themselves confronted by conflicting demands – one form of justice against another, justice in all its forms against rival political values, political obligations against the right to lead a fulfilling private life – and have to learn the arts of weighing and compromise if they are to act rightly.

least one historical precedent for the kind of retreat that we seem to be witnessing from engagement with the forces that are actually shaping our societies and our world.

An extreme reaction to detached political philosophy is to be found in a counter-movement sometimes called ‘realism’, which insists that principles are only worth elaborating at all if they can be attached to political agents capable of putting them into practice. This, I think, moves too far in the other direction. Although the focus on ‘agents of justice’ is important, and I shall say more about it later, it would be too confining for a normative theory only to recommend policies and social outcomes that *existing* agents are capable of implementing. Sometimes the point of elaborating principles is to call for the creation of institutions that can put those principles into practice. This is often true in international contexts, for example, where we devise principles to apply to a range of issues: the protection of human rights, fairness in trade, policies to combat global warming and many others. These principles can only be acted upon if states are willing to collaborate with one another and allow international institutions to monitor their compliance with what they have agreed to do. The fact that agreement is hard to achieve and the relevant institutions do not yet exist (or do not yet have the necessary powers) should not deter us from developing and setting out normative standards to apply to international behaviour. ‘Realism’ in political philosophy can be hostage to feasibility in too narrow a sense, failing to see that new agents of justice can be deliberately created once the problem they are intended to solve is correctly diagnosed.

The alternative way to think about justice that I advocate, in Chapter 2, I call ‘contextualism’. The key idea here is that what constitutes a just distribution of resources of various kinds will depend on the social context in which the distribution is going to occur. This approach does not exclude the possibility that some principles of justice apply universally whenever human beings interact – for example, respect for human rights. But in many other cases we need to understand the relationship in which the parties to a distribution stand to one another before we can say what justice requires them to do. Justice between friends is not the same as justice between strangers; justice in families is not the same as justice in business enterprises; and so forth. If we want to understand what social justice means – justice among the citizens of a large modern society – we need to examine the many

different ways in which they associate with each other, on a larger or smaller scale; the same applies when we turn our attention to the wider issue of global justice. Each form of association may bring a different principle into play. That means that our theory of social justice is going to be complex, certainly by comparison with abstract single-principle theories such as luck egalitarianism. Should that be a cause for concern? The ideas of justice that people use in their everyday lives are complex in the same way as the theory will be. When resources have to be allocated, sometimes they will look at existing entitlements, sometimes at how comparatively deserving or undeserving various potential recipients are, sometimes at differences in need and sometimes they will advocate sharing resources equally. There are other possibilities as well, including combinations of different principles. It is not clear why it should be a virtue in a theory of justice that it should be much simpler in form than the practices of justice it is intended to illuminate.

One response might be that 'everyday justice' is in fact a mass of contradiction and confusion, and so we need a theory that can help to make people's thinking more consistent and also to resolve the disagreements that arise when people simply follow their intuitive sense of what justice requires. But perhaps confusion and disagreement arise largely because people are uncertain about how to understand the context in which some decision about distribution has to be undertaken. Their thinking about justice is contextual, but because they don't recognize this explicitly, they can become uncertain when faced with some unfamiliar situation. They have to reason by analogy, and sometimes the analogy they choose is the wrong one. Here a contextual theory can provide guidance by clarifying the relationship between context and principle, without requiring people to jettison the principles they already believe in.

Such a theory may not succeed in resolving all of the conflicts over justice that arise in politics and in everyday life. For sometimes, even after the relevant principles have been clarified and set in their appropriate contexts, we will find that they pull us in different directions. I give an example in Chapter 7 when I explain how the demands of *social* justice and *global* justice may conflict in practice. It is tempting at this point to suppose that a successful theory would provide a vantage point from which such practical dilemmas could be resolved. Rawls, for example, speaks at one point in *A Theory of Justice* of finding an

‘Archimedean point’ from which the overall justice of a society can be assessed, the reference being to the (imaginary) point of balance outside of the world by means of which Archimedes claimed that, using a suitably long lever, he could lift the Earth. I do not believe that such a point can be found. Our thinking about the demands of justice, even at its most impartial, is always conditioned by the relationships in which we already stand towards the people to whom justice is owed.<sup>2</sup> Since we very often have multiple relationships, this is immediately a main source of conflicts over justice. But a theory of justice can nonetheless guide our decisions by making clear the exact nature of the choices that we face, even if it does not yield a determinate answer in every case.

Disagreements about justice are often said to stem from underlying cultural differences. Since most contemporary societies are to a significant extent multicultural, this might seem to pose problems for any theory of social justice that aims to overcome such disagreements – and at global level matters will be worse still. But the underlying premise needs to be scrutinized, as I do in Chapter 3. Rather than relying on conjecture, we should look empirically to see what impact culture has on people’s thinking about justice. It proves hardly to matter at the level of general principle. On the other hand, it can influence the way in which people interpret the context in which a judgment about fair distribution has to be made. People see their social relationships differently, depending on their cultural background, though even here we must be careful not to exaggerate the difference that culture makes. The real problem with social justice in multicultural societies lies elsewhere, I suggest: in diminished trust between members of different social groups, which makes them more reluctant to apply their principles impartially across groups. The problem, in other words, is motivational rather than cognitive. The solution, therefore (if our aim is to promote social justice), is to encourage inclusive identities

<sup>2</sup> I suggested above that ‘respect for human rights’ was a universally applicable principle of justice. By ‘respect’ I meant the injunction not to act in ways that violate the human rights of others. But if one asks instead how far we are required to go to *protect* human rights, for example by supplying people with the resources they need to lead a decent life, the answer will depend on the relationship in which we stand towards them. For arguments to this effect, see my essays ‘Distributing Responsibilities’, *Journal of Political Philosophy*, 9 (2001), 453–71, and ‘The Responsibility to Protect Human Rights’ in L. Meyer (ed.), *Legitimacy, Justice and Public International Law* (Cambridge University Press, 2009).

to emerge that can help to build trust between cultural groups. This provides another respect in which a theory of justice needs to be sociologically informed. It not only needs to pay attention to the ways in which people actually think about justice, but it needs to understand what motivates them to practise it, and towards whom. ‘Justice for Earthlings’ is justice for creatures who naturally identify with others who they take to be like themselves in certain ways, so if it is to be implemented on a wide scale, questions of identity will loom large; I return to this theme below, when I discuss the boundaries of justice.

Cultural issues also feature in Chapter 4, the first of two essays that explore the idea of equality of opportunity. This idea is central to how justice is understood in liberal societies especially, but it is nevertheless fraught with difficulties. Both component parts need careful examination. What exactly does it mean to have an opportunity? If some goal that I might aim for is difficult or costly for me to achieve, do I still have the opportunity to reach it? And what does it mean for opportunities to be equal? Do the athletes who line up at the start of a race all have an equal opportunity to win it? We are likely to think that *some* differences between them that will affect the result – for instance the determination with which they run – do not amount to inequalities of opportunity. But which differences exactly?

Both of these issues are taken up in Chapter 4, which asks how equality of opportunity should be understood in a multicultural society, where people’s cultural (especially religious) commitments will prevent or discourage them from pursuing opportunities that would otherwise be open to them – for example, applying for jobs whose requirements mean that they would have to breach the cultural norms of their group to carry them out. A simple view, which I criticize, is that since people have the choice to disregard those norms, or even jettison their existing cultural commitments entirely, they pose no problems for equality of opportunity. I believe that this view underestimates the constraints that group membership imposes, and the real costs that individuals would face if they chose to leave groups that may provide their personal life with much of its meaning. At the same time, questions can be asked of the cultural group as a whole: since cultures are always in flux, is it reasonable to continue to impose an interpretation of the group’s culture that restricts the opportunities of individual members in significant ways? For example, if rigid dress codes are preventing them from being employed in jobs they would otherwise like



to take, shouldn't there be a debate within the group about whether these codes are in fact justified? Perhaps a religious requirement that women should dress 'modestly' can be modified in such a way that it does not close off opportunities to find work or to participate in sports and other leisure activities, for example. So justice here cannot be achieved merely by having uniform rules that apply to everyone regardless of their cultural or religious affiliation. There needs to be flexibility both on the part of those who will provide the opportunities (employers, for instance) and on the part of those who wish to take advantage of them (members of potentially restrictive communities).

The following chapter examines the role of the family in relation to equality of opportunity. It is clear that the family you are born into affects your life prospects in many important ways. But which of those effects are compatible with equality of opportunity and which are not? Some authors seem to assume that everything that parents do that improves their children's prospects relative to others must conflict with that principle, so either we must abolish the family unit altogether, or we must become resigned to the fact that full equality of opportunity is unachievable. As I show, Rawls, for whom equality of opportunity was a leading principle of social justice, was sometimes inclined to take the second, more pessimistic view, and the same is true of feminists such as Susan Okin, whose influential work provoked the original essay. But I try to show that another response is possible. It proves to be difficult to pin down the precise means by which parents affect their children's life chances. Do they do so primarily by the genes they transmit, by the social environment in which children are raised or by the material advantages they pass on through inheritance or by paying for education? I suggest that to apply the equal opportunity principle in this context, we need to draw a line between personality and circumstances – between the characteristics that make someone the person she is, and the external conditions that may help or hamper her as she advances through life. Once we do this, we see that some of what families do for their children falls on the personality side of the line. Equality of opportunity requires us to correct as best we can for the unequal circumstances in which children are raised, but not, in general, for the impact of family membership on personality.

Although luck egalitarianism is not the main target of my discussion in Chapters 4 and 5, it should be abundantly clear how the understanding of justice that informs them contrasts with that doctrine.

Justice, here in the form of equal opportunity, does not require us to eliminate the effects of everything that on a wide interpretation might be regarded as 'luck'. There is a sense in which it is 'luck' to be born and raised a member of one cultural group rather than another; it is also 'luck' to have had a particular set of parents, who transmitted their genes to you and gave you a childhood different from the one that others experienced. By virtue of these influences, you have become the person that you now are, and what justice requires is that the opportunity set that now confronts you should as far as possible be as wide in extent as those that other people will face. How successful you are in making use of these opportunities will depend on 'personality' (in the broad sense, which includes talents); justice does not require equal outcomes. The point here is not merely that a principle that tried to correct for all kinds of unchosen luck would be impossibly demanding in practice, as I argued earlier; it is also that it threatens to collapse into incoherence, since it is impossible to say what choices I might have made had I been a different person, in the sense of having different genes, or being raised in a different environment. Equality of opportunity (properly understood) does aim to correct for relative disadvantage in people's circumstances – access to inferior schools, for instance – which could be labelled as cases of 'bad luck', but it is an error of abstraction, discussed further in Chapter 10, to suppose that the principle must therefore imply a wholesale attempt to compensate people for everything that might be so described.

In Chapters 6 and 7, attention shifts to the hotly contended issue of the proper boundaries of distributive justice. The idea of social justice was intended from the time of its first appearance at the end of the nineteenth century to govern the way in which political communities distributed their resources internally: what tax and property regime should they adopt, which publicly funded services should they supply to their members, and so forth. But this inward-looking focus has in recent years come under attack. It is said to be arbitrary for states to respond to the justice claims only of their own members, unless it can be shown that people elsewhere are equally well provided for. The implication is that our understanding of social justice must be stretched until it becomes global in scope. Once again, we find that this stretching is what luck egalitarianism would entail. It is normally a matter of unchosen luck which political community you are a member

of, and so, it is argued, you should not be relatively advantaged or disadvantaged by virtue of that fact.

In the first of these chapters, I respond to this argument by exploring different criteria that might be used to establish the boundaries of distributive justice, focussing here on comparative principles that tell us how people should fare relative to one another. I consider three possibilities. One is that these boundaries are set by appeal to the idea of a cooperative practice for mutual advantage, the position favoured by Rawls. Principles of justice apply among people who by cooperating together over time under known rules produce benefits that they could not produce alone and whose distribution needs to be settled by appeal to justice. A second possibility is that the boundaries of justice correspond to the boundaries of *states* that impose coercive systems of law on their members, coercion that is said only to be legitimate if it can be shown that the rules that are enforced comply with principles of distributive justice. A third possibility is that such principles apply only to those bound together by a common identity, which both enables them to agree in some detail about what justice means in practice and also motivates them to comply with its demands – the motivational question first raised in Chapter 3. I argue, however, that none of these yields necessary and sufficient conditions for distributive justice. To that extent, those who argue for stretching the boundaries of justice outwards are correct. What they overlook, however, is the manner in which over the last century or so nation-states have succeeded in fusing together all three conditions: they have been largely self-sufficient as units of economic cooperation, they have applied coercive laws uniformly to all their members, and they have served as sources of identity by virtue of their national character. This has made them privileged sites of social justice. Once we move beyond their boundaries, therefore, we cannot assume that the same principles will continue to apply – at least if we adopt the contextual approach to justice defended in Chapter 2.

The following chapter applies this approach to the idea of global justice, arguing that we have no general reason to treat it simply as social justice writ large. Instead we need to develop principles that are specifically tailored to the global context, which remains one of interacting but still largely self-determining nation-states. One leading requirement will be respect for and protection of universal human

rights; another will be fair terms of interaction in areas such as international trade and the provision of global public goods, such as preventing excessive climate change. Broadly speaking, when states agree to coordinate with one another by establishing rules to deal with these problems (and human rights are not at issue), fairness requires that the costs and benefits of cooperation should be shared equally, per head of population. So equality has a role to play here, but not the role envisaged by luck egalitarians. The aim is not to eliminate all sources of inequality for which people cannot be held responsible, but more narrowly to share the gains and losses that global cooperation creates on an equal basis.

Where states are unable, or unwilling, to protect the human rights of their own citizens, the responsibility to do so falls on outsiders, and this responsibility may prove costly to discharge. The question therefore arises as to how such demands of global justice are to be weighed against the obligations of social justice that are directed towards fellow citizens. Should foreign aid, for instance, take priority over domestic expenditure on health, education and social security, or should it be the other way round? In Chapter 7, I suggest that we are justified in the name of equal citizenship in giving qualified priority to the demands of social justice when such dilemmas arise, even though the needs of foreigners may be more urgent in absolute terms. This is a controversial view and it forces us to think not only about what justice requires from the perspective of the recipients of rights and resources, but also about how the responsibility to deliver just outcomes should be assigned. Whose job is it to ensure that people get what they are entitled to, especially at global level?

This takes us back to the 'agents of justice' problem that I referred to earlier. It is explored in some detail in Chapters 8 and 9. The underlying assumption that runs through these discussions is that people will respond to claims of justice when something signals that it is indeed their responsibility to respond; but that where no such signal is received, they will be reluctant to act. What is particularly important is that the responsibility should be divided fairly among the universe of potential agents. People will 'do their bit' or 'take their turn' when this is part of a wider practice in which others are behaving in the same way; on the other hand, they are quite sensitive to being taken advantage of and asked to do more than their fair share. This sense of fairness seems to be deeply embedded in the human psyche. Although the issue

is mainly explored here with reference to the behaviour of individuals, my assumption is that people think in the same way when acting in a collective capacity, for example as citizens of nation-states. If they are going to make sacrifices to combat global poverty or to ensure a sustainable future for the planet, they will expect people elsewhere to be making comparable sacrifices.

Chapter 8 addresses the issue of responsibility as part of a wider discussion of altruism, and the circumstances that prompt people to respond altruistically to others in need of help. It surveys an accumulated body of evidence suggesting that altruism is not a fixed character trait but is situationally quite specific. People give help when prompted to do so by contingent features of the situation that confronts them, such as whether they have witnessed others behaving altruistically, whether they identify with the person in need of aid and so forth. It is also noticeable that responsibility becomes diffused in cases where there are many people who could give help to a needy individual, but there is nothing that marks out one person as the bearer of responsibility. This chapter concludes by examining mechanisms that could address these failures of altruism by assigning responsibility to particular actors.

Chapter 9 analyses a more narrowly defined class of cases, where a task has been divided up in such a way that each agent (whether an individual person or a state, say) knows the size of the contribution that fairness requires them to make towards carrying it out. The question is how such agents should respond when others fail to discharge their fair share of the responsibility. Should they do more, to compensate for the shortfall, or less, so as to preserve parity with the slackers? Or should they discharge their obligation as originally defined regardless of how others behave? Although much depends on the details of case, I argue that in general what justice requires is that you should do your fair share even if others neglect to do theirs. There is, however, a potential paradox here. What if the original task was required by justice – for example it involved providing aid to people whose basic rights were under threat? How can justice not require compliant agents to take up the slack left by others and provide further amounts of aid themselves if they are able to do so? I suggest, however, that we need to ask who bears responsibility for the injustice that remains, and when we do this we see that there could at most be a *humanitarian* obligation, not an obligation of justice, to step in where others have failed in their duty.

This will have implications for the issue of compulsion: in general, people can be *forced* to do what justice requires of them, but not what humanitarian considerations alone imply. And the same will apply to states when faced with, for example, human rights shortfalls.

These chapters remind us that justice is not the whole either of personal or of political morality. It is certainly not the same as universal benevolence. David Hume, whose ideas I discuss briefly in Chapter 1, called it a 'cautious, jealous virtue'. When we are owed something as a matter of justice, we can demand it, we can even sometimes use force to obtain it; but we need first to be sure that the person or the institution that we are demanding it *from* indeed bears the corresponding responsibility to meet our demand. Looking at the matter from that side, as agents we will have the responsibility to meet some demands as a matter of justice, but not others, even though the demands themselves, simply in terms of their content, may be equally strong. Justice may require us to feed one starving person but not another, because the first has become our responsibility but the second has not. Sometimes, however, there will be good reason to do more than justice requires; compassion, mercy and humanity are virtues too.

All of this will seem suspicious to philosophers of a rationalist cast of mind, who cannot see why justice should be limited in the various ways that these essays suggest. Why should specific principles of justice apply only in some contexts and not in others? Why should the scope of justice be restricted by apparently arbitrary features such as whether people are engaged in mutual cooperation or share a common identity? How can one person's responsibilities be circumscribed by others' failure to do what justice requires? This can begin to look like a series of excuses for not doing more in a society, or a world, in which injustice is rife. I have tried to suggest otherwise. *Justice for Earthlings* takes the human form of life and asks what part justice plays within it. This involves examining how human beings understand their relationships to others, and what this implies about how they should act towards them. Questions about human motivation, and its limits, are unavoidable here. Once we have grasped the basic grammar of justice, so to speak, we can try to apply it to new and unfamiliar problems, such as those that often arise today on a global scale. But we should always remember that if those problems are going to be solved at all, they will be solved by humans who bring with them inherited conceptions of justice and fairness that they have learned how to use in much more

local settings. As I argue in the concluding chapter of the book, we do justice a disservice if we begin to compare its limited earthly form with an imaginary divine form that escapes those limitations. We might think that we are simply setting our sights high when we do this, but the result is that justice no longer serves as an inspiring guide to action. Instead it becomes merely a lament for what might have been if the human condition were different.

# 1 *Political philosophy for Earthlings*

## I

The question that I want to pursue in this chapter concerns the relationship between political philosophy as a normative enterprise whose purpose is to identify and justify principles intended to guide us politically, and what we can call the facts of political life – everything that we know about human beings and human societies, either through common sense or through the more formal methods of the social sciences. How, if at all, do the principles of political philosophy *depend* on those facts, in the sense that if the world changes in certain ways, or we make new discoveries about it, our political concepts and principles should change too? This question has several dimensions to it. We can treat it as a question about the formal structure of political theories: given that such theories often include descriptive or explanatory claims about human nature, or about how societies or governments function, as well as normative claims about how we ought to organize our collective life, what precisely is the relationship between the two kinds of claim? If the empirical claims are shown to be false, does that mean that the normative claims must be abandoned too, or can they survive without such support? But our question also bears directly on a more practical issue: how should we, as scholars, go about doing political philosophy? Ought we to be spending considerable amounts of our time immersing ourselves in the literature of history and the social

This chapter began life as a lecture delivered to a conference on ‘Political Philosophy and Empirical Research’, Department of Philosophy, University College, London. I should like to thank Jo Wolff for inviting me, and the participants for their questions and comments. Since then it has undergone extensive revision, and I have received many helpful suggestions along the way, especially from David Leopold and Marc Stears. My greatest debt, however, is to Jerry Cohen, who provided very extensive critical comments on an essay with whose main thesis he profoundly disagreed, in the forlorn hope that I might change my mind.



sciences, in order that the empirical claims we make are as well grounded as possible, or should we be focussing our attention more narrowly on conceptual and normative questions – trying to decide, for example, what liberty means or whether liberty and equality are compatible – without concerning ourselves too much, at this stage at least, about aspects of the real world that might bear on the conclusions we reach? And finally, there is a third issue, which concerns the purpose or point of engaging in political philosophy in the first place. How far should we intend our theories to have a practical impact, that is to say contain ideas that people engaged in real-world politics can take up and act upon when drafting legislation or making public policy? Is political philosophy to be understood as a purely speculative activity that aims to delineate the ideal state or the ideal society, or should it aim to engage with the political issues that arise in contemporary societies, in circumstances that are usually far from ideal?

The question I am asking, in other words, embraces not only ‘What is political theory (how are its component parts related)?’ but also ‘How, and why, should we go about doing it?’ There is one answer to that question that has proved attractive not only to philosophers but also to social and political scientists of a positivist cast of mind, because it allows for a mutually convenient division of labour between them. The answer runs as follows. The basic principles of political philosophy are to be established without reference to empirical questions. By rational reflection or in some other way we decide upon fundamental principles of liberty, justice, democracy and so forth. These principles are universally valid and hold regardless of circumstances. But in order to *apply* these basic principles and come up with some practical rules for ordering society, we have to bring in factual evidence about the kind of society in which the principles are going to be applied. Empirical evidence about the society will determine, for example, how far each of the basic principles can be implemented – there may be empirical barriers to the full realization of our favoured principle of justice, say. General facts about the society may also determine which institutions we will select as the best embodiment of a given principle – for instance which political institutions will best achieve or approximate our ideal of democracy in a particular society. Or in cases where we regard the basic principles not as holding unconditionally but as standing in trade-off relationships to one another – some amount of liberty may be sacrificed in order to achieve greater equality, say – empirical

evidence will be needed to tell us what the optimal mix of values will be for the society we are considering. To put the point more formally, philosophical reflection will establish the shape of our indifference curves between, say, different quantities of liberty and equality; social scientific investigation will reveal the shape of the feasibility curve in any given place and time – the set of feasible social states providing greater or lesser degrees of liberty and equality in combination. Once the shapes of the curves are known, it is then just a matter of identifying the point at which the feasibility curve touches the indifference curve furthest from the origin and recommending this as the optimum.

To paint the picture a bit more colourfully, and to explain my title, we might imagine the well-intentioned inhabitants of a spaceship – the *Starship Enterprise* let's say – deciding, while still in outer space, on the principles they will attempt to apply to each of the life forms that they discover on their voyage of planetary exploration. Having established the basic principles, they then examine each new planet, looking at its physical composition, the kind of creatures who exist on it, their level of social organization, and so forth, and work out which principles to try to implement when they beam down on to the planet's surface. The basic principles are always the same, but the secondary or applied principles will vary according to the general facts of life on a particular planet.

It is this *Starship Enterprise* view of political philosophy that I mean to challenge in what follows. The *Starship Enterprise* view draws a line between political philosophy proper, which involves defining concepts and setting out principles in an entirely fact-free way, and applied political theory, which takes these basic concepts and principles and, in the light of empirical evidence, proposes a more concrete set of rules to govern the arrangements of a particular society, or a particular group of societies. In contrast, I want to argue that even the basic concepts and principles of political theory are fact-dependent: their validity depends on the truth of some general empirical propositions about human beings and human societies, such that if these propositions were shown to be false, the concepts and principles in question would have to be modified or abandoned. In other words, I am advocating political philosophy for Earthlings – political philosophy that is sensitive not only to general facts about the human condition but also to facts of a more specific kind, facts about particular societies, or types of societies. Whatever Captain Kirk and his crew are doing in outer space, it is not

political philosophy – unless, of course, the principles they come up with to guide their interventions depend on tacit assumptions drawn from their human experience (even Mr Spock, we should recall, is only half Vulcan and his human half frequently rescues him when pure logic runs out).

## II

Why, one might ask, should anyone wish to deny that the concepts and principles of political philosophy are fact-dependent? Perhaps life is made easier for the political philosopher if she does not have to worry at all about empirical questions while formulating her basic principles, but that alone does not seem sufficient justification. A more compelling reason is that by allowing empirical claims to influence the way these principles are formulated, we run the risk that our political philosophy becomes too conservative, adapting itself to aspects of human existence that may be contingent, and therefore potentially alterable. Consider, for example, John Rawls' well-known theory of social justice, which openly proclaims that 'the fundamental principles of justice quite properly depend upon the natural facts about men in society' or that 'there is no objection to resting the choice of first principles upon the general facts of economics and psychology'.<sup>1</sup> Among the facts that Rawls appeals to in defending his principles are the fact that people may need to be given economic incentives if they are to use their talents in the most socially productive way, and the fact that people do not agree, and cannot be brought to agree, about what is of ultimate value in life. Treated as empirical claims about how things are in contemporary liberal societies, both of these seem highly plausible. Yet they are not 'facts' in the sense in which the laws of physics are facts – societies in which neither fact obtains are not only conceivable but may actually have existed in other times and places. Rawls' critics therefore claim that by making 'the fundamental principles of justice' depend upon such facts, he is committing a serious error. He is confusing political philosophy proper with applied political theory, which takes the fundamental principles and, in combination with the relevant facts, derives lower-level principles to regulate the institutions

<sup>1</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 158–9.

and practices of a particular society. He is wrong to call these applied principles ‘principles of justice’: they are better described as, for example, ‘principles of regulation’. As one critic has put the charge, ‘it is a fundamental error of *A Theory of Justice* that it identifies the first principles of justice with the principles that we should adopt to regulate society’.<sup>2</sup>

It is important, however, to distinguish two versions of this challenge to Rawls. The first, less radical, version does not fault Rawls simply for making his fundamental principles of justice fact-dependent, but criticizes the particular set of facts that he chooses to invoke – claiming, for instance, that the ‘general facts of economics and psychology’ which he relies upon in defending his principles obtain only in certain contemporary societies (capitalist market societies, for example), and are not, therefore, facts about the human condition as such. Reliance on such facts distorts the theory and makes it ideological rather than philosophical: justice comes to mirror too closely prevailing institutions and practices, rather than serving to assess them critically. The second, more radical, version challenges the idea that fundamental principles of justice should be fact-dependent in any sense. This is the challenge that Cohen mounts in the article cited above, and I shall explore it next, before coming back later in the chapter to look at different ways in which principles in political philosophy might be fact-dependent, and consider how far this fact-dependence is acceptable.

Let’s begin, then, with the radical thesis that the task of political philosophy is to elaborate fundamental, fact-independent principles. Cohen defends this thesis indirectly, by calling upon those who take the opposite view – that the fundamental principles of political philosophy depend on facts – to explain the nature of this dependence. His claim is that where a political principle is said to be fact-dependent, there must be a further, fact-independent, principle that explains how the facts in question support the first principle. Or as he puts it, ‘principles that reflect facts must, in order to reflect facts, reflect principles that don’t reflect facts’.<sup>3</sup> In other words, if we have a fact-sensitive principle, one whose truth depends on the facts being the way they are claimed to

<sup>2</sup> G. A. Cohen, ‘Facts and Principles’, *Philosophy and Public Affairs*, 31 (2003), p. 241.

<sup>3</sup> Cohen, ‘Facts and Principles’, p. 214.

be, then in order to understand *how* the principle reflects or responds to the facts, we have to appeal to another principle that isn't fact-sensitive, or at least isn't sensitive to those same facts. There could be a hierarchy of principles, Cohen thinks, where principles at each successive level respond to different facts, but eventually we must reach a supreme principle that is wholly fact-insensitive.

For example, Cohen says, if principle P – 'we should keep our promises' is sensitive to fact F – 'only when promises are kept can promisees successfully pursue their projects' – that must be because it also reflects another principle such as P1 – 'we should help people to pursue their projects'.<sup>4</sup> P1 is not sensitive to fact F; its truth does not depend on whether F holds or not. It might be fully fact-insensitive, or it might turn out to depend on a different fact F1, in which case there will be a further principle P2 which explains why P1 holds given F1. Eventually we will reach a fact-insensitive principle Pn.

Why, in order to explain the sensitivity of P to F, do we need to invoke another normative principle such as P1? Cohen describes the relation of F to P as one of 'grounding'. The fact that people can only pursue their projects successfully when promises made to them are kept grounds the principle that we ought to keep our promises. And he further says that there must be some explanation as to why F grounds P. Someone who asks why the fact that people can only pursue projects if promises are kept supports the principle that promises should be kept is entitled to an answer. And the explanation, Cohen suggests, must be some further principle such as P1. To defend this suggestion he issues a challenge: 'provide an example in which a credible explanation of why some F supports some P invokes or implies no such more ultimate principle'.<sup>5</sup>

If we are to rise to this challenge, we need to look more closely at the relationship of 'grounding' on which Cohen's argument relies. What might it mean for a fact to ground or to support a principle, or for a principle to reflect a fact? In the examples that Cohen uses, facts ground principles by virtue of being premises in a relationship of logical entailment. If we combine F – 'only when promises are kept can promisees successfully pursue their projects' – with P1 – 'we should help people to pursue their projects' – then P – 'we should keep our promises' – follows necessarily. So although Cohen does not say

<sup>4</sup> Cohen, 'Facts and Principles', p. 216.

<sup>5</sup> Cohen, 'Facts and Principles', p. 218.

explicitly what form the grounding relationship must take, his implicit idea of what it means for A to ground B is that when A is combined with one or more other premises, A will entail B. Now if A is a fact and B is a principle, then to set up a relationship of entailment what we need is a further premise that will combine with A to yield B, and only another principle can fit that bill. To vary the example, if our principle P is 'eating people alive is wrong', and this is said to reflect fact F 'it's agony to be eaten alive', then what we need to create a relationship of entailment is the principle P1 'it's wrong to cause people agony'.

But should we understand 'grounding' or 'support' in such a narrow way? Let's step back for a moment from the facts/principles question and consider two other ways in which one proposition might be said to ground another. The first of these we might call 'evidential grounding', where a fact support a conclusion, not by entailing it, but just by providing evidence that makes it likely to hold. So 'that is a small bird with an orange breast and a white wing-bar' grounds 'that is a chaffinch' because, given the context (we are sitting in an English garden), a bird meeting the former description is very likely indeed to be a chaffinch, even though there is no entailment (there exist other birds fitting the description that are not chaffinches). So here we can explain why A grounds B without converting the grounding relationship into one of entailment. The second kind of grounding we might call 'presuppositional grounding', where although A doesn't entail B, A's being true is a necessary condition of B's being true.<sup>6</sup> Thus we might say that 'Fred is a pig' grounds 'Fred is a readily available source of pork chops'. Fred's being a pig doesn't entail that he is available for conversion into chops – he might be a pet pig or a diseased pig – but being a pig is certainly a pre-condition for that fate. Or to take a different case, 'Radcliffe is a woman' grounds, in this presuppositional sense, 'Radcliffe is entitled to enter for the women's marathon' – the former does not entail the latter, since there may be other qualifying conditions, but unless the premise holds, the conclusion cannot.

As I have indicated, the examples used to explain these two forms of grounding are not examples of facts grounding principles. We have yet

<sup>6</sup> I should add, to avoid possible misunderstanding, 'without at the same time being a necessary condition of not-B's being true'. Thus although Fred's being a pig is a presupposition of Fred's being a thin pig, this is not a case of presuppositional *grounding* in the sense used here, since the same fact is also a presupposition of Fred's being a fat pig.

to see whether facts can ground principles in either the evidential or the presuppositional sense. Their purpose is to show that grounding need not mean entailment. Recall that Cohen's requirement of a grounding relationship is that it should be possible to *explain* how A grounds B. That requirement is met in the cases I have cited. I can explain how the fact that a bird is small with an orange breast, etc., grounds the claim that it is a chaffinch. But the explanation won't convert the grounding into an entailment. To insist that an explanation of how F grounds P doesn't count as such unless it shows how F (along with other premises) *entails* P is to beg the question at stake.

So can we find cases in which facts ground principles without the help of fact-insensitive principles? Consider a putative case of presuppositional grounding, involving a principle of liberty, such as Rawls' principle of greatest equal liberty or Mill's principle of liberty to perform self-regarding actions. Assume that the principle asserts the intrinsic value of liberty, within the designated limits – it is intrinsically valuable for humans to enjoy liberty of thought and action provided they do not infringe the equal liberty of others, or harm others' interests, as the case may be. Now consider how this principle may reflect a very general fact about human beings, namely their capacity, in normal cases, to make self-conscious choices as to how to live. This fact differentiates humans from the rest of the animal kingdom, and explains why liberty is intrinsically valuable for humans but not for other animals. So what we can call, for short, the fact of human self-consciousness grounds the principle of liberty. The relationship between the fact and the principle appears to be one of presupposition: if the fact were not to hold – if human beings were no more capable of self-conscious choice than other animals – then the principle would not apply.

How might Cohen respond to this example? He is committed to claiming that, if the principle of liberty is fact-dependent in this way, there must be a fact-independent principle that explains the grounding relationship. Which principle might be a plausible candidate for this role? It may be tempting to suggest a principle such as the following: 'Creatures who are capable of self-conscious choice ought to enjoy the greatest equal liberty, etc.' But this principle does not explain the grounding relationship, it merely restates it in more general form. It is equivalent to the conditional principle, 'If a creature is capable of self-conscious choice, then it ought to enjoy the greatest equal liberty, etc.' Clearly anyone who was puzzled by the alleged grounding

relationship – who could not see why the truth or validity of the proposed liberty principle depended on the fact of human self-consciousness – would not be enlightened if they were presented with the conditional principle just stated. Cohen's thesis that fact-sensitive principles must reflect fact-insensitive principles becomes trivial if we include among the fact-insensitive principles conditional principles of the form 'if F, then P'. For the thesis *not* to be trivial, the ultimate fact-insensitive principles that ground fact-sensitive principles must be unconditional in form.<sup>7</sup>

So where else might we look for a principle that explains the grounding relationship between human self-consciousness and liberty? We might observe that human beings, because of their capacity for self-conscious choice, often strongly desire to have the greatest possible freedom of thought and action, and so the underlying, fact-insensitive principle in the case is that, *ceteris paribus*, people should be allowed to have what they strongly desire. However, the effect of this move is to convert liberty from being something of intrinsic value to being something of instrumental value only. People should have maximum liberty because that is conducive to satisfying their desires. Many of Cohen's examples of fact-insensitive principles take such a utilitarian or quasi-utilitarian form – the explanation for why a fact supports a principle is that it reveals why following the principle satisfies human wants or avoids human pain. But we need not go down this route. We can hold that liberty is of intrinsic value independently of whether it satisfies people's desires. And this belief can be conditional on the fact of human self-consciousness, in the sense that if it proved to be the case that humans lacked the capacity for self-conscious choice, we would abandon the principle.

But, Cohen might argue, if we pass up on fact-independent principles such as the one proposed in the previous paragraph, we are left with no way of explaining how a fact grounds a fact-dependent principle. *How* does the fact of human self-consciousness support the liberty principle if we refuse to tell a story about the satisfaction of human desires or something similar? Remember the challenge: 'to provide an example in which a credible explanation of why some F supports some P invokes

<sup>7</sup> Cohen does not always seem alive to the danger of trivializing his argument by allowing conditional principles to count as fact-independent. For instance, on p. 225 of 'Facts and Principles' he treats the principle 'If a being is liable to pain, you ought not to cause it pain' as fact-independent.



or implies no such more ultimate principle'. In responding to the challenge, it is important to underline once again that we do not have to show that F can conclusively justify P, alone or in combination with other premises – that by invoking F we are presenting a knock-down argument that anyone currently opposed to P would be compelled to accept. If we took that as our model, we would have fallen back into the entailment view of grounding. What we have to explain is simply the role played by F in supporting P – in the present instance why, if F did not obtain, we would have no reason to assert P. Imagine, then, somebody who is disposed to accept the liberty principle, but who cannot see the relevance to it of the fact of human self-consciousness. Such a person must presumably think that, other things being equal, the liberty principle should also apply to certain animals. Explaining to this person the relevance of F would involve pointing out how a cow, say, would not experience choice as valuable – would not be able to imagine being in a field other than the one she was currently in, and therefore would not be deprived, in a morally relevant way, by being denied a choice of fields. This is just to remind our interlocutor of some very familiar facts of human experience, and to show how it is those facts that bring principles like the liberty principle into play – if the facts were otherwise, there would simply be no reason to propose such a principle.

Consider now a second example, which will prove to be instructively different from the first. This is Hume's depiction of the circumstances of justice, which plays an essential part in his account of what justice is and why it is valuable. Hume argues that principles of justice apply only because of certain contingent features of the human condition, namely that resources are scarce relative to human desires, that human benevolence is limited, and that external goods can be readily transferred from person to person. In the absence of these features, there would be no need to have principles of justice to regulate the distribution of resources: 'if men were supplied with every thing in the same abundance, or if *every one* had the same affection and tender regard for *every one* as for himself; justice and injustice would be equally unknown among mankind'.<sup>8</sup>

<sup>8</sup> D. Hume, *A Treatise of Human Nature*, L. A. Selby-Bigge (ed.), rev. P. H. Nidditch (Oxford: Clarendon Press, 1978), p. 495.

Now admittedly Hume himself goes on to give a somewhat utilitarian account of the relationship between the cited facts about the human condition and the principles of justice he proposes. This would fit with Cohen's view about how facts ground principles, with utility playing the role of fact-insensitive principle. But it is not essential to Hume's argument that we should interpret it in this way. We can read him simply as saying that notions of justice, and the more specific principles that he proposes to regulate the allocation of external goods, arise as a response to the features of the human condition he has identified. Such facts ground justice in a presuppositional sense. If we imagine, as Hume does, a golden age in which 'the rivers flow'd with wine and milk: The oaks yielded honey' and so forth, then justice would have no place: we would find instead 'much nobler virtues, and more valuable blessings'.<sup>9</sup>

So interpreted, Hume's account of the circumstances of justice does not fully determine the content of our normative theory of justice. The account tells us that we need principles of justice, understood as principles that assign resources to people in such a way that I know what is mine and what is not, by virtue of facts about the human condition. How those principles should be specified is a further question. One possibility considered and rejected by Hume is an equal division of resources. To defeat this possibility Hume invokes further facts about the human condition, such as differences in 'art, care, and industry' which 'will immediately break that equality'.<sup>10</sup> The circumstances of justice taken by themselves show only why a division of property is necessary, and why therefore we understand and value justice as the virtue that upholds that division. If the facts were different, justice would have no point: we could still invent and apply principles that assigned rivers and oaks to particular people, but of course we wouldn't, because it would appear senseless by virtue of the abundance of what was being assigned. In such circumstances the 'cautious, jealous virtue of justice would never once have been dreamed of'.<sup>11</sup>

<sup>9</sup> Hume, *Treatise*, pp. 494–5.

<sup>10</sup> D. Hume, *An Enquiry Concerning the Principles of Morals in Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, L. A. Selby-Bigge (ed.), rev. P. H. Nidditch (Oxford: Clarendon Press, 1975), p. 194.

<sup>11</sup> Hume, *Enquiry*, p. 184.

Cohen would no doubt claim here that to explain how the facts ground the principles of justice, we need to make explicit certain steps that are only implicit in Hume's argument. So reconstructed, the argument might take the following form:

- (F) Resources are scarce and readily transferable, while human benevolence is limited.
- (F1) Given F, humans will suffer if we do not assign resources using principles of justice.
- (P1) We should not allow human beings to suffer.

Therefore:

- (P) We should assign resources using principles of justice.

In this reconstruction, P1 serves as a fact-insensitive principle which, in conjunction with F1, explains how F grounds P. I have not denied that such a reconstruction is possible, nor have I denied that it may capture Hume's own intentions. But I do want to deny that we need to reconstruct the argument in this way in order to understand how F can ground P – always provided, of course, that we do not equate grounding with entailment. My counterclaim is that we can see directly how a principle depends on the truth of certain claims about the human condition without having to explain this dependency in utilitarian or quasi-utilitarian terms. It is pointless to apply principles of distributive justice in circumstances of abundance like Hume's golden age, just as it is pointless to apply principles of liberty to creatures who lack the capacity for self-conscious choice. Facts ground principles, in these cases, by indicating that circumstances are such as to make principles of a particular kind relevant. Or to make the same point from the other side, principles reflect facts because by applying a principle of a certain kind – justice or liberty, say – we presuppose, usually tacitly, that the context in which we apply it displays certain empirical features.

### III

In the previous section, I offered a general defence of the claim that political principles are characteristically fact-dependent. In advocating political philosophy for Earthlings, I suggested that the political principles we adopt – principles of liberty and justice, for instance – are grounded in certain familiar, though nonetheless important, facts

about the human condition, such as that each human being forms a separate centre of consciousness, that human bodies are vulnerable to pain and disease, that there are at least two human sexes, and so forth – facts, let it be noted, that the crew of the *Enterprise* could not assume would hold for each form of life they might encounter. Earlier on, however, I noted that attacks on fact-dependency might take a more radical or less radical form. The more radical position is the one taken up by Cohen, and discussed in the previous section, which holds that the ultimate principles of political philosophy are fully fact-insensitive.<sup>12</sup> I shall not discuss this position any further. The less radical view, by contrast, aims to draw a line between what we might call universal features of the human condition, on the one hand, and facts about particular societies, or types of society, and their inhabitants, on the other. On this view, it is acceptable for basic political principles to depend on facts of the first kind, but not for them to depend on what may prove to be merely contingent features of particular societies. Fact-dependence of the second kind, it is argued, makes political philosophy too conservative – too reluctant to subject our current political arrangements and social practices to critical appraisal.

Someone who took this position might want to draw a line between the two examples that I discussed in Section II. Making our principles of liberty depend upon the fact of human self-consciousness is not problematic, because the fact invoked here qualifies as a rock-bottom fact about human beings: we cannot envisage human beings (other than those who are mentally damaged, comatose, etc.) who do not have that feature. By contrast, making our principles of justice depend on facts such as the scarcity of resources relative to human desires, or limited human benevolence, *is* problematic because we can envisage circumstances in which resources become abundant or in which people are altruistically motivated. Our most basic principles should apply to these circumstances too, and then we will derive secondary principles

<sup>12</sup> Cohen does not say explicitly that the fact-insensitive principles that he claims explain how facts ground political principles are themselves political; nevertheless, his quarrel with Rawls is a quarrel about what should be regarded as fundamental principles of *justice*, normally understood as a political idea; and on pp. 242–3 of ‘Facts and Principles’ he presents his thesis as a thesis about the nature of political philosophy. For a fuller discussion of Cohen’s conception of political philosophy, see M. Stears, ‘The Vocation of Political Theory: Principles, Empirical Inquiry and the Politics of Opportunity’, *European Journal of Political Theory*, 4 (2005), 325–50.

that take into account the contingencies of particular societies. So the question that now arises is: if we abandon the attempt to find basic principles that are independent of *all* facts about the human condition, how far should we allow the fact-dependence of principles to go?

Answering this question will require us to take a stand on the issue that I signalled at the beginning of this chapter, the issue namely of the underlying purpose of political philosophy. To help answer it, I want to return to the example of Rawls' theory of justice, which is heavily fact-dependent in two quite different ways. First, the theory openly rests on a number of assumptions about the subject matter of justice, using that phrase in its broadest sense. For instance, it assumes that the concept of justice (or at least the concept of *social* justice) applies within the boundaries of a self-contained community whose members are held together by common sentiments; that the members of such a community nevertheless hold an irreducibly plural set of beliefs about the good life; that there exists a basic structure of social and political institutions capable of being regulated by principles of justice and determining, to a large extent, the different life-chances of individuals; that we can identify a set of primary goods – income, wealth, employment opportunities, and so forth – that serve as all-purpose means to individual ends; that the production and distribution of such goods occurs primarily through some form of market economy; that children are raised in families rather than communally; and so forth. We do not have to join the crew of the *Enterprise* to see just how contingent these assumptions are: we need only to look back through human history to find societies in which none of these conditions holds.<sup>13</sup> The principles Rawls proposes only make sense at all if we take for granted many of the features of a modern, technologically advanced, liberal society.<sup>14</sup>

Rawls himself would have no problem with this dependence on contingent facts, as I shall illustrate in a moment. But now consider a second way in which his theory is fact-dependent: it depends on facts about people's beliefs or judgements about justice. Rawls relies

<sup>13</sup> With the possible exception of the first – although even here we can say that by no means all human communities have taken the form assumed by Rawls, which is more or less that of the modern nation-state.

<sup>14</sup> For further reflection on, and justification of, the fact-dependence of Rawls' theory of justice, see Joshua Cohen's very illuminating paper 'Taking People as They Are?', *Philosophy and Public Affairs*, 30 (2002), 363–86.

on the existence of a ‘public political culture’ made up of commonly accepted beliefs from which the ideas that go into the theory of justice can be drawn. This makes it possible for the theory to achieve what he calls ‘full reflective equilibrium’, where not only has each individual person reconciled his or her pre-theoretical judgements about justice with the principles laid out in the theory, but each member of the political community arrives at the same public conception of justice as every other.<sup>15</sup> In other words, he assumes two things: first that people’s judgements of justice will converge, when they go through the testing and refining process that culminates in a reflective equilibrium for each person taken separately; and second, that what they will converge *on* is the Rawlsian theory of justice, or at least a liberal theory of justice that is a close cousin of that theory.

It is not fanciful, I think, to regard these two kinds of fact-dependence as corresponding roughly to the two forms of grounding that I identified in the previous section of the chapter. Facts of the first kind ground the theory in a presuppositional sense: unless they held true of the society to which the principles of justice are to be applied, principles of the kind that Rawls proposes would be irrelevant. The facts do not determine the content of the principles – they do not, for example, require that equality of some kind must feature in the set – but they do determine what the theory must be *about*. Facts of the second kind ground the theory in an evidential sense: the theory must respond in the right kind of way to the considered judgements of justice that people are disposed to endorse before they encounter it. I do not want to say that the evidential grounding takes exactly the same form here as it does in a case where the proposition to be grounded is empirical; nevertheless I find in Rawls a tendency to treat pre-theoretical judgements of justice as somewhat akin to the raw data that might serve to ground a scientific theory.<sup>16</sup> So in

<sup>15</sup> See J. Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), p. 31.

<sup>16</sup> For instance, ‘one thinks of the moral theorist as an observer, so to speak, who seeks to set out the structure of other people’s moral conceptions and attitudes’. (J. Rawls, ‘The Independence of Moral Theory’ in J. Rawls, *Collected Papers*, ed. S. Freeman (Cambridge, MA: Harvard University Press, 1999), p. 288.) For discussion of this and other passages in which Rawls addresses questions of method, see T. Scanlon, ‘Rawls on Justification’ in S. Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge University Press, 2003). Scanlon cautions against attributing to Rawls too close an analogy between moral and scientific theory.

consequence, not only the subject-matter but also the content of the theory of justice comes to depend on certain facts that are external to it.

Rawls, as I noted, willingly embraces both forms of fact-dependence, and the reason he does so is that he holds a certain view about the aim of political philosophy, which in his later books he describes as the delineation of a 'realistic utopia'.<sup>17</sup> The meaning of this phrase is not self-evident. According to Rawls 'political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition.'<sup>18</sup> The two halves of this sentence might seem to contradict each other. How can a theory that aims to stretch the limits of political possibility at the same time have a reconciling purpose, since reconciliation appears precisely to mean accepting, not struggling against, things as they are? But Rawls' idea, I believe, is that by extending the limits of political possibility – exploring different ways in which societies might be reordered in the name of greater justice – we shall also come to a better understanding of the limits of the reshaping, and therefore become reconciled to those aspects of our condition that cannot be changed. Thus, we can try to discover the terms on which people whose conceptions of the good life are radically divergent can better live together in a single political community, but we can also learn not to hope or wish for a society in which everyone adheres to the same conception.

The next question that we face is how the limits of political possibility are to be established. Rawls acknowledges the significance of the question without really providing an answer:

I recognize that there are questions about how the limits of the practically possible are discerned and what the conditions of our social world in fact are. The problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. Hence we have to rely on conjecture and speculation, arguing as best we can that the social world we envision is feasible and might actually exist, if not now then at some future time under happier circumstances.<sup>19</sup>

<sup>17</sup> See J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), section 1; Rawls, *Justice as Fairness*, sections 1 and 4.

<sup>18</sup> Rawls, *Law of Peoples*, p. 11. <sup>19</sup> Rawls, *Law of Peoples*, p. 12.

Nor does Rawls get us much further when he says that a realistic conception of justice ‘must rely on the actual laws of nature and achieve the kind of stability those laws allow’. This is too weak a constraint if all that it means is that such a conception should not violate the laws of physics or biology by, for example, requiring people to levitate or become immune to disease. But it is arguably at least too strong a constraint if ‘the actual laws of nature’ are to include propositions about human behaviour in contemporary societies, for instance the proposition that people need material incentives to be productive, or that by the free exercise of reason they will reach different conclusions over moral, religious, and other such questions.

I believe in fact that the notion of practical possibility that Rawls relies upon has an inescapable normative element. The limits of political possibility are set not just by physical and sociological laws, but by implicit assumptions about what, for us, would count as a tolerable or intolerable outcome. This can perhaps best be illustrated by considering what Rawls has to say about the family as a social institution. Rawls accepts that the existence of the family, and the formative influence that it exercises upon children, is a powerful barrier to fair equality of opportunity – or to be more precise, that because the existence of the family is taken for granted, the definition of fair equality of opportunity must be narrowed to accommodate it.<sup>20</sup> In his later and more extensive discussions, Rawls makes it clear that he does not require or presuppose any particular family structure – he is in favour of greater equality between men and women, he doesn’t rule out same-sex marriage, etc. – but he nonetheless continues to assume that children will continue to be raised in small family units, and therefore, as a matter of fact, to enjoy the very significant advantages and disadvantages that result from this.<sup>21</sup> Why does he assume this? Presumably because he believes that, for us, the freedom to form family units and to raise children within them is fundamental – we would find

<sup>20</sup> Rawls, *Theory of Justice*, sect. 46. Fair equality of opportunity is said to require equal prospects only for those ‘similarly endowed and motivated’, so if the effect of family upbringing is only on endowment and motivation, there is no inconsistency between the family and equality of opportunity so defined. I discuss the ambiguities of Rawls’ idea of equal opportunity more fully in Chapter 5 below.

<sup>21</sup> See Rawls, *Justice as Fairness*, sect. 50 and Rawls, ‘The Idea of Public Reason Revisited’, section 5, in Rawls, *Law of Peoples*.



an imposed regime of collective childrearing, say, intolerable. He says at one point:

We wouldn't want political principles of justice to apply directly to the internal life of the family. It is hardly sensible that as parents we be required to treat our children in accordance with political principles. Here those principles are out of place.<sup>22</sup>

'We wouldn't want' in this passage is a characteristically Rawlsian piece of understatement. What Rawls really means is that having political principles of justice applied to the internal life of families would be wholly unacceptable to us. Proposals to reform the family so that women are treated more fairly within it (by, for example, being entitled to a share of their husbands' income on divorce) remain within the bounds of feasibility, whereas proposals to get rid of the family altogether and replace it with some other institution for raising children step beyond those bounds – not because they break some natural law (Rawls cannot be unaware that there are alternative ways of raising children that human societies have followed<sup>23</sup>), but because in liberal societies people are fundamentally committed to family life in some form.

We can conclude from this example that for Rawls the limits of political possibility are set not just by physical laws, but by the range of outcomes that we – people in modern liberal societies – would regard as fundamentally unacceptable. This, then, is a fact of a different kind to which the theory of justice must respond. A proposed principle will be ruled out if implementing it would produce consequences that step beyond these limits in one or another direction. A principle whose implementation requires the abolition of the family would be one example. A principle whose implementation requires that everyone should adhere to the same religion would be another.

An obvious objection to this way of construing normative feasibility is that it makes the limits of the possible depend upon beliefs and attitudes that may be widely and firmly held in contemporary societies but are clearly not unchangeable. Abolishing the family may be unthinkable for us, but in other societies different arrangements have

<sup>22</sup> Rawls, *Justice as Fairness*, p. 165.

<sup>23</sup> For comments on this aspect of Rawls' thinking, see M. Nussbaum, 'Rawls and Feminism', section 2 in Freeman (ed.), *The Cambridge Companion to Rawls*.

been accepted without difficulty. Here we need to return to our central question about the aim of political philosophy, to see what can be said in defence of the view that it should be realistically utopian in Rawls' sense.

I start from the assumption that political philosophy is a branch of practical reason – it is thought whose final aim is to guide action, as opposed to having a merely speculative purpose. The question that then arises is whose action it is intended to guide. There is no simple answer to this question. Political philosophy might be written to guide the actions of political rulers, as it was in the so-called 'mirrors for princes' tradition in medieval political thought. It might be written to direct legislators and administrators, as (at least arguably) was older utilitarian political philosophy. But in Rawls' view (and in mine), political philosophy in democratic societies should be aimed at citizens generally, setting out principles that they might follow when supporting or changing their institutions and practices. That this is Rawls' conception is suggested by a tantalizingly brief remark near the end of *The Law of Peoples*: 'By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavour, and in working toward it gives meaning to what we can do today'.<sup>24</sup>

What this implies is that the principles political philosophers propose must be principles that citizens can act upon, not in the sense that they can fully implement them here and now, but in the sense that their present actions can be guided by the longer-term goal of realizing the principles in question. But if they are action-guiding in this way, they cannot contravene the deeply held commitments of present-day citizens such as those described earlier. People cannot reasonably be expected to act politically on principles which if realized would have outcomes that they regard as wholly unacceptable.<sup>25</sup> It might be said in reply that a political philosopher could recommend the principles without drawing attention to the abhorrent outcomes: by acting on these principles, people's sense of what is acceptable and what isn't would change over time. If, for example, they accepted the arguments in favour of (really fair) equality of opportunity and supported policies

<sup>24</sup> Rawls, *Law of Peoples*, p. 128.

<sup>25</sup> See also here the thoughtful discussion in T. Nagel, 'What Makes a Political Theory Utopian?', *Social Research*, 56 (1989), 903–20.

that brought it closer to fruition, such as extensive preschool education for children, they would come to regard the family as less valuable and would finally be happy to see it disappear. But even if that causal prediction were accurate, it would cast the political philosopher in a very different role from the one envisaged (I believe) by Rawls. It would require political philosophy to be less than fully open with its addressees, concealing from sight some of the known consequences of the principles it puts forward. What one might call such a neo-Leninist view of political philosophy is certainly possible, but it seems to me very unattractive by comparison to the more democratic view implicit in Rawls, where political philosophy aims to proceed by modes of reasoning that are accessible to all citizens, and to develop principles that cohere with their most basic political beliefs.

#### IV

If the claims I have made in this chapter about the fact-dependence of political principles are accepted, what does this imply about how we should go about doing political philosophy? There are two primary implications that I want to draw out by way of conclusion.

The first of these is that we need to be self-conscious about the status of the principles we put forward to govern our political life. As I have argued, these principles will not in general hold unconditionally. They will have factual presuppositions. But these presuppositions can be of different kinds. In some cases the facts that ground the principles will simply be general features of the human condition, of the kind that I sought to illustrate in the case of the principle of liberty. So long as we are doing political philosophy for Earthlings and not for Martians, etc., we can take these facts for granted, and need not speculate about what we should think were they not to obtain. But in other cases the presuppositions will be more limited in scope, in the sense that they hold true in some human societies but not in others, and then we need to be clear about exactly what we are taking for granted when we assert the principles in question. Many of the principles that feature prominently in contemporary political philosophy – democracy, equality, or social justice, for example – fall into this category. These are principles that apply only in societies of a certain kind, each principle having specific presuppositions – presuppositions that we may be able

to identify by tracing when and how the principle established itself in political debate.<sup>26</sup>

Paying attention to the factual presuppositions of our principles in this way would help us avoid two serious errors. Most obviously, we will no longer be tempted to dismiss political thinkers living in societies where the presuppositions don't hold as simply blinkered or benighted. We won't, for example, believe that medieval political philosophers who failed to take the idea of democracy seriously were just making a mistake or were unable to see beyond the limits of their own time. In feudal Europe, valid arguments could be made about better or worse forms of government, but democracy was not on the agenda because its presuppositions were not fulfilled. So we will be saved from a certain kind of intellectual arrogance. But more importantly, we will not be tempted to apply the principles in question outside of their proper context. We will not, for example, prescribe that governments everywhere should be constituted democratically, on the grounds that democracy is the only legitimate principle for allocating political authority. Nor will we assume that principles of social justice that apply within societies of a certain kind can be abstracted from that context and applied elsewhere – to the world as a whole, for example. Where the presuppositions no longer obtain, the principle ceases to apply.

The first implication of the fact-dependence of political principles is, then, a certain modesty in the way that we apply these principles across time and space. The second implication concerns the conditions under which a political theory becomes feasible, if we assume, following Rawls, that the aim of such a theory is to delineate a 'realistic utopia'. Feasibility is important, but we need to be clear about what it means. The feasibility condition I want to endorse must be distinguished from two other kinds of feasibility:

- (a) What we can call 'political feasibility', feasibility of the kind that concerns practical politicians.<sup>27</sup> In this sense, whether a proposal

<sup>26</sup> In the case of the idea of social justice, I sketched an account of this sort in *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 1.

<sup>27</sup> For a fuller discussion of political feasibility, and of the relationship between the political theorist and the practical politician, see A. Swift and S. White, 'Political Theory, Social Science and Real Politics' in D. Leopold and M. Stears (eds.), *Political Theory: Methods and Approaches* (Oxford University Press, 2008).

is feasible depends on whether it can command sufficient political support to be adopted, and this will depend, among other things, on the range of interests that might be affected if the proposal were implemented. For example an environmental policy that required doubling the price of petrol to cut down on car use would be politically infeasible if adopting it would provoke mass protest and civil disobedience and condemn the party that brought it in to electoral defeat.

- (b) What we can call ‘technical feasibility’; that is, whether a proposal contravenes physical laws or rock-bottom social or psychological laws. In this sense, a proposal that required all citizens to have advanced mathematical skills or to be able to recall every transaction they had made over the last twelve months would not be feasible. On the other hand, it would be technically feasible for contemporary Britain, say, to be reorganized politically along the lines of North Korea: since North Korea exists, its form of social organization clearly breaks no sociological or other law, and a political theory that recommended such a regime could not be dismissed on grounds of technical feasibility.

As will be apparent, the feasibility constraint we need falls somewhere between political and technical feasibility. A political philosophy that presents itself to any given society as realistically utopian must contain principles that members of that society could be brought to accept by reasoned discussion, which means that the principles cannot have implications that those citizens would find abhorrent. This doesn’t mean that the principles must be accepted immediately they are laid out. They may be unfamiliar, or they may be resisted simply because they impose sacrifices that many citizens are initially unwilling to make. Political philosophy *should* be in the business of changing political attitudes, of showing people what their convictions mean when applied consistently to political questions. It should not be constrained merely by political feasibility in the above sense. But at the same time it implies more than technical feasibility, because many technically feasible proposals would fail the requirement that they be reasonably acceptable to present-day citizens.

If they are to satisfy this feasibility condition, political philosophers must also be social scientists, or at least be prepared to learn from social scientists. They need to discover what it would mean, empirically, to implement their principles, and they need to discover whether the

ensuing consequences are acceptable, in the light of the fundamental beliefs of their fellow citizens. They also, therefore, need to explore the structure of those beliefs, to find out which are fundamental, and which are open to change in the light of evidence and argument. There is no need to capitulate in the face of ‘raw’ public opinion as it is captured by snapshot polls, but there is every reason to pay attention to the judgements that emerge from deliberative settings in which participants search for agreement on questions of public policy by considering the evidence and arguments for and against particular proposals.

## V

I began this chapter by presenting a certain conception of the nature and role of political philosophy that I characterized as the view from the *Starship Enterprise*. On this view, political philosophy proceeds by first developing a set of basic principles that are fact-independent – and these are the principles that specify what we really mean by justice, liberty, democracy and so forth – and then by applying these principles to the circumstances of a particular society, or set of societies, derives some secondary principles that if we follow Cohen are best described as principles of regulation. By disputing Cohen’s claim that all fact-dependent principles require ultimate fact-independent principles to explain how they are grounded in fact, I sought to show that we are not compelled by simple logic to adopt the *Starship Enterprise* view. This left it an open question, however, how far we should go in allowing our political principles to be fact-dependent. Drawing on Rawls’s conception of the aim of political philosophy, I argued that our choice of principles can properly depend not only on general facts about the human condition, but also on more specific facts about a particular society, or group of societies. If political philosophy aims to give practical guidance to citizens, it must propose principles that it is feasible for them to act on, where feasibility in turn depends not just on physical and sociological laws, but on what, empirically, they would regard as an unacceptable outcome.

If these arguments are valid, then political philosophy is only for the locals, on whichever planet they happen to be. The crew of the *Enterprise* should not try to engage in it while still in outer space. No doubt there are rules they should follow, such as ‘Don’t fire your photon torpedoes without first of all finding out what’s going on down

there.’ More positively, they should act on the maxim: first understand the form of life on this planet, then try to discover what are the appropriate principles to implement when you beam down. But these principles won’t be derivative from some fact-independent super-principles. And the maxim itself, although it may guide the way that Captain Kirk and his team behave, isn’t a political principle but a meta-principle, a guide for arriving at valid political principles for each planet to which they boldly go.

## 2 | *Two ways to think about justice*

### I

Justice is one of the oldest topics in political thought, but as anyone working in contemporary political theory will testify, it shows no sign of becoming exhausted. The last quarter of the twentieth century produced a cornucopia of new theories, the landmark work of Rawls being followed by the alternative accounts of social or distributive justice proposed by Barry, Cohen, Dworkin, Nozick, Sen, Steiner, Walzer and many others. Pessimists might want to argue that the Owl of Minerva was going about its business in the usual way, and that philosophizing about justice reached its peak at precisely the moment when the capacity of the modern state to implement any recognizable scheme of social justice was about to disappear. But I shall put that pessimistic thought aside<sup>1</sup> in order to draw attention to a second feature of this literature on justice, namely that there is no sign of an emerging consensus on how justice is to be understood – no sign that, say, a suitably refined version of the Rawlsian theory can yield principles of justice that everyone recognizes as valid. So the situation we are in is one of intense interest in the topic of justice (and I am concerned here primarily with distributive justice in the broadest sense, that is, the just allocation of resources and benefits of all kinds, rights, freedoms, opportunities, property, income and so forth between persons)

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<sup>1</sup> I have looked at possible reasons for such pessimism, and tried to respond to them, in D. Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 12.



together with fairly radical disagreement as to which theory of justice is actually correct.

How should we respond to this state of affairs? One answer was provided a short while back by Alasdair MacIntyre, when he argued that modern liberal societies lacked the social forms (he called them ‘practices’) within which ideas of justice could be given a determinate content. As a result, he said, ‘we have all too many disparate and rival moral concepts, in this case rival and disparate concepts of justice, and . . . the moral resources of the culture allow us no way of settling the issue between them rationally’.<sup>2</sup> I believe that MacIntyre’s diagnosis was wrong,<sup>3</sup> but the phenomenon he was drawing attention to is certainly one that deserves our sustained attention. What, after all, *is* the point of theorizing about justice if the only result of our efforts is to produce yet one more theory to lay alongside the existing array, with no real prospect of converting anyone who already adheres to a rival theory?

We develop theories of justice, I shall assume, because we want to order and explain our intuitive beliefs about what fairness requires in different situations – beliefs that are at least to some degree uncertain and conflicting, whether within each person’s thinking, or between different people. If we all knew exactly what justice required of us, and our conclusions were all the same, the intellectually curious might still want to produce explanatory theories, but the need to do so would be far less pressing than it is for us now. A good theory, I shall also assume, is one that fulfils Rawls’ condition of reflective equilibrium.<sup>4</sup> According to Rawls, theory construction must begin with our ‘considered judgements’ of justice – those judgements about the justice of practices or institutions in which we feel confidence and that, as far as we can tell, are not distorted by emotion, self-interest and so forth. The theory should systematize and explain those judgements, although it may also cause us after due reflection to abandon some

<sup>2</sup> A. MacIntyre, *After Virtue* (London: Duckworth, 1981), p. 235.

<sup>3</sup> As I have argued in *Principles of Social Justice*, ch. 6.

<sup>4</sup> For Rawls’ idea of reflective equilibrium, see J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), section 9. For a fuller elaboration of the idea, see especially N. Daniels, ‘Wide Reflective Equilibrium and Theory Acceptance in Ethics’, *Journal of Philosophy*, 76 (1979), 256–82. I have explored the relationship between theories of justice and popular conceptions in greater detail in *Principles of Social Justice*, ch. 3.

of them if they turn out to be inconsistent with the theory itself. This requirement that there should be a reasonably close fit between the theory and our pre-theoretical considered judgements can, I think, be defended in two ways. First, our aim should be to develop a theory of *justice* specifically, not a theory of political morality in general, and to succeed in this aim we must make use of the conceptual markers that are present in everyday judgement. People think and say that *this* is a matter of justice but *that* is not, and unless we pay attention to such distinctions we can have no warrant for saying that what we have produced is indeed a theory of justice.<sup>5</sup> Second, our aim is to develop a theory that has practical force, in the sense that people will be motivated to act on its requirements. Sooner or later, we hope, the principles laid out in the theory will command widespread consent, and we can aspire to create a political community effectively governed by principles of justice that its members themselves endorse. But unless we envisage a Damascene conversion on a mass scale, such a hope is forlorn unless the theory can incorporate in the right kind of way the considered judgements that people already make. It may be possible to shift quite radically people's concrete judgements about particular institutions or practices (say about the justice of income distribution in capitalist societies) but not, I am assuming, the underlying principles that inform these judgements.

## II

I have briefly described the purpose of setting out a theory of justice. My aim in this chapter is not to put forward a new substantive theory, but to lay out and examine two broad ways of thinking about justice – two contrasting assumptions about the kind of theory we are looking for. On the one hand, we have the view that I shall label universalism. On this view, our aim is to discover principles of justice that can and

<sup>5</sup> This assumes of course that there is substantial agreement in the relevant linguistic community about where the conceptual boundaries lie. But unless that is so, what warrant is there for saying that we have a concept of justice at all, rather than a word used indiscriminately to indicate approval of policies and decisions? Note that to assume agreement about the application of the concept is not to assume that people's concrete judgements about the justice of policies and decisions will necessarily converge. One of the aims of a theory of justice is precisely to try to increase convergence at this level.

should guide our judgement and our behaviour in all circumstances – principles that are universally applicable in the sense that whenever we have to assess the justice of a decision, or an institution, or a policy, we appeal, at base, to the same considerations. Universalists do not deny that the way these principles are *applied* may depend on circumstances, and this may make it seem as though when we think about what justice requires, we appeal to different principles on different occasions. But on the universalist view, this appearance is misleading because the basic principles of justice are invariant.<sup>6</sup> Our aim in producing a theory, therefore, should be to lay out and explain those basic principles, from which it follows of course that the theory itself is circumstance independent: it tells us what justice *is*, not merely what justice requires given a particular set of circumstances.

In contrast, there is the view that I shall call contextualism. Contextualists assume that principles of justice are context specific rather than invariant across contexts. In other words, we must first ask questions of the general form ‘Who is distributing what to whom and in what circumstances?’, and only once that is resolved are we in a position to say which principles of justice are relevant to the decision or policy in question. Moreover this context dependence of principles of justice goes all the way down, so that the contextually specific principles are free-standing, and not simply derivatives of invariant basic principles. On this view, the kind of theory we should be looking for is one that connects principles to contexts in a systematic way. Rather than laying out principles  $P_1 \dots P_n$  as constituting justice in all circumstances, it should take the form ‘In  $C_1$ ,  $P_1$ , in  $C_2$ ,  $P_2 \dots$  in  $C_n$ ,  $P_n$ ’ where the  $C$ s are the distributive contexts in which principles of justice may be applied.

This contrast between universalism and contextualism needs to be distinguished from two others. First, it is not the contrast between monism and pluralism – between the view that justice can be captured in a single principle and the view that justice comprises two or more independent principles. Of course, any interesting form of contextualism must also be pluralist, since there is no point in distinguishing

<sup>6</sup> A position of this kind has been developed by Jerry Cohen, first in an unpublished paper ‘Rescuing Justice from Constructivism’, and at greater length in his book *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008). His original paper was the inspiration for this chapter.

contexts unless one thinks that different substantive principles of justice apply in each. On the other hand, universalists may be monists, but they need not be. A monistic form of universalism would hold that justice in all its applications can be captured by a single principle, such as a principle of equal rights or a principle of desert. But universalists may also believe that justice comprises a number of independent principles that are either to be applied in lexical order, or perhaps traded off against each other. What makes this a universalist position is that the *same* principles are applied in all situations. Admittedly there is something a little puzzling in the idea that justice might be pluralistic all the way down, and yet not contextual in nature. One wants to know what the source of the pluralism is, and pressing this question may have the effect of revealing a would-be universalist as a closet contextualist (I shall come back later to ways of dressing up contextualist theories as universalist). Yet, formally at least, the distinction between universalist and contextualist theories is not the same as the distinction between monistic and pluralistic theories of justice.

Second, the contrast between universalism and contextualism is not the same as the contrast between objectivism and relativism. Although it is sometimes alleged that contextualist theories of justice must collapse into conventionalism or relativism (this allegation is one that I shall address in due course), a contextualist understanding of justice makes claims that are themselves objective and universal in character. As indicated earlier, a contextualist theory will take the form 'In C1, P1, in C2, P2...in Cn, Pn'. This entails that whenever a decision has to be made or a policy followed in context C1, the correct principle to apply is P1. Contextualists tend to assume that when we look at different societies, we find many contexts of distribution reiterated across them, although no two societies are likely to be exactly the same in this respect. So a full account of justice in society S1 will reveal that its requirements there are not identical with those in S2, but this difference can in turn be explained by differences in the set of distributive contexts found in S1 and S2. A further implication is that what justice requires in S1 is not necessarily what the inhabitants of S1 *believe* justice to require in their society. Contextualism leaves room for the claim that people's beliefs about justice may in certain respects be mistaken; for instance, if they hold that P2, rather than P1, is the appropriate principle to apply in C1.

I have presented universalism and contextualism as though they were sharply opposed ways of thinking about justice, but there are also different ways of holding the middle ground (which can be presented as universalist concessions to contextualism, or vice versa). For example, one may develop a theory of justice whose form appears to be universal, but then add that this theory applies only to societies of a certain type – modern liberal democracies, for example. Unless this theory can be represented as the application of a still more basic theory that applies universally, adding the rider involves injecting a contextualist element into the theory. Or again, one may draw a distinction between justice *within* political communities and justice *between* political communities (or international justice) and offer separate accounts of each, which again amounts to moving somewhat in the direction of contextualism, though not as far as someone who begins by distinguishing different sub-contexts inside political communities.<sup>7</sup> Perhaps the most defensible theory will turn out to be located somewhere on this middle ground. Nevertheless, I want to continue with the basic contrast, and in particular to see what can be said in favour of the contextualist way of thinking because I believe that this approach has been short-changed in recent political philosophy. Universalism comes naturally to philosophers as an account of what they are doing when they think about justice – or indeed about any moral or political concept – whereas anthropologists, sociologists and social psychologists are likely to assume as a matter of course that justice will take on different forms in different social contexts. Faced with this fact, philosophers are apt to respond that what these social scientists are up to is merely description, whereas their own concern is normative. I have tried to show elsewhere why I regard this antinomy as unhelpful.<sup>8</sup> Here my

<sup>7</sup> As readers will doubtless recognize, John Rawls makes both of these contextualist moves, especially in his later presentation of the theory of justice encapsulated in the two principles. The two principles are said to offer an account of justice that captures ‘a number of familiar and basic ideas implicit in the public political culture of a democratic society’ (J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 43. Moreover, their justification rests on features of domestic society that are not reproduced at international level (see, for example, his discussion of why the difference principle does not apply internationally in J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 113–20).

<sup>8</sup> See Miller, *Principles of Social Justice*, ch. 3.

aim is to examine problems facing universalist theories of justice, and to show how different ways of escaping from those problems concede a good deal to contextualism. Then I ask whether contextualist theories can deal successfully with the problems that *they* face.

### III

But first I need to say a little more about how the line between universalism and contextualism is to be drawn. There is a danger that the real division between these two ways of thinking about justice becomes blurred by presenting as contextualist, theories whose real structure is universalist, and vice versa. So let me begin with a few clarificatory remarks about universalism. Universalists about justice believe that we can identify fundamental principles of justice that apply in every circumstance in which questions of justice arise, regardless, for instance, of the specific type of resource that is being distributed, the institutional setting in which the distribution is taking place, and so on. But this holds only at the fundamental level. At a more applied level, universalists can make room for variation. For instance, they can defend secondary principles that represent the best way of cashing out the fundamental principles in particular social circumstances. Suppose that a universalist takes equality of resources as her fundamental principle of justice. Following Ronald Dworkin she might argue that in contemporary societies the best way to operationalize this principle is to treat resources as privately owned and to allocate them by means of a Walrasian auction.<sup>9</sup> But she might also argue that in quite different circumstances (say, in a technologically undeveloped society) equality of resources might be best achieved by giving each person equal access to resources that remain collectively owned.

Furthermore, some principles defended by universalists may be of such a kind that their implementation necessarily depends on contingent features of the social context in which they are being applied. The Rawlsian difference principle ('Inequalities of income and wealth are to be arranged to the greatest benefit of the least advantaged') provides a good example. The shape of the monetary distribution that would result from applying this principle depends on whether and

<sup>9</sup> R. Dworkin, 'Equality of Resources', *Philosophy and Public Affairs*, 10 (1981), 283–345.

how economic inequalities have the effect of improving the position of the worst off, and this in turn depends on contingent facts such as the extent to which different jobs require special talents to be performed effectively, the extent to which material incentives are needed to attract talented people into those jobs and so forth. Thus, someone applying the difference principle might judge both egalitarian society A and highly inequalitarian society B to be just if it turned out that in each case the worst-off group were doing as well as they could given the relevant facts in each society.

Lastly, universalists may allow that the answer to the question ‘How *much* justice can be achieved in this society?’ will also depend on contingent circumstances. They may concede that it is simply impossible to implement the principles that they take to define justice fully in some societies, or that the costs of doing so would be too great in the light of other values. In other words, universalists need not hold a strong view about the priority of justice in order to be universalists. They can allow for trade-offs between principles of justice and other political principles. And so, they can judge that society S is as just as it reasonably can be, meaning that further attempts to make it conform to their conception of justice would be too costly in the light of these other principles.

With these clarifications in place, what then is distinctive about contextualism? Contextualists hold that it is the context of distribution itself that brings one or other principle of justice into play. Moreover, the principles in question are normatively independent of each other, that is to say, not applications of, or derivative from, some overarching, more fundamental principle. To understand this better, more needs to be said about the idea of a context of distribution. Different contextualist theories will identify this in different ways. One well-known account by Michael Walzer distinguishes contexts by reference to the social meanings of the goods that are being distributed.<sup>10</sup> On Walzer’s view, we identify separate spheres of justice by appealing to shared understandings of the particular goods that are being allocated within each, and each sphere contains its own principle, or set of principles, of just distribution – the principle that properly governs the allocation of political power is different from the principle that properly governs the allocation of medical care, which in turn is different from the principles

<sup>10</sup> M. Walzer, *Spheres of Justice* (Oxford: Martin Robertson, 1983).

that properly govern the allocation of educational opportunities, and so forth. An alternative view – one that I have defended myself elsewhere – defines contexts by reference to the kind of social relationship that exists among the parties between whom justice is to be done.<sup>11</sup> Here the suggestion is that people may be related to one another in a number of different ways (for instance in families, in communities of various kinds, in business enterprises, in bureaucracies, as sporting competitors, as fellow-citizens, as complete strangers) and that the principle that should be used to determine whether an allocation of resources in each of these contexts is just will depend on which kind of relationship obtains.

These are not the only possible contextualist approaches to justice, and there are important differences between them. What they have in common, however, is the idea that when we have to decide what justice requires, we do not automatically reach for the same principle or set of principles, but instead we interpret the context of decision in a certain way, and this tells us which principle to use. Contextualists claim that there is a relationship of appropriateness between context and principle that is primitive in the sense that it cannot be explained by appeal to some more fundamental principle that applies universally. This is not to imply that nothing can be said to someone who does not grasp why P1 is the appropriate principle to apply in C1. But the explanation will involve setting out the features of C1 more fully, or explaining the character of P1 more explicitly, or perhaps relating C1 to other contexts in which the person in question has a firmer grasp of what justice requires. So, for example, if someone does not see why scarce educational opportunities for which there is competition should be allocated on the basis of merit rather than, say, need, it may be necessary to say more about what an educational opportunity involves, about what qualities should count as merit in this context and so forth. But if after all this has been done, the person in question still cannot understand why merit is the right principle to use in this case, there is nothing more that can be said. Contextualism has to rely on there being sufficient agreement between people about the way in which different contexts bring different principles of justice into play for a contextualist theory to achieve reflective equilibrium. If this assumption were to prove false, contextualism would collapse.

<sup>11</sup> See Miller, *Principles of Social Justice*, ch. 2 for a fuller exposition of this view.



What contextualists cannot do, obviously enough, is to appeal to some non-contextual fundamental principle to explain why the contextually specific principles apply when they do. That move pushes them over the frontier into universalism.

Contextualists also have to defend themselves against the charge that it is impossible to specify contexts of distribution clearly and uncontroversially – that in every case where there is a dispute about social justice, there will also be dispute about how to identify the relevant context. I shall return to this question later in the chapter when I consider challenges to contextualism. At this stage, I want only to insist on one further point. Contextualism, as I understand it, is not to be identified with *conventionalism* as an account of justice. Conventionalism holds that principles of justice are indeed conventions – they are the constructions of a particular social milieu, and there is nothing more to be said other than that justice means such and such to people in this particular time and place. Contextualism, by contrast, assumes that the relevant social contexts (however one understands these) are characteristically reiterated across time and space, and that whenever a particular context appears, we can determine what justice requires in that context. So the claims that contextualists make about the contextual validity of principles of justice are themselves objective and universal in character. In other words, they take the form: in context C it is always right to distribute the relevant goods and bads according to principle P. So if we find a society that contains context C, but distributes goods in that context in some other way, then the contextualist will rule that society unjust. Thus, to take a concrete example, Michael Walzer is able to condemn as unjust the exclusion of metics (resident aliens) from citizenship in ancient Athens, because of his (contextualist) view that citizenship is a good that must be distributed equally to everyone who lives permanently within the polity.<sup>12</sup> This claim is not defeated by the fact that the Athenians themselves regarded their more restrictive rule for awarding citizenship status as justified. Whether this contrast between contextualism and conventionalism can be sustained is a further question that will occupy us later. My remarks here are meant to be clarificatory: I do not want contextualism to be dismissed offhand as simply a version of conventionalism about justice.

<sup>12</sup> Walzer, *Spheres of Justice*, ch. 2.

Conventionalism, therefore, should be seen as a third way of thinking about justice, one that embraces various forms of scepticism about justice, ranging from Thrasymachus' assertion that 'justice is the interest of the stronger' through Pascal's 'justice is as much a matter of fashion as charm is' to more recent postmodernist arguments that there are many languages of justice behind which always lie relations of power. All of these conventionalist arguments entail that while we can describe the rise and fall of different conceptions of justice, much as we can describe the rise and fall of hemlines in the fashion industry, and also perhaps that we can expose the power play that lies behind the principles we commonly take for granted, normative theorizing about justice is off the agenda. On the conventionalist view, justice simply describes the set of principles that a particular society, or a particular section of society, has chosen to govern its distributive practices; no critical distance can be achieved between the way justice is understood in society *S* and what justice really is. This in turn means that justice ceases to be a critical concept except in cases where a society behaves in ways that contravene its avowed principles. Scepticism about justice always has conservative implications in practice, even when it gives itself radical airs, as in the case of postmodernism. So I regard this particular third way as an admission of defeat; it is what we may be forced back to if neither universalism nor contextualism proves to be defensible.

More positively, I would like to claim that scepticism about justice feeds off the failure of universalism. When repeated attempts to find transcendent principles of justice all fail, the natural upshot is to embrace some form of relativism or conventionalism. Contextualism can, therefore, serve us as an inoculation against this risk. It recognizes that we are likely to find different principles of justice being used at different times and in different places, but it argues that this variation itself has an underlying logic that we can both grasp and use as a critical tool when assessing the prevailing conceptions of justice at any particular moment. So when a Pascal announces that justice is an odd sort of thing if it means one thing on this side of the Pyrenees and something else on the other, the contextualist does not throw his or her hands up in despair, but as a first move looks for contextual factors that might explain why the French and the Spanish think differently about justice, if indeed they do.

Let us, therefore, set conventionalism aside and return to the main distinction between universalism and contextualism. It is, unfortunately, not always clear where particular theories of justice should be placed in terms of this distinction. Let me give two examples to illustrate this point.

First, some accounts of justice invoke principles that are universal in form, but turn out on closer inspection to have little or no substantive content. Among the accounts that fall into this category are the following: 'justice consists in treating equals equally and unequals unequally'; 'justice requires giving each person what is rightfully theirs'. Such definitions lack substance until we know how to decide when people are equal or unequal, in the first case, or how to decide what rightfully belongs to someone, in the second. Suppose the answers to these questions turn out to be contextually variable – suppose, for instance, that what is rightfully X's is determined in some contexts by looking at what X deserves, in other contexts by looking at what X needs, in other contexts by dividing up all the available resources and giving X an equal share, and so on – then what we have is a theory that is substantially contextualist in character. No contextualist need deny that justice can be given a very general definition such as those proposed above; all that a contextualist needs to claim is that the blanks in the formula must be filled in in a contextually specific manner, and that the criteria used to do this are normatively independent, that is, not merely sub-principles of a common master principle. If, on the other hand, definitions such as these are filled out by means of substantive universal principles (say, that what rightfully belongs to X is always determined by X's deserts) then the theory in question is universalist.

Second, we may encounter accounts of justice that are second-order rather than substantive, that is, accounts that lay down conditions that valid principles of justice must meet, without however specifying any actual content for those principles. The most familiar example here is the view that justice consists of principles that everyone would agree to under certain stipulated conditions, for example, the condition that they were to select principles that other parties to the agreement could not reasonably reject. This is universalist at the meta-level, so to speak, but whether it is substantively universalist depends on whether the principles that emerge from the test are universal in form or, on the other hand, contextually specific. Partisans of such accounts appear to

disagree among themselves whether it is part of their rationale that they should generate universal principles of justice. Brian Barry, for example, who has appropriated the Scanlonian reasonable rejection test as a way of grounding the principles of justice that he favours, makes it clear that the principles in question are to be treated as universally valid.<sup>13</sup> Scanlon himself, however, allows that the rules that it is reasonable to reject may often depend on the general social conditions that prevail in a society, and finds no difficulty with Walzer's approach to justice in so far as 'answers to questions of right and wrong can depend on social meanings because these meanings can affect the reasons people have for rejecting certain principles'.<sup>14</sup> The general point here is that it may be difficult to tell at first sight whether a second-order account of justice is universalist or contextualist in its substance.

#### IV

Having now, I hope, adequately separated the two ways to think about justice that concern me, it is time to begin assessing them. And here we need to refer back to my earlier remarks about the conditions that a successful theory must meet. It must recognizably be a theory of *justice* in the sense of standing in a sufficiently close relationship to the set of practical judgements that people in general make, and the principles they invoke, when they talk and argue about what justice and fairness require. This, then, excludes theories that announce what justice is without any attempt to use pre-theoretical beliefs as a touchstone, on the grounds that without such a test we have no way of deciding which of the coherent normative theories on offer qualifies as a theory of justice in particular, as against some other aspect of rightness or goodness.

<sup>13</sup> See B. Barry, 'International Society from a Cosmopolitan Perspective' in D.R. Mapel and T. Nardin (eds.), *International Society: Diverse Ethical Perspectives* (Princeton: Princeton University Press, 1998). In B. Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995) this is somewhat qualified by the claim that impartial principles of justice impose only rather weak constraints on how a society chooses to organize itself, though he does not go so far as to say that justice itself can be contextually determined.

<sup>14</sup> T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 342.

If this condition is accepted, then universalist accounts of justice appear to face two main problems. One is the problem with which we began, namely, the sheer diversity of universalist accounts of justice that have been proposed, together with the absence of any signs of convergence on a single theory. As everyone familiar with the literature will know, some theories have defined justice in terms of *rights*, others in terms of *desert*, and yet others in terms of *equality*. There is dispute about whether the currency of justice (the metric that is used to measure individual shares) should be freedom, or welfare, or resources, or something else. Diversity in itself would not be a problem, any more than it would be, say, in the case of competing scientific theories, if we knew how the theoretical contest could be resolved, in principle anyway. But we do not. And this is connected to the second problem, namely, that the considered judgements of ordinary people seem to display a similar diversity, depending on the kind of issue they are being asked to pronounce upon. Take some familiar questions of social justice that might be put to them: how should jobs or university places be assigned? How should medical resources be allocated? How should income be distributed within a firm or across a society? Who should be entitled to vote? Should children be entitled to inherit assets from their parents? Then think of the principles that people would typically use in answering these questions. They would differ radically from one case to the next. People would very likely say that merit should count for a lot in allocating jobs and university places, but they would be horrified by the suggestion that the allocation of medical resources or voting rights should depend on merit. Medical resources should be distributed on the basis of need, people would think, but income should depend more upon choice and contribution – the choice to work in the first place, the choice of which work to undertake, how successful someone is in carrying out their chosen task, and so on. Equality, by contrast, would be taken to be the relevant principle when liberties and political rights are at stake. The problem for universalists here is not just that people seem to be invoking a plurality of conflicting principles when asked about concrete issues of justice, but that they are applying different principles to different cases. So not only monistic versions of universalism but also pluralistic versions (which understand justice as involving across the board trade-offs between conflicting principles) appear unable to accommodate the kind of diversity that we encounter

when we look at the judgements about social justice that people actually make.

Universalists, then, are in trouble on two fronts: too many theories of justice with universalist pretensions, without any obvious way of resolving the competition between them; and too much diversity in our pre-theoretical beliefs about justice. And here an obvious diagnosis suggests itself: the variety of theories reflects the diversity in everyday beliefs, because each of the theories on offer is picking up and extending one part of our everyday thinking. So rights theories, for example, begin from the observation that in many contexts what justice requires in respect for the rights of other people (so that we view rights violations, such as breach of contract or unwarranted deprivation of personal liberty, as serious acts of injustice) and then claim that justice is always and only a matter of respecting rights, properly understood. Desert theorists, similarly, can point to incontrovertible cases in which justice means ensuring that people get the resources that they deserve, and then argue that these cases can be generalized to incorporate other instances in which the connection between justice and desert is not so apparent; and so on for the other theories. And, that in turn suggests a contextualist diagnosis of universalism: theories of justice with universalist pretensions are actually the result of generalizing illegitimately from a limited class of cases – of failing to see that what justice demands in one context may *not* be what it demands in a different context. The way to make sense of and integrate people's considered judgements of justice is to place each of them in its proper context, and then to develop a multi-principle theory that connects context and principle in a systematic manner.

Faced with this challenge, there are three general strategies that universalists may pursue, none of which, I shall argue, turns out to be successful. The first employs the distinction between *fundamental* and *applied* principles of justice, and attempts to show that the superficially contrasting principles that are displayed in everyday judgements of justice are in fact manifestations of the same underlying principle. A strategy of this sort was used by utilitarians like the younger Mill and Sidgwick, for example, when they tried to show that common precepts of justice could best be understood as secondary principles used in different circumstances to guide agents towards the greatest happiness. But it has to confront two major difficulties. One is that it is difficult to explain how the same underlying principle can give

rise to such apparently conflicting prescriptions for distribution in practice, depending on the circumstances. Consider principles such as equality, desert and need, and consider the shape of the distribution that would result from distributing a resource such as money according to each. Clearly, the three distributions would look very different. A universalist theory that wanted to present these three principles as applied sub-principles of a master principle would have to show that the master principle entailed applying egalitarian principles in some circumstances, desert principles in other circumstances, and need principles in other circumstances still.<sup>15</sup> And, this argument would have to avoid lapsing into contextualism: it could not take the form ‘equality is simply the appropriate principle to use in circumstances C’, and so on. That move simply steps across the line I have drawn between universalism and contextualism.

The other difficulty is that if we switch our attention from what the principles entail extensionally to where their normative force lies, it just seems implausible to represent them as derivative from the same underlying principle. That is, the moral intuition that we express when we say that people should be treated equally is simply different from the intuition that we express when we say that people should get what they deserve, and from the intuition that we express when we say that people should get what they need. Whereas ‘Don’t tell lies’ and ‘Fill in your tax return accurately’ are both naturally understood as sub-principles of the more general principle ‘Behave honestly’, this is not so with the three principles of justice I am considering. Of course they can all be represented as sub-principles of the general principle ‘Distribute justly’, but this by itself does not fully explain their normative force, which appears to stem from three different sources. So it looks as though the attempt to find a master principle of justice that can somehow embrace a range of more applied principles, in the way that the honesty principle naturally entails a set of more specific injunctions about honest behaviour, is doomed to failure.

<sup>15</sup> The problem here is not that of finding *some* rationale for each of the principles in question. For a utilitarian, it is not difficult to explain why equal distribution, distribution by desert and distribution by need might each be justified as contributing to overall happiness. The problem is to give reasons why one principle should be used in circumstance C1 and a different principle in circumstance C2, and so on.

The second strategy open to universalists is to try to limit the ground covered by justice. They may point out, correctly, that justice is not the only value that should guide our behaviour – individually or collectively – and then argue that the principle they propose does capture everything that properly belongs within justice itself. Counter-examples are then dealt with by claiming that they fall within some other department of ethics. So, for instance, a rights theorist may argue that justice *stricto sensu* means respecting the rights of others, and no more than that. No doubt, he may say, there is moral value in giving people what they deserve even when they have no entitlement to it; likewise, it is morally good to help people in need. But these are not genuine demands of justice.<sup>16</sup> Similar strategies have been employed by those who identify justice with desert and those who identify justice with equality. Desert theorists have argued, for instance, that when distributive policies are aimed at relieving need, merely as such, they are best regarded as humanitarian policies rather than policies required by justice.<sup>17</sup> Egalitarian theorists, looking at distributive practices that operate according to criteria of desert (practices of honouring or rewarding people for what they have done, for instance), tend to say that these practices may be necessary on incentive grounds, given human nature as we encounter it today, but they have nothing essentially to do with justice.<sup>18</sup>

<sup>16</sup> Libertarians very often hold a view of this kind. It is implicit, though not stated openly, in R. Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974). See also R. Nozick, *Philosophical Explanations* (Cambridge, MA: Harvard University Press, 1981), p. 503 for the claim that political philosophy's concern with rights by no means exhausts the moral universe. According to Hillel Steiner, 'Justice is a moral rule assigning equal freedom to each of us through a structure of rights. How we use this freedom, whether for good or ill, is up to us so far as justice is concerned but *not* so far as other moral rules and values are concerned.' (*An Essay on Rights* (Oxford: Blackwell, 1994), p. 229.) On p. 226, fn. 43 Steiner instances transferring resources to the needy as a case where 'weighty moral reasons' should guide the use one makes of one's rights. Libertarians would also add that these non-rights-based moral principles are not coercively enforceable, and in that sense non-political. I am grateful to Daniel McDermott and Hillel Steiner for advice on this question.

<sup>17</sup> See, for example, T.D. Campbell, 'Humanity Before Justice', *British Journal of Political Science*, 4 (1974), 401–16.

<sup>18</sup> Jerry Cohen, I believe, held a refined version of this position: see for instance his paper 'The Future of a Disillusion' in G.A. Cohen, *Self-Ownership, Freedom and Equality* (Cambridge University Press, 1995). (I describe Cohen's position as refined because he avoids saying, categorically, that desert is irrelevant to



The problem with this second strategy is that it unavoidably looks arbitrary to attach the label 'justice' to one segment of morality rather than another, unless reasons can be given that are not peculiar to the universalist theory being promoted. If one takes the ordinary use of language as a touchstone (as indicated by what people will say when asked to comment on distributive practices), then certainly they will say that it is unjust for rights to be violated, but they will also say – depending on the circumstances but with equal confidence – that it is unjust if people do not get what they deserve, that it is unjust if people are deprived of what they genuinely need, that it is unjust when people are treated unequally, and so on. What authority, then, do restrictive claims such as those I listed a moment ago actually have? It is true of course that we must provide some general account of justice that explains why all of these beliefs belong together as beliefs about justice (something I shall return to when I discuss contextualism) but, pending that, is it not reasonable to assume that when people say, consistently and with confidence, that an action or a policy is unjust because it violates principle P, they mean what they say, that is, that P, whatever it is, is a justice-relevant principle?

The third and final strategy for universalists that I shall consider involves restricting the scope of the theory of justice that they wish to defend. In other words, the theory is no longer presented as giving an account of justice *tout court*. Instead, the claim is that it captures one particularly important aspect of justice which, it is asserted, is indeed expressible in the form of a single principle or set of principles. For instance, a universalist may claim, following Rawls, that her concern is with the justice of a society's basic structure, understood as a set of coercively maintained institutions that largely determine the life-chances of its individual members. She does not intend her theory to capture the requirements of justice in other settings, for instance, within voluntary associations, among groups of friends and so forth. Justice in these settings, she may concede, is indeed contextually determined. But the justice of the basic structure itself must be judged by principles that are universal in form.

justice; he does, however, argue that the desert-based practices that exist in contemporary societies (practices such as paying people wages that vary according to their respective economic contributions) are unjust, and can at best be justified by appeal to other values such as efficiency.)

We should note that this third strategy concedes a great deal to the contextualist approach. Indeed, it only avoids collapsing straightforwardly into contextualism by insisting that the form of justice that the theory aims to capture has some kind of priority over other forms. What is so special about the basic structure, we may be tempted to ask? The answer might be that this is the only form of justice that can be coercively enforced, or the only kind that really matters in terms of its impact on individual lives, or both. But even if we could be convinced that it is the justice of the basic structure that should primarily concern us, this strategy still involves a significant shift in the direction of contextualism. In effect, we are being presented with a universal account of the requirements of justice in one specific context, say of the principles of justice that apply among citizens as members of a political community. This is what I described earlier as a middle-ground position, located somewhere between universalism and contextualism proper.

I am, moreover, very doubtful whether it is possible to demarcate the subject matter of a theory of justice in as sharp a way as would be required by the third strategy. To begin with, if we want the theory to stand in a suitably close relationship to popular conceptions of justice, then we must face the fact that people's thinking about justice does not display discontinuities of the relevant kind. People do not, for example, immediately switch to different principles when asked to make judgments about the justice of the basic structure (indeed the very idea of a basic structure almost certainly plays no part in their thinking). Notions of desert, for instance, are standardly used to make judgments of fairness in small group contexts (say, if the question is how to distribute the fruits of cooperative production among a small team), but they are also used to judge the fairness of income distribution on a society-wide scale.<sup>19</sup> Furthermore, it is fortunate that this is so, because it is doubtful if we could achieve a just basic structure unless people were guided by the same general principles at both the macro-level

<sup>19</sup> I do not mean to imply that switching from a micro- to a macro-setting makes no difference at all to the way people understand distributive justice; I do, however, believe that there is a great deal of continuity in their thinking across the two levels. See Miller, *Principles of Social Justice*, ch. 4 for supporting evidence; the opposing view is discussed briefly in fn. 2 of that chapter.

and micro-level.<sup>20</sup> Implementing equality of opportunity at the level of the basic structure, for instance, requires that people should be guided by the principle when making decisions in the institutions of civil society – such as when choosing candidates for university entrance.<sup>21</sup> So, although I wish to defend the view that principles of justice are contextually specific, I do not believe that it makes sense to treat something like ‘the basic structure’ in Rawls’ sense as a relevant context, and to put forward a theory of justice that has this as its exclusive target.

Faced with the fact that none of the strategies I have canvassed (trying to present diverse principles of justice as applications of a single underlying principle, trying to reduce the diversity by counting only a sub-set of these principles as genuine principles of *justice*, or narrowing the scope of justice to a specific subject matter) shows much promise, universalists may be tempted to abandon the search for a Rawlsian reflective equilibrium. They may, in other words, boldly announce that justice is equivalent to principle P (where P is, say, a suitably tailored principle of equality) and that both common opinion and rival theorists have simply got it wrong when they identify justice with principles other than P. But it is hard to treat this announcement as anything more than a strong statement of personal conviction. In the face of competitors who with equal conviction identify justice with principle Q, it is not easy to see what kind of argument could be made to establish P’s credentials as an exhaustive account of justice. For

<sup>20</sup> It is a matter of controversy how far we should expect people to be governed directly by their political principles in their everyday lives: see the exchange between G.A. Cohen, ‘Where the Action is: On the Site of Distributive Justice’, *Philosophy and Public Affairs*, 26 (1997), 3–30 and A. Williams, ‘Incentives, Inequality, and Publicity’, *Philosophy and Public Affairs*, 27 (1998), 225–47. But no one doubts, I think, that social justice cannot be achieved unless people are guided by principles of justice in their day-to-day lives *in some degree* at least.

<sup>21</sup> It is, therefore, somewhat puzzling that Rawls seems to want to draw a sharp line between justice in the basic structure and justice in sub-state institutions such as churches and universities, given that ‘fair equality of opportunity’ is one of the principles applied to the basic structure. On the one hand, he says that ‘for churches and universities different principles [than the two principles of justice] are plainly more suitable’. On the other, he says that these institutions ‘may be restricted in various ways, for example, by what is necessary to maintain the equal basic liberties (including liberty of conscience) and fair equality of opportunity’ (Rawls, *Political Liberalism*, p. 261). It seems to me difficult, if not impossible, to reconcile these two claims.

even if it could be shown that P fulfils certain conditions of rationality while its rivals do not (say, it can be shown that it would be the unique choice of people having to reach agreement under fair conditions), it would still need to be demonstrated that P qualifies as a principle of *justice* specifically.<sup>22</sup> Unless one wants to argue that all valid principles of political morality should be counted as principles of justice, it is difficult to forgo the Rawlsian requirement that a theory of justice should respond in the right kind of way to the considered judgements we make independently of the theory.

## V

The failure of universalism as a way to think about justice is not by itself sufficient to justify contextualism. For it may be that this second approach confronts difficulties that are as severe as, or indeed more severe than, those facing universalism. So I now want to consider and respond to three major challenges that a contextualist theory of justice must address.

Contextualists argue that in order to understand justice we must bring order to diversity by tracing systematic links between principles of justice and their contexts of application. It is a mistake to try to discover one fundamental principle that applies regardless of context; but it is not a mistake to identify a small number of core principles each of which has a reasonably well-defined context of application. The first challenge I shall consider asks: Why are all these contextually specific principles principles of *justice*? What is the warrant for saying that a principle of desert applied here, a principle of need applied there, and so on, are all manifestations of the same underlying concept? Must not we be able to say what justice *is*, over and above the forms it may take in particular circumstances?

To respond to this challenge, we need to observe that concepts can be well behaved without having necessary and sufficient conditions of application. Wittgenstein famously argued this in relation to the concept of a game. We can understand why a range of human activities all count as games even though there are no necessary and sufficient conditions for something's being a game (many games, but

<sup>22</sup> One can think of ways of trying to close this gap, but it would take me too far afield to consider them here.

not all, are played by teams; many games, but not all, have winners and losers; many games, but not all, are played for fun, and so on).<sup>23</sup> Wittgenstein pointed to the overlapping characteristics that allow us to classify activities that were different in many other respects under the same heading, and contextualists can use a similar strategy in the case of justice. They can, in other words, point to features that *connect* the use of a rights principle in one context with a desert principle in another and an equality principle in a third without invoking any single principle or set of principles that applies across all these different contexts. They can say, for instance, that justice is often about the way goods are distributed among persons; that it is often understood as imposing obligations on individuals; that it is often contrasted with random or arbitrary allocation, and so forth. Given these overlapping features, it is not arbitrary to say that enforcing valid contracts, paying people what their contribution is worth, and providing shelter for homeless people are all practices of justice, even though there is no single principle of distribution that runs through them all.

The second challenge that contextualism must face is the challenge that it offers no practical guidance when principles of justice conflict. Contextualism appears to be a species of intuitionism in Rawls' sense, that is, it holds up a number of principles as equally fundamental, without suggesting any lexical ordering between them. It seems then to follow that when the principles clash, as inevitably they do (the person who has a right to something often is not the person who most deserves it, nor the person who most needs it and so on), the contextualist has nothing to say, except, rather unhelpfully, 'Well, you just have to weigh up the conflicting considerations and decide which is the most powerful'.

The contextualist riposte is that such clashes of principle will not, in general, occur, once the context in which the distributive decision in question is being made is properly specified. Considered simply as abstract principles, desert, equality, need and so on are certainly conflicting criteria, but once we have settled who is distributing what to whom in what setting, then typically one of these criteria will come into play as the relevant factor. Thus, if a hospital administrator in a public health system has to set priority rules for admitting patients

<sup>23</sup> L. Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1963), section 66.

for operations, then medical need is the leading principle she should apply.<sup>24</sup> An administrator who began to use economic desert, say, as the criterion for admission would rightly be castigated for introducing a consideration that is wholly irrelevant *in this context*. Against this it may be said that in many cases the context itself will be ambiguous. The form that the ambiguity takes will vary according to the particular version of contextualism under review. In relation to Michael Walzer's version, for instance – central to which is the claim that the social meanings of different goods determine their criteria of just distribution – it is often claimed that goods have no such determinate meaning, or at least that their meaning is usually contested. Similar criticisms may be advanced against forms of contextualism that focus on the type of social relationships within which distributions are being carried out.

To answer this challenge decisively would mean laying out a contextual theory in all its detail to show how it dealt with alleged ambiguities, something that I will not attempt here. But the best answer will take roughly the following form. There are many situations in which we are quite confident about what justice demands, which principle we should invoke to specify a just distribution. These will typically be cases in which the context in which justice has to be done is clear and unambiguous. A contextual theory will begin by integrating these judgements, showing how principles are systematically related to contexts of application. It will then give guidance in cases we are less sure about, by pointing out strong parallels between contexts: 'In context C we all agree that resources should be distributed on the basis of need; but if you look at context C1, you'll notice that it resembles C in at least the following four respects . . . so need must be the relevant principle of distribution here too.' But, lastly, there may be cases in which

<sup>24</sup> I do not mean to suggest that appealing to need by itself gives the administrator sufficient guidance. For it turns out that the principle of distribution according to need is itself internally complex. Should priority be given to those whose needs are greatest, or to those whose needs can be relieved most effectively? I have discussed this issue in greater detail in *Principles of Social Justice*, ch. 10. Nor do I want to claim that need is the only factor our administrator should consider. For instance, unless the needs are very urgent, she may properly take procedural factors into account, such as the length of time different patients have spent waiting for their operations. More controversially, she might consider the extent to which different patients can be held responsible for the condition requiring treatment. So specifying the context does not necessarily leave us with only one simple principle of justice to apply. But it does, so I claim, decisively rule in certain principles and rule out others.

no such resolution is possible, and here the role of the theory will be to explain why there is a dilemma: why there is deep and persisting disagreement about what justice requires in distributive decisions of a certain type. The explanation will point to reasonable alternative ways of contextualizing the decision. So, for instance, persisting disagreement about whether the practice of inheritance is just or unjust can be understood by seeing that the practice straddles two contexts. Viewed in a familial context, inheritance is a natural and legitimate expression of the special concern that family members have for one another's welfare; we expect parents to give special consideration to the needs and interests of their children, and passing on assets is one manifestation of that. Viewed in the context of civil society, however, inheritance clearly contravenes the principles of desert and equality of opportunity that should govern people's life-chances by giving an unfair advantage (in capital endowment, especially) to those who inherit more. Hence, we should expect to be pulled in two directions here, and it may be that contextualism alone can provide no decisive argument for prioritizing one context and its associated principle.

This is not quite the last word, however, for we may at this point decide to appeal to wider considerations to resolve the dilemma. Justice is not the whole of political morality, and where justice is ambivalent, as in the case just outlined, other values may be brought into play in support of one or other interpretation. I have argued elsewhere, for example, that in Michael Walzer's theory of justice, equality plays such a role: where the boundaries between the spheres of justice are contested (which is equivalent to saying that the meanings of certain social goods are disputed), we can argue that overall social equality is better served by drawing the boundaries here rather than there.<sup>25</sup> (I suggested, for instance, that such an argument could be used to support continuing to treat medical care as a distinct good with its own criterion of distribution rather than beginning to treat it as a commodity like any other.) This, it should be emphasized, is not a case of subsuming justice under some other political value; it is rather a case of appealing to other values for a reasoned resolution of a dilemma which justice by itself cannot resolve.<sup>26</sup>

<sup>25</sup> D. Miller, 'Complex Equality' in D. Miller and M. Walzer (eds.), *Pluralism, Justice, and Equality* (Oxford University Press, 1995).

<sup>26</sup> If this suggestion seems unpalatable, consider an analogous case. How should we decide what the just punishment is for a particular type of crime? An appeal

The third challenge to contextualism that I shall consider holds that contextualism inevitably collapses into conventionalism. The argument here can be put as follows: contextualism effectively relativizes justice when it holds that the validity of distributive principles depends on their context of application, whether this context is spelt out in terms of practices, or types of social goods, or modes of human association (for ease of exposition I shall use ‘social forms’ as an umbrella term to cover these different ways of specifying the relevant contexts). Societies choose which social forms to adopt, either by retaining existing forms, modifying them, or inventing new ones, and in the process they also choose what justice is going to mean (by contextualist reasoning). But this implies that justice can never serve as an external regulator of a society’s practices; instead justice simply indicates what it is appropriate to do given the social forms that already exist. And this is a conventionalist position.

To respond effectively to this challenge, contextualists must show that the repertoire of social forms relevant to justice is constrained in various ways. Societies cannot shape these forms in any way that they please if they are going to qualify as just. I can best explain this idea of constrained variation by means of an example. Consider the practice of awarding honours or other tokens of merit to people who are judged worthy to receive them. Because societies vary in the value they attach to different personal qualities, the shape of this practice will also quite properly vary from place to place. A society that puts greatest weight on military achievements will give successful warriors the highest honours, while another may reserve them for writers and poets, and there is no Archimedean point which allows us to say that one of these practices is more just than the other. However, it is not open to a society to institute an honours system that discriminates, for

to justice enables us to impose certain conditions: for a punishment to be just, the accused must meet certain requirements of intention, responsibility, and so on, and there must be some proportion between the punishment imposed for this crime and the punishments imposed for other crimes of greater or lesser seriousness. But this still leaves it open how high or low all of the tariffs should be, and to settle this we need to appeal to wider considerations, such as deterrence and the need to rehabilitate criminals where possible. So when we judge that, say, a fair punishment for manslaughter caused by dangerous driving is three years’ imprisonment, our judgement is derived by combining justice itself with other political values.



instance, on grounds of race, with only those with black skins allowed to receive awards.

Why is this? Why cannot the members of such a society simply say that they value Negritude, and that they express that value by constituting their honours system in a certain way, just as the militaristic society expresses its valuation of military achievement? The answer is that an honours system is just only when those receiving honours deserve them, and that requirement in turn imposes some restrictions on the characteristics that form the basis for being honoured. To be deserving in this context you must have done or achieved something, characteristically something that is not easy to achieve, that requires talent, effort or self-control in some combination, that creates benefits for others and so forth.<sup>27</sup> Whatever our personal views about military prowess, we can recognize these qualities in the successful general, or the soldier who performs an act of courage; likewise we can understand why the writer who labours hard and long to produce a masterpiece, or the public-spirited citizen who serves his country beyond any formally assigned duty, might be considered deserving, and so we can recognize the potential justice of forms of honouring aimed at such people. We do not have to endorse such honouring, in the sense of thinking that our own political community should practise it. What matters for the argument that I am making is that we should be able to draw a line between cases such as those just mentioned and the (hypothetical) example of honouring the possession of a black skin, or of making the possession of a black skin a necessary condition for receiving any honour. That is something we cannot recognize as just, because there is no imaginable sense in which having a black (or brown or white) skin can make you deserving. We have reached the limits of our conceptual universe.

Someone disposed to defend the honouring of Negritude might say that having a black skin mattered not intrinsically, but because it was necessarily linked to other qualities: only black people, he might argue,

<sup>27</sup> I have defended this view about what desert requires in Miller, *Principles of Social Justice*, ch. 7. There are certainly verbal uses of 'deserves' and so forth that are not restricted in this way, but I argue there that these do not convey any genuine sense of desert, as opposed to a broader notion of moral appropriateness.

could be genuinely loyal to this particular state, or achieve a certain kind of spirituality. It was such a belief, he might claim, that underlay his society's practices. Here our response must be that the belief is false: that the society is unjust because it is using as its ground for deserving honours, a quality that is not in fact tightly linked to the genuine quality that could ground desert (loyalty or spirituality). It might indeed turn out that blacks are on the whole much more loyal, or spiritually able, than browns or whites in the society in question, but that is no reason to exclude these latter groups categorically from honours. I suspect that very often when we look at other societies, past or present, and discover practices that we regard as radically unjust (the experience that leads us to reject conventionalism in favour of universalism), what we find is not so much that they understand justice itself in a quite different way from us, as that they hold beliefs of a broadly empirical kind that we know to be false. The distortion of justice occurs when social forms are created that reflect those beliefs; it does not go all the way down.

Consider, for instance, the exclusion of women from citizenship, something that has characterized most societies throughout history and is still quite common today. In line with the general argument I am advancing, justice always requires the equal treatment of citizens, but how citizenship itself is understood (what scope the rights of citizenship have, for example, or what qualities citizens are expected to possess) is something that we should expect to vary from place to place, and justice itself cannot prescribe one version rather than another. Societies that exclude women do so, I believe, not because they define citizenship as an exclusively male practice, but because they believe, mistakenly, that women cannot possess the qualities demanded by citizenship, or cannot enjoy the benefits it provides. Examples of this phenomenon will readily spring to mind: citizenship requires the capacity to engage in detached and reasoned political discussion, and women, by virtue of their nature or their social role, necessarily lack this, and so forth. Such beliefs are not of course innocent; they are propagated by those who stand to benefit from their acceptance. The point, however, is that they are empirical in form, and that gives contextualists the opportunity to say that societies that automatically deprive women of citizenship are simply unjust. It is not that they have a completely different practice (call it 'mitizenship') for which being male is a necessary requirement; it

is that they distribute citizenship rights on grounds that can be shown, empirically, to be irrelevant.<sup>28</sup>

I believe that a contextualist approach to justice makes better sense of our considered response to societies whose distributive and other practices differs from our own than a universalist approach possibly can. In some cases we want to say that society *S* understands justice differently from us, and that this is reasonable in the light of general features of that society, its mode of production, its religious and political institutions and so forth. We look at the society and see principles that we recognize as similar to ours being put to work within different social forms. Their justice is not ours, and we may think it better on balance if *S* were to develop in a way that brought it more closely into line with our practices, but it would be a crude response to say that *S* was unjust *simpliciter*. In other cases, our response is a sharper one: we look at *S*\* and see a society that is significantly unjust, even when it follows its own principles, either because those principles are simply not ones that we can recognize as principles of justice at all, or (more commonly I have suggested) because recognizable principles of justice are being interpreted in the light of beliefs that we know to be false. In the latter case, it will be an open question whether members of *S*\* are just deluded, or whether they are being driven by the interests of powerful groups to uphold their false beliefs.

It is harder for universalists to make such a discriminating response. Some universalists may be happy to lay out a thick, substantive principle or set of principles and say merely that societies are just insofar as they follow and conform to these principles and unjust otherwise. Other, more reflective, universalists see that this is too crude, but they seem then only to have two options: one involves retreating to a formal definition of justice and saying that there can be legitimate social variation in the way that this formal definition is filled out concretely. This, however, amounts to a complete climbdown, since it will presumably be possible with a little ingenuity for any society to show that its practices comply with the definition in question. The other option is

<sup>28</sup> I should emphasize that, for reasons given earlier, the charge of injustice could not be deflected by claiming that the practice in question was citizenship rather than citizenship. A form of political membership that was categorically based on an ascriptive characteristic such as sex is unjust for the same reason that a practice of honouring Negritude would be unjust.

to distinguish between fundamental and applied principles, and argue that societies will count as just if they can show that their operative principles of justice represent the best local application of the fundamental principles, which hold everywhere. This initially looks more promising (it can probably explain why societies at different levels of economic development should implement different distributive principles, for example), but it does not capture variations of the kind that I have been emphasizing in this chapter. These arise when – for cultural or other reasons – societies constitute their practices differently, divide up essential functions between social spheres in different ways, and so forth.<sup>29</sup> Variations of this kind will directly influence the way that social justice is understood, but this cannot be captured if one thinks in terms of fundamental and applied principles, rather than in terms of a range of principles of justice whose application is context specific. Where universalists see justice as a measuring rod against which all human distributive practices are to be held up, contextualists regard it as more akin to a toolkit, skill in the use of which involves above

<sup>29</sup> In an earlier article, I illustrated this point by considering different ways of organizing work:

How should we understand the relationship between those who work together in a productive enterprise? In contemporary liberal societies, such enterprises are predominantly seen as made up of individuals whose relationship with one another is instrumental and/or competitive. People go to work in order to take home a salary and advance their careers. They are expected to contribute as effectively as possible to the enterprise's performance so long as they are employed by it, but they are free to look for a better job elsewhere at any time, and no one blames them for disloyalty if they take up an offer of this kind. In this context, the primary criterion for distributing income fairly will be desert, as measured by each member's estimated contribution to the overall productivity of the enterprise.

But work could be, and has often been, organized very differently. Work units could be understood as communities whose membership is expected to be permanent and whose ethos is cooperative rather than competitive. Each member would see herself as forming part of a unified team, and her role at work as that of helping the team carry out its task most effectively. In this context, different norms of justice will come into play. Less emphasis will be placed on desert (if people are differentially rewarded at all, this may be done symbolically rather than materially) and greater emphasis placed on competing principles such as equality and need.

Different understandings of work, and of the nature of productive enterprises, lead in the way I have sketched to different understandings of social justice.

(D. Miller, 'National Self-Determination and Global Justice' in *Citizenship and National Identity* (Cambridge: Polity, 2000), p. 170.)

all identifying the circumstances that make the use of one or other instrument appropriate.

I do not expect the argument I have offered to overcome all resistance to a contextualist approach to justice. Indeed I do not want to claim that there are no context-independent principles of justice: respect for basic human rights, to name only the most obvious candidate, fits this bill. But I hope at the very least to have established two conclusions: one is that the present state of theorizing about justice makes contextualism worth at least a serious look as an alternative to universalism; the other is that in embracing contextualism one is not selling the pass to scepticism, relativism, conventionalism or any other view that discredits justice as a workable idea for social criticism and social reform.

# 3

## *Social justice in multicultural societies*

### I

This chapter will examine obstacles to the pursuit of social justice posed by the multicultural character of virtually all contemporary liberal democracies. A society is multicultural, for present purposes, when its citizens belong to a number of distinct ethnic and/or religious groups, and membership of these groups is regarded as an important source of personal identity. Multiculturalism, in other words, requires more than just the coexistence in a single society of various religions, musical cultures, ethnic cuisines and so forth. It requires that people see themselves as belonging to groups defined by one or more of these cultural markers, as having a special relationship with other members of that group and as regarding their group identity as significant and valuable. In other words, we can legitimately speak of multicultural societies as made up of distinct cultural *communities*, while of course recognizing that the boundaries that exist between these communities are not always sharp – some people, by virtue of intermarriage, for instance, will see themselves as straddling two or more cultural groups.

The issue I want to address is the implications this has for the pursuit of social justice. One aspect of the question has already been dealt with quite extensively in the literature: What special claims, if any, can cultural groups make in the name of justice, especially groups that have hitherto fared relatively badly in the distribution of social

An earlier version of this paper was presented to the Francqui Prize Conference on Cultural Diversity versus Economic Solidarity, Fondation Universitaire, Brussels, 28 February–1 March 2003, and I should like to thank Anne Phillips for comments that I have tried to take on board while revising it. A distant ancestor of the present version was helpfully criticised by members of the departmental seminar, Department of Politics, University of York, and members of the Nuffield Political Theory Workshop. I should also like to thank Patti Lenard for her valuable advice on the literature on trust.

resources? There have been wide-ranging debates about the justifiability of special rights for disadvantaged groups, and about the legitimacy of affirmative action programmes, for instance. However, my aim here is to tackle a different question, namely does the very idea of social justice still make sense when societies become multicultural in the sense just outlined? This might seem an odd question to ask. It makes some sense, however, if we make the following assumption about social justice: that for a society to be socially just, it is not sufficient that its basic social and political institutions should distribute resources according to valid principles of justice, but it is also necessary that these principles themselves should be a matter of reasonable agreement among the members. In other words, a just society is one whose members live together on terms of justice – they live according to principles that each has good reason to accept.

This assumption is of course prominent in the work of John Rawls, who makes it a condition for the validity of a theory of justice that it can become the subject of an ‘overlapping consensus’ between people who hold different religious, moral and philosophical beliefs. Rawls doesn’t assume that there will ever be complete agreement on principles of justice in the real world – this would surely be too strong a requirement. Instead he imposes the weaker condition that people can be given good reasons to accept the principles he proposes, so long as they are motivated to find terms of agreement with others, and so long as they are willing to accept certain provisos, such as the fact that people can reasonably disagree about the truth of religious claims. These points about Rawls are familiar. What needs to be underlined is the extent to which Rawls’ conception of social justice rests on an implicit sociology, which is often obscured by the strain of Kantian rationalism in his thought. Behind his theory of justice stands a certain picture of liberal society, and it is this picture that multiculturalism threatens to disrupt.

The picture looks roughly like this. People belong to bounded societies within which the distribution of primary goods – ‘rights and liberties, opportunities and powers, income and wealth’ – is governed by a single basic structure, a common set of economic, social and political institutions.<sup>1</sup> Such a society can for the purposes of developing a theory

<sup>1</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 90.

of justice be seen as closed: 'we are to regard it as self-contained and as having no relations with other societies. Its members enter it only by birth and leave it only by death. This allows us to speak of them as born into a society where they will lead a complete life.'<sup>2</sup> It is implicit here that the application of principles of justice within the society will not be blocked by external factors, for instance global economic forces or pressures from neighbouring states (it is this assumption that allows Rawls to draw a fairly sharp distinction between *social* justice – justice within bounded societies – and international justice, a distinction that had always been implicit in his work, but was spelt out more explicitly in *The Law of Peoples*<sup>3</sup>). Furthermore, a society is not only 'a cooperative venture for mutual advantage' it is also a 'social union' in which people have shared ends and regard other members' success and flourishing as complementary to their own. To be sure, Rawls recognizes the existence of many smaller social unions within the larger society, but he assumes that members regard the inclusive union as their most important engagement: 'the collective activity of justice is the preeminent form of human flourishing. For given favourable conditions, it is by maintaining these public arrangements that persons best express their nature and achieve the widest regulative excellences of which each is capable.'<sup>4</sup>

In a social union, then, people are committed first and foremost to maintaining institutions that they can justify to one another in ways that everyone has reason to accept. Their other aims are to be pursued in private associations and smaller unions within limits set by shared principles of justice. The problem that confronts Rawls is to show that these private values and beliefs are at least compatible with his preferred principles of justice, if not positively supportive of them. With the passing of time, Rawls' appreciation of the seriousness of this problem deepened – he was particularly concerned about the possibility that people holding certain religious doctrines might not be willing to accept the liberal principles of justice that he favoured – but he still assumed that both people's sense of justice, and their reasons for wanting to live together with others on terms of justice, stemmed from

<sup>2</sup> J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 12.

<sup>3</sup> J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), especially section 16.

<sup>4</sup> Rawls, *Theory of Justice*, p. 529.



their membership of the inclusive social union.<sup>5</sup> People were citizens first and foremost: what had to be shown was that the principles of justice they would adopt *qua* citizens were not in conflict with the goals that they might legitimately pursue as members of religious groups and other private associations.

Multiculturalism disrupts this picture because it suggests that for many people at least, it is group membership and group identity that have the greatest significance. People's sense of justice will derive primarily from the culture of the group to which they belong, and we cannot assume that principles that emerge from this source will converge across groups. The social problem becomes one of finding terms on which different cultural groups can live alongside one another. It cannot be assumed that group members have an overriding commitment to search for common principles. One could say that the problem of social justice becomes more like the problem of international justice as Rawls understands it – the problem of how groups espousing different values and different conceptions of justice can live together in relative harmony.<sup>6</sup>

The question we must face is whether multiculturalism as it exists in the real world – as opposed to the way it is portrayed in multiculturalist texts – does in fact have the destructive consequences for social justice outlined above. This is, of course, an empirical question, but I make no apology for leading the debate in this direction because I am convinced that theorizing about justice – like political theorizing in general – is only fruitful when grounded in empirical enquiry. Rawls' sociology may be wrong, but he is not wrong to think that his theory of justice needs to be supported by a realistic sociology.

It is worth distinguishing two broad ways in which multiculturalism might disrupt social justice as a political ideal. The first is that it might turn out to be impossible to achieve agreement on principles of justice in a multicultural society. Because of their different cultural backgrounds, groups would be wedded to different principles of justice, and this would not just be a matter of group self-interest or group prejudice that could be overcome by rational argument, but

<sup>5</sup> Rawls grapples with this problem in *Political Liberalism*, especially Part 2.

<sup>6</sup> For an argument supporting this picture, see C. Kukathas, 'Social Justice and the Nation-State: A Modest Attack' in D. Bell and A. De-Shalit (eds.), *Forms of Justice* (Lanham: Rowman and Littlefield, 2002).

a consequence of the pervasive influence that culture has on the way people understand their relations to each other. The world would simply appear very different depending on the cultural vantage point from which one was looking. The second possibility is that cultural groups might be willing to practise justice towards insiders, but not towards outsiders. In other words, they would allow the scope of justice to be determined principally by the cultural group to which they belonged. They might acknowledge some duties of justice to non-members, but these would be relatively thin, perhaps no more than the duties they would acknowledge to human beings everywhere. This second potential problem, in other words, is a motivational one: in culturally divided societies, people might not be motivated to live with other people outside the group on terms that embody strong, substantive principles of justice. In Rawlsian terms, they would not see themselves as belonging to an encompassing social union, but simply as members of one culturally-defined union alongside others.

## II

In this section and the one that follows, I shall take each of these problems in turn and see what we can learn by looking at empirical evidence about the impact of multiculturalism on prospects for social justice. I should say straight away that we are not to expect clear-cut answers to either of our problems. This is partly because much of the evidence we have is indirect: nobody (to my knowledge) has so far gone out into the field with the explicit aim of exploring the effect of multiculturalism on conceptions of social justice. It is also partly because of difficulties of interpretation with the evidence that we do have. Where we find cultural differences in the way people think about or practise justice, we want to know how deep or shallow these differences are. Are they, for example, differences of the kind that might be resolved through debate, or by presenting additional evidence, or on the other hand are they deep-seated disagreements about the nature of justice itself?

To amplify a little, we might think of a person's conception of social justice as being built up in a series of steps. At the bottom level we find basic principles. Is justice to be understood in terms of *rights*, or *equality*, or *desert*, for instance, or perhaps some combination of these principles? Then there is the question of *scope*. To whom is

justice owed, and does one have stronger obligations (or different obligations) to some people than to others – to fellow-nationals, for example, or co-religionists, or members of one's ethnic group? Next, and not entirely independent of the question of scope, there is the issue of *context*.<sup>7</sup> Assuming some degree of pluralism at the level of basic principles, in what circumstances does any particular principle apply? Should *need*, for instance, be a relevant consideration to be taken into account when deciding who should be hired for a job or how much they should be paid, or should need come into play only in contexts such as income support or medical care? Finally, there are questions about *application*: which practices and policies are mandated by justice, once basic principles, scope and context are all taken into account? This is a further step, because it brings into the picture large empirical questions about how the world works that are not resolved in the course of the first three steps. Suppose, for instance, that one believes that every citizen is entitled to an income sufficient to cover a range of his or her basic needs. Should this be provided in the form of an unconditional basic income, or should the policy be one of guaranteeing everyone a job and a wage that meets this condition? The decision may depend on whether one thinks that, as a matter of fact, unconditional basic income would result in large numbers of people who would otherwise work without complaint choosing not to, or on the other hand whether a workfare regime would result in many people having to take jobs that they bitterly disliked.

Because conceptions of social justice have this multi-level character, knowing what to make of the empirical evidence can be difficult. For instance, suppose we find a high degree of cross-cultural agreement at the level of basic principles: this might seem to bode well for agreement about social justice, but not if it was accompanied by sharp *disagreements* about scope, context and application. To take a simple example, we might find agreement at the basic level on a principle of equality, but then discover that in some cultures the scope of this principle was restricted in such a way that it did not apply across the two sexes – men should be treated equally, and so should women, but not men-and-women together. On the other hand, substantial disagreement at the level of application might turn out to be less deep-seated than it

<sup>7</sup> I have set out and defended the view that principles of justice must be seen as contextually specific in the previous chapter.

initially appeared, if we can explain it in terms of factors that have nothing to do with justice itself. Take the case of affirmative action, which is one area of policy in which we have evidence about the effects of ethnicity, in particular, on people's judgements of what is fair. As one might expect, there are significant differences between ethnic groups in their responses to questions about affirmative action, with Black and White respondents being most likely to judge affirmative action fair and unfair, respectively, and Latino and Asian respondents holding intermediate views.<sup>8</sup> This evidence, however, is far from being decisive if we are concerned about reasonable agreement on conceptions of justice. To begin with, it is noteworthy that although aggregate views about affirmative action differ between ethnic groups, there is also a good deal of overlap – a large minority of Whites supporting it, and a large minority of Blacks (sometimes even a majority, depending on how the question is put) opposing it. Second, it is reasonable to suppose that some part of the remaining difference is explained by the conflicting *interests* of the groups in question, rather than by cultural differences that shape ideas of justice. One would like to know what Blacks and Whites would say if they did not know how affirmative action would affect the prospects of their own particular group. Third, another factor that may help to explain the reported differences of view may be different *perceptions* of the social background against which affirmative action policies are going to be implemented – Blacks being more likely to see the obstacles to social mobility facing members of disadvantaged groups in the absence of these policies, for instance. So we cannot deduce from the fact of (some) disagreement about the justice of affirmative action and other such policy issues that different cultural groups could not reach agreement about social justice at a more basic level. We need to dig deeper.

Here we are handicapped to some extent by the absence of studies of conceptions of justice held by cultural groups *within* the same political community. By contrast, comparative studies *across* political communities are fairly common. I shall proceed on the assumption that cultural groups who belong to the same political community will exhibit less divergence in their basic principles of justice than groups who belong to different communities. This is because whatever effects

<sup>8</sup> See L. Bobo, 'Race, Interests, and Beliefs About Affirmative Action', *American Behavioural Scientist*, 41 (1998), 985–1003.

culture has on people's sense of justice will be offset in the former case by the experience of living together under common social and political institutions. There is general evidence that conceptions of justice are shaped to some degree by the institutional framework that people live under – for instance, beliefs about the size of fair income differentials are correlated to some extent with the existing degree of inequality in the society being studied.<sup>9</sup> The predominant direction of causation is hard to determine – is people's sense of fairness being guided by their perceptions of the status quo, or are existing income differentials the result of people implementing their principles of distributive justice? – but it seems unlikely that existing institutions have *no* effect, particularly when we consider justice-related policy questions. So I shall examine cross-cultural differences in conceptions of justice on the basis that the differences we find between political communities represent the outer limit of divergence; in multicultural societies with common institutions, the differences are likely to be smaller.

The most revealing comparisons are those involving Western liberal societies and non-Western, particularly Asian, societies, between which we are likely to find the sharpest cultural differences.<sup>10</sup> Most of the research in this field uses an individualism/collectivism framework to explain the observed differences over justice.<sup>11</sup> Individualistic cultures are those in which the self is seen as an autonomous agent

<sup>9</sup> I have discussed this evidence in D. Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 4 and in 'Popular Conceptions of Social Justice: A Comparative Approach' in S. Svallfors (ed.), *In the Eye of the Beholder* (Umea: Bank of Sweden, 1995).

<sup>10</sup> There have also been comparative studies between nations with different political backgrounds, especially between capitalist and ex-communist nations, but these tell us more about the impact of political ideology (and experience) on conceptions of social justice than about the impact of culture per se. See, for instance, J.R. Kluegel, D.S. Mason and B. Wegener (eds.), *Social Justice and Political Change: Public Opinion in Capitalist and Post-Communist States* (New York: Aldine de Gruyter, 1995); G. Marshall, A. Swift, D. Routh and C. Burgoyne, 'What Is and What Ought to Be: Popular Beliefs About Distributive Justice in Thirteen Countries', *European Sociological Review*, 15 (1999), 349–67; O. Listhaug and T. Aalberg, 'Comparative Public Opinion on Distributive Justice: A Study of Equality Ideals and Attitudes toward Current Policies', *International Journal of Comparative Sociology*, 40 (1999), 117–40.

<sup>11</sup> This framework was formally introduced in G. Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (London: Sage, 1980), ch. 5, although there is of course a much longer tradition of categorizing societies and their cultures along these lines.

pursuing ends of its own devising, and social groups are regarded as instrumentally valuable – membership is voluntary and contractually based. Morality is centred on individual rights, and there is no assumption that an individual's good and the collective good must coincide. Collectivist cultures, by contrast, are those in which individuals define themselves largely in terms of their membership of groups, which are regarded as having intrinsic value. Morality is centred on obligations and conformity to group norms, and individual and collective good are assumed to coincide. This contrast is broad brush, obviously, but there is evidence that it picks up one important respect in which Western liberal culture differs from most non-Western cultures. Our interest is in how, if at all, this cultural difference affects conceptions of justice.

It appears not to do so if we remain at the most basic level – at principles of justice interpreted in fairly abstract terms, and without specifying the context in which they are going to apply. If we focus on principles of distributive justice, there are three such basic principles.<sup>12</sup> The first is equality – everyone in the relevant universe of distribution should be treated in the same way, or receive the same quantity of resources. The second is need – it is fair to depart from equality by giving more to those with greater needs. The third is merit, understood for the moment in a very broad sense – those who have contributed more, or whose input into a collective project is greater, should receive more back by way of reward (social psychologists, whose work I shall be using here, usually refer to this as the equity principle). Comparative studies of cultural groups in contemporary societies show that all three principles are used by groups everywhere (it is an interesting speculation as to whether the same three principles would be found universally if we extended our search to take in pre-modern societies; in other words whether the three principles are fundamental components of all human social relationships, or whether they reflect more specifically human relationships as they exist in complex modern societies). However, some differences emerge when we examine how people from different cultural backgrounds weigh these principles against each other, and also how the context in which the principle is going to be applied affects their choice.

<sup>12</sup> I have sketched a theory of justice incorporating these three principles, and examined the evidence about the role that each plays in popular conceptions of social justice in *Principles of Social Justice*, chs. 2–4.

One general finding is that members of collectivist cultures give greater weight to equality and need and less weight to merit than members of individualist cultures in circumstances where they have to choose between distributions representing each principle. Many studies ask people about how economic resources should be allocated in work settings – to what extent should the distribution of income or other benefits depart from equality on the grounds either of differential merit or differential need. An important finding is that people's sense of justice in such settings is predominantly meritocratic – they choose to give more resources to more productive workers, in line with the merit principle, and this holds across all cultures. But they also display *some* inclination to favour equality, and this tendency is usually stronger in the case of those whose background culture is collectivist. Thus an experiment in which Australian and Japanese subjects were asked to judge different ways of allocating a project bonus between two workers, one of whom had contributed twice as much to the project as the other, revealed that although both groups judged an allocation according to productivity as most fair, the Japanese subjects rated an equal allocation more highly than the Australian subjects.<sup>13</sup>

However this thesis about equity versus equality must immediately be qualified in one important respect, having to do with the scope across which either principle is applied. People from collectivist cultures draw a sharper distinction between others to whom they are connected in some way – their in-group – and those who are merely strangers, and tend to apply different distributive principles to in-group and out-group. Typical here is an experiment comparing fairness judgements made by Americans and by Hong Kong Chinese.<sup>14</sup> They were presented with a scenario in which two people had worked together on a task, one completing twice as much work as the other. Payment for the task could either be divided equally, or according to productivity (the equity principle), and either the more productive or the less productive worker could make the allocation. The subjects were asked to rate the fairness of each possible allocation. For both groups of subjects, the equity principle was strongly preferred

<sup>13</sup> Y. Kashima, M. Siegal, K. Tanaka and H. Isaka, 'Universalism in Lay Conceptions of Distributive Justice: a Cross-Cultural Examination', *International Journal of Psychology*, 23 (1988), 51–64.

<sup>14</sup> K. Leung and M. Bond, 'The Impact of Cultural Collectivism on Reward Allocation', *Journal of Personality and Social Psychology*, 47 (1984), 793–804.

to equality, though equality was judged fairer when it was used by the more productive worker. An interesting difference emerges, however, when the two workers were characterized either as friends or as strangers. 'Chinese subjects regarded an equal allocation between friends as fairer than between strangers, whereas American subjects regarded an equal allocation between strangers as fairer than between friends. Symmetrically, Chinese subjects regarded an equitable allocation between strangers as fairer than between friends, whereas American subjects regarded an equitable allocation between friends as fairer than between strangers.'<sup>15</sup> A second study using a somewhat similar scenario, though with the subjects themselves having to make the allocation of reward, found that high-performance Chinese were considerably more likely than their American counterparts to choose equal distribution when their partner was a friend, whereas low-performance Chinese were considerably more likely to favour equity (i.e. to take a smaller share themselves and reward their partner more highly).<sup>16</sup>

Belonging to an individualistic culture seems then to have two effects on the way people apply principles of justice, in this case principles of merit and equality. On the one hand, because relationships between people are viewed as primarily instrumental, the principle that has greatest force is the merit principle, which tells us that in situations of joint production people should get out the equivalent of what they put in; though there is some tendency towards favouring equality, it is relatively weak. On the other hand, individualists are not inclined to draw sharp lines between in-groups and out-groups, so their choice of principle is not much affected by the personal relationship in which they stand to the subjects of distribution – they are egalitarian in the weak sense that they wish to apply the same criteria to everyone. Cultural collectivists, in contrast, care a great deal more about maintaining strong and harmonious relationships within whichever group they define themselves as belonging to, and this means that they tend to favour equality as a distributive principle within the group, except in cases where their own contribution is low, when they are inclined to be self-sacrificing. However, they distinguish sharply between justice within the group and justice towards outsiders, and in the latter

<sup>15</sup> Leung and Bond, 'The Impact of Cultural Collectivism', p. 802.

<sup>16</sup> C.H. Hui, H.C. Triandis and C. Yee, 'Cultural Differences in Reward Allocation: Is Collectivism the Explanation?', *British Journal of Social Psychology*, 30 (1991), 145–57.



case some experiments show that they favour the inegalitarian equity principle even more strongly than individualists.<sup>17</sup>

Let us now consider some cross-cultural evidence about need as a principle of justice. The experiments I shall describe again involve subjects having to allocate monetary sums between individuals, where now one person is described as having greater needs than the other. American and Indian respondents were asked to allocate first a pay bonus and then a pay cut between two employees, one of whom was described as having an excellent work performance but no special needs and the other as having an average work performance but being in a poor financial situation with illness in his family.<sup>18</sup> The respondents could divide the bonus and the cut in varying proportions between the two workers. Not surprisingly, they gave greater weight to need when they were being asked about the cut, with Indian respondents strongly favouring the needy worker. In the case of the bonus, an equal split was the first choice of American subjects, followed by a meritocratic distribution in favour of the excellent worker. For the Indians, and especially the Indian women, a need-based distribution was most popular, followed by equality, with merit in third place.

The authors of this study concede that although their findings can plausibly be explained by the more collectivist character of Indian culture (for which there is independent evidence), there is an alternative explanation that cannot be ruled out: although the sum to be allocated was calculated so as to represent the same purchasing power in both countries, much lower living standards in India might account for the Indian respondents' choice of the need principle. This could not apply, however, to a second experiment which compared Australian and Japanese subjects, two nations whose living standards are virtually the same.<sup>19</sup> Here again it was found that the Japanese respondents

<sup>17</sup> These are discussed in K. Leung, 'Negotiation and Reward Allocation Across Cultures' in P. C. Earley and M. Erez (eds.), *New Perspectives on International Industrial/Organizational Psychology* (San Francisco: New Lexington Press, 1997).

<sup>18</sup> V. Murphy-Berman, J. Berman, P. Singh, A. Pachauri and P. Kumar, 'Factors Affecting Allocation to Needy and Meritorious Recipients: a Cross-Cultural Comparison', *Journal of Personality and Social Psychology*, 46 (1984), 1267–72.

<sup>19</sup> M. Siegal and D. Shwalb, 'Economic Justice in Adolescence: An Australian-Japanese Comparison', *Journal of Economic Psychology*, 6 (1985), 313–26.

gave more weight to need (here represented by family size) when allocating income between workers, though not in cases where the worker in question was described as putting little effort into his job (here mirroring a well-supported finding in Western liberal societies, that people support giving more to those in greater need, but not in cases where the recipients could do more to meet their own needs by, for instance, finding work<sup>20</sup>).

There is evidence, then, that people whose cultural background is collectivist give somewhat greater weight to need differences when asked about fair distribution. But the differences are fairly small: most people, whatever their cultural origins, tend to balance merit and need considerations against one another so long as the needs in question are seen as legitimate, as the American subjects who chose to split the bonus between the more deserving and the more needy worker were presumably doing. Even in the case of cross-national comparisons, we find no reason to think that people use wholly different conceptions of justice when asked to resolve some distributive problem. Indeed the basic conceptions are very similar: the main effect of culture is to condition the way that people think about their group memberships, and their relationship to those who they see as belonging to the same social group, and this, as we have seen, may affect the way that principles of justice are used in practice. Culture, in other words, affects the way that a distributive problem is interpreted, but not people's understanding of what the basic principles of justice are, and how, in different contexts, they should be applied. So when, to revert to one of the experiments referred to above, an American and a Chinese person are asked what would be fair distribution of payment as between two people who have been carrying out some task – one having performed considerably more of it than the other – the answers they give are remarkably similar. And this presumably is because they both interpret the problem in a broadly similar way – they see it as a problem of how to reward people for carrying out a job that they are undertaking for instrumental reasons, with the allocator having no personal relationship to either performer, and so forth. Against the background of a market society (which is common to both),<sup>21</sup> these interpretative

<sup>20</sup> See my discussion in *Principles of Social Justice*, p. 76.

<sup>21</sup> Recall that the Chinese participants in the experiments under discussion were living in Hong Kong.

assumptions are familiar ones. Given a more richly described problem, however, we might expect their interpretations to begin to diverge – for instance, as we noted, the Chinese application of principles of justice is more sensitive to the question of whether performer and allocator form part of the same in-group or are strangers to one another.

An objection which might be raised at this point is that although people from different cultures appear to use the same principles of justice, abstractly conceived, in much the same way, this convergence disappears when we look more closely at what is meant by ‘merit’ or ‘need’. John Gray has put this argument with characteristic force:

Conceptions of merit are not shared as a common moral inheritance, neutrally available to the inner city Moslem population of Birmingham and the secularized professional classes of Hampstead, but instead reflect radically different cultural traditions and styles of life. It defies experience to suppose that any consensus on relative merits can be reached in a society so culturally diverse . . . as ours . . . The objectivity of basic needs is equally delusive. Needs can be given no plausible cross-cultural content, but instead are seen to vary across different moral traditions.<sup>22</sup>

Any plausibility that this claim might be thought to have can largely be dispelled by distinguishing between conceptions of merit or need that are used internally to a particular culture and conceptions that are used to decide what is a fair distribution of resources in social settings generally. Religious cultures, for instance, have their own internal definitions of merit, in the sense that they use tradition-specific criteria to judge someone’s spiritual status, and these will be used when deciding who should occupy high office in the priestly hierarchy, say. More generally, cultures are likely to embody standards of perfection that define what it means to be a good X, and these will be used to assign higher or lower status to members of the cultural community. They may also have definitions of need that are internal to the tradition and which govern the allocation of resources within the group, as Michael Walzer has suggested in his discussion of medieval Jewish communities.<sup>23</sup> But

<sup>22</sup> J. Gray, ‘Classical Liberalism, Positional Goods, and the Politicization of Poverty’ in A. Ellis and K. Kumar (eds.), *Dilemmas of Liberal Democracies: Studies in Fred Hirsch’s ‘Social Limits to Growth’* (London: Tavistock, 1983), pp. 181–2.

<sup>23</sup> M. Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford: Martin Robertson, 1983), ch. 3.

this does not entail that the ideas of merit and need that are used to make judgements about social justice generally will vary as between cultural communities. Indeed the evidence reported above suggests the reverse: when people from different cultural backgrounds are asked questions about the distribution of resources within the workplace, for example, they endorse the same criteria – how productive someone has been, how hard he or she has worked, whether he or she has special needs such as dependent children or an ill relative. We may discover minor variations. In East Asian societies such as Japan and Korea, for instance, people tend to regard seniority as a form of merit independently of productivity, and the explanation suggested for this is that in a culture which emphasizes the value of group loyalty, long tenure of a post is seen as demonstrating commitment to the group.<sup>24</sup> However, seniority is also widely used in Western societies as a distributive criterion, particularly to decide who should be promoted and who should be retained when lay-offs are required, and although there are several overlapping justifications for this practice, one of them is that ‘workers feel they ought to be rewarded for having devoted the best years of their life to the firm’.<sup>25</sup> So perhaps the contrast here is not so much over whether seniority can in principle be regarded as a form of merit as over whether it is relevant specifically to income distribution, or only to other distributive decisions (such as whether someone should keep their job).

### III

I suggested at the end of section I that there were two main reasons why multiculturalism might be thought to disrupt the pursuit of social justice, understood in broadly Rawlsian terms. The first was that people belonging to different cultural groups might be unable to agree on principles of social justice to regulate their common social and political institutions. My aim in Section II was to discount that possibility. Taking some fairly extreme cases – conceptions of justice held by members of different national societies – we found that cultural differences

<sup>24</sup> See K Leung and W.G. Stephan, ‘Social Justice from a Cultural Perspective’ in D. Matsumoto (ed.), *The Handbook of Culture and Psychology* (Oxford University Press, 2001), p. 382.

<sup>25</sup> J. Elster, *Local Justice: How Institutions Allocate Scarce Goods and Necessary Burdens* (Cambridge University Press, 1992), p. 75.

appeared not to have a significant impact on basic principles of justice, though culture did matter to some extent when these principles were applied to concrete situations. But there is still a second potential problem, namely that cultural divisions may reduce or destroy people's desire to act on principles of justice towards others whom they regard as belonging to an alien culture. I want to explore this possibility in the present section.

The two problems are perhaps not quite as distinct as they might at first seem, since the second can be recast as a problem about the *scope* of principles of justice. The idea of social justice is the idea of a society all of whose members live under the same institutionally embodied principles, whether these are principles of equality, desert, need, etc. The problem we are now facing is that in multicultural societies some groups may want to exclude others from the scope of these principles – they accept the principle in the abstract, but are willing to apply it only to their own members, or only to members of groups towards whom they feel an affinity. We have already seen evidence that the use of principles of justice is contextually determined – which principle you apply depends upon how you see the relationship between the parties in question – and so we should expect questions of scope to arise whenever the universe of distribution is sub-divided along group lines.

Culture matters here not for any intrinsic reason, but simply because cultural identities are a major source of social differentiation, and one that is often hard to bridge. As many psychological experiments have demonstrated, people can be induced to draw lines between in-group and out-group along almost any dimension, and once the division is in place they become less willing to deal fairly with members of the out-group. This does not matter much when the division is a temporary one, but cultural differences are often not only easily visible but also relatively permanent. Moreover cultural groups are likely to be unequally endowed with resources vis-à-vis one another, so 'separate but equal' solutions, in which each group practises distributive justice among its own members but not towards outsiders, are not going to be acceptable from the perspective of social justice.

Group-based limits to the scope of justice are revealed most dramatically in studies of the limits of toleration. These ask subjects whether they would be prepared to extend basic civil and political rights, such as freedom of speech, the right to hold demonstrations in public places

and the right to teach in public schools, to groups they strongly dislike such as (in American studies) atheists, homosexuals, communists, militarists and racists. What emerges is that a significant proportion of respondents would be willing to withhold such rights, and this is true of both liberals and conservatives – liberals are somewhat more tolerant, on average, but nevertheless about a third would object to disliked groups being allowed to exercise rights such as those listed above.<sup>26</sup> Extending rights to groups you disapprove of might seem the most fundamental way of including them in the scope of justice. However, a complicating factor is that the groups in question may be viewed – rightly or wrongly – as posing a threat to the ongoing practice of justice, for instance as having the potential to undermine democratic institutions if allowed to exercise their civil and political rights, or as having the capacity to intimidate opposing groups. So this evidence, although a salutary reminder that many people are willing to narrow the scope of even the most basic principles of justice in the case of groups they regard with abhorrence, does not bear directly on the issue of multiculturalism *except* in cases where cultural minorities are perceived as posing a threat to democratic values. These cases, fortunately, are comparatively rare, though current attitudes towards asylum seekers show how easy it is for a group identified by cultural characteristics such as ethnicity or religion to be perceived as a political danger as a result of the behaviour of a small number of its members – and how willing members of the cultural majority are to see basic rights withdrawn from the group in such circumstances.

Much more common is the case in which cultural groups regard one another not as threatening but simply as alien and different, and the problem stems from a failure of identification, which leads in turn to diminished motivation to practise justice towards members of the out-groups. Some suggestive evidence here is provided by empirical studies of helping behaviour – studies of the factors that increase or decrease people's willingness to go to the aid of others who are in need of help or rescue.<sup>27</sup> One factor that counts is whether the potential

<sup>26</sup> See, for example, J.L. Sullivan, J. Piereson and G.E. Marcus, *Political Tolerance and American Democracy* (University of Chicago Press, 1982); P.M. Sniderman, P.E. Tetlock, J.M. Glaser, D.P. Green and M. Hout, 'Principled Tolerance and the American Mass Public', *British Journal of Political Science*, 19 (1989), 25–45.

<sup>27</sup> I look at some of this evidence in Chapter 8 in this book.

helper sees the person in need as similar or dissimilar to himself, and ethnic factors count here, as well as political beliefs and other sources of difference.<sup>28</sup> So, for instance, white people are less likely to help Blacks than they are to help other white people, so long as the circumstances allow them to justify their behaviour on grounds other than race.<sup>29</sup> This case is interesting because it shows that at one level people are committed to principles of equal treatment – they have a bad conscience about discriminating on racial grounds – whereas at the level of actual behaviour their identification with fellow Whites displays itself in a greater willingness to help.

But does this phenomenon of group identification have similar effects at the political level, in terms of people's willingness to support policies that extend justice across groups? It is helpful at this point to turn to the literature on *trust* and the effect of cultural heterogeneity on levels of trust towards members of other groups. It is easy to see the connection between trust and social justice: when we live with others on terms of justice, regulating our behaviour by principles that often require us to forgo advantages that we would have been able to grab in a free-for-all, we do so in the expectation that those others will practise similar restraint. For instance, we fill in our tax returns honestly, or we appoint people to jobs and positions strictly on the basis of merit, on the assumption that by and large other people in our society will do the same. If we begin to think that most other people are cheating on their tax returns, or that appointments are being made nepotistically, then we will feel much less compulsion to act under the constraints of justice ourselves. A similar argument applies at the political level: supporting policies that represent a fair compromise between the claims of different groups makes sense only if one assumes that other people also wish to see justice done, and that depends on the level of trust within the political community in question.

It makes sense, therefore, to hypothesise a causal chain that leads from identification through trust to social justice. In the nature of things, decisive evidence to support the hypothesis is harder to come by, but the evidence we have certainly points in the right direction.

<sup>28</sup> See J.A. Piliavin, J.F. Dovidio, S.L. Gaertner and R.D. Clark, *Emergency Intervention* (New York: Academic Press, 1981), pp. 144–59.

<sup>29</sup> See J.F. Dovidio, 'Helping Behavior and Altruism' in L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, vol. 17 (London: Academic Press, 1984).

Take first the link between identification and trust. One test of this is to look at the effect of ethnic diversity on people's willingness to respond positively to the question 'Generally speaking, would you say that most people can be trusted or that you can't be too careful in dealing with people?' A recent study took the ethnic heterogeneity of the area a person lives in as one variable, and found a significant negative correlation between heterogeneity and trust – indeed a correlation that was stronger than that between income inequality and trust: 'people are more likely to trust others in an unequal city than in a racially fragmented one'.<sup>30</sup> However, one should be aware that this overall effect conceals differences between the trust levels of different ethnic groups. Blacks, for example, exhibit very low levels of trust when compared with Whites, but these levels are not significantly affected by the homogeneous or heterogeneous character of the neighbourhood in which they live. It appears that the historical experience of discrimination and inequality is the main factor here, overshadowing the direct effect of interaction with people from other ethnic groups.<sup>31</sup>

Ethnic diversity appears to have a negative effect on generalized trust, but can we extend the hypothesis by finding evidence about its implications for policies of social justice? There are, for instance, several macro-level studies that find an inverse correlation between ethnic diversity and levels of expenditure on redistributive social programmes, some involving comparisons between countries and others comparisons between cities and states within a single country (the USA).<sup>32</sup> In particular, explanations for American 'exceptionalism' in this area – the strikingly low percentage of GDP that the USA devotes to social welfare programmes – frequently highlight the effects of racial divisions, alongside other factors.<sup>33</sup> Soroka, Johnston and Banting have

<sup>30</sup> A. Alesina and E. La Ferrara, 'Who Trusts Others?', *Journal of Public Economics*, 85 (2002), 207–34, p. 222. Alesina and Ferrara use 'race' to refer to Whites, Blacks, Asians, Hispanics and native Americans, where I would use 'ethnicity'; they reserve 'ethnicity' for national origins.

<sup>31</sup> See M.J. Marschall and D. Stolle, 'Race in the City: Neighbourhood Context and the Development of Generalized Trust', *Political Behavior*, 26 (2004), 125–53 for a helpful discussion.

<sup>32</sup> See S.N. Soroka, R. Johnston and K. Banting, 'Ethnicity, Trust and the Welfare State' in P. Van Parijs (ed.), *Cultural Diversity versus Economic Solidarity* (Brussels: De Boeck, 2004), for references to this literature.

<sup>33</sup> See A. Alesina, E. Glaeser and B. Sacerdote, 'Why Doesn't the United States Have a European-Style Welfare State?', in *Brookings Papers on Economic Activity*, 2001 (2), 187–277.



tried to test the implicit linkage between diversity, levels of trust and support for welfare state policies by looking at the attitudes of individuals living in neighbourhoods with different ethnic and linguistic compositions.<sup>34</sup> They find that living in an area with a higher proportion of 'visible' – that is, non-white – minorities does have a negative impact on interpersonal trust, and that levels of trust in turn have a complex but positive relationship to support for welfare programmes. Distinguishing between interpersonal trust and trust in government, they conclude:

Trust is an attitudinal prop for the welfare state. Each form is more important for some parts of the welfare state than for others, and neither is important for all domains. Interpersonal trust is a factor in support for [employment insurance and welfare] and for health care, but not at all for pensions... Trust in government is important for pensions and health care but not for [employment insurance and welfare].<sup>35</sup>

Overall, however, the negative relationship they find between ethnic diversity and support for social programmes is quite weak. As they conclude, 'the impact of ethnic diversity – or diversification – on both interpersonal trust and support for social programmes is conditional on the extent to which majorities and minorities overlap geographically. To the extent that minorities cluster geographically, they do not disturb majorities even as they enhance their own social capital endowments.'<sup>36</sup> This last observation draws our attention to the fact that for generating trust or distrust, what matters is not ethnic or more generally cultural pluralism per se, but the form that intercultural relations take. There are three broad possibilities here: alienation, where cultural groups are intermingled on the ground but there is relatively little contact between their members; segregation, where the various cultural communities live in separate locations and again interact mainly with their own kind; and integration, where group members live together and interact in cross-cutting associations of various sorts.<sup>37</sup> The first situation is most likely to breed mistrust,

<sup>34</sup> Soroka, Johnston and Banting, 'Ethnicity, Trust and the Welfare State'.

<sup>35</sup> Soroka, Johnston and Banting, 'Ethnicity, Trust and the Welfare State', p. 50.

<sup>36</sup> Soroka, Johnston and Banting, 'Ethnicity, Trust and the Welfare State', p. 51.

<sup>37</sup> Soroka et al. measure interpersonal trust by asking respondents how likely it is for a lost wallet to be returned to them intact by, respectively, a neighbour, a police officer, a clerk at a local grocery store and a stranger. This measure

especially of people not from one's own cultural background. The second situation is likely to create high levels of trust towards other members of one's own group, and distrust towards others. The third is the most favourable for fostering generalized trust. From the point of view of support for social justice, the third situation is clearly the most favourable. The comparison between the first two is less clear.<sup>38</sup> If my general argument is correct, alienation will make people less inclined to support policies of social justice and more inclined to act in a narrowly self-interested way. Segregation, on the other hand, is compatible with a strong sense of justice towards one's own group and indifference towards the rest. In a society in which groups were roughly equally endowed with resources, so that the effect of implementing policies of social justice would be to redistribute resources within each group rather than between them, segregation might not matter. But in the opposite case, we can predict that groups will be reluctant to see their resources transferred to members of groups with whom they do not identify and whom they are inclined to distrust.<sup>39</sup> Out-group aversion might become so strong that the second situation is actually worse than the first.

So we see that the impact of cultural diversity on social justice cannot be measured simply by counting up the number of cultural groups in a society, or the percentage of the population that belongs to cultural minorities. What is more important, at micro-level, is how the cultural groups are distributed in physical space, and the extent to which their members interact on a daily basis, in voluntary associations, and in political settings.<sup>40</sup> Cultural differences do create barriers

primarily captures the level of trust people have in other members of their local community. So, one would expect it to go down as local communities became more culturally diverse. But this does not tell us how much trust respondents have in other members of the wider society to which they belong. The effect of increasing local diversity here might be either positive or negative, depending on whether the outcome is alienation or integration.

<sup>38</sup> Compare here Putnam's discussion of the trade-off between 'bridging' and 'bonding' social capital in R. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000), ch. 22.

<sup>39</sup> This prediction is supported by evidence that cities whose populations are more ethnically heterogeneous tend to spend less on collective goods such as education and roads. See A. Alesina, R. Baqir and W. Easterly, 'Public Goods and Ethnic Divisions', *Quarterly Journal of Economics*, 114 (1999), 1243–84.

<sup>40</sup> See Marschall and Stolle, 'Race in the City' for supporting evidence.

to trust – there is no question about that – but given the right pattern of interaction these barriers can be overcome. At the macro-level, what matters is the availability of an inclusive identity that is accessible to members of all cultural groups. The debate here is about whether this needs to be a national identity in the normal sense, or whether a common loyalty to a set of political institutions – some form of constitutional patriotism – may give a sufficiently strong sense of shared identity. I have argued elsewhere for the first of these positions, and do not want to repeat myself here.<sup>41</sup> The problem is that it is fairly easy to find examples of multicultural societies that have successfully pursued policies of social justice, but less easy to determine whether this depends on the fact that most of their members continue to embrace a fairly ‘thick’ form of national identity, or whether institutional loyalties would by themselves provide a sufficiently strong cement. One way to tackle this problem might be to look for connections at the individual level between sense of national identity, generalised trust in one’s fellow citizens and willingness to support socially just policies. Ongoing work by Anthony Heath and others on national identity in Britain may provide evidence of this kind in future.

#### IV

I have tried in this chapter to steer a middle course between those who think that multiculturalism drives the final nail into the coffin of social justice (because there is no reason to think that diverse cultural groups will ever be able to reach an agreement on what social justice requires) and those who think that multiculturalism simply requires us to enlarge our principles of justice so that they can embrace new demands made by cultural minorities. My argument at the beginning was that a theory of justice needs a sociology to go with it – an account of how social relations must be constituted so as to make the theory feasible – and that multiculturalism must make us rethink that sociology. The main problem, I have argued, is not that cultural differences translate into disagreement about justice at the most basic level; it is rather that culture shapes the contexts in which principles of justice are applied,

<sup>41</sup> D. Miller, *On Nationality* (Oxford: Clarendon Press, 1995), chs. 4–5; D. Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), ch. 4.

and moreover that cultural division may affect people's willingness to allow these principles to be applied impartially to themselves and others. It is easy, but shallow, to say that the evidence I have presented simply reveals the limitations of most people's existing sense of justice. If social justice is to be what Rawls in his last book called a 'realistic utopia', then it must take such evidence fully into account.<sup>42</sup> A more serious issue is that the evidence we have available often falls far short of what one would ideally like to have to test theoretical claims about the impact of culture on justice. So this chapter concludes on a tentative note. We need to find out more about how different configurations of cultural groups affect trust and attitudes to justice, and we need more evidence about what part, if any, national identity plays in bridging cultural divisions. Calling for more interdisciplinary research in this area is a bit of a cliché, but it does seem to be the way forward.

<sup>42</sup> Rawls, *Law of Peoples*, Part I, section 1. Rawls applies the idea to both domestic and international contexts.

# 4

## *Liberalism, equal opportunities and cultural commitments*

The principle of equality of opportunity stands at the very heart of contemporary liberalism. A liberal society must, among other things, be one that gives each of its members an equal chance to get what they want out of life. But that loosely formulated claim conceals a host of ambiguities and difficulties that come bubbling to the surface when we ask, as Brian Barry does in *Culture and Equality*, what equality of opportunity should mean in a multicultural society.<sup>1</sup> I shall begin by setting cultural questions temporarily aside in an attempt to pin down the meaning, or meanings, of the principle itself. Then I shall ask how cultural commitments can be brought into the picture.<sup>2</sup>

### I

Equality of opportunity is often used in political debate in a relatively narrow sense to refer to access to positions of advantage. Given

This chapter has been much improved by the very helpful comments provided by Peter Jones, Paul Kelly and Sue Mendus on an earlier draft, for which I am very grateful.

<sup>1</sup> B. Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Polity Press, 2001). This chapter was written as a response to Barry's important book.

<sup>2</sup> By a cultural commitment, I mean a requirement on somebody to be or do (or not be or not do) something that is entailed by his or her participation in a particular culture. I assume, in other words, that if you want to be a part of cultural group G, then this typically entails having to act in certain ways and refraining from acting in other ways. By belonging to or joining G, you take on these commitments. I recognize that this way of thinking about cultures is artificial to the extent that in many cases the idea of 'cultural membership' is a very blurred one – there is no sharp division between insiders and outsiders, but instead it is possible to position yourself on the fringe of a culture, so to speak. In this chapter I make the simplifying assumption that we can straightforwardly identify who participates in a culture and who doesn't, and what commitments follow from such participation. I say a little more about the meaning of 'culture' itself later.

that there are scarce goods such as well-paid careers and places at top universities – scarce in the sense that more people want to have these goods than there are goods to go round – equality of opportunity obtains when people can compete for these goods on equal terms. That implies that access to the goods in question depends only on relevant features of individuals such as talent and effort, and not on circumstantial features such as coming from a wealthy family or attending a particular type of school. There is of course continuing debate about where this line should be drawn – on what should count as a relevant feature determining access and what should count as an irrelevant circumstance. But the underlying image is of a fair race in which all the runners compete on equal terms, so that at the end the prizes go to those who are simply the fastest.

Liberals also believe in equality of opportunity in a wider sense, however. Liberal societies are made up of individual people with a myriad of different aims and ambitions in life, and as far as possible they should afford each person an equal chance to realize those ambitions. Thus not only the question of how goods are to be distributed but also the question which goods are created or produced in the first place is relevant here. One of the chief liberal defences of the market economy consists in the observation that markets respond in the right kind of way to individual aims: if I want to eat cherries and you want to eat pears, a well-functioning market should bring it about that each of us has the opportunity in question. A parallel argument can be made when goods and services are supplied by the state. Suppose that for one reason or another, sports facilities are publicly provided. Equality of opportunity entails that just as footballers get access to football pitches, so should squash players get access to courts and skaters to ice rinks. There are of course problems of relative cost here, and I shall return to these shortly. But abstracting from these complications for the moment, a government that wanted to give sports fans equality of opportunity would look to see how many intended to participate in each sport and then provide facilities in proportion to demand. It would be unfair to favour footballers, say, on the grounds that anyone wanting to play sport could and should take up football. Liberal equality of opportunity means responding in an even-handed way to the aims and ambitions that people actually have.

A further requirement of equality of opportunity in this wider sense is that as far as possible the *costs* people have to bear in order to take

advantage of an opportunity should be equalized. This requirement is difficult to comply with fully, but on the other hand few would judge that equality of opportunity had been achieved if there were wilful disregard of relative costs. For instance, if a government has to decide where to site the national football stadium, one important consideration is that it should be accessible at a reasonable cost in time and money from different parts of the country. Ideally it should be centrally located so that these costs are equalized as far as possible.<sup>3</sup> Equally, if the national theatre company puts on plays exclusively in the capital and never tours the provinces, this would be a violation of equal opportunity to enjoy the arts, given the feasibility and cost of travelling up to see a show. The fact that arguments along these lines are frequently voiced suggests that the implicit notion of equal opportunities is cost-sensitive in the way I have indicated.

For liberal equality of opportunity to obtain, therefore, a society must provide a wide range of opportunities, in line with its members' aims and ambitions, it must try to ensure that the costs involved in taking advantage of the various opportunities are equalized, and in cases of scarcity it must ensure that the competition for advantages is conducted on fair terms. Since these are demanding conditions, I should also say something about what equality of opportunity does *not* require.

First, it should be obvious enough that opportunities to trespass on other people's legitimate aims and ambitions are not going to count as part of the range. If I am to have the opportunity to practise my religion, you cannot have the opportunity to prevent me from practising a religion of which you disapprove. Where the relevant lines are to be drawn is a controversial question, but it should be clear that where aims and ambitions come into direct conflict they cannot all be satisfied, and an independent criterion has to be brought in to decide which ones are going to count as legitimate. More generally, a liberal society will wish to restrict opportunities whose exercise would be damaging to the interests of its members, whether directly or indirectly, as for instance would be the case with activities that damage the natural environment. So equality of opportunity does not mean that everyone should have

<sup>3</sup> One of the many failings of Britain's ill-fated Millennium Dome was that it was built in an area to the east of London which made travelling to it from most parts of the country both difficult and prohibitively expensive.

an equal chance to realize their aims no matter what their aims happen to be. It applies only to goals and ambitions that are not inherently harmful to others – that impinge on others only because realizing them requires resources that are typically in short supply.

Second, a person's opportunities have to be judged at some suitably chosen starting point, since each decision that is made to avail oneself of an opportunity, or not to do so, is likely to affect the opportunity set at a later point. For example, a person who decides to leave school at sixteen cannot later complain that she was denied the opportunity to go to university, if by staying on at school she could have achieved that goal. By the same token, a person whose budget allows him to purchase either a Renault or a Ford, and who chooses the Renault, has then closed off the opportunity to buy a Ford for the foreseeable future, but this is not a restriction of opportunity in the sense that counts (what *does* count, however, is the fact that this person has a smaller opportunity set overall than someone who can buy both a Renault and a Ford simultaneously<sup>4</sup>). The liberal ideal, then, is that *initial* opportunity sets should be equal, not necessarily opportunity sets at some later time when choices have already been made.

Third, the principle of equality of opportunity governs the way social institutions broadly conceived open or close opportunities for different people. But my opportunities also depend on what other people can do and want to do. In competitive situations, my opportunities will be reduced if there are more people with both the ability and the desire to fill the place or take the job that I am aiming for. In other cases, the costs of taking up an opportunity will depend on the preferences and the behaviour of other people. In the extreme case, an opportunity may disappear altogether, if not enough people are willing to collaborate to keep it open. My opportunity to play football closes if twenty-one others cannot be found to make up a game. But this does not fall within the ambit of the principle as I understand it. (If, on the other hand, the reason for their unwillingness to play is the high cost of hiring a pitch, and this is institutionally determined, then equal opportunity issues come back into the picture.)

<sup>4</sup> Whether this inequality in choice sets violates the principle depends in turn on how it has arisen: if the person who can buy both cars earned her higher income, then there is no violation. This highlights the fact that liberal equality of opportunity is not equivalent to equality of outcome.



It follows that the broad characterization of equality of opportunity with which I began – opportunities are equal when each person has the same chance to get what they want out of life – needs refinement. On the one hand, it is not enough that everyone should have the same opportunity set regardless of the content of that set: that condition would be satisfied in a society that only permitted the playing of football, so long as everyone had a chance to play. Opportunity sets have to be sensitive to the aims and ambitions that people actually have. On the other hand, it is not necessary that everyone should be equally successful in achieving their aims. A person's degree of success can legitimately depend on their own abilities – think of someone whose ambition is to run 100 m in ten seconds, in a society that is generous in providing athletics tracks – and on the cost of realizing their aims, where the cost is a function of (say) natural scarcity – think of someone whose ambition is to amass a large collection of Impressionist paintings. This second point underlines the difference between equality of opportunity and equality of outcome. Where the line between them should be drawn, however, is a disputed question. We find people disagreeing about which factors can and cannot legitimately affect someone's chances of realizing their aims. This disagreement will emerge later in the chapter, when we examine whether cultural commitments can be seen as impediments to equality of opportunity.

Let me conclude these opening remarks with two more general observations about liberalism and equality of opportunity as laid out earlier. Liberalism is often said to be grounded in the idea of equal respect for persons. This idea is hard to pin down, but insofar as we can give it a concrete sense, it implies more than equality of opportunity. In particular, it requires that people should not be forced to act in ways that contravene their conscientiously held beliefs. So if, for instance, someone has religious beliefs that prohibit her from eating certain food, or taking part in military combat, then there is a very strong presumption that she should not be made to do these things. The relevance of this to multiculturalism should be obvious: in a multicultural society, respecting people equally includes respecting their cultural commitments,<sup>5</sup> and

<sup>5</sup> This is not all that equal respect includes. It also includes respecting people as potentially autonomous agents capable of changing their cultural commitments in the light of experience and reflection, so it may also require that people be given access to cultures other than their own to allow this capacity for autonomy to develop. Nonetheless, where people identify strongly with one particular

this grounds not only the positive claim that they should have an equal chance to live the kind of life that their culture prescribes, but also the negative claim that they should not be made subject to legal or other requirements that would force them to violate those commitments.

So in one respect liberalism requires more than equality of opportunity, important though that principle is. In another respect, however, it may require something less. Liberals need to be concerned about the conditions under which a liberal society can remain stable over time, in the sense that its members remain committed to preserving it, and committed to settling their differences in ways that are consistent with liberalism itself (not trampling on the rights or interests of minority groups, for instance). To achieve this, citizens are likely to need to share not only political principles but also some wider cultural values: I have argued at some length elsewhere that a shared sense of nationality is an essential precondition for democratic procedures to work effectively and for citizens to support the institutions and policies that deliver social justice.<sup>6</sup> There is some dispute about how 'thick' these shared cultural values need to be.<sup>7</sup> All I want to say here is that liberal societies may justifiably favour those cultural values that in any given place play this supporting role. For instance, it is not wrong to favour the national language or languages when designing education systems or other public institutions, even if this limits the opportunities of those whose native tongues are different. Liberals should seek to accommodate the minority cultures in cases like this, but they need not aim for strict equality.

In the remainder of the chapter I shall set these qualifications aside in order to focus on equality of opportunity itself. In a society where people have different cultural commitments, what is a liberal who

culture, inherited or acquired, liberals should respect the commitments that this entails.

<sup>6</sup> D. Miller, *On Nationality* (Oxford: Clarendon Press, 1995); D. Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), ch. 4.

<sup>7</sup> For the claim that nothing more is needed than allegiance to the constitutional principles that underpin the state – so-called constitutional patriotism – see J. Habermas, 'Citizenship and National Identity' in J. Habermas, *Between Facts and Norms* (Cambridge: Polity Press, 1996). For a sceptical appraisal of this position, and an argument that liberal democracies need stronger ties to hold them together, see M. Canovan, 'Patriotism is Not Enough', *British Journal of Political Science*, 30 (2000), 413–32.

believes in equality of opportunity committed to doing? How far must law and public policy bend to accommodate those differences?

## II

To get these questions into clearer focus, imagine a culturally homogeneous society that has achieved equality of opportunity – it has found an institutional structure that gives everyone an equal chance to realize their aims and ambitions, in the sense just defined – and consider the effect of that society's becoming multicultural, whether by immigration or in some other way. Why might equality of opportunity no longer obtain? To answer that, something must be said about what a culture is – a notoriously hard concept to define. Let us say provisionally that a culture exists when a group of people share a distinctive conception about how life ought to be lived, and embody that conception in shared practices that they engage in. The conception of how life ought to be lived can be more or less comprehensive. At one extreme we find certain religious cultures whose precepts tell their adherents how to behave pretty much throughout their waking lives; at the other extreme we have, for instance, musical cultures that are embodied in practices that their members engage in only during leisure time. However, a culture as I understand it must be more than a shared taste or preference. The fact that lots of people enjoy watching football is not by itself enough to make us speak about football culture. That exists only when fans begin to develop rituals, symbols, expectations about how other fans ought to behave and so forth.

Drawing that distinction is important because it reveals that a culture makes two kinds of impact on its adherents. On the one hand, it endows certain activities and experiences with value – it makes religious observance or watching football a valuable activity in a way that they would not be for non-adherents – but on the other hand it imposes certain constraints. These constraints can be either direct or indirect. They are direct if the culture contains norms that prohibit members from engaging in certain activities. Religious cultures provide a multitude of examples, but I believe that any culture, simply by virtue of the fact that it values certain activities, must also contain implicit norms debarring members from behaving in ways that would undermine those activities (to take a trivial example, football culture involves identifying with a team and that of course prohibits you from

cheering for the opposition). Indirect constraints are also important, however. Because you must do certain things if you are to engage in the culture at all, you are prevented from doing other things that would occupy the same period of time or make competing demands on your pocket. A religious believer may find that proper observance takes up a significant part of the day. Of course any taste or preference has opportunity costs, in the sense that in the course of satisfying it you are using resources that could otherwise be used to satisfy some other preference. But in the case of cultures, you may not be free to decide the level of your involvement because the relevant norms of behaviour are *shared* norms. Religious services usually have a beginning and an end, and believers are usually expected to stay for the duration. And even football culture has its routines, which may involve more than just attending the games. To be really part of it, you may need to be in the pub beforehand and afterwards.

Armed with that understanding of culture, let us return to the question of why introducing cultural diversity into a previously homogeneous society might have an impact on equality of opportunity. Following the argument of the last paragraph, it could do so in two ways. First, because adherents of the incoming culture attach value to different pursuits and practices, existing patterns of state support may turn out to be unfairly biased against them. Suppose the new culture is one in which baseball has a high profile, whereas cricket and tennis receive state subsidies under present policy. Or, to take what may turn out to be a more serious case, suppose that churches and synagogues enjoy favourable treatment under the existing tax regime, but mosques do not. Then it seems *prima facie* that if the incoming culture is Islamic, its members will not enjoy equal opportunities with Christians and Jews. Whether this is indeed the case will require further investigation, but it appears at least that for equality of opportunity to be restored in the new situation, public policy must change so that the distinctive cultural preferences of the incoming group are treated on a par with the equivalent preferences of the established community.

Second, members of the incoming group may face constraints that do not apply to other members of the society in question. This is of course not a problem where the constraints are simply inherent in the culture in question. It is no failure of equality of opportunity that Jews cannot eat pork while others can. The problem arises when cultural norms intersect with the legal or other norms of the wider society

in such a way that the group faces constraints over and above those inherent in the culture itself. Suppose that the society prohibits kosher butchery: then the constraint faced by orthodox Jews on the eating of non-kosher meat turns into a considerably more onerous constraint on the eating of meat in any form. Or suppose that the culture imposes a dress code that prevents members from being employed in a significant range of jobs. These are examples of how the impact of direct constraints can be magnified by existing social norms. The effect of indirect constraints can also be magnified: I noted above how a culture that involves extensive religious observance will close off other opportunities to its adherents, but in a multicultural society this may mean, for example, that they have no chance of regular employment in mainstream jobs. It seems again that equality of opportunity becomes more demanding under conditions of cultural diversity.

This appearance may be challenged, however. Indeed Barry's book can be seen as a sustained challenge to the line of argument sketched in the foregoing paragraphs about equal opportunities and cultural diversity. For it is one of Barry's central contentions that opportunities have to be assessed independently of the dispositions of cultural groups to take advantage of them. According to Barry, there is a critical distinction 'between limits on the range of opportunities open to people and limits on the choices that they make from within a certain range of opportunities'.<sup>8</sup> Attacking Parekh's claim that opportunity is 'subject-dependent' in the sense that 'a facility, a resource, or a course of action is just a mute and passive possibility and not an *opportunity* for an individual if she lacks the capacity, the cultural disposition, or the necessary knowledge and resources to take advantage of it',<sup>9</sup> Barry argues that an opportunity is 'an objective state of affairs'. For example, whether a ship's crew has the opportunity to leave the harbour depends entirely on the winds and the tide, and not at all on the cultural dispositions or other such subjective features of the crew.<sup>10</sup>

Which of these starkly opposed understandings of opportunity is correct? Neither will do as it stands. To begin with Barry, his position relies on an artificially simple example. In the case of a sailing ship,

<sup>8</sup> Barry, *Culture and Equality*, p. 37.

<sup>9</sup> B. Parekh, *Rethinking Multiculturalism* (Cambridge, MA: Harvard University Press, 2000), p. 241.

<sup>10</sup> Barry, *Culture and Equality*, p. 37.

especially, it may indeed be a simple and objective matter whether it is feasible for the ship to leave harbour at a given time, or not. The opportunity to leave is one thing, the sailors' choice whether or not to take advantage of it another. But now complicate the story just a little by supposing that at low tide there are reefs just outside the harbour wall that would ground and damage the ship, though a skilful crew will succeed in avoiding them three times in four. Does the opportunity to leave at low tide still exist? Clearly it depends on whether a one-in-four chance of serious damage to the vessel counts as a cost that is great enough that no reasonable crew would attempt to leave under these circumstances, and in order to settle that we need to appeal to 'subjective' features of human beings generally, including their degree of risk aversion. The question is not whether a particular crew decides to try to leave the harbour at low tide; that crew may prove either to be foolhardy or to be unduly fearful. The question is whether, given what we know in general about human interests and human psychology, the prospective cost of leaving is sufficient to deter a reasonable person.

The opportunity to do X, in other words, is not just the physical possibility of doing X. At the very least, it is the possibility of doing X without incurring excessive costs, or the risk of such costs. Suppose that students have to pay the full costs of their higher education – there is no system of scholarships, grants, or long-term loans – but that parents of modest means could pay these costs by remortgaging their homes (something that the parents in question turn out to be extremely reluctant to do). Should we say that the opportunity to enter higher education still exists for the students in question, on the grounds that there is a possible course of action that would allow them to do this? Presumably we should not: the financial obstacle they face is sufficiently high that the opportunity is blocked. Saying this presupposes a judgement, namely that the costs and risks involved in extending a house mortgage by an amount large enough to fund the costs of a university education are such as to deter a reasonable person on a modest income. The judgement would be supported by observing how the majority of people behave when faced with the choice; it would not be undermined by the fact that a few people turn out to be willing to take the risk.

Opportunities are not, then, 'objective' in the strong physicalist sense suggested by Barry's original ship example. Are they then 'subject-dependent' in the way that Parekh indicates? Not entirely. Barry is

clearly right when he argues that we must draw a distinction between having an opportunity and having the cultural disposition, or more generally the preferences, that would lead one to take advantage of it. Jews have the opportunity to eat pork: what prevents them is simply their belief that it would be wrong to do so. I have the opportunity to go greyhound racing: my choice not to do so reflects a conventional middle-class cultural background in which greyhound racing does not feature. But these are not the kind of examples that Parekh had in mind when he made his somewhat incautious statement about opportunity. As the next sentence but one indicates, he is thinking of cases like that of a Sikh who wishes to send his son to a school that bans the wearing of turbans. In such a case, should we say that the boy has the opportunity to go to the school, or not?

The crucial feature of this case, distinguishing it from the two cited above, is that Sikh culture does not in itself prevent or discourage the boy from attending the school in question. What Sikh culture does, let us assume for the moment, is to require the wearing of turbans, and this, taken in conjunction with the school's no-turban policy, is what creates the obstacle. There is some dispute about whether turban-wearing is strictly a religious or merely a customary requirement for Sikhs, but let's suppose that either way not wearing the turban would mean that the boy in question was excluded from the practices of the community in which he had been raised, that he was ostracized by neighbours and so forth. These costs are sufficiently great that, by parity of reasoning with the higher education example given above, the opportunity to attend the school is effectively blocked. Parekh gives us the right answer, despite his misleading reference to 'cultural dispositions'. What removes the opportunity to attend the school in question is not that the boy lacks the 'cultural disposition' to attend, but that he has cultural commitments which are inconsistent with the access requirements imposed by the school.

### III

This answer, however, can be challenged from several different directions, and exploring these challenges gets us to the heart of the debate about equal opportunities and cultural commitments. One challenge takes the following form. We agree that the idea of opportunity, and more broadly equality of opportunity, must be cost-sensitive. If taking

a course of action imposes heavy costs on an agent, it is not in the relevant sense an opportunity open to her, and moreover equality of opportunity, as we saw earlier, requires that the costs of the course of action in question should as far as possible be equalized across agents. But these costs must be 'real' costs. We can agree that withdrawing financial support from students in higher education destroys equal opportunities, because finding £30,000, say – supposing this is what it costs to support a student with fees and maintenance through three years of university – is for many people a prohibitive cost of an undisputed kind. However when we switch to cases that arise specifically as a result of cultural diversity, the costs involved are themselves dependent on cultural commitments that are not of course universally shared. Going to school turbanless is a major cost for the Sikh boy only because his cultural community holds the belief that turbans must be worn.

But is there a genuine difference here? If we say that, for the reasons suggested earlier, going to school without a turban is not a real option for the boy, we are appealing to the fact that, if you grow up in a cultural community and identify with it, then violating one of the community's norms in a way that will effectively exclude you from further participation in the life of that community imposes unreasonable costs. This is a judgement that any of us can make whatever our particular feelings about the community in question. We might believe that it should change its practices: I shall return to that question in a moment. But given the facts as they now stand, and given some elementary knowledge of human psychology and behaviour, the costs of breaking the norm are as 'real' as the economic costs were in the higher education example. In that case I said that our judgement about opportunity could be backed up by looking empirically at the way people in general behave, and this applies here too. If most Sikhs are unwilling to attend schools that prohibit turbans, and are prepared to send their sons to poorer schools rather than abandon the norm, that is good evidence about the magnitude of the costs. The fact that one or two may reach the opposite decision is not decisive here any more than it was in the education case.

A second, and different, challenge accepts the claim about costs, and concedes that the Sikh boy does not have the opportunity, here and now, to attend his preferred school. But it is then claimed that this involves no departure from equality of opportunity, because it is



the result of a collective choice, on the part of the Sikh community, to insist on turban-wearing as one of their cultural norms. Recall that equality of opportunity does not require that everyone should have the same set of options to choose from no matter what prior choices they have made. The challenge appeals to that principle and characterizes cultural commitments as collective choices for which members of the relevant communities can properly be held responsible. Just as you may have the opportunity to choose a Renault *or* a Ford, but not both, here you may have the opportunity to adopt and practise a particular dress code *or* have a free choice of schools, but not both. Putting the challenge another way, a restricted choice of schools for their offspring is simply part of the price that Sikhs may reasonably be expected to pay for insisting on the wearing of a particular style of headgear.

One tempting response to this challenge is to say that, whereas individuals can properly be held responsible for their individual preferences, it makes no sense to do this in the case of communities and their cultural commitments. Notions of responsibility simply do not apply here: cultural commitments are givens, and the issue is how the wider society should adapt to take them into account. Such a response would, I think, be misguided. To begin with, there is nothing in general wrong with the idea of collective responsibility. We *do* hold collective groups responsible, both for what they do to others and for what they do to themselves.<sup>11</sup> We do this on the assumption that groups are made up of people who are able collectively to reflect on, discuss and assess their existing values and commitments, so that if they decide to leave them unchanged, it is not wrong in principle that they should bear the costs of doing so. And indeed we know that the history of cultures is one of continuous adaptation whereby customs and practices are modified or even abandoned if they no longer serve the group well in the circumstances it faces. Barry is right to point out that we should not treat religious and other cultural commitments as though they were on a par with physical disabilities.<sup>12</sup> If someone cannot attend a school because its lack of wheelchair ramps makes it impossible for her to enter the building, there is absolutely nothing she or anyone else outside the school can do about it. The Sikh boy is not in that position: his

<sup>11</sup> I have discussed this question at some length in D. Miller, 'Holding Nations Responsible', *Ethics*, 114 (2003–4), 240–68, and in D. Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007), ch. 5.

<sup>12</sup> Barry, *Culture and Equality*, pp. 36–7.

community *could* opt to abandon the wearing of the turban. In that light, it is not wrong to say that Sikhs as a community are collectively responsible for the restricted opportunities that their offspring face. To say otherwise would be to portray them as in the grip of some collective compulsion, unable to stand back and reflect on the cultural norms that they currently embrace.

There is, however, another way to respond to the challenge. This takes us back to my opening remarks about equality of opportunity, where I said that the liberal ideal entailed that the state should respond in an even-handed way to the various aims and ambitions that people have. The example I used there was the provision of sporting facilities, in a society where people had different preferred sports. We know that, in general, people choose which sports to take up and practise. Someone who enjoys cricket could almost certainly get considerable pleasure from playing baseball, if for some reason he was transported to a society in which only baseball is available. So what would be wrong with the state deciding that in future it would only support two or three designated sports (perhaps catering for the main branches of sporting activity, and with transitional arrangements so that those who had already committed themselves to a particular sport would be allowed to play out their careers)? Children would be encouraged in school to choose one or more of the designated sports and the message would be 'it's your responsibility, but if you want access to decent facilities you'd better opt for soccer, baseball or sailing'.

The answer, of course, is that liberals think people should be free to take up the sport of their choice, bearing in mind the cost of doing so and the number of others likely to share their preference, and that fairness requires that the state should take these choices as given when it comes to allocating the public sports budget. There might be legitimate overriding reasons for wanting to influence these choices – imagine that a particular sport took a heavy toll on the natural environment – but in the absence of such reasons sporting preferences have simply to be taken for granted. The restrictive policy outlined above could not be defended by saying that everyone had an equal chance to take up one of the preferred sports, so if they chose not to do so that was their responsibility. But this reasoning must surely apply, at least *prima facie*, to cultural commitments of the kind we have been discussing. If a society contains a substantial Sikh minority, then insofar as law and public policy have an unequal impact on the opportunities available to that

minority, fairness requires that these be changed in the direction of equality.<sup>13</sup> Indeed, one might well think that the reasoning applies still more strongly in these cases: it is surely more difficult to change one's cultural commitments than it is to change one's sporting preferences. So although I have dismissed the claim that cultural commitments are fixed and argued that it is reasonable to hold groups responsible for the cultural values that they hold, it is also reasonable to assume that rapid revision of these commitments would be costly and might even cause the group to disintegrate. This gives us good reason to think that an equal opportunity state should treat cultural commitments as given when deciding about legislation and the allocation of public resources.

## IV

There is, however, a further difference between the sports case and the cultural case that might lead us to modify that conclusion. Generally speaking, increasing the opportunity to play one particular sport has no wider effects except insofar as it involves withdrawing resources from other activities. If we start with a homogenous cricket-playing society into which baseball is then introduced, nobody loses if baseball is granted public support, except cricketers who beforehand had been enjoying an unfairly large share of public resources.<sup>14</sup> But the culture-related issues that have provoked the present debate characteristically involve the larger society paying a cost of some kind in order to create equal opportunities for cultural minorities. For instance, to return to the young Sikh denied access to his preferred school, we must assume that the banning of turbans was part and parcel of a school uniform policy that was seen as generally beneficial to all pupils. Without that assumption, the ban would present itself merely as an arbitrary piece

<sup>13</sup> As I noted in the first section of the chapter, the unequal impact of a law does not violate fairness in cases where the law is designed to prevent harm to others or to the public good. It is not an objection to the law against arson that it has an unequal impact on the opportunities of would-be arsonists. But plainly the action of wearing a turban is not harmful in that way. I consider in the next section whether it might still be regarded as costly because it violates a generally beneficial rule.

<sup>14</sup> Thus if the sports budget allows £100 per person to be spent on the provision and upkeep of sports grounds, etc., and 20 per cent of the population convert from cricket to baseball, then if a cricket-only policy is pursued, the remaining cricketers will be getting a subsidy of £125 per head for their sport.

of cultural discrimination. In other cases the cost may be economic. If members of a cultural group cannot – for religious or other reasons – comply with the requirements of the conventional working week so that special arrangements have to be made to give them equal opportunities in employment, this may pose a cost on employers who have to keep plant running for longer than they otherwise would or to hire additional staff in order to meet the expectations of their customers.<sup>15</sup> These costs must ultimately fall on the political community as a whole.

Because respecting existing cultural commitments may impose costs on the wider society of the kind just referred to, the question arises whether cultural groups should not after all be held responsible for the commitments that they hold and for meeting the costs that arise from acting on these commitments. In particular, although cultural belonging is often a matter of personal identity, and therefore not something that individuals can reasonably be expected to give up, the precise requirements that a given culture imposes on its members may be more flexible. Debate within the culture may lead to these requirements being modified. So, for instance, in countries such as Norway, Sweden and Switzerland where the ritual slaughter of animals has been banned, members of the Jewish and Muslim communities have relaxed their requirements for meat to be kosher or halal, so that animals that have been anaesthetized prior to killing can qualify.<sup>16</sup> So why, more generally, should cultural communities not be presented with a choice: either bear the costs that follow from compliance with existing cultural norms, or revise those norms so that the costs are diminished or eliminated altogether?

<sup>15</sup> Of course, it may in some circumstances be advantageous to have employees who prefer to work unconventional hours – who prefer to work on Sundays rather than on Fridays, say, and who therefore don't need to be paid special bonuses to do this. So cultural diversity may also *reduce* economic costs. Nonetheless, the possibility canvassed above is more than merely hypothetical, as the much-discussed case of Mr Ahmad, the Muslim schoolteacher who insisted on attending his mosque on Friday afternoons, reveals. (For reflection on this case, see especially P. Jones, 'Bearing the Consequences of Belief', *Journal of Political Philosophy*, 2 (1994), 24–43.)

<sup>16</sup> This is Barry's claim, following Peter Singer (*Culture and Equality*, p. 35). I have not been able to check the position in Norway or Switzerland, but in Sweden the accommodation appears to have been made by Muslims, but not by Jews, who now rely on imported meat killed in the traditional way. I am grateful to Hans Roth for information on this point.

Barry, characteristically, poses this question in its most provocative form when he characterizes 'costs that arise from moral convictions or religious beliefs' as 'expensive tastes', the implication being that as a matter of justice the costs should be borne by those who hold the beliefs in question.<sup>17</sup> But the idea of expensive tastes only comes into play in contexts where we already know on independent grounds what a fair distribution of freedoms, rights and resources looks like. Thus, if the issue is the fair distribution of material resources, and we have an independent reason to think that market pricing is a fair way of determining the relative value of different commodities, then we can say that someone who has a preference for highly priced goods has expensive tastes and should either be prepared to accept a lower level of preference satisfaction, or else work on acquiring cheaper tastes. But in the present context it is precisely the proper distribution of freedom that is at issue. If we already assume that the ritual slaughter of animals is not something that people should be free to carry out, then we can if we choose characterize the Jewish and Muslim belief in eating kosher and halal food as an expensive taste. But if one took the other view and claimed that ritual slaughter, properly carried out, is an acceptable way of killing animals and therefore a practice that people should be free to engage in, then the belief of animal welfarists that such killing is wrong would come to be seen as an expensive taste. The proper conclusion to draw in that case would be that the animal welfarists should pay Jews and Muslims to abandon their dietary practices, either by changing the kosher/halal rules as their Scandinavian counterparts have done, or by becoming vegetarian.

A better way to approach the question, however, is to abandon the expensive tastes approach altogether and to recognize that what is at stake is how the costs of cultural diversity should be distributed between the various communities that make up the larger society. Recall that what is at stake here is not the costs that follow directly from cultural commitments – nobody is suggesting that Jews who want to eat pork or Muslims who find attending evening prayer onerous should be compensated for their frustration – but the costs that arise when groups with conflicting commitments have to live together under the same legal and policy regime. Once the question is posed in that form, it seems evident that what we should be aiming for is a fair

<sup>17</sup> Barry, *Culture and Equality*, p. 40.

distribution of the costs, so that each group is asked either to change its practice somewhat, or else to bear some part of the cost. To put some flesh on these abstract bones, consider a typical case in which a cultural minority finds an established rule – say a dress requirement – difficult to comply with. We can imagine a dialogue between representatives of the minority and representatives of the social majority, which might proceed roughly as follows.

The first question would be whether the rule was needed at all, or whether it was merely a convention that might have suited people at some earlier time but no longer had any particular rationale. In the latter case, there is no cost to the majority in abandoning the rule and the solution is evident. Next, supposing the rule turned out to be a useful one, could it be modified so that the problems facing the cultural minority were eased – for instance, to take a simple case, could trousers be worn by women in place of a skirt? Once again, an affirmative answer provides an easy solution. But now suppose that the rule cannot be changed or cannot be changed sufficiently to resolve the problem. The next question might be whether the cultural minority was insisting on too rigid an application of their cultural norms. Here, issues such as whether a dress code was mandated on religious grounds, or whether it was now largely a matter of cultural tradition, could properly be raised. Representatives of the minority might reasonably be asked to produce evidence about the status of the code – it would not be enough for them to thump the table and say that they could not appear in public without the clothing or headgear at issue. In other words, the majority can reasonably try to establish just how costly it would be for the minority to relax its cultural norms somewhat.

Suppose, however, that the cultural commitment that creates the problem turns out to be deeply embedded and not susceptible to revision, in the short term at least. Then the question straightforwardly becomes one of the distribution of costs. How much will the majority lose if the rule is abandoned? Conversely, how much of a burden does it place on the minority community if their members are excluded by the rule from taking on certain forms of employment? This must depend on how many members actually want to enter those lines of work and whether there are comparable alternatives available. There is no such thing as a right to have a *particular* opportunity open to one – say the opportunity to work in one particular job. What matters,

from the equal opportunity perspective, is that opportunity *sets* should as far as possible be equalized. And in assessing these sets – something that can only be done in a rough-and-ready manner – one needs to pay attention both to how much people actually want to avail themselves of particular opportunities and how like or unlike these opportunities are. It matters less that someone is prevented by a rule from becoming a street-cleaner than that he is prevented from becoming a surgeon, and it matters less that he is prevented from becoming an ear surgeon if he has a good chance to become an eye surgeon.

Barry in fact seems to accept this balancing of costs approach when he discusses the rule-and-exemption solution – that is, keep the rule in place for the majority, but create an exemption for the minority who find it burdensome. But he presents this solution as involving a sacrifice of justice in the name of the utilitarian principle of alleviating hardship. The argument I have presented, in contrast, is that if one begins with a liberal commitment to equality of opportunity, then it is a matter of justice that the legal and policy regime should as far as possible provide people with differing cultural commitments with equivalent opportunity sets. If rule A puts members of a particular cultural group at a disadvantage compared with others, while rule B puts them on all fours with the rest, then justice requires rule B, and it is no adequate defence of rule A that formally speaking it treats every citizen equally. I have made it clear, I hope, that cultural commitments cannot be taken as fixed – that where an existing cultural commitment clashes with a rule or requirement that is independently justifiable, one of the questions that can properly be asked is how difficult it would be to modify the commitment. But justice requires us to weigh the costs of this kind of change against the costs of changing the rule or, where this is feasible, providing an exemption for the minority.

## V

One implication of the position defended here is that equality of opportunity cannot be achieved by a narrowly legalistic approach that invites us to begin by identifying the relevant principles of equality, and then simply to proceed to apply them consistently. Instead, we must envisage a political process in which a dialogue of the kind that I sketched above actually occurs in each case where a cultural group believes

that it is disadvantaged by existing law or practice. We cannot tell a priori how burdensome the group finds the status quo, nor can we assess how realistic it is to ask the group to consider modifying its own norms unless we engage in a real discussion with representatives of the group. Barry is, I think, somewhat sceptical of this kind of approach, believing that there will be a tendency for group representatives to capture the issue and to hold out for positions that are more extreme than those held by most of the members. There is certainly a danger here, and I agree with Barry that we should not be tempted by Iris Young's proposal to give groups a veto over issues that they regard as essential to their interests.<sup>18</sup> But I believe that eventually we have to put our trust in democratic deliberation, and in the incentives it gives to members of particular groups to seek for a fair compromise over issues of the kind discussed here.<sup>19</sup>

My claim here is not that equality of opportunity should be *defined* in terms of the outcome of a democratic procedure. It remains an open question whether in any given case democratic deliberation works in such a way that what is finally decided upon treats cultural groups equally. What I do want to claim, however, is that only democratic debate can yield the kind of information that we need to apply the principle in a multicultural context, given what has been said above about the meaning of opportunity.<sup>20</sup> A court might perhaps try to simulate such debate by consulting documents which set down the traditions of particular cultures, or inviting spokesmen to give testimony, but this would be a poor substitute for genuine deliberation where the search for agreement encourages groups to reveal just how strongly they are committed to particular ways of being or behaving. It also allows questions of public interest – for instance the health and safety implications of particular cultural practices – to

<sup>18</sup> Barry, *Culture and Equality*, pp. 301–5; I.M. Young, *Justice and the Politics of Difference* (Princeton University Press, 1990), ch. 6.

<sup>19</sup> I have defended the view that deliberative democracy can give minority groups a fair chance to promote their interests and concerns in Miller, *Citizenship and National Identity*, ch. 9.

<sup>20</sup> For a fuller (and critical) discussion of the reasons we might have for thinking that democracy is a privileged procedure for reaching just decisions in a multicultural context, see P. Jones, 'Political Theory and Cultural Diversity', *Critical Review of International Social and Political Philosophy*, 1 (1998), 28–62.



be brought into consideration, whereas a legalistic approach might focus narrowly on the issue of equal treatment even in cases where a concern for equal opportunities needs to be qualified by these wider considerations.

I am not in the end sure whether Barry would disagree with this conclusion. For there are passages in *Culture and Equality* where he speaks eloquently in favour of an inclusive democratic politics, based on a shared sense of 'civic nationality', and attacks multiculturalists for supporting policies that would undermine a politics of this kind. But such a 'politics of solidarity' can only work successfully if the members of minority groups are able to raise issues of concern to them – especially issues having to do with opportunity-restricting laws and policies – and feel that their arguments are being given a fair hearing. That cannot happen if the majority adopt the kind of doctrinaire liberalism that Barry comes close to defending elsewhere in the book, which says that justice is satisfied so long as everyone lives under a uniform set of laws and other rules, even if these laws and rules impose greater burdens or restrictions on some than on others. If liberalism of this kind becomes the ruling creed, there is very little that minority groups can do to advance their arguments, except perhaps in those comparatively rare cases where an existing law restricts everyone's opportunity, and so a general appeal to individual freedom gives grounds for abandoning it.

In contrast, I have argued that a liberalism committed to equal opportunities must take into account the range of cultural beliefs and cultural commitments that are actually present in a given society, along with other preferences of a more prosaic kind (such as tastes for different sports). Having an opportunity to do X does not mean *wanting* to do X, but it does mean being able to do X without bearing excessive costs. So to establish whether equality of opportunity obtains, we do not have to show that members of different cultural groups make identical *choices* from their opportunity sets, but we do have to show that the sets themselves are roughly equivalent, and that in turn involves looking at the costs attached to taking up particular options. To get at the costs, we have to step inside the culture in order to see, for instance, whether a turban is a religious necessity or merely a fashion item. Without knowing that, we cannot tell whether a rule that proscribes the wearing of turbans is deeply

restrictive to Sikhs or just a mild inconvenience. Of course we cannot step inside the culture in a literal sense. So our liberalism has to make room for political dialogue in which groups are able to explain the significance of particular requirements and prohibitions, and can at the same time be asked how far these requirements and prohibitions can be changed, given the interests of the wider society. The dialogue has to be two-way and conducted in good faith. So it is vulnerable to the distortions that Barry identifies. But since cultures are invariably opaque to one another to a greater or lesser extent, I can see no other way of discovering what equality of opportunity really requires in a multicultural society.

## 5 | *Equality of opportunity and the family*

*The family is a crucial determinant of our opportunities in life, of what we ‘become’.... We are not born as isolated, equal individuals in our society, but into family situations: some in the social middle, some poor and homeless, and some superaffluent; some to a single or soon-to-be-separated parent, some to parents whose marriage is fraught with conflict, some to parents who will stay together in love and happiness. Any claims that equal opportunity exists are therefore completely unfounded.<sup>1</sup>*

### I

One of Susan Okin’s main achievements in political philosophy – perhaps her greatest achievement – was to place the institution of the family at the centre of the theory of social justice. She noted how, in the history of political thought, philosophers had assumed for no good reason that family relations were to be regarded as beyond the realm of justice. And in the case of the modern political philosopher whose work she admired most – John Rawls – she detected and criticized a profound ambivalence in his treatment of the family.<sup>2</sup> Rawls wavered

An earlier draft of this chapter was presented at Toward a Humanist Justice: A Conference Honoring and Examining the Work of Susan Moller Okin, Program in Ethics in Society, Stanford University, February 2005 and at the Political Theory Workshop, Nuffield College, Oxford, 2005. A later draft was discussed at the European Consortium for Political Research workshop on Equality of Opportunity at the Joint Sessions of Workshops in Granada, April 2005. I am very grateful to these three groups for their comments and suggestions, and particularly to Patti Lenard, Debra Satz and Andrew Williams for sending me written comments.

<sup>1</sup> S. Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), p. 16.

<sup>2</sup> See Okin, *Justice, Gender, and the Family*, ch. 5, and on Rawls’ later work S. Okin, ‘Political Liberalism, Justice, and Gender’, *Ethics*, 105 (1994), 23–43, ‘Justice and Gender: An Unfinished Debate’, *Fordham Law Review*, 72 (2003–4), 1537–67, and “‘Forty Acres and a Mule” for Women: Rawls and Feminism’, *Politics, Philosophy and Economics*, 4 (2005), 233–48. It is noteworthy that

between seeing the family as a key component of the basic structure of society – by virtue of its pervasive effects on the life chances of its members – and therefore as central to the theory of justice, and viewing it as a private association on which, accordingly, principles of justice were to bear only peripherally. In Okin's eyes this was symptomatic of the way that the liberal tradition as a whole had failed to take seriously the gendered nature of family relations and to follow through on the implications this has for social justice.

At the same time, Okin never developed a fully fledged theory of justice in the family, nor a theory of social justice that comprehensively addressed the issues raised by family membership, either for parents or for children. She assumed, realistically enough, that children would continue to be raised in familial settings – of one kind or another – and she also assumed that, because 'the pluralism of beliefs and modes of life is fundamental to our society',<sup>3</sup> public policy had to cater to those who opted for traditional (gendered) family relationships, despite her own view that 'families in which roles and responsibilities are equally shared regardless of sex are far more in accord with principles of justice than are typical families today'.<sup>4</sup> The various practical proposals she supported – an equal division of earned income between husband and wife, equal living standards for both households after divorce and so forth<sup>5</sup> – are therefore best seen as damage-limitation exercises, means of reducing the vulnerability of women to male exploitation and oppression, rather than as recipes for ideal justice. There is still work to do, therefore, in developing a theory of social justice which sets out more specifically what place, if any, the family should have in the basic structure of a just society and what kind of family this should be.

My own question here is slightly, but only slightly, more limited in scope: Is it possible for equality of opportunity and the family to coexist? Is there an interpretation of equality of opportunity that is both ethically appealing as a principle of social justice and yet consistent with the fact that men and women continue to live together and raise

Okin is the first feminist critic to whom Rawls refers in his final response on this subject, 'The Idea of Public Reason Revisited' in J. Rawls, *Collected Papers*, ed. S. Freeman (Cambridge, MA: Harvard University Press, 1999).

<sup>3</sup> Okin, *Justice, Gender, and the Family*, p. 180.

<sup>4</sup> Okin, *Justice, Gender, and the Family*, p. 183.

<sup>5</sup> See Okin, *Justice, Gender, and the Family*, ch. 7 for these proposals.

children in family settings?<sup>6</sup> What would family relationships have to be like for this reconciliation to occur? The quotation from Susan Okin with which I began might at first glance seem to be no more than a comment on existing family realities. But on a second look, one might well conclude that in *no* society in which the family continues to play a central role in child-rearing, etc., can there be substantial – more than merely formal – equality of opportunity. This is certainly the conclusion other authors have reached. James Fishkin, for example, argued in an influential book that ‘under the best conditions that might realistically be imagined for a large-scale industrial society . . . the basic liberal approach to equal opportunity does not amount to a coherent ideal once complications involving the family are systematically taken into account’.<sup>7</sup> And even Rawls, who of course gives equality of opportunity a prominent place in his two principles of justice, betrays misgivings about whether it is, in fact, achievable given the continued existence of the family, as we shall see shortly.

It might seem that the first step here should be to offer a definition of equality of opportunity. Given the problem that we face, however, the definition has to emerge in the course of the enquiry; part of what we have to do is to adjudicate between competing conceptions of equality of opportunity in the light of what we discover about the causal effects of the family, in particular, on the life chances of its members. How, then, should the problem be characterized? I am interested in the principle of equality of opportunity that is influential in current political debate and not, for instance, in more purely philosophical notions, such as ‘equality of opportunity for welfare’. Equality of opportunity applies primarily to educational places, jobs and public offices and to the various benefits – income and wealth, power, social status and so forth – that are attached to these, and it requires that the society in question is structured in such a way that every member has a fair chance of acquiring these goods. It is assumed, in other words, that for various practical reasons, jobs, offices and places in higher education

<sup>6</sup> I will focus on heterosexual families with children, since these are still the most common cases and are the ones that pose the greatest challenge to equality of opportunity, without suggesting that they are in any way normatively superior to other forms: single-parent families, same-sex families, etc. I leave the question of the intrinsic value of the family entirely open.

<sup>7</sup> J. Fishkin, *Justice, Equal Opportunity, and the Family* (New Haven: Yale University Press, 1983), p. 6.

cannot be allocated equally to everyone; what matters instead is that no one should be prevented from gaining access to these goods by factors that are irrelevant to their allocation ('levelling the playing field' is the metaphor often used).

But what does 'irrelevant' mean here? That is, of course, the crux of the problem we are addressing, and when we try to answer the question we find that equality of opportunity tends to bifurcate into minimal and maximal versions, both of which turn out to be deeply problematic.<sup>8</sup> The minimal version looks at the procedures and mechanisms that are used to allocate positions of advantage and says that the allocation must exclusively track features that are directly relevant to the position in question. Jobs must be given to those best able to perform them: skin colour, gender, age, etc., are all irrelevant features and must be disregarded. Similarly educational places must be distributed according to academic achievement and potential alone. The problem, however, is that the minimal version pays no attention to the background factors that may explain how candidates have come to have the features on the basis of which the allocation is made. What if one candidate has the advantage of better schooling and a supportive family, while another has not? Minimal equality of opportunity at best achieves a shallow kind of fairness: it requires non-discrimination at the point at which advantaged positions are being assigned. But in a society marked by pervasive inequalities of class, race, ethnicity and gender, it fails to address the deeper unfairness that gives some candidates a far greater chance than others to display the characteristics that are judged to be relevant to the assignment.

Maximal equality of opportunity tells us to go back and *really* level the playing field by discounting the effects of all 'morally arbitrary' features: not only all those external forces – family background, schooling and so forth – that have shaped individuals up to now, but also the 'undeserved' natural talents that may underlie present revealed aptitudes. What then is left to count as a relevant basis for assigning advantaged positions? Only features for which individuals can genuinely be held responsible, for example their choices and efforts. But these, too,

<sup>8</sup> Similar distinctions between less demanding and more demanding conceptions of equality of opportunity have been drawn by, among others, Andrew Mason in 'Equality of Opportunity, Old and New', *Ethics*, 111 (2001), 760–81; and John Roemer in *Equality of Opportunity* (Cambridge, MA: Harvard University Press, 1998), section 1.

may be put in question by maximal equality of opportunity. For it is a familiar observation that the choices we make – and our willingness to make an effort – are themselves shaped by our natural talents and also by our social environment, for instance, living in a family in which high aspirations are encouraged and a work ethic is instilled. Once this is understood, maximal equality of opportunity appears to collapse into simple equality of outcome: the only way to give everyone an equal chance to acquire advantaged positions is to distribute them equally, that is to reconstitute them in such a way that no one gets a ‘better’ job or educational place than anyone else. While some philosophers might welcome this conclusion, it constitutes a *reductio ad absurdum* of equality of opportunity as originally understood, namely as a principle for ensuring the fair allocation of positions of advantage, on the assumption that some inequalities of outcome in this dimension were unavoidable.

Minimal equality of opportunity, therefore, is too thin to be ethically appealing; maximal equality of opportunity tends to collapse into equality of outcome. The challenge is to find some intermediate view that staves off the collapse, but at the same time embodies a more robust notion of fairness than the minimal version. In rising to this challenge, we will consider why the existence of the family poses an obstacle to equality of opportunity (in any more-than-minimal version) and what, if anything, might be done to surmount this.

Another distinction that will prove to be important as we proceed concerns the meaning of ‘opportunity’ and how this relates to the idea of *equal* opportunity. What does it mean to have the opportunity to do something? It means, at least, that the something in question is physically possible and legally permitted, but it also implies that the cost of doing it is not excessive for the agent in question. Cost in this context might be monetary or non-monetary. Someone who earns an average salary does not have the opportunity to buy a Ferrari, given that paying the price would land him in serious long-term debt. Equally, a daughter whose father threatens to beat her if she goes out in the evening, does not have that opportunity. Cost here operates as a threshold notion: a person has the opportunity to do X if the cost of doing so is reasonable for her, given the benefit that X will bring. Consider two prospective students deciding whether to take a university course. One can afford to do so comfortably, while the other can manage the fees but with more difficulty. Yet there is an obvious

sense in which both have the opportunity to attend the university, whereas someone who simply cannot raise the money to attend or who can raise the money only by putting her financial future at considerable risk, does not. In other words, when we are considering the question of whether an opportunity exists for someone or not, cost differences matter only if they would take the person over the relevant threshold.

But what about *equality* of opportunity? Do the two students in the last paragraph have an *equal* opportunity to attend the university? Or does equality of opportunity imply that the costs attached to taking up an opportunity must be the same for each person? Here I want to distinguish between *weak* and *strong* versions of equality of opportunity. Weak equality of opportunity obtains when agents have identical or equivalent opportunity sets even though the costs attached to taking up the opportunities in the sets may be different for each; strong equality of opportunity requires that the costs must also be the same for each agent. In the strong sense, then, the two students do not have equal opportunities to attend the university, since one is required to make a greater financial sacrifice than the other; in the weak sense they do, because in neither case is the cost so great that the opportunity is closed.

Which of these two principles should guide our thinking in choosing equal opportunity policies? The strong principle is very demanding, indeed perhaps impossibly demanding, because it implies, for example, that any background differences in income and wealth are likely to translate into inequalities of opportunity. We are not, I think, concerned by the fact that the children of moderately rich families face slightly greater financial costs in attending a university than the children of very rich families; if we call this an inequality of opportunity, then the idea loses the force that it has when we apply it to the case of children from poor families, who cannot attend at all unless they are given financial support. Since the principle is meant to regulate access to positions of advantage on the assumption that flat equality of outcome cannot be achieved, it would be paradoxical to interpret it in such a way that equality of opportunity can only exist in a society that achieves flat equality. On the other hand, there are contexts in which the strong principle comes into play – for instance, in cases where a government is providing some benefit – and can choose a form of provision that equalizes costs as far as possible (in an earlier discussion, I gave the example of siting a national sports stadium in a



place that is equally accessible from different parts of the country<sup>9</sup>). In these contexts, a wilful disregard for relative costs would rightly be seen as failing to equalize opportunities. So we cannot simply jettison either principle: depending on the problem we are addressing, either weak or strong equality of opportunity may be the relevant principle to invoke. When we look at the family and ask whether its existence is compatible with equal opportunity, we need to be clear whether it is the weak or the strong version of that principle we are talking about.

To complete the road map, it is worth distinguishing two different ways in which the family as an institution may block equality of opportunity. It may do so, first, because relationships *within* the family – especially between men and women, boys and girls – may deny opportunities to some members that it makes available to others. To take obvious cases, if women are not permitted to work by their husbands, or if girls are denied the education that boys enjoy, equality of opportunity in two very important domains cannot exist. But second, relationships *between* families may also violate equal opportunity, as when one family buys its members privileged education or gives them access to jobs through nepotism, and another does not. We are most likely to think about interfamilial cases when debating equality of opportunity, but it was one of Okin's major contributions to highlight the way in which intrafamilial practices could deny equal opportunity to women and girls. The two dimensions are clearly separable: we can envisage a world in which relations within the family are egalitarian – men and women contribute equally to paid work, parenting, etc. – but relations between families continue to be marked by inequalities of income and social class; and an alternative (perhaps less likely) world in which an otherwise egalitarian society is still made up of traditionally gendered families. There may be reasons to think that progress toward equality along one dimension would normally be accompanied by progress toward equality on the other, but this is far from certain, and my judgement is that the recent past has brought us a significant increase in equality within families, but no increase – even, in some cases, a decrease – in equality between them. Whatever the truth about this,

<sup>9</sup> See Chapter 4 in this book. There I defined opportunity in the same way as here, but identified equality of opportunity with the strong principle without qualification. I now think this was a mistake, and that in many cases justice is satisfied so long as weak equality of opportunity is achieved.

there are clearly two separate issues that need our attention when we ask whether equality of opportunity and the family can be reconciled.

## II

Like many others in political theory, this question has both normative and empirical aspects. As I have indicated, we need to consider how equality of opportunity should be interpreted, given the underlying notion of fairness it is meant to express; and we also need to consider just how the family might block equality of opportunity so interpreted. I want to make a start on the first question by considering the work of Rawls, and Okin's critique of that work. For Rawls, as is well known, it is a primary requirement of social justice that, if social and economic inequalities are to be justified, they must be 'attached to positions and offices open to all under conditions of fair equality of opportunity'.<sup>10</sup> What, then, does 'fair equality of opportunity' require? According to Rawls, it means:

those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed.<sup>11</sup>

What is immediately noticeable about this definition is that it interprets equality of opportunity quite narrowly, specifically in relation to the income class into which someone is born. Equality of opportunity is violated only when Smith, born into a wealthy family, has better life prospects than Jones, whose motivation and endowment are similar but whose parents are poor. Consistently with this definition, Rawls identifies the practical requirements of equal opportunity as providing equally good education for children of all classes, ensuring that jobs and offices remain 'open to all on the basis of qualities and efforts reasonably related to the relevant duties and tasks', and limiting the unequal inheritance of wealth.<sup>12</sup> It would not be difficult to broaden this definition so that it embraced other sources of social inequality,

<sup>10</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 302.

<sup>11</sup> Rawls, *Theory of Justice*, p. 73.      <sup>12</sup> See Rawls, *Theory of Justice*, section 43.

for instance ethnic or racial background, and Rawls, if pressed, might well have been willing to accept this – effectively widening the idea of a ‘sector of society’ so as to include not only income classes but also racial or ethnic groups. But family membership poses a much more difficult question, one that Rawls sees but is unable to resolve satisfactorily. Indeed, he appears to contradict himself. Compare the following two passages:

...the principle of fair equality of opportunity can be only imperfectly carried out, at least as long as the institution of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent on happy family and social circumstances. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle which recognizes this fact and also mitigates the arbitrary effect of the natural lottery itself.<sup>13</sup>

... although the internal life and culture of the family influence, perhaps as much as anything else, a child’s motivation and his capacity to gain from education, and so in turn his life prospects, these effects are not necessarily inconsistent with fair equality of opportunity. Even in a well-ordered society that satisfies the two principles of justice, the family may be a barrier to equal chances between individuals. For as I have defined it, the second principle only requires equal life prospects in all sectors of society for those similarly endowed and motivated. If there are variations among families in the same sector in how they shape the child’s aspirations, then while fair equality of opportunity may obtain between sectors, equal chances between individuals will not.<sup>14</sup>

The first passage says that fair equality of opportunity can’t be fully achieved so long as the family exists; the second says that it can be achieved, but something else – ‘equal chances between individuals’ – cannot. What is going on here? The apparent contradiction between the two passages reveals that there is an ambiguity in what it means for two individuals to be ‘similarly motivated and endowed’. This might refer to ‘native’ motivation and endowment, that is people’s original genetic capacities, including their disposition to exert themselves in various ways; or it might refer to ‘developed’ motivation and

<sup>13</sup> Rawls, *Theory of Justice*, p. 74.    <sup>14</sup> Rawls, *Theory of Justice*, p. 301.

endowment, that is the capacity and motivation displayed after the process of socialization is complete, say at the point at which a person enters the labour market. If we take the first reading, then given what Rawls says about the causal effects of the family, there cannot be equality of opportunity in a society where children are raised in families.<sup>15</sup> Families will determine how natural talents are developed and how innate dispositions become converted into 'the willingness to make an effort', and so two babies who at birth had equal potential but are reared in different families will in practice have unequal opportunities. If we take the second reading, by contrast, then the causal effects of the family are bracketed off, and we simply look at whether the economic and political system affords equal opportunities to those with similar developed capacities.

It might appear that Rawls could have escaped his difficulties by plumping for one or other of these readings of 'similarly motivated and endowed', but in fact neither provides him with a congenial position. On the second reading, equality of opportunity becomes a thin concept and it becomes difficult to maintain his distinction between 'careers open to talents' and 'fair equality of opportunity', given that the latter is intended to incorporate concern for the conditions under which talents are developed, most notably the education system. If all we are concerned about is that people who are similarly endowed and motivated *as they enter adulthood* should have equal opportunities in the job market, etc., why should we be concerned that, at an earlier stage, some had greater opportunities to develop their talents than others? Put another way, if we are prepared to ignore what families do for children directly by way of equipping them with linguistic and cultural skills, a work ethic and so forth, why should we worry about what they can do indirectly by opening the door to a superior education? But Rawls clearly does want to go further in levelling the playing field than this reading permits. If, on the other hand, he were to adopt a strong conception of equal opportunity as 'equality of life-chances', then it seems there would be a straightforward collision between this

<sup>15</sup> It might be said that there can still be equality of opportunity between social sectors, in Rawls' sense. However, this would assume that variations between families are random across income classes and so forth, and this is surely implausible. Although upper-class families, say, differ in many ways, they will still in general give their offspring more cognitive skills, higher aspirations and so forth than lower-class families will be able to do.

principle and the continued existence of the family as we know it. But Rawls does not contemplate abolishing the family; he allows that it can, and maybe should, take forms different from that of the traditional (gendered) heterosexual family, but he assumes that children will continue to be raised in small family units, and, therefore, as a matter of fact, to enjoy the very significant advantages and disadvantages that result from this.<sup>16</sup> His principles of justice have to be tailored to accommodate this fact and he achieves this by weakening the definition of equality of opportunity and offering the difference principle by way of compensation:

The acknowledgement of the difference principle redefines the grounds for social inequalities as conceived in the system of liberal equality; and when the principles of fraternity and redress are allowed their appropriate weight, the natural distribution of assets and the contingencies of social circumstances can more easily be accepted. We are more ready to dwell upon our good fortune now that these differences are made to work to our advantage, rather than to be downcast by how much better off we might have been had we had an equal chance along with others if only all social barriers had been removed.<sup>17</sup>

These words of comfort fail to disguise the fact that Rawls really has given us no coherent account of equality of opportunity.<sup>18</sup>

What does Okin have to say about Rawls' understanding of equal opportunity? She does not directly address the question I have been raising about how the impact of the family is to be taken into account when the principle is formulated. She does, though, argue with some

<sup>16</sup> See J. Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001), section 50 and Rawls, 'The Idea of Public Reason Revisited', section 5, in Rawls, *Collected Papers*.

<sup>17</sup> Rawls, *Theory of Justice*, pp. 511–12.

<sup>18</sup> I mean that allowing the operation of the difference principle to reconcile us to inequalities of opportunity does not resolve the question of how the latter principle is to be understood. There are indications in Rawls that he would permit inequalities of opportunity that worked to the benefit of the least advantaged (see, e.g., *Theory of Justice*, p. 303), and it may also be that he would regard the family as having rights that are protected by the first principle of justice, which takes priority over the second. I have not addressed the question of whether Rawls is able to produce a plausible justification of equality of opportunity, given his general theory; I have simply pointed to ambiguities in his formulation of the principle when the influence of the family is being considered. For a wide-ranging critique of Rawls on this issue, see R. Arneson, 'Against Equality of Opportunity', *Philosophical Studies*, 93 (1999), 77–112.

force that 'the principles of justice that Rawls arrives at are inconsistent with a gender-structured society and with traditional family roles'.<sup>19</sup> She develops this theme in several directions, two of which have particular relevance to our problem. First, 'the assumption and customary expectation, central to our gender system, that women take far greater responsibility for housework and child care, whether or not they also work outside the home' denies them the opportunity to pursue a career on equal terms with men.<sup>20</sup> Second, the experience of being raised in a gendered family influences women's psychological and moral perspectives and encourages them to adopt subordinate roles. 'Only children who are equally mothered and fathered can develop fully the psychological and moral capacities that currently seem to be unevenly distributed between the sexes.'<sup>21</sup> Although she does not pursue this point at length, the implication seems to be that early family experience forms women in such a way that they are deterred from taking on the full range of occupational, political, etc., roles that are available to men.

How telling are these points as criticisms of Rawls? In both cases, women are being denied opportunities that they might otherwise have had by their adherence to a norm which defines how women are expected to behave – as homemakers, in the one case, as subordinate to men, in the other. But since Rawls defines fair equality of opportunity as 'equal life prospects for those similarly endowed and motivated', might he not reply here that women are just differently motivated? If they aspired to become political leaders or captains of industry, they would have an equal chance of achieving this, under institutions complying with the two principles. This brings us back to the question of what it means to have an opportunity. If we say that, for a person to have the opportunity to achieve X, it must be possible for her to pursue X without incurring unreasonable costs, what should we say about someone who is subject to a social norm that deters her from pursuing X? The questions that Okin raises about gender here clearly connect to our earlier questions about the impact of the family, since among the things that families do is to imbue children with norms that influence aspirations and career choices. How far, then, do

<sup>19</sup> Okin, *Justice, Gender, and the Family*, p. 103.

<sup>20</sup> Okin, *Justice, Gender, and the Family*, p. 103.

<sup>21</sup> Okin, *Justice, Gender, and the Family*, p. 107.

we want to go in allowing our assessment of someone's opportunities to be affected by the norms to which she adheres?

Rawls is a liberal. He believes that each of us has the moral power to form, revise and pursue a conception of the good, and he accordingly believes that the demands of justice must be kept separate from any such conception. Okin follows him in this respect.<sup>22</sup> As we have seen, she believes that 'the pluralism of beliefs and modes of life is fundamental to our society', and she cannot therefore believe that opportunities are denied by the mere fact that people adhere to contrary norms. Vegetarians have the opportunity to eat meat, but choose not to. Religious believers have the opportunity to lie in bed on Sunday mornings, but think that they ought to go to church.<sup>23</sup> In what way, then, are gender (or social class) norms different, such that their perpetuation can be said to deny equality of opportunity? We have identified the question, but not yet found an adequate way of answering it.

### III

At this point, I want to leave the conceptual and normative issues about equality of opportunity behind for a moment and ask what we know empirically about the sources of opportunity. In particular, what do families do to their children that is relevant for their future opportunities to gain access to relatively advantaged positions? Obviously, if the influence of the family turns out to be close to zero, then the question with which we have been grappling loses its interest. Unfortunately, as so often happens when political philosophers turn to social scientists for enlightenment on some broad empirical question, this one turns out to be hotly disputed. Rival camps, using different general methodologies, argue that the family is a crucial transmitter of advantage, on the one hand, or, on the other, hardly matters at all. And the same is true when we consider the impact of the family on the gender system.

What is not disputed is that there is a consistent and rather stable correlation between how parents fare in life and how their children

<sup>22</sup> For a discussion highlighting Okin's liberalism and its implications, see J. Cohen, 'Okin on Justice, Gender, and the Family', *Canadian Journal of Philosophy*, 22 (1992), 263–86.

<sup>23</sup> For a fuller argument to the effect that embracing a norm that prohibits you from following a course of action does not in general remove the opportunity to pursue that course of action, see Chapter 4, Section II in this book.

fare. As a survey by Bowles and Gintis concludes, 'recent evidence points to a much higher level of intergenerational transmission of economic position than was previously thought to be the case. America may still be the land of opportunity by some measures, but parental income and wealth are strong predictors of the likely economic status of the next generation.'<sup>24</sup> In the case of income bands, for example, 'a son born to the top decile has a 22.9 per cent chance of attaining the top decile . . . and a 40.7 per cent chance of attaining the top quintile', whereas 'the son of the poorest decile has a 1.3 per cent chance of attaining the top decile and a 3.7 per cent chance of attaining the top quintile'.<sup>25</sup> What is very much disputed, on the other hand (as Bowles and Gintis readily admit), is the means whereby such advantages are transmitted. For, as a moment's reflection reveals, there are many different casual mechanisms that may be involved, whose normative status (from the point of view of equality of opportunity) is quite different. At one extreme, the mechanism might simply be genetic: parents pass on to their children genes which determine cognitive skills, personality traits (such as extraversion), good health, good looks and so forth, all of which together determine which ladder of opportunity the child will climb and how far up it she will rise.<sup>26</sup> At the other extreme, the mechanism might be the passing on of external resources, principally inherited wealth, which would allow the children to start up businesses, train for the professions, etc. The second mechanism would amount to a violation of equal opportunity on any reasonable interpretation of that ideal. The first mechanism would be consistent with any but the most maximal form which excludes native endowment as a legitimate source of advantage. On any other view, the parents' genes make the child the person that she is, and it is actual persons, not hypothetical ones, whose opportunities must be equalized. (I shall return to the underlying issue here later in the chapter.)

In between these two extremes, there are a number of other plausible ways in which parents might equip their children for access to

<sup>24</sup> S. Bowles and H. Gintis, 'The Inheritance of Inequality', *Journal of Economic Perspectives*, 16 (2002), pp. 21–2.

<sup>25</sup> Bowles and Gintis, 'The Inheritance of Inequality', p. 7.

<sup>26</sup> I will not discuss the difficult issues that will arise when it becomes possible deliberately to influence the genetic make-up of one's children.



advantage in later life.<sup>27</sup> They might, for instance, develop their skills: endow them with a larger or smaller vocabulary (more on this in a moment), teach them to read and to handle numbers, think in abstract terms and so forth. They might also shape their personalities by their style of parenting, making their children more or less cooperative, more or less authoritarian and so on. And they might pass on a wide range of cultural attitudes and norms, ranging from religious and political values, through gender norms, to basic traits such as self-discipline and independence of mind. If parents are indeed able to influence their children's development in one or more of these ways – at this stage I am simply presenting possibilities, not making empirical claims – then it is easy to see why professional or middle class parents whose own skills, attitudes and norms are congruent with their advantaged social positions would tend to produce children who would become advantaged themselves.

We might call these the parents' *direct effects* on the formation of their children. There are also potentially important *indirect effects*. School choice is the most obvious mechanism, if we assume that quality of schooling is an important determinant of later access to jobs and university places. A bit less obvious, but potentially significant, is the wider social environment – whom the child meets, in the neighbourhood, whom gets invited home, which clubs he joins, and so forth. This will be significant if one thinks (see below) that a child's peer group is a very important source of beliefs and norms that may determine later life prospects. Parents determine that environment to some extent inadvertently (by choosing where to live, for example) but also to a considerable extent deliberately by encouraging the child to involve herself with certain groups of peers and to avoid others.

On the surface, all of this is pretty obvious. What is more surprising is the depth of disagreement about how the causal mechanisms internal to the family actually work and which of them is most significant. In the literature I have surveyed, this mainly takes the form of conflict between socialization theorists, who stress the direct causal efficacy of the family, and behavioural geneticists, who as their name implies

<sup>27</sup> For a more systematic attempt to explore different mechanisms that might explain the intergenerational transmission of advantage, see, for example, G. Duncan et al., 'The Apple Does Not Fall Far from the Tree' in S. Bowles, H. Gintis and M. Osborne Groves (eds.), *Unequal Chances: Family Background and Economic Success* (Princeton University Press, 2005).

stress the child's genetic make-up and the effect this has on the way she is treated by others, including her parents. Let me cite two sources, one from either side of this divide.

An influential text from the socialization school is Hart and Risley's *Meaningful Differences in the Everyday Experience of Young American Children*, which studies the development of children in the first three years of life, and comes up with some striking findings. The research involved a close study of how parents in professional, working-class and welfare families interacted with their children, especially how they talked to each other: what range of vocabulary was used, which kinds of utterances (questions, commands, etc.) predominated, etc. The upshot is that, at age three, children from professional families had an average recorded vocabulary of 1116 words, children from working class families 749 words, and children from welfare families 525 words; their average IQ scores were 117, 107 and 79, respectively. There was also a qualitative difference, captured in the following contrast:

We could see in the professional families the American dream: parents adding to and handing on to their children the advantages their families had given to them. We saw the daily efforts of these parents to transmit an educationally advantaged culture to their children through the display of enriched language; through the amount of talking they did and how informative they were; and through the frequency of gentle guidance, affirmative interactions, and responsiveness to their children's talk.<sup>28</sup>

Conversely:

The frequency and tone of the interactions in the welfare families limited the words and meanings the children heard. Because the welfare parents talked less often to their children, they talked in less varied contexts about less varied aspects of the children's experience. Because they spent less time interacting with their children, they had fewer opportunities to learn about their children's skill levels and the topics the children were interested in talking and hearing about. Perhaps as a result, proportionately more of their talk contained prohibitions and simple directives.<sup>29</sup>

Hart and Risley point out that the differences in outcome they discovered continue to have significant effects after the first three years. A

<sup>28</sup> B. Hart and T.R. Risley, *Meaningful Differences in the Everyday Experience of Young American Children* (Baltimore: Brookes, 1995), p. 179.

<sup>29</sup> Hart and Risley, *Meaningful Differences*, p. 178.

retest six years later of the children studied found significant correlations between vocabulary use at age three and measures of linguistic competence at age nine (though not with general academic test scores). They also point out that programmes intended to compensate for the inequalities they discovered – Head Start and the like – would not do so unless they were to involve massive, and therefore extremely expensive, interventions into the family itself.

In complete contrast to the assumptions underlying Hart and Risley's study, consider works influenced by behavioural genetics such as Judith Rich Harris' *The Nurture Assumption: Why Children Turn out the Way They Do* or David Rowe's *The Limits of Family Influence: Genes, Experience and Behaviour*. These works do not deny that personal characteristics of many different kinds are transmitted from parents to children, nor that life prospects are similarly correlated, but they explain these correlations primarily in terms of direct genetic similarities, which also have an indirect effect via the way that parents treat their (genetically related) children. Thus behavioural geneticists study identical and non-identical twins, including twins reared in separate families, and they compare biological children with adopted children, in an attempt to isolate what effect the common family environment has on the way that children turn out. Their general conclusion is that, except in the case of severely dysfunctional families, the family environment in which a child is raised matters very little. As Harris puts it:

... children raised by the same parents do not turn out alike, once you skim off the similarities due to shared genes. Two adopted children reared in the same home are no more similar in personality than two adopted children reared in separate homes. A pair of identical twins reared in the same home are no more alike than a pair reared in separate homes. Whatever the home is doing to the children who grow up in it, it is not making them more conscientious, or less sociable, or more aggressive, or less anxious, or more likely to have a happy marriage.<sup>30</sup>

Although neither of the sources I have consulted directly discusses the Hart and Risley study, it is easy to predict what they would say about it. First, we would expect to find a direct correlation between the intellectual capacities of parents and children, and therefore between

<sup>30</sup> J.R. Harris, *The Nurture Assumption: Why Children Turn out the Way They Do* (London: Bloomsbury, 1998), p. 353.

their IQ scores and between more specific features, such as the range of vocabulary they use. Second, we should expect to find different styles of parent–child interactions in different families, these being a joint product of the genetic make-up of parents and children (though for the same reason we should also expect to find parents adopting a somewhat different style for each child). Third, even if the common family environment has some small independent effect on children’s capacities, this will usually dwindle away still further as the child’s most salient environment becomes her peer group rather than her family – thus Harris underlines the way in which immigrant children become fluent speakers of the language of their adopted country despite not having been exposed to that language in the parental home.<sup>31</sup>

This third point does, however, reveal that even on the behavioural genetics side of the debate, the transmission of advantage between parents and children involves more than just the transmission of genes. Peer groups may matter much more than parents for the acquisition of vocabulary, culture, role models, etc., but as noted above, parents may influence which peer group becomes salient for a child. And although writers like Harris emphasize that, within peer groups, cultural norms are mainly handed down from older to younger children, they don’t deny that children do bring something of the culture of the home with them when they move into their new social environment. So the debate is mainly about the significance of the *direct* influence that parents have on those features of their children that will advantage them in later life, once genetic effects have been filtered out.

I cannot hope to resolve that debate here, although any parent of children with contrasting personalities and abilities is unlikely to find any strong version of the socialization theory plausible (of course, the same evidence shows that there is a good deal of randomness in the way that genes are transmitted from parents to child). What matters is that we should have some understanding of which family-related mechanisms clearly do play a role in the transmission of advantage and which are more debatable.

If we ask what role the family plays in the transmission of gender norms, once again we need to tread carefully. Okin argued consistently for the thesis that the family is a school of moral development and that

<sup>31</sup> Harris, *The Nurture Assumption*, pp. 188–92, 253–7.

unjust families are unlikely to produce children with an adequate sense of justice. She argued specifically for the moral benefits of co-parenting:

... since co-parenting would eliminate the gendered division of roles in heterosexual households that tends to result in different patterns of identity formation and attachment to others in girls and boys, such differences of this type that currently exist would diminish dramatically. It could reasonably be predicted that girls would develop a stronger sense of self while retaining a healthy capacity for empathy, and that boys would develop more capacity for empathy and attachment. This in turn should make the children likely to be better (and the boys more willing) co-parents if and when they have their own children.<sup>32</sup>

This prediction *sounds* plausible but it needs to be backed up with hard evidence.<sup>33</sup> More sceptical authors influenced by behavioural genetics argue that gender differences are not the result of parents treating their male and female children differently, nor of children imitating the gender-differentiated behaviour of their parents, but are almost entirely a product of genetic differences together with peer-group socialization.<sup>34</sup> Parents who themselves practise an unconventional division of labour in the home find that their children generally ignore these potential role models and learn from their peer groups how to behave in traditionally gender-defined ways.<sup>35</sup> Indeed, the piece of

<sup>32</sup> S.M. Okin and R. Reich, 'Families and Schools as Compensating Agents in Moral Development for a Multicultural Society', *Journal of Moral Education*, 28 (1999), p. 289.

<sup>33</sup> Okin conceded in a footnote to one of her essays that the general thesis that 'persons need to be raised in just families in order to develop a strong sense of justice' was not self-evidently true. See Okin, 'Political Liberalism, Justice, and Gender', p. 38, fn. 32. To the best of my knowledge, however, she did not investigate the kind of comparative evidence that would be needed to settle the question.

<sup>34</sup> D.C. Rowe, *The Limits of Family Influence: Genes, Experience and Behaviour* (New York: Guilford, 1994), ch. 6; Harris, *The Nurture Assumption*, ch. 10.

<sup>35</sup> A study of children brought up in self-consciously egalitarian families showed that while the beliefs they expressed about the roles of men and women followed those of their parents, their own gender identities – the ways they characterized themselves as boys and girls – were mostly conventional and were learned from their peers. See B. Risman, *Gender Vertigo: American families in Transition* (New Haven: Yale University Press, 1998), ch. 6. As Risman observes, 'when family experiences collided with experiences with peers, the family influences were dwarfed' (p. 140). She also speculates, however, that 'the identities and selves they adopt to negotiate their sexist and gendered childhood worlds' may not determine the selves they adopt later in life (p. 149).

evidence that Okin herself cites on this question seems ambivalent.<sup>36</sup> A study of household work done by girls and boys in families of different types – those with a male breadwinner and those where both parents worked outside the home – showed that girls performed a far greater share of the housework in families of the second kind. In traditional families, the chores were evenly divided. We could explain the unequal division of labour in families with two working parents by arguing that the girls were copying their mothers (who were also taking on the majority of the housework). But why should traditional families produce an equal division of domestic labour between their children if the socialization theory holds true?

Earlier in this chapter, I distinguished two strands within Okin's critique of the gendered family as an obstacle to equality of opportunity. One strand had to do with the impact of the domestic division of labour on women's opportunities outside of the home. We have still to investigate this argument, insofar as it relies on the prevalence of norms that prescribe a 'proper' domestic role for women. The other strand had to do with the consequences of being raised in an unjust family for the conceptions of justice developed by children – in particular their beliefs about equality or inequality between the sexes. What we have discovered is that there is significant disagreement among social scientists over just how much influence families have on the way children develop, and the uncertainty extends to such things as the sense of justice they acquire. So, if we are looking for mechanisms whereby gender norms are reproduced across the generations, it seems that we should first look to cultural norms transmitted through peer groups and then to labour market and other institutions that have been shaped by these norms, rather than to the family itself. And we need to examine more closely how, if at all, norms of any kind, including gender norms, can be shown to limit the opportunities of those who embrace them.

#### IV

After this brief foray into social science, let us now return to the question of how we should understand equality of opportunity. One

<sup>36</sup> Okin, 'Political Liberalism, Justice, and Gender', pp. 35–6. The original source is M.H. Benin and D.A. Edwards, 'Adolescents' Chores: The Difference between Dual- and Single-Earner Families', *Journal of Marriage and the Family*, 12 (1990), 361–73.

possible approach would be to stick to the maximal definition – individuals should have equal life chances, that is their access to advantage should depend only on their own choices and efforts – and freely concede that the family stands as a barrier to equal opportunity so defined. The next step would be to look at the family as it currently exists, and decide which aspects of that complex institution are essential to it – in the sense that family relations would be drained of value without them – and which are not. Then we would propose getting rid of those non-essential elements that infringe on equality of opportunity.<sup>37</sup> Thus, we might argue that parents should not have the right to choose privileged schools for their children – it is not essential to family life as such that they should – but that they should have the right to decide where to take their children on holiday. In the second case, there would be a minor infringement of equality of opportunity, but this would be justified by the inherent value of the activity. The hope is that those aspects of the family that seriously compromise equality of opportunity will also turn out to be non-essential, and this would depend on resolving the empirical questions raised in the previous section of the chapter.<sup>38</sup>

The problem with this approach, as I have already hinted, is that maximal equality of opportunity collapses into incoherence once one examines it with some precision.<sup>39</sup> Consider first the issue of genetically based capacities and talents. The maximal view requires that the less talented should not be disadvantaged by their lack of talent. But the efforts and choices that people make will inevitably be conditioned by their perception of their own capacities and the likely results of applying them. Thus, if people who are, say, mathematically untalented put little effort into a project requiring mathematical skills and get a poor result, should we compensate them only for their lack of ability,

<sup>37</sup> More radically, we might ask whether the family itself has any place in a just society, or whether some alternative institution for childrearing should be adopted. On this, see V. Munoz-Dardé, 'Is the family to be abolished then?', *Proceedings of the Aristotelian Society*, 99 (1998–9), 37–56.

<sup>38</sup> An approach of this kind is taken by Adam Swift in 'Justice, Luck, and the Family: The Intergenerational Transmission of Economic Advantage from a Normative Perspective', in S. Bowles, H. Gintis and M. Osborne Groves (eds.), *Unequal Chances: Family Background and Economic Success* (Princeton University Press, 2005).

<sup>39</sup> I am by no means the first to notice this. See, for example, B. Williams, 'The Idea of Equality' in P. Laslett and W.G. Runciman (eds.), *Philosophy, Politics and Society*, Series II (Oxford: Blackwell, 1964); B. Barry, 'Equal Opportunity and Moral Arbitrariness' in N.E. Bowie (ed.), *Equal Opportunity* (Boulder: Westview Press, 1988).

or also for their lack of effort, on the grounds that they made little effort *because* they knew they were untalented? Put another way, we cannot in general say what people would do or be if their genetic make-up were different – if they had capacities that they do not in fact have. To make this point, we do not need to decide whether ‘willingness to make an effort’ is itself a genetically determined feature or remains subject to choice; all we need to do is to make the realistic assumption that people’s choices and efforts in any area of life are conditioned by their perceptions of how likely they are to succeed.

This means that a viable notion of equality of opportunity has to begin with a thicker notion of the person than the maximal view. The idea is to draw a line between the person and her circumstances, and say that equal opportunity obtains when the circumstances are the same for everyone along relevant dimensions. But the person here has to be understood as already laden with tastes, character, capacities and so forth.<sup>40</sup> It is these features together with the choices that such a person makes that should determine where she ends up on the several ladders of advantage. We cannot speculate about what choices she might have made had she been differently formed – she would then simply be a different person.<sup>41</sup>

So far, I have been looking at how genetic differences should figure in our understanding of equality of opportunity. But now we must ask where we should place the family in relation to the line between person and circumstances. Should we assimilate family influence to genetic make-up, as simply another causal factor making us the persons that we are? Or should we regard the family as a set of circumstances providing greater or lesser opportunities to a particular (young) person?

<sup>40</sup> As Barry puts it, ‘the fundamental attitudes, values, behavioural traits and so on that make up people’s characters would (uncontroversially) have been different had they (i.e. the identical collection of cells) been placed in different conditions, but that does not entail the conclusion that they are not *theirs* in a way that is morally relevant’ (‘Equal Opportunity and Moral Arbitrariness’, p. 41).

<sup>41</sup> Personality is not, of course, formed in a single moment. The set of circumstances one enjoys at T may influence one’s personality at T1. This does not matter provided equal opportunities obtain at T, but where they do not, and where we can show that one’s capacities at T1 are less developed than they would otherwise be because of inferior circumstances at T, then equality of opportunity at T1 requires us to take this into account (for instance, it may require some form of positive discrimination in education or job selection policies).



Neither answer is obviously right as it stands. Although we have seen that the personality-shaping effect of the family can easily be exaggerated, clearly families do play some part in transmitting cultural values – languages, religions, moral outlooks – to their children. And they also help to develop, or fail to develop, their offspring's innate talents. A family with many books on its shelves encourages a child with bookish tastes to become an avid reader, while equally a family that plays a lot of sport together is likely to foster any sporting talents that its younger members possess. Since these are among the capacities that will determine the use made of opportunities later in life, they will become important elements of personality.

On the other side of the line, many things that families do for their children are rightly seen as affecting their circumstances. If I inherit money from my family while others do not, that is clearly an inequality of circumstance. I would be the same person whether I received this money or not, and we could roughly plot the difference the money makes in terms of the advantages it brings. The same goes for educational opportunities insofar as they are determined by family income or choice of residence. In this aspect, families with unequal endowments are indeed an obstacle to equality of opportunity and it is a legitimate objective of social policy to counteract this inequality by measures such as inheritance taxes and higher levels of educational spending on schools in deprived areas.

Among the more difficult cases to categorize in terms of the person-circumstances distinction are those involving the transmission of norms through the family. These would include gender norms, class norms and religious norms – in each case the recipient is being told that certain forms of behaviour are 'right' and others 'wrong'. The point about such norms is that they are very often internally embraced by the agent while at the same time being externally enforced by social sanctions, such as expressions of disapproval or exclusion from the group. Women who refuse to marry, working-class boys who want to stay in education after age 18, or the children of religious families who no longer want to attend church or mosque may be sanctioned in these ways. What bearing does this have on their opportunities? Are norms to be seen as external constraints that may limit opportunities, or, assuming they become internalized, are they better seen as aspects of the person that will determine what use is made of any given opportunity set?

Our answer to this question should depend on two factors: how easy or difficult it is for someone who adheres to a particular norm to change her behaviour and break the norm, and how far adhering to the norm systematically disadvantages the person who does so. Let me take each of these in turn. Since the norms are being enforced, breaking them must incur certain costs; for instance, the woman who refuses to marry might be repeatedly questioned by her family about why she hasn't been able to find a partner, a process that she finds more than a little irritating. Does this mean that her opportunity set – in this case to remain single and, as a result, to enjoy certain other freedoms such as choice of career path – has been restricted? As I argued in section I, an opportunity exists so long as it is possible to pursue the course of action in question without incurring unreasonable costs. Norms, then, will restrict opportunities only when breaking them would impose costs that it would not be reasonable for the person to bear. The woman whose family are nagging her to get married still has the opportunity to remain single unless the nagging becomes intolerable. On the other hand, if a churchgoing family refuses to have any contact with a child who no longer attends church, then the norm is being enforced in a way that clearly does restrict the child's opportunity to pursue other paths.

The other factor to consider is the extent of the disadvantage that conformity to the norm carries with it. Families no doubt always pass on to their children beliefs about which ways of life, which careers, etc., are more valuable than others and this may affect the choices the children make, but in general this does not breach equality of opportunity. If one family transmits its belief in the importance of education and another its belief in material success, and as a result the offspring of the first family end up teaching in college while those of the second become entrepreneurs, it is not inconsistent with equality of opportunity that one set of children is finally richer than the other. This is because advantage is multidimensional and there can be legitimate disagreement about which set of children is eventually better off, all things considered. Contrast with this case one where a family transmits a norm that strongly discourages its children from continuing into post-secondary education. Insofar as the lack of a college education means taking up a manual job that is less well paid, more dangerous, less stimulating, etc., etc. – that is worse across virtually all relevant dimensions – than non-manual jobs, this would potentially amount to a limitation of opportunity, depending on how the norm is enforced.

If we apply this analysis to the case of gender norms, there is good reason to think that a family that succeeds in imposing such norms on its female children is systematically disadvantaging them. Okin mounts a powerful argument to this effect in her diagnosis of why women who accept the traditional division of labour within marriage become vulnerable and dependent on their partners.<sup>42</sup> However, to demonstrate an inequality of opportunity, we would also need to show that daughters cannot depart from the norm without incurring unreasonable costs. For some women this will be true but, in liberal societies at least, for most it will not. They may embrace the norm and be disadvantaged as a result, but they have the opportunity to do otherwise: we cannot infer opportunities, or the lack of them, backwards from outcomes. Of course, if we were to follow the strong principle that I identified in section I, *any* costs that are attached to deviation from gender norms would amount to a denial of equal opportunity. But this raises the bar very high, too high in my view if we want equality of opportunity to serve as a guide to practice.

I have been asking in this part of the chapter whether the influence of the family is best understood as shaping the personalities of the children or as affecting their circumstances. The conclusion is that if we focus on what families do *directly* for their children (to use the distinction introduced in Section III) most of it falls on the personality side of the fence. Families may encourage their children to pursue one career path rather than another, to follow a particular faith or become fanatical about a particular sport, but in normal cases this does not diminish their *opportunities* to choose differently. By contrast, what families do *indirectly* may indeed affect the opportunity set. By sending their children to schools where they are better taught, better motivated and will make social contacts that will be useful to them later in life, they also provide them with greater opportunities.

## V

This discussion has been exploratory and in places tentative, so it may be helpful to sum up the main points I have made. First, it is difficult to hold a clear line on the question of whether equality of opportunity and the family can be reconciled; Rawls in particular illustrates this difficulty. Second, it is easy to conclude that reconciliation is

<sup>42</sup> Okin, *Justice, Gender, and the Family*, ch. 7.

impossible by combining an excessively demanding version of equality of opportunity with an overestimate of the importance of the family as a socializing agent. (I am not certain that Susan Okin was guilty of this in the quotation that heads the chapter but I believe she may have been.) Third, we need therefore to work out a view of equality of opportunity that hinges on the distinction between people and their circumstances, with the person seen not just as a bare chooser but as constituted by capacities and traits of character, some genetic and others shaped by the family environment. Fourth, we also need to look more closely at the different mechanisms by which families may influence the life prospects of their children, in order to decide which of these are consistent with equal opportunity and which are not.

Following these recommendations would have certain practical implications. First, we would give up what we might call the ‘two hospital babies’ test for equality of opportunity that has often proved popular with politicians and others. As Fishkin expresses this idea, ‘According to this notion, I should not be able to enter a hospital ward of healthy newborn babies and, on the basis of class, race, sex, or other arbitrary native characteristics, predict the eventual positions in society of those children.’<sup>43</sup> This doesn’t work because there are some native characteristics – genetically based intelligence, for example – that will be correlated to some extent with social destinations without infringing equality of opportunity as I have argued it must be understood; nor should we expect that a society of equal opportunity will show no correlation at all between people’s class or ethnic origin and their destination. Of course, when we find such correlations, we need to look hard to discover the mechanisms that are producing them.

On a more positive note, instead of regarding the family as simply a blanket obstacle to equal opportunity, we would try to discover which of the many things that families do to their children poses the greatest threat to equality of opportunity, properly understood, and then whether the best response is to try to reform the family or to create external mechanisms that can counter its effects. I have raised some doubts about how far the family serves as a direct transmitter either of cultural advantages or of gender norms, and I have also questioned whether, even if such transmission does occur, this should necessarily be seen as infringing equality of *opportunity*. If this scepticism is justified, then we should be focussing our attention

<sup>43</sup> Fishkin, *Justice, Equal Opportunity, and the Family*, p. 4.

on the indirect effects of the family via the education system, and so forth, effects which are best counteracted by external means. (Okin reached a similar conclusion by a different route: she *did* think that the traditional family was a powerful vehicle for the transmission of cultural and gender norms, but for liberal reasons favoured tackling the problem by external means, through changes in marriage and divorce law, work practices and so forth.)

Finally, we should not expect too much of equality of opportunity: we should not expect that an equal opportunity society will necessarily be a classless or statusless society. Indeed, there is something in the worry often heard that such a society might be socially more unequal, because the people who would reach positions of advantage would know that they had done so through merit rather than privilege or luck. There are two complementary ways of responding to this worry. The first is to try to preserve or create multiple ladders of opportunity, on the assumption that a person's success in climbing one ladder will not in general be mirrored by similar success on the others – for instance that educational achievement will not automatically translate into higher incomes.<sup>44</sup> The second is to develop and apply an idea of social justice which is pluralist, in the sense that equality of opportunity, and its associated principle of distribution according to desert or merit, is counterbalanced by principles of equality and need, so that people's overall life chances are not determined entirely by their success or failure in climbing the opportunity ladders. Theories such as those of Rawls and Walzer, as well as my own, have this pluralist character.<sup>45</sup> So although policies to increase equal opportunity are an important component of the pursuit of social justice, they should not be the only component. The difficulties we have unearthed in the course of trying to make the idea of equal opportunity more precise underline the wisdom of this view.

<sup>44</sup> In earlier discussions, I have emphasized the importance of having multiple spheres of recognized achievement in a society, with no single dimension of advantage being seen as dominant. See D. Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 9, and also 'Complex Equality' in D. Miller and M. Walzer (eds.), *Pluralism, Justice, and Equality* (Oxford University Press, 1995).

<sup>45</sup> Rawls, *Theory of Justice*; M. Walzer, *Spheres of Justice* (Oxford: Martin Robertson, 1983); Miller, *Principles of Social Justice*.

## 6 *Justice and boundaries*

### I

Let me begin with a much-cited quotation from Michael Walzer's book *Spheres of Justice*:

The idea of distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging and sharing goods, first of all among themselves.<sup>1</sup>

I believe that what Walzer says here is true: distributive justice is always justice within a group, and that implies the existence of a boundary between those who are members of the group and those who are not. But neither the meaning nor the truth of this proposition is self-evident. There are in fact two questions that we need to explore. First, should boundaries matter in the way that Walzer assumes or should the scope of distributive justice be universal, that is, should all human beings fall within its range (I will not consider here the issue of creatures other than human beings)? Second, if Walzer is right about the bounded nature of distributive justice, which boundaries should count? What must be true of a group of human beings in order for us to say that they form the kind of group within which principles of distributive justice apply?

Walzer's answer to this second question is not as clear as it might be. The passage I quoted above goes on as follows:

Earlier versions of this chapter were presented to audiences at the Universities of Oxford, Zurich and York, and at the Royal Irish Academy, Dublin. I am grateful for the many suggestions and comments that I received on these occasions and especially to Sue Mendus, Mozaffar Quizilbash and an anonymous referee for *Politics, Philosophy and Economics*.

<sup>1</sup> M. Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford: Martin Robertson, 1983), p. 31.

That world, as I have already argued, is the political community, whose members distribute power to one another and avoid, if they possibly can, sharing it with anyone else. When we think about distributive justice, we think about independent cities or countries capable of arranging their own patterns of division and exchange, justly or unjustly.<sup>2</sup>

Walzer does not tease out the various different senses that might be given to the idea of 'political community'. Is a political community simply a group of people subject to a common sovereign power or does 'community' here suggest something more than this – that the group's political arrangements reflect a social bond between them that is independent of those arrangements? In addition, if we speak of 'countries' as sites of distributive justice, what does 'country' actually mean? Does it refer to a geographical territory, a nation, a state, or all of these at once? Walzer's emphasis in the passage I have quoted seems to fall on the capacity of the political community to determine a pattern of distribution, in other words on its *power* to create and enforce a scheme of distributive justice without outside interference. But as readers of *Spheres of Justice* will know, in other places in that work, he attaches great weight to the idea that principles of distributive justice depend upon the goods being distributed having *shared social meanings*. Shared social meanings, however, require more than just the existence of a power that can create and enforce a distributive pattern. They presuppose a community with a common language in which the meanings can be expressed, interaction over time between the members of the community and so forth.

I do not intend to try to excavate Walzer's thought any further here; I point to his ambiguities in order to suggest that the issue of justice and boundaries is not straightforward. It does in fact raise several distinct questions. At the most general level, it raises the question of whether principles of justice are universal in nature (the same principles apply in all circumstances) or whether they are contextually specific, with different principles applying in different situations. I have defended the second position (contextualism) in Chapter 2 and do not intend to revisit the issue here. It also raises the distinct question of whether principles of justice must necessarily be universal in *scope*, such that when they apply, they must apply to all human beings regardless of

<sup>2</sup> Walzer, *Spheres of Justice*, p. 31.

whether they belong to some smaller sub-division of humanity, however defined.<sup>3</sup> Third, it raises the question of whether, if some version of particularism is true (justice is not, as a matter of conceptual necessity, universal in scope), the political community in any of its senses is the right kind of sub-division to bring principles of justice into play. That is, one might be a particularist about the scope of justice but reject Walzer's claim that the important boundary lies between those who form part of the political community and those who do not. In order to assess that claim, we need to discover what features a political community might possess that would make it appropriate to treat it as a distinct 'world' when we apply principles of justice to its members. What is supposed to connect membership in such a community with having special claims of justice against other members that one does not have against human beings at large? As we shall see, there are competing answers to this question and we need to explore the plausibility of each of these before we can decide whether there is reason to restrict the scope of justice in the way that particularists recommend. So, after considering and rejecting arguments to the effect that the scope of justice *must* be universal, I shall explore critically three different ways of setting the boundaries of justice before returning to see why political communities might be regarded as privileged sites of justice.

Let us be clear to begin with, however, that the argument is specifically about *distributive* justice. Those like Walzer who want to defend some version of particularism need not deny that there can be forms of justice that apply universally, between human beings considered simply as such and regardless of any kind of group membership. This idea is implicit in *Spheres of Justice* and spelt out more fully in later works such as *Thick and Thin*, where Walzer contrasts distributive justice as a 'maximalist' morality with a 'minimalist' concept of justice

<sup>3</sup> It is important to insist that these two questions are distinct. One may believe that principles of justice are universal in content, in the sense of being context-independent, while at the same time believing that they are limited in scope. For example, one might think that justice is always best understood in terms of a principle such as equality of resources, while holding that such a principle is to be applied within separate political communities: the equality that justice requires is equality between the members of such communities, not between human beings as such. I refer later to Ronald Dworkin as someone who appears to hold such a view. Nevertheless, I think that there is a looser connection between the questions, such that contextualists about justice are also likely to support restrictions on its scope: Walzer illustrates this case well.



that comprises injunctions against murder, torture, oppression and so forth.<sup>4</sup> We might equally well capture these universal principles of justice using the language of basic human rights: human rights identify the claims people can make on each other regardless of boundaries and memberships.<sup>5</sup> Justice in this minimal sense can be distinguished from distributive justice in several ways. It is concerned with the allocation of goods only insofar as these goods are necessary means to fulfil basic rights, so it has nothing to say about the distribution of the many other kinds of goods (wealth, honours, rewards, status and so forth) that principles of distributive justice are meant to regulate. Moreover, principles of distributive justice are mainly comparative in form (they concern the share of goods received by each person measured against the shares received by relevant others), whereas minimal justice is non-comparative. It is not about how one person is being treated relative to others, but about how they are being treated, period – about whether their situation is such that they are able to enjoy minimally adequate amounts of liberty, security, nutrition, medical aid and so forth.

With this distinction in place, we can now begin to consider the arguments of those who deny the relevance of boundaries to justice of any kind – who believe that distributive justice, too, must be universal in scope. These arguments fall into two classes, negative and positive. The negative arguments take the following form. The scope of distributive justice must be global because there are, in fact, no morally relevant boundaries between people. If there were such boundaries, the scope of distributive justice might perhaps be restricted. But as things now are, in the light of all those processes that go under the names of ‘globalization’, ‘multiculturalism’ and so forth, there is no way of dividing up people into groups such that restricted principles of justice apply to them. Certain boundaries do of course exist (state boundaries, administrative boundaries of other kinds) but these are not relevant from the point of view of justice. The relationships that

<sup>4</sup> M. Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (University of Notre Dame Press, 1994), chs. 1–2.

<sup>5</sup> Rewriting Walzer’s conception using the language of human rights does also involve expanding the content of minimal justice somewhat, if we include among the basic rights various rights to provision, such as rights to subsistence and medical care. The injunctions of minimal justice are then no longer purely negative in character, but include positive duties of aid. For further discussion, see D. Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007), ch. 7, section 3.

exist between people inside these conventional borders are not qualitatively different from the relationships that increasingly exist across them. For example, people no longer identify exclusively or primarily with the other members of their ethnic group or their nation, say, but are just as likely to have, instead or in addition, alternative identities that cut across these narrower ones.

That is the negative argument for justice having universal scope – its principles must apply globally because belonging to the human species is the only kind of membership that is robust enough to carry the necessary weight. The problem with it is that it depends very heavily on some broad empirical theses about the contemporary world that may prove on closer inspection to be quite challengeable. Every claim to the effect that political identities are becoming transnational or even global, for instance, is liable to be met with a counter-claim that points to the resurgence of sub-state nationalism in many places. Claims about economic globalization are challenged by the observation that widely varying rates of economic development in different societies appear seem to be explicable mainly by domestic factors such as the nature of the political regime. So the negative argument for universal justice rests on a fragile empirical basis. It is vulnerable, too, because as standardly advanced, it fails to specify *which* boundaries are the ones whose irrelevance it sets out to demonstrate. In other words, it does not take into account the possible range of particularist arguments that may be advanced. As I suggested earlier, particularism about justice can potentially take a number of different forms, depending on which aspect of group membership is supposed to ground the claim that principles of distributive justice apply only among those who belong to the group. Negative arguments for universal justice try to undermine particularism about justice in whatever form it is advanced. In this vein, the universalist says to the particularist ‘Whatever boundaries between people you think are relevant to determining the scope of distributive justice, I know in advance that those boundaries are not going to do what is required of them’. This is a bold thing to say, it seems to me. Should the universalist not wait to see which specific boundaries the particularist thinks are relevant, and then produce evidence that the world is such that those boundaries do not exist, or do not have the properties they would need to have to support a claim about the restricted scope of distributive justice?

So it seems that claims about the bounded nature of (more than minimal) justice cannot be defeated by the negative argument alone, where that argument consists simply in marshalling some rather general facts about the contemporary world order. What about the positive arguments, which are normative in character and aim to show that justice by its very nature must be universal in scope? I shall consider two of these, neither of which seems to be successful.

The first positive argument starts with a widely held moral intuition, namely that every human being is of equal worth, and as such is entitled to equal respect. By drawing boundaries in such a way that we apply our principles of justice to some people but not to others (or at least apply different principles to those falling inside and outside the boundary), we fail to treat those outside with equal respect, so it is claimed. But in fact this is far from obvious. The problem is that very little follows concretely from the ideas of equal human worth or equal respect taken by themselves. Perhaps we can say that there are ways of treating human beings (degrading them or torturing them, for instance) that are ruled out by these ideas. It would also violate equal respect if we were simply to ignore the effects of our actions on some people when deciding what to do, for example if a government when deciding on its energy policy paid no attention at all to the fact that one of the means of generating energy being considered would have harmful effects on a group of non-citizens, say by creating acid rain or nuclear fallout. This would be tantamount to saying that the affected group counts for nothing, and that is inconsistent with the idea of equal moral worth. But it is a big step from this premise to the conclusion that we are bound to treat the claims of people everywhere as counting equally when we establish our practices of distributive justice. Assuming there are morally relevant reasons for limiting the scope of distributive justice, why must it show disrespect for those outside the boundaries when we act on those reasons?<sup>6</sup>

Another popular argument in this area is that boundary drawing is always morally arbitrary. The argument usually proceeds roughly as follows. Within the boundary we apply a certain principle, for

<sup>6</sup> See also here the acute discussion in S. Scheffler, 'Conceptions of Cosmopolitanism' in Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press, 2001).

instance equality of opportunity or distribution according to need. What someone gets as a matter of justice will depend on his or her personal features, for instance academic potential if we are distributing scarce educational places or medical condition if we are allocating health care. The feature serves as the ground of the distribution. But now consider someone outside the boundary who exhibits the same academic potential or the same medical need. Surely it is arbitrary, in an objectionable sense, to deny that person an equivalent educational place or access to health care. They also have the feature that grounds just distribution within the boundary, so why should they be treated differently?

The problem with this argument is that it begs the crucial question. It simply assumes that the scope of a principle of justice is determined by the distributive criterion it embodies – so if that criterion is need, then all needs must count equally. But this is what has to be shown. Alternatively, it has to be shown that there can be no good reasons for restricting the scope of a principle. But this is far from obvious. Why should not the fact that somebody belongs to a particular group or participates in a particular practice be a relevant fact when determining whether a principle of justice applies to them or not? It is not self-evidently arbitrary to restrict the universe of distribution on this basis, as it would be, say, to restrict it to people whose third finger is longer than their first.

Since the arbitrariness argument has proved to be popular in recent debates about global justice, it is worth pausing for a moment to pinpoint exactly where it goes astray.<sup>7</sup> What does it mean to say that someone has a feature that is ‘morally arbitrary’ – their ethnicity or nationality, for instance? It may mean one of two different things. It may mean, first, that the feature is not one that the person in question can claim moral credit for having. No one, for example, is responsible for being born into a particular nation (if they are French rather than German it is because their parents were French and raised them as French citizens), so they have done nothing to earn their membership. This seems obviously true in the case of most forms of group membership that particularists appeal to when they argue for the restricted

<sup>7</sup> I draw here on my discussion in *National Responsibility and Global Justice*, ch. 2, section 3.

scope of distributive justice. So that is the first sense of moral arbitrariness: a personal feature is morally arbitrary when the person who has it is not morally responsible for having it – has not, for example, chosen to have it, or earned it in some way.

But ‘morally arbitrary’ may also mean something different – it may mean that a feature is such that it should not count when deciding how a person should be treated. When we say that it is morally arbitrary whether a person has blue eyes or brown eyes, what we mean is that eye colour is morally irrelevant, for almost all practical purposes. Here, moral arbitrariness is being used as the conclusion of a moral argument, not as the premise. We believe that eye colour should not count when deciding how people should be treated, so we say that having blue eyes rather than brown is a morally arbitrary personal feature.

I think that arguments for the universal scope of distributive justice often trade on this ambiguity. They suppose that because group membership is normally a morally arbitrary feature in the first sense (people are not in general morally responsible for belonging to particular groups, certainly not ethnic groups or nations), it must also be morally arbitrary in the second sense, that is it should not count for practical purposes. But this by no means follows. As a counter-example, consider special needs. If a child is born handicapped, this is morally arbitrary in the first sense – the child is not morally responsible for having the disabilities that she now has. But it is certainly not morally arbitrary in the second sense. We think that having special needs is a valid reason for receiving treatment that others do not receive, to compensate for the disability. So if group membership should not count when deciding what people are owed as a matter of justice, it cannot merely be on the grounds that membership is arbitrary in sense one. There must be something more specific about group membership that disqualifies it from counting when distributive justice is at issue. But to show that, we need to have a substantive argument – we cannot get there simply by talking about moral arbitrariness.

So far, I have been looking at, and rejecting, the arguments of those who think that the scope of distributive justice must be universal. But I have not yet tried to offer any positive reasons in support of the opposite view. In reality, clearly, bounded justice is the norm, both in terms of what happens by way of distributive practice, and in terms of how people think. Principles of social justice are applied within state

boundaries by institutions that are powerful enough to ensure that rights, opportunities and resources are distributed according to relevant principles such as equality, desert and need. Distributive justice is also practised at a much more local level, in families, workplaces and universities, for example. When people think about whether they are being fairly treated, they worry much more about small inequalities of treatment among those who are close to them (classmates, work colleagues and so forth) than about very much larger inequalities between these groups and others. At national level, citizens become very agitated about what in Britain we call the 'postcode lottery', where place of residence determines whether you have access to particular schools or the speed at which you can be treated at your local hospital, even though these differences are very minor when compared with the huge differences in education or health care that exist across national borders, especially when these comparisons involve both developed and developing countries. But, of course, this does not settle the matter. It might just be a case of myopia or warped human psychology. To show that bounded justice is legitimate, we have to explain why falling within a certain boundary should count when deciding what someone is owed as a matter of justice.

The argument for bounded justice has the following general form: principles of distributive justice apply to people who have a certain relationship to one another. It is by virtue of being so related that they can advance particular claims of justice against one another, invoking distributive principles such as various principles of equality. Once we understand the relationship, it is claimed, we will see why those particular principles apply. This leaves open, however, which kind of relationship is relevant. As I have already noted, social justice is for us the most prominent form of distributive justice. But to what, more precisely, does the 'social' in social justice refer? Societies are complex entities: they are made up of a large number of separate practices, they are governed by political institutions, they have common cultures as well as being to a greater or lesser extent multicultural and so forth. Which of these features, if any, is relevant to setting the boundaries of distributive justice? Is it one feature in particular or is it a combination of several? We are back to the questions that I raised at the outset in relation to Walzer's appeal to the 'political community' as the arena of distributive justice.

## II

I want to proceed by considering three answers to the boundaries question that have featured prominently in recent debates about social justice – answers given by those who want to endorse particularism about distributive justice. I shall suggest, to anticipate, that none of the three answers, taken by itself, is adequate, but that taken together they can be used to explain what is special about the idea of social justice. I shall label the three positions to be examined the ‘*cooperative practice* view’, the ‘*political coercion* view’, and the ‘*common identity* view’.<sup>8</sup> And the claim to be considered, in each case, is that the designated feature provides a necessary and sufficient condition for principles of distributive justice to apply. So, to illustrate in the case of the first of the three views, the relevant claim is that principles of distributive justice apply to a group of people if, and only if, they are related to one another as fellow-participants in a cooperative practice; similarly for the second and third views.

Let us begin, then, with the cooperative practice view. This is most famously associated with John Rawls, who at the very beginning of *A Theory of Justice* announces that principles of social justice are to apply to a society conceived of as a rule-governed association of persons – ‘a system of cooperation designed to advance the good of those taking part in it’. He continues:

<sup>8</sup> I do not claim that this list exhausts all possible ways of explaining the boundaries of justice. Hume made the interesting suggestion that the boundaries were set by how essential rules of justice were to safeguarding basic human interests. This, he thought, explained why rules that were treated as obligatory within societies, such as promise-keeping, were taken more lightly in international relations: ‘tho’ the intercourse of different states be advantageous, and even sometimes necessary, yet it is not so necessary nor advantageous as that among individuals, without which ’tis utterly impossible for human nature ever to subsist’ (see D. Hume, *A Treatise of Human Nature*, ed. L.A. Selby-Bigge, rev. P.H. Nidditch (Oxford: Clarendon Press, 1978), Book III, section 11). Another possibility, canvassed in the course of a critical discussion by Philippe Van Parijs, is that distributive justice presupposes a democratic regime, and its boundaries are therefore co-extensive with existing democracies (see P. van Parijs, ‘Global Distributive Justice’ in R. Goodin, P. Pettit and T. Pogge (eds.), *A Companion to Contemporary Political Philosophy*, 2nd edn (Oxford: Blackwell, 2007)). I believe, however, that it may be better to treat democracy as playing a role within some versions of the political coercion view, such as Nagel’s, discussed later.

Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interest. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share.<sup>9</sup>

Now Rawls' complete view of the form of human association to which principles of justice apply is more complex than this opening quotation suggests, but let us for the moment examine the simple idea of a cooperative practice as outlined in the above passage. What are its main features? First, it is a *system* of cooperation in the sense that the practice continues over time with the same (or largely the same) set of participants involved in it – it is not a one-off event. Second, it is rule governed, meaning that people coordinate their efforts on the basis of a commonly agreed set of rules of conduct. Third, the participants engage in the practice for mutual advantage: they understand that they can each do better by participating than they could by going it alone. Fourth, it is an open question how the surplus generated by the practice should be shared among the participants: there are no prior entitlements that already determine the answer. It is these four features taken together, Rawls implies, that make it necessary for the practice to be regulated by principles of (distributive) justice. Here there is a contrast with, in particular, a simple exchange between two individuals, or two groups of individuals, where although there may be mutual advantage (both parties expect to benefit from the exchange), the issue is one of reaching agreement from an established baseline and where the only issues of justice raised by the transaction may be procedural ones (no force, fraud and so on).<sup>10</sup>

It is fairly easy to see how a cooperative practice as described above requires principles of distributive justice to regulate it. For, first, the practice is rule-governed, but the rules themselves stand in need of justification, since different sets of rules are likely to produce outcomes that relatively advantage or disadvantage different people. Second,

<sup>9</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 4.

<sup>10</sup> See also B. Barry, 'Humanity and Justice in Global Perspective', section 2 in Barry, *Democracy, Power and Justice: Essays in Political Theory* (Oxford: Clarendon Press, 1989).



participation is voluntary, so participants will only remain committed to the practice if they can see that it treats each of them fairly. Third, the cooperative surplus has to be allocated somehow, given that there are no pre-existing entitlements that already settle this question. So, in so far as the surplus takes the form of divisible benefits, some distributive principle (for instance, equality or a desert-based principle such as contribution) is needed to allocate it. This suggests that the existence of a cooperative practice is sufficient for principles of distributive justice to apply among those who participate in it. But is it also a necessary condition?

There are good reasons to believe that it is not necessary. One is that principles of distributive justice can apply to individual decisions that do not form part of ongoing practices. Aristotle famously used the example of allocating flutes among would-be flautists to illustrate the concept.<sup>11</sup> Of course, this is not social justice. But, first, it is nonetheless distributive justice, so more has to be said about why we need to draw a sharp distinction between justice within cooperative practices and justice in particular acts of distribution, as Rawls apparently wants to do. Second, it seems that the substance of the principles may often be the same in both cases: *contribution* and *need* may be relevant criteria for distributing resources both within ongoing practices and in making individual decisions. In an attempt to avoid this assimilation, Rawls contrasts social justice with allocative justice and suggests that the latter tends to collapse into utilitarianism.<sup>12</sup> But although considerations of utility may indeed be used to guide particular distributive decisions (we may give the flutes to those we think likely to produce the best music), there is no reason why this must always be so. We may be guided by past contribution, by considerations of equality, and so forth. There may be good reasons to treat social justice as special (I shall argue for this later on), but the cooperative practice view, taken by itself, does not sufficiently explain why we should.

A second reason for doubting that the boundaries of distributive justice must be aligned with the boundaries of cooperative practices is that principles of distributive justice seem also to apply to those who

<sup>11</sup> Aristotle, *The Politics*, trans. T.A. Sinclair (Harmondsworth: Penguin, 1962), p. 128.

<sup>12</sup> See Rawls, *Theory of Justice*, pp. 88–9. J. Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), pp. 51–2.

are included in such practices without themselves contributing to the cooperative surplus. Indeed, it has often been argued against Rawls that there is at least a dissonance – if not an outright contradiction – between the way that he frames the problem of social justice, as applying within ‘a cooperative venture for mutual advantage’ and the substantive principles that he proposes by way of solution (why would people setting up a cooperative practice from which each participant must gain, commit themselves to maximizing the position of the worst-off group?).<sup>13</sup> Thus we would surely want to include within the scope of social justice, people who for one reason or another (lack of opportunity, disability and so on) were unable to contribute to the cooperative surplus. Such people are owed, for example, various forms of equal treatment as a matter of justice. Rawls, however, makes it clear that his theory of justice applies to citizens regarded as ‘normally cooperating members of society over a complete life’, so although it can accommodate those who, as a result of illness or accident, are unable to contribute in one particular time period, it excludes those who make no net contribution overall, such as the severely disabled. As he concedes ‘we must see whether justice as fairness can be extended to provide guidelines for these cases; and if not, whether it must be rejected rather than supplemented by some other conception’.<sup>14</sup> But it seems wrong to treat such cases as peripheral from the point of view of social justice, as the metaphor of ‘extension’ implies.

I have argued that the cooperative practice view, which regards cooperation for mutual advantage as not only sufficient but also necessary for principles of distributive justice to apply, is too demanding as a way of setting the boundaries of justice. But we should equally reject, as not demanding enough, the idea that such principles apply whenever people interact economically, as some of the arguments against bounded justice seem to assume. That is, the mere fact that something A does with resources she holds has an impact on the economic position of B and others, does not by itself seem to bring principles of distributive justice into play. A might destroy one of her holdings, thereby increasing the value of B’s, because of scarcity. But this does

<sup>13</sup> See especially B. Barry, *Theories of Justice* (Harvester-Wheatsheaf: Hemel Hempstead, 1989), ch. 6.

<sup>14</sup> See Rawls, *Justice as Fairness*, pp. 171–6; the quotation is from the footnote on p. 176.

not mean that B as a matter of justice must redistribute some part of his gain to A. Of course, if resource holdings are already subject to some principle of justice such as equality, B's windfall gain may bring the principle into play. But my point is that the fact of interaction does not by itself entail that such a principle must apply. Equally, if A worsens B's position, for instance by producing something whose effect is to make one of B's holdings less valuable, this by itself does not impose any requirement of distributive justice. Some ways of worsening other people's position do certainly produce legitimate claims for compensation, but this is justice of a different kind – rectificatory, not distributive. And other ways of worsening B's position (for instance, through fair competition) appear, on their own, to generate no justice claims at all.

So while the suggestion that principles of distributive justice apply *only* among people who are related to one another by virtue of common participation in a cooperative practice seems too stringent, the claim that they apply whenever the activities of one agent make some impact on the material position of others is too lax. Let me turn then to the second of the three views that I want to consider: the political coercion view defended for instance by Ronald Dworkin in his book *Sovereign Virtue*, and in later articles by Michael Blake and Thomas Nagel.<sup>15</sup> The claim here is that questions of distributive justice arise among people who are subject to a coercively imposed set of laws and policies, which in the standard case means that they are citizens of the same state. The boundaries of social justice, then, are the boundaries of systems of political coercion. Why should we think this? The key argument here is not that coercively enforced laws are necessary in order to implement principles of distributive justice effectively. That might well be so, but such an instrumental account of the link between political coercion and justice is not what the authors in question have in mind. Their argument is rather that if someone is made subject to coercive laws that restrict her freedom in a number of ways – and that

<sup>15</sup> R. Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), Introduction; M. Blake, 'Distributive Justice, State Coercion, and Autonomy', *Philosophy and Public Affairs*, 30 (2001), 257–96; T. Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33 (2005), 113–47. By considering these three authors together, I do not mean to imply that they spell the political coercion view out in the same way – they do not. But I believe that what I say in the following applies to that view generally.

may impose punitive costs if she is found to be in breach of them – then she is owed a justification for those laws, and the justification that succeeds is one that shows that the system as a whole is distributively just.<sup>16</sup> In other words, the argument ties together distributive justice and legitimacy: systems of coercion can be legitimate if, and only if, they comply with principles of distributive justice, in which case those unavoidably subject to them have no complaint if they are coerced. One popular way of spelling out the argument is via the notion of hypothetical consent: if the system as a whole is fair, then all those involved in it would have given their consent to it if asked in advance, in which case they have no justified complaint when they are now made to comply with its rules.<sup>17</sup>

As with the cooperative practice view, the political coercion view clearly contains something of relevance to the boundaries issue we are addressing. How we think about social justice is properly shaped by the fact that its requirements are primarily delivered by a legal and political system that is also coercive. But is the link quite as tight as this view suggests? If we accept it, then we seem to be committed to drawing a sharp line between human relationships that involve coercion and those that do not.<sup>18</sup> Yet questions of distributive justice appear to

<sup>16</sup> Nagel adds the further claim that by virtue of their (non-voluntary) membership, citizens become responsible for the content of the law. As he puts it, the will of each citizen is ‘actively engaged’ in the making and sustaining of coercively enforced rules, which adds extra weight to the requirement that the rules must be justified to (all of) those who are subject to them. See Nagel, ‘Problem of Global Justice’, section 5. This seems to imply that the political coercion view applies only within democratic states. However, Nagel resists this implication, claiming in a footnote that even societies governed by colonial or occupying powers may fulfil the conditions for distributive justice. As he admits, this ‘requires a broad interpretation of what it is for a society to be governed in the name of its members’. In my view, such an interpretation is implausibly broad. Nagel would have been better advised to confine his argument to democratic states and authoritarian regimes that nonetheless can reasonably claim to be ruling with the support of the people and in conformity with their values. Under these circumstances, subjects can be held collectively responsible for what the regime does, as I have argued in Miller, *National Responsibility and Global Justice*, ch. 5.

<sup>17</sup> Blake deploys this line of argument in ‘Distributive Justice, State Coercion, and Autonomy’.

<sup>18</sup> For a fuller critique of Nagel in particular, which argues that state-based coercive relationships are only one among several types of relationship that can give rise to duties of justice, see J. Cohen and C. Sabel, ‘Extra Rempublicam Nulla Justitia?’, *Philosophy and Public Affairs*, 34 (2006), 147–75.

arise in both settings: they arise, for instance, in workplaces, clubs, churches, universities and so forth. One answer might be that this is a different kind of distributive justice. But once again it is by no means obvious that the principles that apply in these non-coercive settings are categorically different from those that arise at state level. Certain principles of equality, for example (such as equal rights to stand for office), seem to apply in both cases.

The proposed tight link between distributive justice and political legitimacy is also open to question. Political legitimacy is to a considerable degree a matter of procedures. That is, a system of coercive laws may be legitimate if it has been authorized in a certain way, say, through a democratic procedure such as majority voting, even if it fails fully to meet standards of social justice. To someone who asks 'Why should I be subject to this coercive law that I personally find objectionable?', it may be enough to say, for example, 'The law was enacted by a procedure that was fair – it gave everyone equal rights to vote for their representative'. It would be wrong to suggest, however, that political legitimacy can be understood entirely in terms of procedures. A radically unjust law (such as one that imposes severe burdens on a minority) may be illegitimate even though authorized by an otherwise fair procedure such as democratic voting. Thus the political coercion view is not wholly off the mark in seeing some connection between distributive justice and legitimacy. But by overlooking the predominantly procedural character of political legitimacy, it exaggerates the significance of that connection.

So although questions of distributive justice may become especially pressing between people whose relationships to one another involve routinely applied coercion, it seems that such relationships are neither strictly necessary nor sufficient to bring principles of distributive justice into play. The political coercion view, taken by itself, does not provide an answer to the boundaries question. What about the third candidate for this role – the common identity view? This holds that to understand the boundaries of justice, we need to begin with people who form a community of some kind, who identify with each other and therefore feel a sense of solidarity among themselves. Why is this said to be a necessary condition for distributive justice? There are two complementary arguments to consider here.

One has to do with the need for agreement – agreement both about the nature of the goods whose distribution will be subject to the

relevant principles and about the principles themselves. Before we can talk about the fair distribution of education or health care, say, we have to understand what these goods are – what counts as an instance of being educated or given medical aid. These common understandings arise only in communities whose members interact with each other, speak a common language and so forth.<sup>19</sup> Of course, such understandings may overlap to a considerable extent across different communities. Nevertheless, broad agreement is not enough to make distributive justice possible – the level of agreement has to be sufficiently high, and that, so it is claimed, will only obtain within groups of people united by a common culture, by language and so forth. Equally, there must be agreement on the criteria of distribution. If principles of justice are couched in terms of *desert* or *need*, for example, this presupposes some consensus on the qualities that should count as the basis of desert, or on the components of a decent human life that enable us to distinguish genuine needs from mere wants or demands. Where no real community exists, it is argued, appeals to desert or to need become merely self-serving demands by particular groups for an increased share of social resources.<sup>20</sup>

The second argument in support of the common identity view is an argument about motivation. The argument runs roughly as follows: in order for people to be willing to abide by principles of distributive justice, particularly in circumstances in which they might be able to do better for themselves by departing from these principles, they have to feel the need to justify themselves to those who would bear the impact of their decision. But such a need for justification arises only among those who identify with each other in a way that is more powerful than the identification that we might have with other human beings considered merely as such. Distributive justice, in other words, presupposes solidarity. When we feel a sense of community with others, we want to live with them on terms that all can accept – in other words, terms of

<sup>19</sup> I have expanded upon this claim in D. Miller, 'Against Global Egalitarianism', *Journal of Ethics*, 9 (2005), 55–79, and in Miller, *National Responsibility and Global Justice*, ch. 3.

<sup>20</sup> These arguments can of course be turned around so as to claim that the scale and diversity of modern societies means that they are no longer suitable sites of distributive justice. Alasdair MacIntyre famously made this claim (with particular reference to desert) in A. MacIntyre, *After Virtue* (London: Duckworth, 1981). See also C. Kukathas, 'The Mirage of Global Justice', *Social Philosophy and Policy*, 23 (2006), 1–28, esp. Sections II–III.

justice. This argument applies not only to individuals contemplating whether to keep or break the social rules laid down in the name of justice, but also to citizens having to decide which rules to support – do I vote for whatever is most in my material interest or for the law or policy that I regard as fair? The argument is further reinforced by the observation that willingness to abide by principles of justice, in either of the ways just distinguished, depends on a belief that others will reciprocate. But this belief is also powerfully affected by people's sense of identity, by whom they see as members of their community and whom they regard as outsiders.

So the common identity view is supported by two strands of argument, one concerning agreement on principles of justice and the goods to which they apply and the other concerning the motivation to apply and conform to such principles. Do either of these arguments, or both together, yield necessary and sufficient conditions for distributive justice, to ask the question already asked of the cooperative practice and political coercion views?

Contrary to the common identity view, it seems that principles of distributive justice can apply among people who are engaged in common practices or common enterprises, whether or not they also identify with one another other than as fellow participants or feel a sense of solidarity. It may be enough that they agree about the general purpose of the practice or enterprise. Thus, suppose that a group of people is brought together for purposes of economic production. They may be able to agree on principles for distributing the fruits of their labours simply because they agree on what counts as contribution (number of hours worked, say) and what counts as reward (money, say). There need be no deeper level of agreement about, for example, how money is to be valued relative to other goods. Of course, this group does not have a complete conception of distributive justice, and it may be that in order to have such a conception they would need to enjoy a higher degree of cultural unity. But if the question is simply what level of agreement is necessary for *any* principle of distributive justice to apply, then the common identity view gives too demanding an answer.

A similar point can be made about the motivational argument. It is not clear why distributive justice in a group such as the one just described cannot be sustained by enlightened self-interest. That is, we can imagine the members of such a group choosing to introduce, and comply with, a rule such as distribution of rewards according to the

number of hours each person works because each calculates that such a rule will protect his or her interests most effectively. Each might like simply to grab as much of the product as he can, but he also wants to protect himself against the grabbing proclivities of others. On the other hand, a rule of equal distribution regardless of contribution would suit those who are inclined to free ride on the efforts of others, but expose everyone to the same risk of exploitation. What this shows, I believe, is that the motivational argument applies, at best, to a subset of distributive principles – essentially those whereby it is easy to see in advance who will gain and who will lose by their application, so the prospective losers will be willing to accept them only if they are motivated by the wish to live on terms of justice with the prospective gainers.

If common identity fails as a necessary condition for distributive justice, it fails too as a sufficient condition, since it has long been argued that communities in which shared identity and solidarity are very strong may be able to move ‘beyond justice’, allocating their resources in a way that takes no account of considerations of justice as these are normally understood, such as personal responsibility for outcomes. Drawing upon Hume’s claim that if human benevolence and generosity were extensive enough ‘justice and injustice would be equally unknown among mankind’,<sup>21</sup> Sandel has suggested that we should see justice as a remedial virtue, one that is required only because our attachments to one another are not strong enough for us ‘to govern by the common good alone’.<sup>22</sup> Whether any real human community could achieve a level of solidarity high enough to allow it to dispense with justice altogether is uncertain, but the relevant point

<sup>21</sup> Hume, *A Treatise of Human Nature*, p. 495.

<sup>22</sup> M. Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press, 1982), p. 183. It is possible to argue, against Sandel, that the effect of strong communal attachments is not to displace justice by rendering it unnecessary, but rather to alter its content – for example by substituting principles of need for Humean principles of property rights, or for principles of desert. Sandel’s description of the ideal family governed by mutual affection wavers between saying that, in these circumstances, members will not wish to insist on their individual *rights* and saying that they will not claim their fair shares in a more general sense (see p. 33). Perhaps we should distinguish here between what strong community implies under conditions of scarcity (need-based justice) and what it might imply under conditions of plenty, such as those described by Hume.



is that community by itself is not sufficient to bring principles of justice into play.

It seems, therefore, that the common identity view cannot by itself solve the problem of boundaries and justice. It has to be taken in conjunction with the other two views that I canvassed. If we look back to the cooperative practice view, then, as I suggested earlier, if a group of people are participating in a cooperative venture for mutual advantage, they may appropriately apply certain principles of distributive justice within that group whether or not the cooperators share a common identity; even if their association is purely instrumental (each looks on the others just as useful contributors to the project and nothing more), questions of fairness naturally arise when the benefits of cooperation are being allocated. A similar point can be made about those who are subject to a system of political coercion but neither cooperate economically nor share an identity beyond the fact of their common subjection.

### III

So none of the three positions I have considered (cooperative practice, political coercion or common identity) seems to yield necessary and sufficient conditions for bounded distributive justice. Each seems to fit some cases but to leave out others in which, intuitively at least, distributive principles apply. If that conclusion is correct, there are two main corollaries that I want to draw.

The first is this: it is a common observation, among supporters and critics alike, that the nation-state has been and still is the favoured vehicle of social justice. Social justice as understood, and above all as practised, is justice within the boundaries of independent states whose members have a common national identity. Consider an ideal-typical nation-state: one that exercises sovereignty over a well-defined territory all of whose inhabitants share the national identity in question. Few, if any, states in the world match this ideal type (they are often multinational to a greater or lesser degree and include populations whose identities may involve allegiance to more than one homeland); but let us set these qualifications aside for the moment in order to explore the link between the nation-state and social justice. What is interesting about the ideal-typical nation-state is that it *combines* the three features discussed above: it applies coercive laws to all its

members; those members identify with one another as compatriots; and although it is not fully self-contained from an economic point of view, its economy and accompanying set of social services can be regarded as a large-scale cooperative practice since most production, exchange and distribution occurs within the borders of the state. So when John Rawls, for instance, said that his principles of social justice applied to a well-ordered society that was ‘a self-sufficient association of human beings’ and ‘a closed system; there are no significant relations to other societies, and no one enters from without, for all are born into it to lead a complete life’, he was idealizing a bit, but not to a ludicrous extent.<sup>23</sup> But because nation-states combine the three features in question, it is harder to see which of them is playing the crucial role in setting the boundaries of social justice: is it the economic and social cooperation or the political coercion or the shared sense of identity among compatriots?

In consequence, although it is correct to say that nation-states remain privileged sites of distributive justice, it is also important to acknowledge that this claim rests ultimately on a contingent fact, namely that political communities of this kind combine at least three different modes of human relationship, each of them relevant to distributive justice. I believe that fact also explains why social justice is a complex idea – why no single principle such as equality can adequately capture all of its requirements.<sup>24</sup> But the main point I want to make is that the existence of the nation-state has made life easier for those of us on the particularist side of the fence than it ought to be: we’ve been able to tie nation-states and distributive justice together without having to specify precisely by virtue of what that tie is supposed to hold. Walzer’s idea of the political community which I cited at the beginning of the chapter illustrates this well: by implication, the political community is a cooperative unit (its members ‘divide, exchange and share goods’); it is able to exercise coercive power (it can control the distribution of these goods); and yet it remains a community in the true sense of the word (its members are committed to each other, and attach shared meanings to the goods they distribute). Given the degree of overlap

<sup>23</sup> J. Rawls, ‘Kantian Constructivism in Moral Theory’ in J. Rawls, *Collected Papers*, ed. S. Freeman (Cambridge, MA: Harvard University Press, 1999), p. 323.

<sup>24</sup> I have argued for this at greater length in D. Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), esp. ch. 2.

that has existed in many developed societies over the past century or so (the age of social justice) between economic and social cooperation, subjection to a common set of coercive laws, and national identities, we have largely been able to avoid the task of specifying *which* forms of justice apply within *which* boundaries.

The second corollary has to do with the implications of that overlap beginning to break down, as many now claim is happening in the world today. Systematic coercion may remain very largely the prerogative of the state but economic cooperation takes place increasingly in networks that run across state boundaries, and identities appear to be shifting both upwards and downwards – to transnational collectives and to cultural groups below the national level. If this is indeed happening, what are the implications for distributive justice? Can we any longer think in terms of a single subject of social justice in Rawls' sense, or will we have to talk about multiple justices, corresponding to the different boundaries that may be relevant in each case?

This is by no means intended as an argument in favour of justice without boundaries. Those who speak of 'global social justice' or who interpret global justice in such a way that it has the same content as social justice used to have (equality, the Rawlsian difference principle and so on), are tacitly presupposing that 'the globe' has, or could have, those features that support distributive justice at national level. But this is very implausible. The absence of political institutions able to wield coercive force is the condition most often highlighted, but equally important, in my view, is the lack of a common identity among people who – if they are not still primarily attached to their ethnic groups or nations – may align themselves in religious terms, say, rather than as 'citizens of the world'. I am, therefore, arguing for a middle position between those who defend global principles of distributive justice, and those who, like Thomas Nagel, maintain that 'the idea of global justice without a world government is a chimera'.<sup>25</sup> For Nagel, only humanitarian duties between people can exist in the absence of a sovereign able to wield coercive power. He reaches this conclusion because he holds the political coercion view of just boundaries. But this view, I have argued, is too simple. Cooperative practices and common identity matter too. So where we find forms of economic cooperation arising at transnational level or where people begin to acquire new

<sup>25</sup> Nagel, 'The Problem of Global Justice', p. 115.

identities, say of a regional kind, then the scope of distributive justice will also enlarge even in the absence of coercive political institutions.

The idea of distributive justice will, then, continue to presuppose ‘a bounded world within which distributions take place’, and social justice within nation-states will be its strongest form. To deny that boundaries are relevant to distributive justice, or to underestimate the significance of political units that can bring boundaries of different kinds into closer alignment with each other, would be a serious error. But we should also expect to see new boundaries becoming salient, and with them new kinds of distributive claim. Alongside ‘thin’ global justice, cashed out primarily in terms of human rights, there will also be ‘thicker’ forms of international justice, prescribing, for instance, how to share the benefits of international trade or how to allocate the costs of environmental protection.<sup>26</sup> Philosophers wedded to simple, monistic principles of justice may find this conclusion unsatisfying. But having started with Walzer, it is perhaps appropriate to end with Rawls, who, even in his earlier thinking when problems of global justice did not yet loom large, remarked that ‘the correct regulative principle for anything depends on the nature of that thing’.<sup>27</sup> Once we grasp the force of that remark, we can more readily grant that boundaries matter for distributive justice, and different boundaries matter in different ways.

<sup>26</sup> Thinking about these questions is still in its infancy. For political philosophers it should now be a major task to explore these intermediate forms of justice, neither ‘social’ nor ‘global’ as these terms are usually understood. For my own initial forays in this direction, see D. Miller, ‘Fair Trade: What does it mean and why does it matter’, CSSJ Working Paper available at [http://social-justice.politics.ox.ac.uk/materials/SJ013\\_Miller\\_Fairtrade.pdf](http://social-justice.politics.ox.ac.uk/materials/SJ013_Miller_Fairtrade.pdf), and D. Miller, ‘Global Justice and Climate Change: how should responsibilities be distributed? Parts I and II’, *Tanner Lectures on Human Values*, 28 (2009), 119–56.

<sup>27</sup> Rawls, *Theory of Justice*, p. 29.

## 7 | *Social justice versus global justice?*

*Few things have played a more fatal part in the history of human thought and action than great imaginative analogies from one sphere, in which a particular principle is applicable and valid, to other provinces, where its effects may be exciting and transforming, but where its consequences may be fallacious in theory and ruinous in practice.*<sup>1</sup>

### I

The idea of global justice is comparatively new: it was rarely used before the last decades of the twentieth century. The idea of social justice, by contrast, has been with us for a century or more. When a new political idea appears in the wake of a longer-established one, it is natural, perhaps almost unavoidable, to see the second as simply a development of the first. Social justice was a central idea in twentieth century politics, in democratic societies especially. It was the banner under which the battle for equal rights, equality of opportunity, the welfare state and other such goals was fought within each separate state. Alongside the political battle, philosophers elaborated numerous theories of social justice, the most celebrated perhaps of which was that of John Rawls, as set out in his book *A Theory of Justice*<sup>2</sup> and later works. So, when later on these philosophers and others began to think about what justice might mean on a global scale, it was natural that they should start by taking familiar principles of social justice and exploring how these could be applied beyond the realm of domestic politics.<sup>3</sup> The implicit assumption here was that at a fundamental

<sup>1</sup> I. Berlin, 'European Unity and Its Vicissitudes' in I. Berlin, *The Crooked Timber of Humanity*, ed. H. Hardy (London: Fontana, 1991), p. 197.

<sup>2</sup> J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

<sup>3</sup> Rawls himself, however, did not take this path. When, near the end of his life, he wrote at length about international justice for the first time in *The Law*

level social justice and global justice are one and the same, the difference between them being essentially a practical difference of scope: social justice is justice within bounded societies, while global justice is justice across humanity as a whole. In line with this, the use of the phrase 'global social justice' in popular political discourse makes this assumption evident.

It is this way of thinking that I want to challenge in this chapter. Although I want to defend both the idea of social justice and the idea of global justice, I also want to argue that the relationship between the two ideas is more complex than the simple picture above suggests. To understand global justice correctly, we have to grasp how the world order as a context for justice is both similar to and different from the domestic context, the differences being sufficiently great that familiar principles of social justice – equality of opportunity, for example – cannot simply be 'stretched' and applied at a global level. We also have to explore the possibility that they might pull us in different directions – that sometimes political choices have to be made between promoting social justice at home and furthering global justice abroad. It is too neat and too comfortable to think that one fits inside the other like a Russian doll.

There are two main questions that we need to address, therefore. One is conceptual. When we talk about social justice and about global justice, is the same conception of justice being used or are we bringing different conceptions of justice into play? In other words, is the difference between the two ideas *merely* a difference of scope, with the same principle or principles being applied in the one case to the set of persons who belong to a particular society and in the other case to all human beings, or are different principles being applied? The other question is normative. If social justice and global justice are indeed distinct ideas, are they in practical conflict with each other? Might we have to choose between promoting social justice and promoting global justice given the practical constraints that we face – finite resources, for example? Two values can be distinct without coming into practical conflict, if what is required to promote the first also

*of Peoples* (Cambridge, MA: Harvard University Press, 1999), he was explicit that the principles he had defended in his theory of social justice did not apply beyond the nation-state. For discussion see the essays collected in R. Martin and D. Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell, 2006).

helps to promote the second, or if the demands they make are wholly independent of each other. But is this true of the two values we are considering?

## II

I begin with the conceptual question, which like most conceptual questions is difficult. To answer it properly, we would have to tackle some fundamental questions about the nature of justice and about moral epistemology. Here I shall be less ambitious and simply suggest two possible ways in which the conceptual identity thesis – social justice and global justice are conceptually the same and differ only in scope – could be defended.

First, it might be argued that justice is a universal value whose substance is always captured by the same principle, or set of principles, no matter where and to whom or what it is being applied. In other words, justice is not contextually variable. It is never the case that different principles of justice apply in different cases, for instance to different subject matters or among different groups of people. This is simply a matter of what justice means – it is a conceptual truth. If justice is universal in this sense, then it immediately follows that the difference between social and global justice can only be a difference of scope.

Consider, as an example of this position, the libertarian conception of justice as the non-violation of personal and property rights. These rights are held by all persons, and justice obtains insofar as they are respected. If we speak of social justice, we mean simply that the rights in question are respected among the group of people who form a society; if we speak of global justice, we mean that the same rights are respected universally. There is no conceptual difference. The same will apply to rival conceptions of justice that also claim universal status, for example egalitarian conceptions such as equality of resources. If justice can always be understood in terms of such a principle, then the difference between social and global justice can only be a difference in the principle's scope, not in its content.

Second, it might be argued that although justice may have a contextual character, in whole or in part – it comprises distinct principles that are used in different contexts – this does not drive a wedge between social and global justice. Someone taking this view might concede,

for example, that justice is not always a matter of equal distribution. Whether this is so depends on what is being distributed and the social context in which the distribution is taking place. However, when we survey the various contexts that bring different principles of justice in play, we find that there are no relevant differences between bounded societies and the world as a whole. Society and globe differ only in scale, not in features that are relevant to justice.

I find neither version of the conceptual identity thesis persuasive, but the issues they raise are somewhat different. In particular, the second version depends in part upon an empirical claim about the properties that societies possess and whether these are sufficiently distinctive to mark them out as spheres within which special principles of justice apply. So they need to be addressed separately.

The claim that justice is a universal value whose principles are invariant across social contexts may seem patently false. After all, we often talk about legal justice, political justice, justice in families and so forth, and it is by no means obvious that when we do this we are always applying the same substantive principle or principles. However, to give the first version of the conceptual identity thesis a fair hearing, we should modify it so that it becomes a claim specifically about *distributive* justice, understood for present purposes as justice in the distribution of advantages and disadvantages among large groups of people. The claim, then, is that when issues of distributive justice arise, we always address them by applying the same principles, for example a principle of equality. On closer inspection, however, this seems not to be the case. What we regard as a just distribution – and by ‘we’ here I don’t mean professional philosophers who are likely to have a particular stake in the matter but people generally who are competent users of the concept – depends on what is being distributed, by whom and among whom. This contextual variability can be shown through experiments in which people are asked to make decisions about fair distribution, having been given information which induces them to construe the context in one or other way. For example, we can construct situations in which the participants have contributed differentially to some common outcome – some have worked harder than others, for instance – and then by manipulating these situations we can explore what makes the people involved choose to reward individuals unequally according to their productive contributions,



and what makes them prefer to share their resources equally.<sup>4</sup> Our understanding of the concept of justice ought to accommodate this evidence, which means that it cannot be spelt out in terms of universal principles that apply regardless of context. If, like Rawls, we think that a theory of justice must pass the ‘reflective equilibrium’ test – the requirement that an adequate theory should accommodate and explain at least most of our considered judgements of justice, those judgements that we feel confident about and that seem not to be affected by our personal emotions or interests<sup>5</sup> – then no context-invariant theory is going to be a plausible candidate.

Of course, there is more that could be said here. A defender of the first version might simply dismiss the appeal to ordinary usage and reflective equilibrium, or she might try to show that many of the judgements people commonly make about justice are flawed and therefore don’t deserve to be counted as ‘considered judgements’ for the purpose of building a theory of justice. But it would take us too far afield to explore this further. My claim is that identifying social and global justice conceptually on the grounds that justice (or at any rate distributive justice) always carries the same meaning no matter in what circumstances we are applying the idea, is implausible. Indeed it completely distorts the idea of social justice itself. Social justice can’t be captured in terms of one or more principles that apply in all situations. It’s a complex idea, and it is complex because societies and the distributive spheres they encompass are also complex. Sometimes it is about ensuring that people are treated in the same way, sometimes it is about ensuring that they are treated differently, because, for example they deserve greater or lesser rewards or have larger or smaller needs. The principles that apply within economic enterprises are not the same as those that apply in the health or welfare services, nor those that apply in specifically political settings. This complexity cannot be reduced to some underlying master-principle, or even to a fixed *set* of principles that apply whenever justice is being invoked.<sup>6</sup>

<sup>4</sup> See my overview of the evidence in *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 4.

<sup>5</sup> Rawls, *Theory of Justice*, section 9.

<sup>6</sup> For an extended argument to this effect see Miller, *Principles of Social Justice*, especially ch. 2.

### III

So let's now turn to the second version, which accepts that justice is plural and contextual, but then argues that there is nothing special about societies that distinguishes them from the world as a whole as far as distributive justice is concerned. The world is simply one big society, so social justice and global justice must conceptually be one and the same.

Obviously what we need to get clear about here is what is meant by 'a society' and which of its features are supposed to be important from the point of view of justice. The answer I think is that by 'societies' we mean 'nation-states', using 'state' here in a somewhat broad, quasi-Hegelian sense to include not only formal political institutions but also the informal associations that make up civil society. Social justice is justice within nation-states so understood, and this is not accidental, as I have argued elsewhere.<sup>7</sup> But the problem now is to determine which of the several features of the nation-state matter as far as justice is concerned. There are different reasons we might have for regarding nation-states as privileged contexts of justice, and in order to settle the social justice versus global justice issue we need to know which of these counts.

There are broadly four grounds on which we might regard nation-states as special sites of justice.<sup>8</sup> They are first of all systems of economic cooperation whose members interact with each other to their mutual benefit to a far greater extent than they interact with outsiders. By producing and exchanging goods and services under a common set of rules, they create a surplus over and above what each might have produced by acting alone, a surplus whose allocation brings principles of distributive justice into play. Following Rawls, we can say that nation-states are 'cooperative ventures for mutual advantage'.<sup>9</sup> Second, they are systems of political coercion in which members agree

<sup>7</sup> Miller, *Principles of Social Justice*, ch. 1. and Chapter 6 in this book.

<sup>8</sup> This fourfold distinction follows P. van Parijs, 'Global Distributive Justice' in R. Goodin, P. Pettit and T. Pogge (eds.), *A Companion to Contemporary Political Philosophy*, 2nd edn (Oxford: Blackwell, 2007). Van Parijs, however, in each case dismisses the alleged reason for limiting the scope of distributive justice. I have considered the first three grounds at greater length, and more favourably, in Chapter 6 in this book.

<sup>9</sup> Rawls, *Theory of Justice*, p. 4.

to restrict their freedom in various ways by adhering to coercively enforced laws, restrictions that have to be justified by showing that they follow from principles that all concerned have reason to accept. Third, they are political *communities* in the real sense of that term, meaning that their members recognize a common national identity and share a common will to live their lives together, and as a result incur obligations to each other that they do not have to human beings elsewhere. Fourth, those nation-states in which the idea of social justice has taken root have also been more specifically *democratic* political communities whose members are collectively responsible for the legal and policy decisions that are taken in their name and that determine the resulting distribution of benefits and burdens amongst themselves.

With respect to each of these grounds, however, defenders of the conceptual identity thesis are able to point to features of the existing or emerging global system that suggest that nation-states are not distinctive as sites of justice. In the case of economic cooperation, for example, it is commonplace to underline the extent of economic interdependence between national economies and between individuals within those economies, and similar claims are commonly made about the coercive properties of international institutions, about multiple identities, some of them transnational, and about the growth of democratic institutions and practices at supranational level. These claims are frequently advanced in the large and expanding body of literature dedicated to the general phenomenon of 'globalization', and I do not want to elaborate on them further. The real question is whether these various processes that are lumped together under this heading of globalization have gone so far that there is no longer a qualitative difference between relationships that obtain between people within nation-state boundaries and relationships that cross those boundaries. This is a hard question to answer definitively. It's a bit like the old Sorites puzzle about the number of grains that have to be added before we can say that we have a heap of sand. Nonetheless, the following can be said against the identity thesis and in favour of the view that *social* justice remains special.

The idea of social justice emerged in the form that it did precisely because within nation-states the features I have just itemised were combined in the same unit: they were, and to a large extent still are, at one

and the same time schemes of economic cooperation, coercive legal systems legitimised by democratic institutions and communities with shared national identities. Within units of this kind, several things happen that are necessary to give shape to the conception of social justice as it developed throughout the twentieth century. First, there is broad agreement on what we can call the several currencies of justice – the specific types of benefit and cost whose distribution is seen to raise questions of fairness. Thus education, health care, job opportunities, income, civil and political rights and so forth come to be seen as things to be distributed according to principles of equality, need, desert, etc., according to the case. Second, the members of national communities see themselves as forming a common reference group, so they judge the adequacy of their share of each of these types of resource by how much other members in different geographical areas, occupations and so on are getting. Third, the economy and its accompanying social institutions are seen as subject to coercive regulation by the state, in principle at least, so that the final distribution of costs and benefits can be brought in line (imperfectly, no doubt) with principles of justice. Against this background, a conception of social justice made up predominantly of *comparative* principles – principles specifying what share of resources relative to others individuals are entitled to – can emerge. Thus we have principles that specify equal civil and political rights, principles of equal opportunity in education and jobs, principles of need in access to health care and so forth. Even those principles that are not directly comparative, such as those specifying entitlements to minimum levels of income, are often indirectly so when the income poverty line is drawn in such a way as to make it relative to the national average.

There is no similar convergence of features at transnational level even though, taking each feature separately, it is of course possible to find examples of that feature occurring at that higher level (economic cooperation across borders, etc.). And that suggests a different conception of global justice, one that acknowledges the impact of nation-states upon one another but does not presuppose that the circumstances of social justice are already present at global level. Such a conception will not be made up of comparative principles. Instead, as I have argued elsewhere, it will include the idea of a global minimum, a set of human rights that people everywhere can claim as a

matter of justice.<sup>10</sup> I understand human rights to be rights to those freedoms, resources and bodily states that allow basic human needs to be fulfilled, and basic needs in turn are defined as the conditions that must be met if a person is to have a minimally decent life in the society to which he or she belongs. So we begin with the idea that a decent human life contains certain essential components that are reiterated across all societies, and on that basis identify generic human needs whose precise form will nonetheless vary somewhat from one society to the next (thus the need for food and shelter takes a different concrete form in tropical and Arctic societies). Corresponding to these needs, we have a set of human rights, some of which are primarily rights to non-interference (such as rights to freedom of movement and expression) but others of which are rights to positive provision (to the means of subsistence, basic health care and so forth).

Global justice, therefore, requires first of all the protection of these basic human rights for people everywhere. Because not all states are able (or willing) to secure these rights for their own citizens, the obligation to do so may fall on outside bodies, including other states. That is why human rights protection becomes a matter of *global* and not merely *social* justice. But note that the requirements of justice here are absolute, not comparative. What is required is that everybody should be brought to the point where he or she securely enjoys rights to bodily integrity, subsistence and so forth. So far nothing has been said about the distribution of freedoms and resources over and above the minimum necessary to reach that threshold. But there is more to be said because nation-states are not isolated and self-contained units but political communities able to interact to their mutual advantage by, for example, creating economic gains for each other through international trade and investment or cooperating to solve collective action problems such as the degradation of the global environment. When these interactions take place, they raise questions of fairness. How are the benefits to be shared among the various parties? What rules should be applied to set the terms of trade, given that alternative sets of rules will benefit to varying degrees producers and consumers in different countries? Or in cases where political communities have to

<sup>10</sup> See D. Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007), ch. 7.

incur costs in order to solve global problems – cutting down on their use of natural resources or reducing their carbon emissions, say – what is a fair allocation of the costs in question? These questions are often now resolved in practice by self-interested bargaining among the various parties, a practice that tends to produce results that favour richer and more powerful states. What justice requires, by contrast, is a more complex matter, which may involve taking account not only of what would be a fair assignment of costs and benefits going forward but also of the historical background to the present situation. I shall not try to give a full account of what we might call *transactional* global justice, except to say that one leading principle is the equal sharing of costs and benefits between the parties. Notice, however, that equality here applies only to the fruits of the interaction – for example to the economic surplus that is created by trade. If we say that each party to the transaction should receive a roughly equal share of this surplus, we are not attempting to equalize their overall position. Global justice does not require that all countries should be equally rich, for example, or that their members should enjoy equal opportunities relative to all their global counterparts.

My argument, then, is that we should reject the conceptual identity claim, whether in the first or the second version. Social justice and global justice are different concepts, and in order to understand global justice correctly, we need to focus attention on the nature of relationships between people across the globe who at the same time belong to different national communities. But in saying this, I am not rejecting the idea of global justice outright. On the contrary, wealthier states especially may be subject to quite demanding obligations of global justice, either to intervene to protect human rights outside of their borders or to forgo some part of their bargaining advantage in international negotiations in the name of transactional fairness. So my position is not that of writers such as Thomas Nagel who argue that because the conditions for social justice are not met at global level (Nagel focusses on the political coercion condition, the absence of a world state), the idea of global justice makes no sense.<sup>11</sup> For Nagel, our obligations to people beyond the borders of the state are essentially humanitarian in nature, not matters of justice. In my view the

<sup>11</sup> T. Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33 (2005), 113–47.

interactions between nation-states and individual people at global level are sufficiently intense to bring principles of justice into play, but not comparative principles of the kind that belong to the concept of social justice. Thus the capacity of states to intervene in various ways beyond their own borders to protect the human rights of non-citizens is what makes such protection a matter of global justice.

#### IV

This concludes my discussion of the conceptual question about social and global justice. But what now of the normative question? Are they conflicting values, and if so which is the more urgent? This will of course depend on how we understand each value. In line with my discussion up to now, I will assume that global justice should be understood as demanding the universal protection of human rights and fair terms of interaction between nation-states. Others may want to advance more demanding conceptions, for example some form of global equality. In the case of social justice, I assume that it embraces comparative principles such as equality of opportunity and equal access to medical care for those with similar needs. Interpreted in this way, it seems clear to me that these two values often do place conflicting demands upon us. At the most elementary level, if we assume that the global protection of human rights sometimes requires rich countries to make resource transfers to poor countries, then we as democratic citizens may have to choose between, say, increasing the foreign aid budget to promote global justice and increasing the budget for preschool education to promote equality of opportunity at home. It is a debated question whether social justice is a satiable goal, in the sense that we might reach a point where there is nothing more that we can do by way of reallocating rights and resources between people that might make their shares of resources more distributively just. There is reason to think that it is not satiable, when we consider, for example, expenditure on health care, on disability and indeed on measures to try to correct inherited inequality of opportunity. That is, there will always be more interventions that we might make that will have the effect of meeting medical needs more adequately, giving people with disabilities opportunities that are nearly the same as those enjoyed by the able-bodied, and correcting for the effects of inherited social position by, for example, intensive preschool education for children from

disadvantaged families. In each of these areas, and others, we could decide to put more resources into pursuing social justice, and there would always be at least marginal gains from doing so. Because GDP at any time is finite, however, these resources would have to come from somewhere: either other forms of public expenditure would have to be retrenched or rates of taxation raised (but eventually, we should assume, the tax yield will fall if the rate rises beyond a certain point). If that is the case, then practical trade-offs between social and global justice are going to be with us indefinitely.

There is also a more subtle reason why we might think that social justice and global justice are conflicting values. This involves looking not at the resources needed to meet the demands of the two ideals but at the conditions under which people are willing to support each of them, respectively. Here I am assuming that there is some practical connection between identity and justice: people's willingness to support and comply with principles of justice – particularly principles that are likely to work to their disadvantage – depends on how far they identify with the constituency within which justice is going to be practised. If that is true, and if we want democratic support for policies designed to promote social justice and global justice respectively, then we may have to choose between fostering a national and a cosmopolitan sense of identity: between encouraging people to see themselves primarily as members of a particular political community, and as responsible for the welfare of people belonging to that community, and encouraging people to see themselves as citizens of the world, with responsibilities owed equally to the needy and vulnerable, no matter where they live. So, for example, if we include citizenship education as part of the school curriculum, as many countries now do, then a choice has to be made about how far the content of this education should be such as to encourage future citizens to think of their identity as primarily national in character and how far as cosmopolitan. Should they learn mainly about the history, institutions and political traditions of their own country, or mainly about global problems and how to tackle them? Of course these two options do not exclude one another completely. One can learn to be a citizen of one's country but also recognize responsibilities and obligations to people elsewhere, perhaps responsibilities stemming from the historical record of that same country. Nevertheless, a decision has to be made about where to place the emphasis. It is not the case that national and cosmopolitan identities can simply



be juxtaposed, since a national identity carries with it the idea that its bearer has special responsibilities to his or her compatriots that are not owed to people at large. It is sometimes suggested that there is no real conflict here because one may have a cosmopolitan identity but at the same time recognize that – because one is physically a member of a particular society – one's first task is to promote justice at home. By doing so, one at the same time contributes to cosmopolitan goals. But this assumes that there are no real choices to be made of the kind described in the last paragraph, where resource constraints mean that one cannot meet both the needs of compatriots and the needs of outsiders in full. Faced with such a choice, a person has to ask herself where her strongest commitments really lie – whether it is her fellow citizens or human beings as such that matter most to her when the chips are down.

If conflicts between social and global justice are unavoidable, we should next ask whether there are priority rules that might resolve them. Should we give priority to global justice, and say that social justice may only be pursued subject to that constraint, as Kok-Chor Tan, for example, has argued?<sup>12</sup> In defence of this position, it could be said that global justice – particularly if interpreted in the way I have suggested – represents a more urgent set of ethical demands. Assume that our political community has achieved at least a modicum of social justice within its own borders – a reasonable assumption if we are thinking about one of the economically advanced liberal democracies. It may then seem more important to secure the basic human rights of people abroad than to take further steps to promote equality or fairness within our own political community. It matters more that people living in sub-Saharan Africa should have adequate nutrition and clean water than that inequalities in access to medical care in a country like Britain should be ironed out – since even comparatively badly off people in Britain are still far better off than most of those living in sub-Saharan Africa.

If one takes what Nagel has called 'the view from nowhere', this conclusion follows easily.<sup>13</sup> But what if we ask the same question from

<sup>12</sup> K.-C. Chan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge University Press, 2004).

<sup>13</sup> T. Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986).

the point of view of the citizens of a particular political community who have to decide on their policy priorities? Suppose the choice is this: we could save money on health expenditure by closing down a few outlying hospitals and requiring the people affected to travel long distances to the big city units, which will mean some inequality of access to health care (people will be deterred from making the trip and some may suffer medically from having to take long rides in the ambulance). The money saved will be used to fund life-saving drugs in developing countries. Is it now so clear what our choice should be? There are two questions that we have to consider. One has to do with the division of responsibility. It is not disputed that the human rights of people living in sub-Saharan Africa include the right to receive essential medical supplies, given that these supplies are available – the drugs exist and it is feasible to deliver them to the people who need them. But whose responsibility is it to fulfil this right? How much, if anything, must we in this community do, given what we and others have done in the past and what others are now capable of doing? The second question has to do with our treatment of those who will be disadvantaged if we decide in favour of global justice by funding the drugs programme. Is it consistent with the underlying principle of equal citizenship – the principle of equal concern and respect, as it is often labelled – to choose to widen inequality of access to health care, albeit for good reasons? It is tempting to sweep this second question under the carpet by supposing that the pursuit of global justice only requires uniform sacrifices on the part of fellow-citizens – each of us must give up a few pence a day to help raise the position of the global poor – or at least to suppose that if the sacrifice is unevenly distributed this can be compensated for by other policies. But this may not always be so. You can't in fact compensate the person who dies in the ambulance making the longer journey to hospital; the same applies to the soldier or aid worker who is killed in the course of a humanitarian intervention to protect human rights.

So, once we abandon the view from nowhere and consider the matter from the point of view of the citizen in a democracy deliberating with his fellow-citizens about policy choices, we are going to have to accept that there will be practical conflicts between social and global justice in which global justice will have to yield, even on the fairly restrictive conception of global justice that I have proposed. There is no reason to think that these conflicts will be all-pervasive: clearly anti-poverty

programmes directed at people within your political community will contribute to both social and global justice. But given the demanding nature of social justice, we can't rule out cases in which pursuing it would mean retrenching on policies and programmes designed to protect human rights abroad and we can't say that in these cases global justice must always take priority. This means that there may be what I shall call a justice gap: people in poor countries may have claims of justice against the citizens of rich countries – claims for resources to be sent in their direction or for protection against various forms of local oppression – which those citizens can justifiably refuse to meet in the name of social justice. This is not, I should stress, simply a claim about motivation. The point is not just that citizens may be unwilling to send resources abroad because their altruism is limited. It is a point about justice and what we should do when different claims based on justice collide. It relies, therefore, on my earlier argument that justice is contextual, not universal, and on my claim that there is something special about social justice.

I have not, however, tried to provide an independent argument for giving priority to social justice in cases such as those described. Instead I have appealed to what I hope may be shared understandings on the part of readers of what is owed to fellow citizens. I am not sure what to say to someone who is already committed to a strong form of cosmopolitanism that would rule out any such special consideration for compatriots. At the same time, I do not want to suggest that the claims of social justice must always take precedence over claims of global justice. It is easy to think of cases where the priority should be reversed – for example, few of us would believe that making available a supply of very cheap clothes to poor people in our own society justifies allowing our corporations to source their goods from third world sweatshops employing child labour. For a justice gap to exist, it isn't necessary that social justice should trump global justice whenever they collide; it's only necessary that social justice should win sometimes.

## V

The argument of this essay can be summed up in three main claims. The first is that if we are to develop an intelligible conception of global justice, we must begin by taking a close look at the human relationships to which our conception will be applied. The world, now and

for the foreseeable future, is made up of independent, though interacting, political communities, within each of which there are different shared understandings of the central values of human life and of what, therefore, the goals of the state should be. Even though most nation-states are multicultural internally, there is no real equivalent to this political diversity inside them. So we cannot form our conception of global justice simply by drawing from ideas of social justice that have evolved within nation-states. We cannot assume that principles that make sense in these domestic contexts will continue to apply once we move to the international arena. Our theory of global justice must stand independently of existing theories of social justice.

The second claim concerns the agency that we hold primarily responsible for carrying out the task of promoting distributive justice. In the case of social justice, that agency is the state. Of course the state mainly furthers social justice indirectly, through legislation, public policy and fostering norms that citizens are encouraged to follow – so social justice relies on widespread cooperation on the part of the public who have, for example, to pay their taxes and claim their benefits honestly; to follow appropriate, non-discriminatory rules when making decisions about who to employ, who to buy from and sell to and so forth. Nevertheless part of the state's job is to say authoritatively what each person must do in the name of social justice and often to follow up with sanctions if a person fails to comply. There is no equivalent to this in the case of global justice, no single agent who can be held responsible for protecting human rights or for ensuring that the international trading system is fair. We might imagine states agreeing with each other to coordinate their activities so that these goals are achieved, but even if such agreements can be reached – and as recent negotiations over humanitarian intervention, trade rules and measures to combat climate change show, this can itself be very difficult to achieve – they cannot be effectively policed. There is no authority with the power to enforce what has been agreed against a recalcitrant state. This is the background to what I have called the justice gap: no state can be obliged, as a matter of justice, to take up the slack that others have left. This makes the achievement of global justice precarious in a way that the achievement of social justice is not.

The third claim is about the real possibility of conflict between pursuing global justice and pursuing social justice, a possibility that

seems often to be denied by progressives who see the former as simply a logical extension of the latter. I have noted that there may not only be resource conflicts but also identity conflicts: there may be a trade-off between seeing ourselves as citizens of nation-states bound by historical and cultural ties to other citizens, and seeing ourselves as cosmopolitans whose ties to any particular place are only sentimental but not ethical or political. Although the institutions and practices of social justice are now well entrenched in most liberal democracies, it is also true that public attitudes in these societies have shifted somewhat over the past quarter-century or so, broadly towards liberal individualism and away from liberal egalitarianism. That is, there is a stronger sense that people should be free to choose how they want to live their own lives and be willing to take responsibility for those choices, and a weaker sense that it should be part of the state's job to protect people from the effects of their choices by measures to promote equality of outcome. (Symptomatic here may the recent debate, in Britain, about inheritance tax, where it has proved hard to convince people that there is something unfair about the hugely unequal effects of the inheritance of wealth in the absence of such a tax.) In other words, social justice has been on the back foot in recent decades as far as popular attitudes are concerned.<sup>14</sup> Under these circumstances, we should be concerned to strengthen communal identifications – national identities especially – that might help to reverse this trend.

Contrariwise, encouraging people to adopt a more cosmopolitan identity may weaken their commitment to social justice still further without at the same time making them any more committed to global justice. In other words, rather than strong principles of distributive justice for the world, we get weak principles of justice for those at home – perhaps a social safety net and not much else. A better strategy, it seems to me, is to strengthen national citizenship but then make it a part of citizenship so understood to be active in pursuit of global

<sup>14</sup> This point should not be overstated. People will still declare themselves in favour of equality of opportunity, the social minimum and government's responsibility to narrow the gap between rich and poor. But as the inheritance tax example shows, they may not always be willing to support the policies that would be necessary to achieve these aims. For some recent evidence, see R. Jolley, 'The British Do Support Equality', *Fabian Review*, 119 (3) (Autumn 2007), 4–7.

justice. In other words, alongside established national goals such as domestic security, economic growth and environmental protection, it should become part of the national project to contribute in specific ways to global justice. It might become a matter of national pride to have set aside a certain percentage of GDP for developmental goals – perhaps for projects in one particular country or group of countries – or to have met agreed international targets for reducing emissions of greenhouse gases. This does of course require citizens to be willing to look beyond national interest in the conventional sense when deciding which policies they are prepared to support. But with a relatively modest conception of global justice along the lines I have sketched, the demands that are made on them should not in general be excessive. Since coordination between independent political communities cannot be guaranteed, the justice gap will still exist: there will be cases where people in poor countries have claims of justice that no rich community feels obliged to meet. But if we can enlarge our understanding of citizenship so that it comes to include the discharge of responsibilities of global justice, it will at least have been narrowed significantly.

## 8

*'Are they my poor?': the problem of altruism in a world of strangers*

## I

'Are they *my* poor?' This question comes, as readers may know, from an essay by Ralph Waldo Emerson entitled 'Self Reliance'. I do not have a very secure grasp either of Emerson's general philosophy of life or of the particular point of view that he expresses in this essay, but it is safe to say that Emerson was not keen on altruism as we would normally understand it. He believed that when each person cultivated his or her individuality – developed and expressed all his or her mental and physical powers to the full – other people would benefit spontaneously, whereas activities performed to meet these others' expectations or demands would diminish both giver and receiver. The surrounding passage reads:

Do not tell me, as a good man did today, of my obligation to put all poor men in good situations. Are they *my* poor? I tell thee, thou foolish philanthropist, that I grudge the dollar, the dime, the cent, I give to such men as do not belong to me and to whom I do not belong.<sup>1</sup>

And there follows a list of charitable causes in relation to which, Emerson says, 'though I confess with shame I sometimes succumb and give the dollar, it is a wicked dollar, which by and large I shall have the manhood to withhold'.<sup>2</sup>

This essay was first given as a lecture to the Association of Legal and Social Philosophy's Annual Conference on the Ethics of Altruism at Royal Holloway College, in April 2002, and subsequently presented to a workshop on Economics, Philosophy and Cognition at Nuffield College. I am grateful to both audiences for questions and comments which have helped me revise the essay. I am particularly grateful to Cecile Fabre, Patti Lenard and Jonathan Seglow for their written comments on earlier drafts. Finally I must thank Natalie Gold for research assistance without which the essay could not have been written.

<sup>1</sup> R.W. Emerson, *Emerson's Essays* (London: Gibbings and Co., 1901), vol. 1, p. 59.

<sup>2</sup> Emerson, *Emerson's Essays*, vol. 1, p. 60.

You may feel, then, that this is not a very promising place to begin an essay on altruism, though on Emerson's behalf it should be said that he did sometimes hand over the dollar, and often a great deal more, in particular for the cause of abolishing slavery to which in the 1850s especially he devoted a great deal of his time and energy. So perhaps we can read his remarks differently, not as repudiating any idea of altruistic concern for the poor, but as one way of signalling the problem that I want to address, as the frustration of a man who having given a good deal to one very worthy cause found himself inundated with requests for other kinds of help. The question it is very natural to ask in such circumstances is 'Why me?' 'Why is it *my* responsibility to look after these particular needy people?' For although there may be many people in need, there are also very many who would be able to offer relief if they chose. So how can I decide where to direct my efforts and how much of the burden I should shoulder?

This predicament is very familiar to us. Step out into the street and it will not be long before you encounter someone who needs help. Open your morning post and the chances are that you will find an appeal from a charity or a political lobby for your time or your money. It is hard not to have an Emersonian reaction. But it is worth noting that this is a peculiar feature of our world, not shared with the human societies that have come before, which embodied mechanisms that put potentially needy people into the care of particular others – for instance, some embodied practices of mutual aid whereby within a well-defined community, a village say, people were expected to help those who suffered misfortune. Those whose crops failed in a bad year were permitted to take grain from the communal store; someone whose house burnt down could call on neighbours to help rebuild it and give or lend basic furniture.<sup>3</sup> Other societies relied on a well-defined hierarchy of responsibility: under the English Poor Law, for instance, officers in each parish raised funds through local rates and distributed them in cash or in kind to the parish poor. Obligation was localized: people had responsibility for those who stood close by, according to rules that everyone understood. The system could work as long as most people stayed put: it was supplemented by rules governing hospitality

<sup>3</sup> These examples and many others are discussed in the classic work on mutual aid, P. Kropotkin, *Mutual Aid: A Factor of Evolution* (London: Heinemann, 1910).



to strangers, but these again assumed that strangers would only show up occasionally and in limited numbers. No doubt these arrangements broke down from time to time – people defaulted on their obligations or there were simply not enough resources available to meet them – but in principle everyone knew whose poor were theirs and what they were expected to do as a result.

In this world – ‘the world we have lost’, to use Peter Laslett’s phrase<sup>4</sup> – there was no room and no need for altruism, understood loosely for the moment as an attitude of indiscriminating concern for the welfare of others. Altruism becomes appropriate and relevant in a world of strangers, in a world, that is, where we regularly encounter, either directly or through the media of communication, unknown people who nevertheless we might be able to help if we so chose. Both parts of this formula are necessary: we must be aware of the strangers’ needs and it must be possible for us to do something about them, for instance by putting a cheque in an envelope. In the older world, neither of these conditions held and so ethical space was fully occupied by concrete obligations to others. It is not surprising, then, that the concept of altruism should have appeared in the midst of the transition from pre-modern to modern society, coined apparently by Auguste Comte in about 1840 and quickly catching on as a way of identifying the moral perspective that was appropriate to the new society. People could either be egoists, pursuing their own self-interest, or they could be altruists, pursuing the interests of humanity at large. But that of course left open the question of when and towards whom one was supposed to be altruistic.

## II

Since there is no standard definition of altruism, I need to stipulate how I shall use the term in the discussion that follows. Comte’s usage suggests dividing human actions into two categories: egoistic acts motivated by the agent’s own self-interest and altruistic acts motivated by any other reason that is positively connected to the welfare of others. But this defines altruism very broadly – too broadly to be useful, at least for present purposes – and it leaves in limbo those actions performed for mixed motives. In particular, I propose to exclude from the

<sup>4</sup> P. Laslett, *The World We Have Lost*, 3rd edn (London: Methuen, 1983).

definition of altruism actions that are performed in order to comply with institutional rules, even in cases where the motive for compliance is a sense of obligation or duty. For instance, if I promise you to do something and then fulfil my promise because I believe I ought to, should that count as altruism? Or suppose it is part of my job to help people in certain specified ways. When I dutifully perform the actions in question, am I being altruistic? Is it altruism when I read and mark students' essays? Most people, I think, would not regard such behaviour as altruistic and this suggests a narrower definition of altruism as behaviour that is intended to meet the needs of others, where there is no immediate self-interested reason to help and where there is no institutional requirement that one should.

Let me say a little more about the three parts of this tentative definition. I assume first that altruism comes into play when people are in need, though this can range from acute need such as starvation to cases such as the person whose shopping bag breaks in the middle of the street. Anyone who goes to the rescue intending to help is an altruist in my book. This leaves out behaviour whose aim is to give pleasure, even though the recipients are not in need – present-giving, throwing parties and so forth. I have no objection to someone who wishes to expand the definition of altruism so that it covers such behaviour, but the present discussion will focus on altruism as a response to need since the interesting ethical questions seem to arise only about altruism in this narrower sense.

Second, helping behaviour undertaken in the hope of getting something directly back in return is not altruistic, though I want to leave the door open to actions undertaken in the spirit of what has been called 'generalized reciprocity' – that's to say, a sense that we will all benefit if people help each other in certain ways. When I take time to give directions to a stranger I meet in the street, I am behaving altruistically, even if at the back of my mind there is the thought that I might find myself lost one day and need to ask a passer-by, though almost certainly not this particular one. In excluding self-interest, one need not require the motivation for altruistic actions to be 100 per cent other-regarding, so to speak.

Third, as already indicated, I want to exclude actions that are undertaken to comply with legal or institutional rules or that are part and parcel of my social role. It is not altruism when I keep my promises, obey the law, feed my children or write comments on my students'

essays, even if my motives in each case are unselfish. It does not follow, however, that altruistic acts are by definition non-obligatory. When I pull the drowning child out of the river at little cost to myself or drive someone injured in a car accident to hospital, I am acting altruistically even though I have an obligation to act in this way. The obligation reflects the seriousness of the need I am responding to: it is obligatory to save people's lives or to help the badly injured; it is not obligatory to pick up people's shopping or give directions in the street, though it is good to do these things.<sup>5</sup> Acts are both altruistic and obligatory when there is no institutional requirement to perform them, so my rescuing the drowning child is altruistic, while the lifeguard's rescuing her is not, at least in standard cases.

It might be said in reply here that calling actions altruistic implies that the agent has a choice as to whether she performs them or not, so if an act is obligatory it cannot at the same time be altruistic. I agree that there is a sense of altruism – I noted above that the term has no fixed definition – in which it implies supererogation, actions done above and beyond the call of duty. In the present context, however, there is a particular reason for drawing the line where I have drawn it. Actions can be obligatory, in the sense that it is obligatory that *someone* should perform them, and yet it may be uncertain who that someone should be. There may be a number of spectators who see the child getting into trouble in the river and then there is an obligation that falls initially on the group as a whole that someone should wade in and pull him out, but there is so far no way of identifying one particular spectator as the person who should discharge the obligation. Someone who took the initiative and jumped in might then say, with a slight air of paradox, both that she was obliged to act as she did – the child would have drowned otherwise – and that she had a choice whether to jump in or not – there were plenty of others who would no doubt have rescued the child if she did not. This is the feature that distinguishes the case from instances of institutional obligation – where a particular individual is picked out as the person who has the duty – and allies it with other cases of altruism, such as giving directions to a stranger in the street,

<sup>5</sup> This contrast is sometimes expressed differently, as a distinction between perfect and imperfect duties. An imperfect duty is one that gives the agent discretion as to whether she performs it on a given occasion or not. For a good account of where the distinction falls, and why it falls there, see P. Smith, *Liberalism and Affirmative Obligation* (New York: Oxford University Press, 1998), ch. 3.

where the need is less urgent, but once again there are many who could potentially meet it.

Altruistic acts have a fourth feature, which is so obvious that it is barely worth specifying in the definition: they are more or less costly to the agent who performs them, if only in lost time. When we help people in need, we give up resources, expose ourselves to risk or forgo other opportunities. One could imagine cases in which helping cost nothing, but was for instance simply a matter of diverting resources from less needy B to more needy C, or giving away resources that one had no use for at all – and we could debate whether this should count as altruism or not – but the point is that these examples will nearly all be artificial ones. The obvious point is worth stating only because it forms the backdrop to the discussion that follows. ‘Are they *my* poor?’ is a resonant question because people are generally willing to be altruists if they must, but would rather not have demands for altruism crowding in on them all the time.

### III

The problem I want to address is not the basic question ‘*Why* should I be altruistic?’ but the more nuanced one ‘*When* should I be altruistic?’ In a world of strangers, where there are many needy people, but also many others who could respond to their need, how should I decide when it is my turn to help? Or should it always be my turn, so long as there are people in need? To get to grips with the question, I want to begin by looking briefly at some studies of altruism in practice, in particular at some experiments designed to uncover the factors that encourage people to help or discourage them from doing so. I will ask about how these studies should inform our practical thinking, whether we can learn positive lessons from them or whether we should just set them aside as evidence of moral fallibility or weakness.

The first thing one learns, looking at these studies, is how situationally specific people’s altruism is. It would be natural to think that altruism is a function of personality, the world dividing up into selfish and unselfish people, but although personality differences undoubtedly play some part, it is striking how far altruistic behaviour is affected by the framing of the situation in which agent and patient find themselves. To begin with, altruism is quite cost-sensitive: small differences in what must be given up in order to perform the altruistic act can

make a big difference to the result. There is a classic experiment that reveals this.<sup>6</sup> The experimenters wanted to recreate the parable of the Good Samaritan, so they arranged for their subjects, who were students at a theological seminary, to be sent between two buildings, passing on the way a victim who was slumped in the street and evidently in some distress. Who would stop to help the victim? Dropping a big hint, some of the students were asked to prepare a talk on the Good Samaritan parable itself and others on a tangential subject, careers open to theology students. As one might expect, those who had been thinking about the parable were more likely to help – 53 per cent as against 29 per cent. But much more strongly correlated with helping behaviour was a second variable, how much time the students had. Some were told that they were a few minutes late for the next session, others that they were on time, a third group that they had a bit of time to spare. This had a dramatic impact on their willingness to help the unfortunate victim: 63 per cent of those with time to spare helped, 45 per cent of the middle group, but only 10 per cent of those who had been told they were running late. The experimenters witnessed on several occasions the bizarre spectacle of theology students hurrying to deliver a talk on the Good Samaritan and in the process literally stepping over a man who to all appearances had fallen in the street. Changing the cost of helping, in this case the cost of being a few minutes late to give a talk, transformed the subjects' willingness to be altruistic.

Another important factor is how the potential altruist views the person who needs help. A multitude of studies have shown that altruism is significantly affected by perceptions of similarity between giver and receiver.<sup>7</sup> So, for example, smartly-dressed people help other smartly-dressed people more often than they help scruffy people. More worryingly, perhaps, people are more likely to help those who share physical features like skin colour – in some circumstances, for example, white people are less likely to help Blacks than they are other white people, though this depends on whether they can justify the differential

<sup>6</sup> J. Darley, and C. Batson, "From Jerusalem to Jericho": a Study of Situational and Dispositional Variables in Helping Behavior', *Journal of Personality and Social Psychology*, 27 (1973), 100–8.

<sup>7</sup> See J.A. Piliavin, J.F. Dovidio, S.L. Gaertner, and R.D. Clark, *Emergency Intervention* (New York: Academic Press, 1981).

treatment to themselves on grounds other than race.<sup>8</sup> People discriminate racially, in other words, but they have a bad conscience about doing so, so they need an excuse. Their altruism is also influenced by what they learn about the political views of the would-be recipient: one study using letters dropped randomly in the street found that the chances of a letter being picked up and posted fell dramatically when it was addressed c/o Friends of the Communist Party;<sup>9</sup> another study found that when an unlocked car was left with its headlights on, passers-by were much less likely to switch them off when it displayed a bumper sticker reading 'Support the Black Panthers', but also (reassuringly perhaps) somewhat less likely to be altruistic when the sticker read 'America – Love it or Leave it'.<sup>10</sup>

Would-be altruists are not only influenced by their perception of the needy person as 'someone like me'. They also make moral judgements about the character of the recipient. Most obviously, they are influenced by the extent to which the person in question can be held responsible for his or her own needy condition. One set of experiments tested people's response to someone collapsing in an underground train, where in some instances the victim was presented as having a medical condition and in other instances as drunk.<sup>11</sup> Helping rates were significantly higher in the former case, and in a further refinement which tested for control of the two conditions, it becomes clear that judgements about personal responsibility play an important part in explaining why people are less willing to help drunks.<sup>12</sup> But wider moral questions can also intrude. In one experiment people were called by telephone with the following story: the caller says that his car has a flat tyre, that he is due to meet someone, that he has dialled the wrong number by mistake and has no more change. Would the person he has

<sup>8</sup> J.F. Dovidio, 'Helping Behavior and Altruism' in L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, vol. 17 (London: Academic Press, 1984), 361–427.

<sup>9</sup> O. Hansson, 'Altruism Towards a Deviant in City and Small Town', *Journal of Applied Social Psychology*, 7 (1977), 272–9.

<sup>10</sup> J. Ehlert, N. Ehlert, and M. Merrens, 'The Influence of Ideological Affiliation on Helping Behavior', *Journal of Social Psychology*, 89 (1973), 315–16.

<sup>11</sup> I.M. Piliavin, J. Rodin, and J.A. Piliavin, 'Good Samaritanism: An Underground Phenomenon?', *Journal of Personality and Social Psychology*, 13 (1969), 289–99.

<sup>12</sup> B. Weiner, 'A Cognitive (Attribution)-Emotion-Action Model of Motivated Behavior: An Analysis of Judgments of Help-Giving', *Journal of Personality and Social Psychology*, 39 (1980), 186–200.

called mind phoning on his behalf? . . . and he gives the number. Significantly, however, when he says he is meeting his girlfriend, 70 per cent of women and 90 per cent of men make the call, whereas when he says he is meeting his boyfriend these numbers fall to 35 per cent and 30 per cent respectively.<sup>13</sup> So here, then, disapproval of homosexuality makes a big difference to people's willingness to engage in a not-very-costly piece of altruism.

What can we learn from these studies? One understandable reaction is to say that what they reveal is above all people's moral weakness – the fact that they are only too ready to avoid behaving altruistically and that therefore they will seize on anything (the cost of the action, some disqualifying feature of the recipient) that lets them off the hook. Good people, it might be said, would not discriminate: they would help whenever help was needed and they were able to provide it. But there is an alternative, Emersonian, interpretation as well. Perhaps people are being selective in their altruism because they are willing to help their own poor but not everyone else's. Admittedly they are using somewhat arbitrary criteria to decide who their own poor are, but the underlying impulse is that of wanting to do one's fair share, but no more than that, of the world's altruistic work. I will come back to this idea shortly. But first let me conclude our brief tour of the empirical evidence by looking at studies that focus on the *number* of people available to carry out a rescue.

These studies were inspired by some well-publicized real-life cases in which people were harmed or killed despite the presence of many witnesses who were able to help. So the experimenters created artificial emergencies in which subjects had to decide whether or not to intervene, and then varied the number of people available to take action.<sup>14</sup> For instance, in one study<sup>15</sup> an accomplice faked an epileptic seizure and subjects were led to think either that they were the only witness to the event or that they were part of a group of two, three or six (there

<sup>13</sup> J.I. Shaw, H.W. Borough, and M.I. Fink, 'Perceived Sexual Orientation and Helping Behavior by Males and Females: the Wrong Number Effect', *Journal of Psychology and Human Sexuality*, 6 (1994), 73–81.

<sup>14</sup> See the helpful overview in B. Latane and J.M. Darley, *The Unresponsive Bystander: Why Doesn't He Help?* (Englewood Cliffs: Prentice-Hall, 1970); see also B. Latane and S. Nida, 'Ten Years of Research on Group Size and Helping', *Psychological Bulletin*, 89 (1981), 308–24.

<sup>15</sup> Latane and Darley, *The Unresponsive Bystander*, ch. 11.

was no communication with other group members, a fact whose significance I will comment on later). Other studies were carried out in real-life settings – one for instance involved researchers dropping handfuls of pencils on the floors of lifts with different numbers of passengers and seeing how much help they got in retrieving the pencils.<sup>16</sup> The consistent finding from these experiments is that increasing the number of potential rescuers always decreases the chances of any individual helping, often to the point where the likelihood of being rescued by anybody at all declines for the unlucky victim.

What explains this finding? Three processes seem to be involved, all tending to inhibit people from giving help when numbers of others are present.<sup>17</sup> First, people interpret other people's inaction as a sign that the situation they are confronting is not one that requires them to intervene. Before they act altruistically, people need to believe first that the victim really needs help and second that they are able to give some. If other people are doing nothing, then this suggests either that what looks at first glance like a person in need is actually something else, or that nothing can be done in any case, or that intervening is too risky, etc. In other words, there is a cognitive effect: people tend to redefine the situation in the light of others' inaction.

Second, we know that altruistic behaviour is often affected by norms telling us what is expected of us in particular contexts. We know, for instance, that people who witness someone else behaving altruistically – putting money in a collection box, stopping to help a motorist with a flat tyre – are more likely to follow suit themselves.<sup>18</sup> Here, witnessing others' behaviour brings a specific altruistic norm into play. But in the multi-person cases I am discussing, inaction becomes the norm. If no one else is bending down to pick up dropped pencils, then I shall feel slightly embarrassed, or uncool, if I get down and help. It is just not the done thing to pick up pencils for strangers in lifts, so it seems.

<sup>16</sup> B. Latane and J.M. Dabbs, 'Sex, Group Size and Helping in Three Cities', *Sociometry*, 38 (1975), 180–94.

<sup>17</sup> See Latane and Nida, 'Ten Years of Research on Group Size and Helping'.

<sup>18</sup> See J.H. Bryan and M.A. Test, 'Models and Helping: Naturalistic Studies in Aiding Behavior', *Journal of Personality and Social Psychology*, 6 (1967), 400–7; further evidence is surveyed in D.L. Krebs, 'Altruism – An Examination of the Concept and a Review of the Literature', *Psychological Bulletin*, 73 (1970), 258–302.



But third, and most importantly, where numbers of people are available to help, responsibility for helping becomes diffused. If I fail to help and the victim suffers, I may be part-responsible for what happens, but my responsibility is shared with two, six or however many others there are present. And responsibility shared is responsibility diminished.<sup>19</sup> To connect this to diminished altruism, we only need to observe that altruism has two sides to it: it is praiseworthy to help people in need, but blameworthy to fail to help them. If I fail to act in a multi-person case, I may miss out on the praise, or self-praise, that I would have received, but at least I am not much to blame for what happens to the victim. So I am less likely to do the altruistic deed.

The diffusion of responsibility effect is well-documented and experiments have been designed to isolate it from the two previous effects by creating situations in which subjects were unable to discover how other members of the group were behaving and were therefore unable to draw either cognitive or normative inferences from that behaviour.<sup>20</sup> Even here, the more people there are in the group, the less likely any one member is to behave altruistically.

Does it matter that the groups who fail to respond are non-communicating groups – they are people artificially separated by partitions in psychology laboratories, or groups of unknown passers-by in the street, and so on? Would they be more likely to help if they talked to each other? Yes and no: it depends on the content of the talk. Looking back at the three processes just discussed, talking to people is likely to consolidate a shared interpretation of the situation the group is facing, so if that interpretation is a negative one from the point of view of altruistic intervention – 'He's probably just drunk', 'I'm sure he'll sort himself out if we leave him alone' – talk will make intervention less likely still. On the other hand, talk typically has the effect of making the group more cohesive, and there is evidence that cohesive groups are more likely to take action than non-cohesive ones

<sup>19</sup> This, at any rate, is how the onlookers are likely to see things. It is not so clear whether they are justified in doing so. For the counter-argument, see Smith, *Liberalism and Affirmative Obligation*, pp. 53–6. But Smith concedes that 'this issue is quite unsettled'.

<sup>20</sup> S.H. Schwartz and A. Gottlieb, 'Bystander Anonymity and Reactions to Emergencies', *Journal of Personality and Social Psychology*, 39 (1980), 418–30.

so long as a norm of social responsibility is activated.<sup>21</sup> Again this depends on whether the group sees the victim as in legitimate need of help. Finally, talk can of course be important simply as a way of coordinating behaviour or dividing up tasks, and this makes effective intervention more likely. One study found that groups of three people sitting together responded about as effectively to a minor emergency as single individuals, whereas isolated threesomes took much longer to respond or did not respond at all.<sup>22</sup>

In general, though, multi-person cases confirm what we have already found, namely that people are keen to avoid acting altruistically if they can manage it, taking refuge in groups either as a way of confirming their reasons for inaction or in order to lessen their share of responsibility if the needy person is not helped. So let me now change into normative gear and ask what, if anything, these studies can teach us about how we *should* behave. How much responsibility for meeting the needs of others can we be asked to assume in a world of strangers?

#### IV

One quite common response is that we must learn to overcome the limits to our altruism that these studies reveal. When people are in need, the only question we should be asking is 'Where can I do most good, without impairing my own capacity to do good in the future?' We should not consider the costs of behaving altruistically, unless these costs become so great as to leave the agent worse off than the person she is trying to help. We should not draw distinctions between people as being more or less eligible for our help – the extent of their need is all that should concern us. And we should not consider our own responsibility as in any way lessened by the fact that there are others who might equally well help; indeed the less others do to help, the greater our altruistic responsibilities become. Moral philosophers who take this line – people like Peter Singer and Peter Unger, for example – devote their energies to exposing and dismantling the various reasons

<sup>21</sup> G. Rutkowski, C.L. Gruder and D. Romer, 'Group Cohesiveness, Social Norms, and Bystander Intervention', *Journal of Personality and Social Psychology*, 44 (1983), 545–52.

<sup>22</sup> R. Misavage and J.T. Richardson, 'The focusing of responsibility: an alternative hypothesis in help-demanding situations', *European Journal of Social Psychology*, 4 (1974), 5–15.

given for limiting the scope of altruism.<sup>23</sup> They admit that, in a world in which many are poor, the implications of what they say are very demanding indeed, but that is no reason to weaken the moral requirement to give aid. From this perspective, the experimental work I have discussed is no more than a catalogue of human frailty, an exploration of the mechanisms that people use to avoid facing up to their genuine responsibilities.

But there is also another way of thinking about these studies, which begins with the idea that we are *collectively* responsible for meeting the needs that altruism aims to satisfy.<sup>24</sup> Instead of thinking of one individual confronting a world with many needy others, and asking what that individual should do, we should recognize that there are many others who could help too. And then, given that altruistic actions are burdensome to the person who performs them, the natural question to ask is 'What is my fair share of responsibility?', 'How much can I be expected to do myself and how much can I properly leave to others?' One might spell this out by thinking of a sum total of need that has to be met, where needs range from the trivial to the profound, and then dividing this up so that each person bears an equal part of the cost of meeting that total, or perhaps a share that reflects each person's capacity for altruistic behaviour, in line with the famous formula 'From each according to his abilities, to each according to his needs'. However one does the calculation, the idea is that each person has an altruistic 'quota' that she is supposed to meet, that she can be asked or in some cases required to fulfil that quota, but that she should not be asked to take on anyone else's.

But, it may be said in reply, even if such a calculation could be made, we know that as a matter of fact most people won't fulfil their quota. Look around you and you see people throwing the Oxfam letter into the bin, stepping over homeless people on the street and so forth. One cannot limit one's altruism to what would be required in a world in which everyone behaved properly. Well, we might want to modify the quota idea a bit to cope with the fact that most people aren't going to do their share, while still holding on to the idea that need is a collective

<sup>23</sup> P. Singer, *Practical Ethics*, 2nd edn (Cambridge University Press, 1993); P. Unger, *Living High and Letting Die: Our Illusion of Innocence* (New York: Oxford University Press, 1996).

<sup>24</sup> A similar idea is developed in L.J. Cohen, 'Who is starving whom?', *Theoria*, 47 (1981), 65–81.

responsibility, perhaps along the lines suggested by Liam Murphy.<sup>25</sup> Murphy's basic idea is that one should first work out what each person would be required to do assuming full compliance by everyone else, and then in situations of partial compliance one should do as much good as one can so long as the sacrifice involved does not exceed what would be demanded under full compliance. The fact that others are defaulting on their altruistic responsibilities will change the set of costs and benefits that an agent faces, so he will need to act differently than under full compliance, but he should not have to give up more than he would if everyone else did their fair share.

Of course, following something like the Murphy principle may well mean that many needy people are not helped, so what can be said in its defence? First, it obviously appeals to an idea of fairness. Given that helping behaviour is costly, we shouldn't expect some people to perform more than their fair share of it, while others perform little or none. Altruistic behaviour has implications for the distribution of resources among those who engage in it, whether this is a matter of contributing money, or time, or bearing personal costs. These are matters to which principles of distributive justice apply. It does not make sense on the one hand to attempt to shape the basic structure of our society to achieve a fair distribution of the benefits and burdens of social cooperation, while on the other hand endorsing the Singer/Unger view that each person should bear the costs of meeting needs up to the point where she becomes needy herself. The latter view is a recipe for arbitrary distribution, unless everyone coordinates their behaviour and agrees how to share the responsibility for meeting needs, in which case it becomes indistinguishable from the Murphy position.

Second, even if one thought that the Singer/Unger position gave a correct account of one's private moral obligations to the needy, it is not a view that could reliably serve as the basis for a shared public morality.<sup>26</sup> For if a sufficient number of people declare themselves

<sup>25</sup> L. Murphy, *Moral Demands in Nonideal Theory* (New York: Oxford University Press, 2000).

<sup>26</sup> 'Public morality is not simply a general name for the sum of all the autonomous private moralities; rather, it is essentially a way of coordinating private efforts for common goals. In some matters it makes no sense to determine what an individual's duty is in isolation from the public system of assigned shares and responsibilities.' (J. Feinberg, *Freedom and Fulfillment*. (Princeton University Press, 1992), p. 195.)

willing to help the needy up to the point at which they become needy themselves, this immediately allows others to exploit their willingness by doing nothing, secure in the knowledge that the Singers and Ungers of the world will respond by taking up the slack. In other words, the Singer/Unger view, publicly avowed, becomes a recipe for exploitation. Like other members of the utilitarian family, it is at best a doctrine that one should espouse in private. By contrast, in declaring openly that one is willing to do one's fair share to help those in need, but not more than that, one simultaneously assures others that they will not be exploited if they do *their* bit and gives them an (altruistic) incentive to contribute.

Finally, the Singer/Unger view seems not to tally with our sense of how responsibility and blame should be assigned in cases where needs are *not* met. Consider a case in which there is some simple way to settle what each person's altruistic quota should be – there are this many people needing help, that many people able to supply it and we can calculate what each person's contribution (of time or money, say) must be.<sup>27</sup> Suppose some of the potential helpers make their contribution and others do not. It is natural then to say that the plight of the people who are left in need is the responsibility of the non-contributors. Even if we think that – because the need is grave and the non-contributors seem determined not to put their hands into their pockets – those who have already contributed should contribute some more, we should surely regard this additional contribution as qualitatively different from the original one. We would not blame someone who refused to make it, even if we thought more highly of someone who did. But we cannot make sense of this qualitative gap if we adopt the Singer/Unger view. From that perspective, which focuses simply on the victim's need and my capacity to meet it, the two contributions are equivalent: if I gave £100 in the first instance, and that paid for medical treatment for a sick child, then if I have to give another £100 to help a second child because someone else refuses to contribute, I am equally praiseworthy if I give and equally blameworthy if I do not.<sup>28</sup> There is no room here for the thought that I am responsible for the health status of the first child but not responsible for the health status of the second.

<sup>27</sup> Cohen, 'Who is starving whom?' provides an example with this structure.

<sup>28</sup> Assuming that contributing the second £100 does not take me below some morally relevant threshold.

So in principle, I believe, there is a good deal to be said for the view that sees altruism as a matter of doing one's share of the work of meeting needs. But unfortunately the principle that Murphy elaborates is going to be very little help in practice. It's not just that the calculation involved is one that is impossibly difficult to perform – first work out the sum total of unmet need in the world today, and then work out how much of the cost of meeting that need is down to each person. It is also that occasions for altruism typically arise in much more discrete settings. The Murphy approach might just work if one was thinking about Third World poverty, say, where it may be possible to calculate how much each of us needs to put into the Oxfam envelope. But more often altruism is a matter of a particular person taking action *now* to rescue a particular other – the stranded motorist with a flat tyre, the child drowning in the river – and it hardly seems appropriate for potential rescuers to perform Murphy-type calculations before deciding when to help. (Indeed Murphy admits that his principle cannot accommodate common intuitions about rescue cases.<sup>29</sup>) So we are left with our dilemma. Altruism is an enormously important contributor to the quality of our lives, whether one is thinking of urgent life-threatening situations, or simply of everyday acts of helpfulness (giving directions, picking up the spilled shopping and so on), and we ought all to do our bit, but none of us can tell what that bit amounts to.

## V

How can we move forward here? Let me explore three possible avenues. One is that we should formally collectivize our altruism. We should create institutions that discharge our altruistic obligations for us, and we should all contribute – financially, above all – to the costs of those institutions. That way, each of us can pay our fair share. That's a route that we already follow to a large extent. For instance we pay taxes to support the welfare state and one thing that the welfare state does is to employ professionals to carry out tasks that might otherwise be dependent on individual altruism, such as caring for the elderly. Or on a much smaller scale, we hire lifeguards to sit on crowded beaches and relieve ordinary bathers of their responsibility to pluck swimmers

<sup>29</sup> See Murphy, *Moral Demands in Nonideal Theory*, ch. 7.

who get into trouble out of the surf. Where it can be made to work, this is a good solution and I am among those who think that, rather than relying on individual acts of altruism to cope with world poverty, for instance, we should empower the state to act on our behalf, by voting for increases in the foreign aid budget. By collectivizing our altruism we can ensure both fairness and effectiveness.

It might be said in reply that when altruism is formally collectivized in this way, it ceases to be altruism. In one sense this is perfectly true. For the public at large, the act of giving becomes compulsory and for those who become professional helpers or rescuers, it becomes a job requirement that they should give help or carry out rescues, and so in neither case do the acts in question qualify as altruistic according to my original definition. Nonetheless, one could still say that the scheme as a whole is altruistically motivated, so long as people support it because they see it as fulfilling aims that they would otherwise pursue themselves for altruistic reasons (whether this is the case with existing schemes of this nature is hard to judge). Beside this conceptual worry stands a more substantive concern that because collective schemes diminish the scope for individual acts of altruism, they may diminish altruism in other areas of life – the theory here being that altruism is a quality that is strengthened by being exercised and atrophies otherwise. Whatever the truth about this, I think that the evidence surveyed above adds up to a strong case for collectivizing altruism when it is feasible to do so and the needs in question are serious ones. For we saw how susceptible individual altruism is to contingencies such as perceptions of the person in need and the number of people available to help. Where people are at risk of serious harm, it is better to have a system in place that formally identifies the person or persons responsible for helping them.

The problem, however, is that very often formal institutions cannot be created, or only created at a cost that is out of all proportion to the harm in question. We could, I suppose, employ official direction-givers to linger on street corners looking for lost pedestrians, or river wardens to patrol the banks of streams on the off chance that a child might fall in somewhere, but what these examples reveal is that in a world of strangers, need arises in such a random way that each of us has to be ready to meet it when we encounter it. Even in those areas where we have opted for professional provision, we still have to rely on ordinary citizens to fill in the cracks, alerting somebody if an elderly neighbour

seems not to be moving about as usual or a child appears to be suffering from neglect. So we cannot shift the burden of altruism entirely off the shoulders of the ordinary person. But might we try to formalize it in a different way, by laying down rules that require people to assume responsibility for the needs of others in specific circumstances? This is the second way forward, and the clearest example of this approach in practice is so-called Bad Samaritan legislation.<sup>30</sup>

This is legislation imposing a duty of rescue that requires any citizen to come to the aid of another in certain specified circumstances. Many legal systems, including most of those in Continental Europe, now include a duty of rescue, whereas Anglo-American law has not generally recognized such a duty except in cases where there is some prior relationship between aid-giver and recipient, so that the duty to rescue is subsumed under a wider duty of care.<sup>31</sup> Contemplating this state of affairs, most legal philosophers seem to think that Bad Samaritan laws are not objectionable in principle, provided the duty of rescue is closely circumscribed. And this appears to be the case in those existing legal systems that have such laws. Aid-giving is required only when the victim is facing a threat of death or serious injury; the rescuer is normally required to intervene only when he can do so without incurring significant risk; and often he is given a choice between carrying out the rescue himself and contacting the authorities, for instance the police.

Why is the legal duty of rescue interpreted so narrowly? In order to justify punishing someone whose failure to help is the source of harm to the victim, two conditions would have to be met. First, it would be necessary to establish the right kind of causal relationship between actor and victim. The potential rescuer must have seen the victim, recognized that he was in need of help, understood that there

<sup>30</sup> Legislation that imposes a duty of rescue on individuals is referred to in this way, since its purpose is to penalize Bad Samaritans, whereas Good Samaritan laws are those whose aim is to protect people who carry out rescues from being penalized (e.g. from being sued by the victim if the rescue miscarries).

<sup>31</sup> A few American states now impose such a duty, however. For discussion both of existing legislation and of the jurisprudential arguments for and against Bad Samaritan laws, see J.M. Ratcliffe (ed.), *The Good Samaritan and the Law* (Garden City: Anchor Books, 1966); E. Weinrib, 'The Case for a Duty to Rescue', *Yale Law Journal*, 90 (1980–1), 247–93; J. Feinberg, *The Moral Limits of the Criminal Law, vol 1: Harm to Others* (New York: Oxford University Press, 1984), ch. 4; M.A. Menlowe and A. M. Smith (eds.), *The Duty to Rescue: the Jurisprudence of Aid* (Aldershot: Dartmouth, 1993).



was something he could do to provide the help and understood also that it was his responsibility rather than anyone else's to effect the rescue. Of course we can readily imagine cases in which all these conditions hold (bather evidently drowning not waving, sea calm, no-one else on beach, etc.) but equally there will be many other cases in which the agent could reasonably claim that one or more of them was not. Failure to rescue is after all an omission rather than an act, and there are good reasons why the law punishes omissions only in special circumstances – typically circumstances in which A stands in a special relationship to B and therefore has well-defined responsibilities towards her. Under these circumstances an omission becomes a failure to discharge a responsibility – say a duty of care – that A either was or should have been aware of. But this does not in general apply to people who are simply physically juxtaposed in such a way that A could, if he was aware of the situation and decided to act, rescue B.

The second condition is that the costs of the rescue should be relatively low: the duty to rescue is a duty to carry out *easy* rescues. But what if A's psychology is such that an action which would be low cost for most other people becomes high cost for him? This might for instance be because A knows that he will faint at the sight of blood, or has a phobia about entering the water; or it may be that the action is one that carries a risk to A himself, and he assesses that risk as much greater than others would (perhaps because of his past experience).<sup>32</sup> In other areas of law a 'reasonable person' standard is used to determine, for example, whether someone was provoked to such an extent that it was reasonable for him to retaliate. But would we be justified in using such a standard here?<sup>33</sup> A reasonable person would surely wade waist-deep in water to save a drowning child, for example, but would it be right to prosecute someone who claimed that his fear of water was such that he could not bring himself to do it? Feinberg suggests that the way forward here would be to confine liability to those who *clearly* face no unreasonable risk, cost, or inconvenience in carrying out a rescue, in other words not to prosecute if there is any reasonable

<sup>32</sup> This point is powerfully made, with some vivid examples, in H.H. Malm, 'Bad Samaritan Laws: Harm, Help or Hype?', *Law and Philosophy*, 19 (2000), 707–50.

<sup>33</sup> For a defence of the reasonableness standard in the context of a duty of rescue, see C. Fabre, 'Good Samaritanism: A Matter of Justice' in J. Seglow (ed.), *The Ethics of Altruism* (London: Frank Cass, 2004), pp. 128–44.

doubt in the matter.<sup>34</sup> This seems defensible, but it does of course narrow the scope of the duty to rescue very considerably.

Taking these two points together – that the rescuer must stand in the right kind of causal relationships to the person in need and that the cost of the rescue should be minimal – we can see why formalizing altruism by means of Bad Samaritan laws is not an appropriate solution in the great majority of cases. In particular, it is inappropriate in situations of the kind that I discussed earlier, when a relatively large number of people, each of whom could intervene to rescue the person in need, all fail to act. On what grounds could all the bystanders be prosecuted? Each could claim that it was not her inaction that led to the victim being harmed. Each could add that she reasonably believed that another person was better placed to carry out the rescue, or faced fewer costs in the course of doing so. There have not been many prosecutions to date under Bad Samaritan laws, but to the best of my knowledge, all those who have actually been prosecuted have been lone individuals who were uniquely positioned to carry out a rescue but chose not to do so.

So formalizing altruistic duties, by turning them into legal requirements for individuals, can only work in narrowly defined circumstances, and in particular cannot work in just those cases which sparked my discussion, cases where there are many potential aid-givers who might be held responsible for the person or persons in need. We need to explore a third avenue, one that both leaves altruistic behaviour in the hands of ordinary citizens and makes them responsible for judging what help they should give without legal enforcement.

## VI

The key idea, I want to suggest, is to encourage the growth of norms that connect particular people in need of help to particular other people who are able to give it. One of the main lessons that I tried to draw from my review of the empirical evidence about altruistic behaviour is that people's altruism is discriminating: they behave altruistically when, and only when, they interpret the situation in front of them as one that requires helping behaviour on their part. The other main lesson was that when many potential helpers are present, each individual

<sup>34</sup> Feinberg, *The Moral Limits of the Criminal Law*, vol. 1, ch. 4, section 3.

is much less likely to intervene. The Singer/Unger response to this is to try to transform people's altruism through rational argument so as to turn them into simple consequentialists, considering only the overall consequences of various courses of action they might take. My suggestion is quite different: we should build on what we know about existing behaviour, and find ways of forging links between individuals, or between individuals and groups, that serve to identify a particular A as the salient aid-giver for a particular P.<sup>35</sup>

How might this be done? Sometimes one person will be distinguished by having a special capacity or a special status that marks them out from the rest of the group, and the primary responsibility for helping will naturally devolve on to that person – the medically-qualified bystander, for instance. But more often there will be no substantive reason why one person rather than another should help, and here all that matters is that *somebody* should be singled out. What we are looking for are psychological connections that form spontaneously in people's minds and that could then be used to generate norms of altruistic behaviour. One example is physical similarity between the person needing help and the potential helper – similarity based on age, sex, ethnicity, etc. We saw earlier that this was a factor that already influences people's behaviour when they are rationing out their altruism. The proposed norm is that the person who should help is the person most like the victim. Another example is proximity: the person who should help is the person physically closest to the person in need, say in cases where someone collapses in the street or falls into the river (recall that by assumption no spectator has a special competence to deal with the situation). If these 'natural' connections fail, we may try to create artificial ones in their place. We know, for instance, that people are quite responsive to the mere fact of being picked out as aid-givers. Asking someone sitting next to you to look after your possessions proves to increase greatly the chance that the person asked will intervene to stop a thief.<sup>36</sup> At a much more serious level, studies of people who rescued Jews from the threat of persecution during the Nazi occupation of Europe show that the single most important

<sup>35</sup> I have proposed a similar approach to the problem of how to assign responsibility internationally for helping deprived or suffering people in D. Miller, 'Distributing Responsibilities', *Journal of Political Philosophy*, 9 (2001), 453–71.

<sup>36</sup> Piliavin et al., *Emergency Intervention*, p. 104.

variable distinguishing rescuers from non-rescuers was the simple fact of being asked to shelter a particular Jew.<sup>37</sup> This mechanism does of course rely on the victim, or someone already connected to the victim, being in a position to make the request, otherwise the problem recurs at a higher level – which B should approach an A to beg help for P?

Except in the case where one potential rescuer has a special capacity to help, these mechanisms of connection essentially pick helpers out at random, and it might be asked how this approach can be squared with my normative claim that our altruism should take the form of a willingness to do one's fair share of helping those in need. Two points are worth making here. First, random allocation mechanisms will allocate the costs of helping fairly over time so long as each person has an equal chance of being picked out by these mechanisms – for instance, is equally likely to be the one standing next to someone who collapses in the street. Second, the norms I am envisaging are norms that would assign primary responsibility to one helper in situations where there are many potential helpers and therefore each may decide not to act in the hope or expectation that someone else will. But the person who is assigned primary responsibility might then turn to another helper – if she is a poor swimmer, say, or can't cope with the sight of blood – or recruit a small team to work together. In other words, she is not required to carry all the costs of the rescue herself if these are significant. As we have seen, people respond well when asked to help; they will no doubt respond even better when they can see that the costs of helping are being fairly shared.

I have suggested some possible ways to connect particular helpers to those in need of aid, but the question remains how to turn these mechanisms of connection into shared norms of altruism. It is much easier to establish conventions of this kind within well-defined groups, so it is tempting to say that the way to solve the problem of altruism is to localize it within fairly small groups who can then establish norms that single out individuals as responsible aid-givers in particular circumstances. But this solution evades the real issue, because as I argued earlier, the Emerson problem – are they *my* poor? – arises precisely in a society of strangers where we continually encounter unknown others in need of help. In these circumstances, we cannot rely on guidance

<sup>37</sup> F. Varese and M. Yaish, 'The Importance of Being Asked: the Rescue of Jews in Nazi Europe', *Rationality and Society*, 12 (2000), 307–34.

from local groups: we need to have norms that are widely diffused throughout societies. So we need to understand how norms of this kind can emerge and how we might encourage this to happen. I have no positive suggestions to make here, so rather than speculate, let me pull the threads together and say a few more words in defence of the approach I favour.

I have been arguing that the problem of altruism in a world of strangers is the relative absence of mechanisms that tell us who is responsible for meeting the needs of particular others and I have suggested three ways in which we might try to remedy this: creating public institutions that discharge our altruistic obligations for us, imposing legal requirements on individuals via Bad Samaritan laws, and promulgating norms that link salient helpers to needy recipients. Each of these, I should stress, is a partial solution only: each works in some cases but not in others. Underlying this approach are two basic intuitions. One is that people's altruistic capacities are limited. They are willing to go to considerable lengths to help – think of those who rescued Jews in Nazi Europe – once they see helping P as their particular responsibility, but they are quite selective about who they will take responsibility for (one may speculate that this limited altruism can be explained in evolutionary terms). The other intuition is that limited altruism is morally justified. Helping those in need is something we are all collectively responsible for and the burden this imposes is one that should be shared as fairly as possible. As moral agents, people should not take other people's inaction in the face of need as simply a fact of life. I don't say that in an emergency one shouldn't be willing to do more than one's share. But it's better still to work to establish systems, whether institutional, legal or moral, that distribute the burden of altruism fairly. Emerson was right to complain about being asked to help all the poor that were brought to his attention. Whatever the merits of his general philosophy of life, the question he asked was a good one.

## 9 *Taking up the slack? Responsibility and justice in situations of partial compliance*

### I

My aim in this chapter is to investigate what justice requires of agents who find themselves in situations that have the following general form. There are many agents who by acting together can avert some anticipated harm. Together, then, they share responsibility for avoiding that harm, but furthermore this collective responsibility can be divided fairly between them so that each knows what he or she must do to discharge that fair share. Despite this, however, some comply but others do not; the ones who do not comply could have chosen to do so, but they have shirked their share of the responsibility and in doing so have acted unfairly. The question then arises: How should we understand the position of those who have already complied or those who have yet to decide what to do? What are their responsibilities now, in the face of partial compliance? Must they take up the slack, by doing more than they were required to do according to the original fair division of responsibility? What does justice demand in this situation?

Situations of this general kind are not merely hypothetical: one can readily think of a number of real-world circumstances that either already do or easily could take the form just described. For instance, we might think of rescue cases where there are numbers of people awaiting rescue and several potential rescuers and it is reasonably clear how much fairness requires each to contribute to the operation. Or we

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might think of world poverty and the position of all those who could contribute to poverty relief by voluntary contributions to aid agencies.<sup>1</sup> Or again if we switch focus from individual agents to collective agents such as nation-states, we could think of measures to conserve natural resources, such as agreements to reduce the catch of ocean fish, where each country is given a target quota such that if all countries comply, fish stocks will not be further depleted. Finally, we could consider the case of global warming and think of an agreement to cut greenhouse gas emissions with each nation being given a target to aim at, targets being set to reflect some underlying principle of fairness. In all of these cases, it is unfortunately only too easy to anticipate that because of bad faith, selfishness, weakness of will, or whatever, some agents will find reasons not to do their share, so that the goal in question – rescuing everyone at risk, keeping fish stocks at the required level and so forth – will not be reached unless other agents take up the slack. But are they obliged, as a matter of justice, to do this?

I think that our immediate intuitions are likely to suggest different answers in different cases. If we take rescue cases, for instance, then assuming it was a matter of justice to do one's fair share in the first place – something we will need to investigate as we proceed, but assume for the moment that if the potential victims had a right to be rescued, and the costs involved in the rescue were not excessive or disproportionate to the harm averted, then justice requires that it be undertaken – many people would say that justice also requires taking up the slack if the costs stay within the same limits. If justice requires you to jump into the pond, spoiling your suit but not risking your life to pull out the first child, then if your companion declines to pull out the second child, you must at least be willing to sacrifice another suit of comparable value to you to rescue that one. On the other hand, in the case of conserving fish stocks, many would think that a nation that conscientiously sticks to its quotas has done all that justice requires, and that reducing catches still further because others have failed in their duty would be supererogation. As long as we have done our fair share, they might say, the decline in fish stocks is entirely

<sup>1</sup> This is not in general a good way to think about world poverty – we should instead focus our attention on the practices and institutions that serve to reproduce it over time – but there may be cases in which it is appropriate, for example large-scale natural disasters such as the Asian tsunami where the short-term provision of aid meets basic needs for food, shelter and so forth.

the responsibility of the countries that haven't. But what can explain these conflicting intuitions, apart from the rather too obvious fact that one case has to do with human beings and the other with fish? Or can we restore consistency by showing that one or other intuition is mistaken?

## II

Before I try to tackle the normative issue directly, let me expand a little on how the situations that interest me are to be characterized. First, although they are multi-agent cases, they are not standard prisoner's dilemmas, nor are they what we might call altruistic prisoner's dilemmas. By an altruistic prisoner's dilemma I mean a situation in which there is some good to be achieved or harm to be avoided but it is indeterminate which agent or agents should take action to bring that result about. So, one might think of a case where there are several people standing near the pond when the child falls in and only one person needs to jump into the pond to save him. Assuming each bystander wants the child to be saved and would jump in if he were the only rescuer at the scene, but is reluctant to sacrifice his suit, we have a dilemma where each has a reason to hold back in the hope that someone else will carry out the rescue.<sup>2</sup> Or in a variant of this case, a car accident may require only a sub-set of those who witness the accident to care for the injured, but it is indeterminate who should make up that sub-set. The situations I am investigating are different from this, because by stipulation it is clear what justice requires each person to do by way of contribution. This might be because a formal agreement has been reached, on the basis of criteria that each party is willing to accept, as in the case of the fish quotas. Or it might simply be because it is evident to everyone what fairness demands in the circumstances – for example an equal sacrifice from each agent. This does not of course prevent people from acting strategically – deciding not to contribute in the hope that others will take up the slack. But it will be clear in these situations that such people are behaving unfairly and that *prima facie* at least, those who decide to take up the slack are doing more than justice requires.

<sup>2</sup> I have explored situations of this kind, and possible responses to them, in the previous chapter.



I need to make two further clarificatory comments here. I assume that for each agent, discharging his or her fair share of responsibility is significantly costly, but not so costly that it becomes questionable whether it could be a matter of justice to contribute. Furthermore this also applies to the additional costs involved in taking up the slack – they are significant, but not so significant as to push the agent across the threshold such that it would be beyond the call of duty to contribute more. In other words, I am not going to be addressing the problem of demandingness that has occupied the attention of many philosophers – the problem of when carrying out a duty becomes so onerous that the agent in question can justifiably refuse to discharge it.<sup>3</sup> My interest is in questions of fairness – in how one should think about cases in which one is asked to bear additional costs only because others have failed to carry out their share of a collective responsibility. If there were no significant costs involved, this would not be an interesting problem – it would merely be pique to refuse to flick an extra switch to avoid some great harm merely because it was somebody else's job to flick that particular switch. On the other hand, when the cost becomes very high, fairness may be obliterated by the demandingness issue – that's to say, the question for each agent may simply be 'how much must I contribute to this collective task before it becomes so onerous that my personal prerogative cuts in?' I think that the examples I used to illustrate the fairness problem – standard rescue cases, world poverty, conserving natural resources and combating global warming – all fall into the middle ground where the costs that agents are being asked to bear, both initially (given a fair distribution of responsibility) and as a result of non-compliance, are significant but not excessive.

One last introductory remark: someone might respond to the situations I have described by saying that what is needed is some mechanism that can oblige people to contribute their fair share, so that the question of taking up the slack need never arise. For example, we should

<sup>3</sup> The voluminous literature on this topic includes S. Scheffler, *The Rejection of Consequentialism* (Oxford: Clarendon Press, 1982); J. Fishkin, *The Limits of Obligation* (New Haven: Yale University Press, 1982); S. Kagan, *The Limits of Morality* (Oxford University Press, 1989); L. Murphy, *Moral Demands in Nonideal Theory* (Oxford University Press, 2000); T. Mulgan, *The Demands of Consequentialism* (Oxford: Clarendon Press, 2001); G. Cullity, *The Moral Demands of Affluence* (Oxford: Clarendon Press, 2004).

create institutions that can supervise the behaviour of individual people, or of countries in policy areas such as resource conservation and climate change. In some cases this will be the correct response. However, I am confident that there will be other cases – many other cases, unfortunately – in which even if setting up such a mechanism were justifiable in principle, it would not be feasible. In rescue cases, for instance, you cannot in the end force human beings to perform actions they are unwilling to perform – they may simply sit on their hands and refuse to help. In the country-level cases, no international institution is likely in the foreseeable future to have either the authority or the coercive power to oblige unwilling countries to cut their greenhouse gas emissions or to conserve fish stocks or other resources (what such an institution *can* do, importantly, is to define fair shares of responsibility by setting targets for each country, but this is very different from enforcing the targets that have been set). So the problem of partial compliance as I have described it is a real one – it cannot be circumvented by ingenuity in designing institutions or other mechanisms that could guarantee full compliance.

### III

In the situations I am considering, agents face a choice between three broad possibilities: they can discharge their original fair share of responsibility despite others' non-compliance; they can do *more* than they were originally required to do in order to compensate for the non-compliance; or they can do *less* than they were originally required to do, so that they fall more closely into line with the defaulters. Each of these options has something to be said for it, so let me elaborate a little further. The argument for the first option is that one's responsibility is only to do one's fair share regardless of what others decide. Liam Murphy, who on the whole supports this position in his book *Moral Demands in Nonideal Theory*, notes that a stricter version of the first option would require people in conditions of partial compliance to perform the best available action subject to the condition that the overall costs of doing so would not be greater than the costs they would have borne under full compliance.<sup>4</sup> This accommodates the fact

<sup>4</sup> Murphy, *Moral Demands in Nonideal Theory*, ch. 5.

that the world will be different in certain ways when there is only partial compliance, so what one actually has to do to discharge one's fair share of responsibility may be different than under full compliance, but the key point is that the net level of sacrifice should be the same. And, it might be said, whatever the arguments for doing more, this is all that justice specifically requires of the agent.

In defence of doing more, it can be argued that because of the non-compliance of the other agents, we are now in a position where the harm we were seeking to avert will not be averted. However much we might regret the non-compliance and condemn the non-compliers, this is simply a fact of life, so what we must now do is to recalculate contributions, distributing responsibilities fairly among the coalition of the willing, so to speak. What justice requires in the new circumstances is that each agent should discharge his fair share of the responsibility as determined by these calculations. Unless he is the only willing complier, nobody is required to take up all of the slack by himself, but must contribute fairly to filling the gap left by the non-compliers. Since presumably there may be some agents who are willing to comply with the original distribution of responsibilities, but not to contribute to taking up the slack, there might have to be further iterations in which additional assignments of responsibilities are made, but to keep things simple let's assume that everyone who was originally compliant is also willing to help take up the slack. Our question will be whether this might be what justice requires of such agents.

The third possibility is that one might do less, in the face of others' non-compliance (I shall call this 'grouching'). What would doing less mean? One possibility is that one should try to place oneself at the *average* level of compliance revealed by the actions of others. This is unlikely to lead to a determinate result in the case of rescues – one can't pull half or two-thirds of a child out of the water – but in the other examples I gave it would certainly be feasible to adjust one's level of contribution to the going rate, so that if others are on average contributing one-third of what they would need to give to abolish global poverty, one would also give one-third of whatever one's full contribution was calculated to be. In defence of this policy, a person could say that he was behaving fairly given other people's actual behaviour – if they were prepared to do more, he would do so as well, but justice should not require us to contribute more to a collective task than others are on average contributing. After all,

to contribute the full amount in these circumstances would put the person in question at an unfair disadvantage relative to these others.<sup>5</sup> Of course, somebody might take this line of thinking further and refuse to contribute more than the *least* compliant of the other parties, but again to keep things simple let us have compliance at the average level on the table as our third alternative.

#### IV

Having sketched these three possible responses to situations of partial compliance at a general level, let me now consider some of the factors that might affect our judgement about which response is required by justice. These in other words are factors that potentially might separate cases in the real world such as those I described earlier.<sup>6</sup>

- (1) The first factor that might be relevant is the causal relationship between individual contributions and the result that is being sought. In other words, how far do successive contributions by different agents affect the overall outcome? One possibility is that each act of compliance has the same net effect, so that the relationship between level of compliance and outcome is linear. For example, if we take the case of conserving fish stocks, each reduction of the catch, measured in weight, say, might have more or less the same effect on the size of the long-term stock of fish in the sea. Another possibility, at the other end of the spectrum, is that each contribution taken by itself has zero effect unless all the

<sup>5</sup> This consideration will have particular force where contribution levels cluster around a particular point, say one-third of what full compliance would require. Where they are more widely dispersed, other forms of grousing, such as taking your cue from the least compliant of the other parties, may become more defensible.

<sup>6</sup> The list that follows is not exhaustive. Here are two other factors that might be relevant: first, whether or not the parties have entered into a formal agreement to discharge their collective responsibility, for example by signing a treaty in which each commits to contributing; second, whether the harm that collective action will avert is a harm that the parties themselves will otherwise cause (as, for example, in the case of global warming) or a harm whose causes lie elsewhere (as, for example, in the case of relief supplied to earthquake victims). I suspect that the second factor will turn out to be less important than the distinction I draw later between harms that involve injustice and those that don't.

contributions are made – one might think of a rescue that involves a human chain of rescuers such that if any one of them declines to participate the chain will not reach as far as the victims. In between there will be cases where early contributions count for more than late ones, and others where later ones count for more than early ones (early and late referring here to the position of a contribution in the sequence of contributions, not to the passage of time as such). In cases such as global warming, for example, there may be thresholds which it is important not to cross in terms of atmospheric concentrations of greenhouse gases, in which case emission cuts that would keep the world just below such a threshold would be more significant than others further below or beyond the threshold that might be desirable but not so critical.

The relevance of this factor to our problem is relatively straightforward. Before we can decide whether justice requires us to take up the slack, or conversely permits us to reduce our contribution to the average, we should ask what the actual effect of doing so would be, in either case. In particular, would making the agreed contribution or taking up the slack mean crossing some significant threshold in terms of its effect? Or at the other extreme, would the contribution in either case simply be useless, given what others can be expected to do?

- (2) The second factor that might be relevant is whether the collective responsibility that our group of agents bear is itself a responsibility imposed by justice. Do they, in other words, owe a collective duty of justice to those who will suffer if the prospective harm is not averted? This raises the question of whether there can be such duties in situations that have the shape I am considering. I shall address that in a moment. But assuming a positive answer, it seems clearly relevant to ask whether the harm that would be averted by successful collective action is a harm that involves injustice, or merely some other kind of loss, as arguably at least would be the loss of fish in the sea. Where the collective responsibility we are examining is a responsibility imposed by justice, two issues of justice will arise with respect to individual compliance or non-compliance: first, justice within the collective (is each agent contributing their fair share or not?), second, justice between the collective and those to whom it is owed. Someone who contributes but refuses to take up the slack might defend herself by pointing

out that she is doing her fair share and that to do more would put her at an unfair disadvantage relative to others (indeed at a double disadvantage relative to the non-compliers). But it might be said in reply that by refusing to take up the slack she is contributing to injustice against the victims, and this is a more serious form of injustice. Whatever we conclude about this, no such issue seems to arise in cases where the harm to be averted is simply a loss that does not involve injustice.<sup>7</sup>

So, could there be a collective duty of justice towards those who will suffer the results if collective action does not succeed, or only succeeds partially, in cases of the kind I am considering? To keep things simple, let us focus on cases where the prospective victims have a right to whatever outcome the collective action would produce, and therefore, apparently, can demand it as a matter of justice.<sup>8</sup> This seems plainly true in the case of rescues – people have a right to life and bodily integrity – and in the case of world poverty – people have a right to a minimally decent standard of living. It may also well be true in the case of global warming, where it has plausibly been argued that among the results of unchecked global warming will be large-scale violations of the human rights of those who are unable to cope with rising sea

<sup>7</sup> Might there nonetheless be harms not involving injustice that are sufficiently serious that they would outweigh the unfairness involved in taking up the slack? An example might be damage to the natural environment (the loss of habitats or species) that did not infringe anyone's human rights. Preventing such damage would clearly give agents a reason to take up the slack in the face of non-compliance. Whether that reason was strong enough to outweigh the unfairness must depend on the case. This, it seems to me, is something that must be left to the agents in question to decide. They cannot be required to take up the slack, even though in some circumstances this might be the right thing for them to do.

<sup>8</sup> I am assuming as a basic premise here that the duties that correspond to basic rights are standardly duties of justice: that is, if George has a right to be provided with some necessary good and Helen is so placed that she has the obligation to provide it, her duty is a duty of justice. The question addressed in the text is whether this extends to cases where, instead of Helen, we have a group of agents who collectively owe a duty to George. Others argue that such duties are always better understood as humanitarian in nature. I shall not defend my assumption in this essay, but see my *National Responsibility and Global Justice* (Oxford University Press, 2007), ch. 9 for such a defence. I also there attempt to disentangle the circumstances in which duties of aid are duties of justice from those in which they do indeed become humanitarian in nature.

levels, droughts and so forth.<sup>9</sup> So on one side we have demands that are potentially demands of justice. But we have now to identify agents to whom the corresponding obligations can be attached. In standard cases, justice involves a claim made by one person against another, or by a person against an institution such as the state. In the present case, the obligation must attach to the whole group of potential contributors, who do not together constitute an agent in the same sense: there is no collective decision to contribute or not to contribute, but rather each individual member decides whether to contribute his or her fair share, or more, or less. What we do have, on the other hand, is an agreed assignment of responsibility within the collective: by stipulation there is no dispute over what the fair share of each member amounts to. So the collective obligation to protect the rights of the potential victims does not simply hang in the air, but is translated into a series of individual obligations, and these it seems clear to me are obligations of justice. That is, if you are part of a collective group which owes something as a matter of justice to another group, and if your share in that obligation is fair and well-defined, then there is also a more specific obligation of justice that falls on you as an individual. What we should say about individual duties when there is only partial compliance remains of course to be seen, but enough has been said to establish the point that it matters whether the group's collective responsibility is a matter of justice specifically, or something less urgent.

- (3) The third factor that seems relevant to our question is whether the position of the non-compliers is reversible or non-reversible. Have they managed to rule themselves out of the picture altogether, so to speak, or might they be brought back into compliance? In a rescue case, for instance, we might contrast the position of those who quickly leave the scene and are then unable to be contacted, with those who stand around watching the rescuers but for the moment seem unwilling to contribute. More generally, we might contrast a one-off decision, where each party has to choose at a certain moment whether to opt in or opt out, with an ongoing practice where agents' behaviour can adapt over time: we might not meet our greenhouse gas emissions targets this year, but next

<sup>9</sup> See, for example, S. Caney, 'Cosmopolitan Justice, Rights and Global Climate Change', *Canadian Journal of Law and Jurisprudence*, 19 (2006), 255–78.

year we can do more by way of compensation. Reversibility makes a difference for the obvious reason that where it obtains, compliers have a choice between taking up the slack themselves, and trying to persuade or cajole or force the non-compliers to make their fair contribution. But there may also be a more subtle difference, which I shall explore shortly, to do with the assignment of responsibility. Where the non-compliers remain on the scene – they have so far chosen not to comply, but they could also choose differently – it might be thought that responsibility for the effects of partial compliance remains firmly with them. They are the ones who by doing nothing are causing some of the victims not to be rescued or some of the starving not to be fed. If they manage to rule themselves out, however, responsibility appears to shift, in some sense, to those who might take up the slack. Whether this is indeed so (and what sense of responsibility is involved here) remains to be seen, but intuitively it seems to make a difference whether the decision the non-compliers have made is reversible or not.

## V

Having explored what seems to me to be the most salient dimensions of our problem, it's now time to begin working towards a solution. I want to argue broadly in favour of option 1 – that what justice requires is contributing your fair share, neither more nor less – while conceding that there may be special circumstances in which justice overall permits option 3 – grouching by doing less – and other circumstances in which there is an obligation (though, I shall argue, not an obligation of justice) to choose option 2 – taking up the slack by doing more. So let me begin by looking critically at the argument in favour of grouching, which I defined as doing only as much as others are doing, *on average*, given partial compliance.

The main argument in its favour, as I suggested, is that it preserves horizontal equity within the group: I am not assuming more of the burden than others are. Another way of dressing the argument up is to say that significant non-compliance changes the meaning of a fair share of responsibility. One may be tempted into this way of thinking by considering cases such as collecting money for a colleague's leaving present where somebody might suggest an appropriate figure per head but looking into the collection box as it comes round you notice that



there seem to be rather few notes and rather a lot of coins and so you swiftly revise your previous good intentions downwards. But the cases we are considering are not like this: they are cases in which the group has a collective responsibility to avoid some harm, and so if you do less than your original fair share you remain responsible for some portion of the harm that remains. Where that harm amounts to injustice towards the victims, as I have suggested it does in several of our real-world cases, this seems decisively to outweigh the relative disadvantage that a complying agent suffers with respect to the non-compliers in the group. Recall here that we are considering situations in which the cost of contributing to the collective effort is not only smaller than the cost that the victims will bear if the effort fails, but is moderate in absolute terms. So option 3 only looks plausible at all in two circumstances: one is where very little will be achieved by one agent's compliance given existing levels of non-compliance; the other is where the harm that non-compliance will produce does *not* involve injustice towards the victims, and the would-be groucher can give good reasons why doing more than others have done is unduly burdensome to her (for example, that it leaves her at a significant competitive disadvantage in some other sphere of life). Otherwise it is dominated by option 1, doing your fair share.

You might, however, think that the argument I have just given for choosing option 1 over option 3 also entails choosing option 2 over option 1: if horizontal equity among members of the group isn't such a weighty consideration, why aren't we required to take up the slack in the face of partial compliance, at least where this will have the effect of averting injustice towards the potential victims? So now I need to show that option 1, doing your fair share, is all that justice requires.

The key argument here is that because the collective responsibility to avert injustice has been fairly distributed, *ex hypothesi*, by doing my fair share I have discharged my obligation, and the injustice that remains, because of partial compliance, is the responsibility of the non-compliers, and only theirs.<sup>10</sup> As a general matter, we are not required as a matter of justice to correct the injustice that others perpetrate, although we may have reason to do so. If Bert steals Anne's money, justice does not require Charles to right this wrong, although if Charles

<sup>10</sup> For further argument in support of this claim, see L. J. Cohen, 'Who is Starving Whom?', *Theoria*, 47 (1981), 65–81.

happens to be so placed that he can direct the money back to Anne, this would very likely be the right thing for him to do.<sup>11</sup> Charles commits no injustice if he fails to secure the return of Anne's money, because responsibility for Anne's loss rests entirely with Bert.<sup>12</sup> How are things different in the partial compliance cases we are considering? Suppose that I am a member of a group with collective responsibility for averting some harm. Initially, then, I share in that collective responsibility. But now it is divided up so that I know what my fair share is and I discharge it conscientiously. Others, however, do not. Does some share of the collective responsibility now revert to me, or does it remain entirely with them? One must avoid being misled here by cases in which some of the group are simply unable to discharge their share of responsibility. For example, in rescue situations, some potential rescuers might turn out to be terrified by what they were being asked to do and become paralysed by fear. Under these circumstances, clearly, collective responsibility does return to the whole group and must be divided up afresh with each of the remaining rescuers having to carry a larger share. Similar considerations apply if external circumstances change, for example if the rescue group is alerted to the existence of a second group of potential victims, so that some of the rescuers need to hive off and form a separate party. By contrast, the cases we are considering are ones in which the non-compliers choose not to comply, even though they are able to do so and have no competing obligations that would prevent them from contributing. How can such a choice

<sup>11</sup> Following Temkin's discussion in 'Justice, Equality, Fairness, Desert, Rights, Free Will, Responsibility, and Luck' in C. Knight and Z. Stemplowska (eds.), *Responsibility and Distributive Justice* (Oxford University Press, 2011), we might say that Charles has a *reason of justice* to direct the money back to Anne. But this is different from saying that he is obliged as a matter of justice to right the wrong that Bert has caused. How weighty this reason will be depends on questions such as whether Charles is the only person other than Bert who is able to see that Anne gets her money back, how much it will cost him to do so, etc.

<sup>12</sup> I am treating this as a question of what particular agents are required to do as a matter of justice. We do of course have social institutions whose purpose is to rectify or offset acts of injustice, for example civil laws that may allow Anne to sue Bert for recovery of the stolen money, and insurance companies whose policies can compensate her for the loss that Bert has caused. We may be required as a matter of justice to contribute to the support of such institutions, paying taxes to cover the costs of law courts, for example. But this is clearly different from being obliged to act to remedy a specific injustice such as the one described.

shift responsibility wholly or partly off of their shoulders and on to those of the willing compliers?

As I indicated earlier, it might seem to make a difference here whether it still remains within the power of the non-compliers to comply if they choose. If it does remain within their power, then it would be natural to say that what is causing the injustice that remains after partial compliance is the continuing unwillingness of the non-compliers to do their bit; the responsibility therefore remains wholly with them. Suppose on the other hand that they have left the scene or somehow disabled themselves irreversibly from making a contribution. Clearly they are morally at fault for doing this, and if we were in the business of ascribing responsibility in order to attribute blame for the bad outcome, these are the ones we would hold responsible. Nevertheless, given that they have in fact acted in this way, the question still arises of responsibility for the ongoing injustice. Those who have already complied could if they choose take up the slack and do more; the non-compliers are out of the picture for practical purposes. Are the compliers not then responsible for the injustice if they decide not to do this?

In a purely causal sense of responsibility, this seems to be true. In other words, if we are asking what will make the difference between the remaining injustice's being remedied and its not being remedied, the answer, given the actual state of the world, is the decision by the compliers whether or not to take up the slack. But this causal sense of responsibility may not be relevant if what we are asking is whether justice requires taking up the slack. As I noted above, the fact that Charles may be able to correct the injustice that Bert has inflicted on Anne does not entail that Charles is himself required by justice to do this. After all, for each of us there are at any moment a large number of injustices that we might be able to correct if we set our minds to it. So the question that arises is what special circumstances, if any, have to obtain in order for the correction of injustice perpetrated by some other agent to be itself required by justice?

In the cases we are considering, there does seem to be one special circumstance, namely that both the compliers and the non-compliers belong to the same group of agents who were originally held collectively responsible for averting the injustice. In other words, the injustice that the compliers are being asked to redress by taking up the slack is not merely some injustice that might occur at random anywhere,

but the injustice that is caused by the failure of those with whom they originally shared collective responsibility to do their bit. However, it is important here to think clearly about the nature of this collective. I have often for convenience described them as a group, but this could be misleading if it suggests a set of agents who are already bound together in some way, by identity or organization for example. But think instead of the collection of people who happen to be on the scene when a traffic accident occurs, or the much bigger collection of people who are so placed that they have a duty to contribute to the relief of global poverty. Neither of these forms a group in the stronger sense. What connects them to each other is simply the fact of being so placed that they are able by sharing responsibility to avert some harm.

This is relevant, because in groups proper we may think that responsibility passes between the members when some of them default. If a team of people has undertaken some task, for example, and some members of the team back out or become unable to continue with the work, we will often think that the rest of the team has an obligation to complete the task on their behalf. But this doesn't apply in the cases we are considering. There may or may not be some kind of signalling or communication between members of the collective – for instance a group of rescuers may need to talk to each other to divide up the necessary labour – but this will not amount to a pre-commitment to cover for defaulters. Indeed, if anything, the reverse will be the case: everyone has an incentive to send out a signal that he or she is prepared to do a fair share of the work, but nothing beyond that.

Responsibility, then, remains with the non-complying members of the collective even in cases where they are no longer in a position to contribute by virtue of earlier decisions they have made. Reversibility matters only for the practical reason that where it obtains, the compliers can choose between bending their efforts to get the non-compliers to play their part and taking up the slack themselves, whereas of course in the opposite case, only taking up the slack is an option. But in either case, compliers are not required to do more as a matter of justice.

This conclusion might, however, be challenged on the grounds that I have misrepresented the nature of collective responsibility in the situations being considered. I have relied on the idea that where collective responsibility can be fairly distributed among members of the relevant group, each has an obligation to do his fair share, but not more than

that. If there are five people needing rescue, and five equally able rescuers, each rescuer's responsibility is limited to carrying out a single rescue. But there is another way of describing the situation. Suppose that the cost to each person of rescuing all five would still remain moderate, so that demandingness considerations do not enter the picture. Then it might be said that each rescuer has a responsibility to rescue all of the victims, even though, if fairness prevails, he or she will only need to discharge one-fifth of that total. In other words, the situation is more like one in which there is just a single victim in need of help and many possible rescuers – in that situation each of the rescuers has a responsibility to help, but in the event may well not have to discharge the corresponding obligation if somebody else steps in first.

What's wrong with this proposed redescription? I think it misunderstands the force of the idea of a fair division of responsibility. This is not just a convenient way of dividing up a task – each gets a specific job to do (rescue one person, say) and in that way the whole task is discharged quickly and efficiently. Instead it reflects the idea that each person is a responsibility-bearing moral agent, so that no one person is called upon to shoulder the entire burden herself in situations of collective harm. Indeed, if she does take that burden upon herself – by acknowledging in advance that she has a duty to take up the slack if others default – we might say that she does not treat the others as responsible moral agents. She would be like a mother with small children who asks for their help in clearing up the dinner table, and is pleasantly surprised when they do, but who knows that *because* they are only children all the responsibility finally rests with her. In contrast, in the five-victims and five-rescuers case, one who is left to do all the work as the others decamp can justifiably feel anger and resentment at the way she has been treated. She is not just somebody who is unlucky because as it turns out she has had to discharge her obligation in full; she has been exploited by agents whose responsibility is identical to hers but have simply chosen not to discharge it.

## VI

Where responsibility for averting a collective harm can be fairly divided, I have argued, justice can only require each agent to perform his or her fair share. But this conclusion runs up against an

intuition that many people have, which is that there are situations in which justice does require more, situations in which questions about fair shares of responsibility should be set aside in favour of simply looking at the consequences of acting or not acting.<sup>13</sup> Rescue cases are the most frequently cited example: many think it obvious that if others are refusing to cooperate, the rescuer who has done his bit is duty-bound to jump back into the river and pull more people out, subject to the usual riders about excess cost or risk. But we might think the same applies to cases like global warming: if the world is reaching some crucial tipping point, such as the melting of a large portion of one of the polar ice-sheets for example, then the fact that other countries refuse to cut their carbon dioxide emissions in line with an agreed set of targets does not pre-empt complying countries being obliged as a matter of justice to cut back still further, given the consequences of not doing so.

What should we say about this? Everyone can agree that in these cases compliers have a strong *reason* to take up the slack, since doing so will have the effect of safeguarding basic rights otherwise under threat. We can also agree that agents who refuse to take up the slack merely because of their understandable indignation at the non-compliers are morally at fault and can be criticized and blamed for their refusal. But do they have an *obligation* to take up the slack and, if so, what kind of obligation could this be?

One way to approach this question is by asking about possible enforcement. It is characteristic of obligations of justice that they are enforceable in principle by third parties, the nature of the enforcement that is justifiable depending on the case we have in mind.<sup>14</sup> Roughly

<sup>13</sup> In *The Demands of Consequentialism*, Mulgan proposes a division between two moral realms, which he calls the Realm of Reciprocity and the Realm of Necessity, and argues that in the latter realm, where we are responding to others' basic needs, simple consequentialism is the most plausible moral view, whereas in the former realm, where goals rather than needs are at issue, some form of collective consequentialism such as Murphy's is more appropriate. From Mulgan's perspective, then, to worry about questions of fairness when human lives are at stake is to fail to recognize that we have crossed into the (relatively unfamiliar) realm of necessity where we ought only to consider the actual consequences of the various actions that we might perform.

<sup>14</sup> I put this point cautiously because I do not wish to claim that an obligation's enforceability is a necessary and sufficient condition for its being a duty of justice. The counterargument is made in A. Buchanan, 'Justice and Charity', *Ethics*, 97 (1987), 558–75.

speaking, the more urgent the duty of justice – as measured by the effects of not fulfilling it – the heavier the sanctions that may be applied by a third party to an unwilling duty-bearer. In a simple rescue case, where the only potential rescuer refuses to carry out a low-cost rescue, a third party arriving on the scene but unable to carry out the rescue herself (she can't swim, for example), can justifiably threaten to impose some fairly substantial loss, like pushing the rescuer's car into the water, for example, in order to save a life. This, it seems to me, applies also in the cases of collective responsibility we have been examining, which is why I said earlier on that if it were possible to create some mechanism that would ensure compliance that would very often be desirable. We are examining cases where no such mechanism can be created, for practical reasons, so I am appealing to enforceability only in order to test our intuitions about justice. So, consider the situation in which some have fulfilled their obligation to avert injustice but others have not. An enforcing agent arrives on the scene but is unable to get the non-compliers to act – threats of various kinds do not work. Is the enforcing agent then justified in turning his attention to the compliers and forcing them, if he can, to take up the slack? Simple consequentialism would say that he is so justified, but my intuition is that he is not. Because the compliers have already discharged their share of the responsibility, it cannot be right to force them to do more.<sup>15</sup> So their obligation to take up the slack is not an obligation of justice.

<sup>15</sup> It might be said in reply here that although forcing the compliers to take up the slack is unjust, it is less unjust than leaving the victims to their fate, since it is the latter who will bear the greater costs. But consider the following case. A poor person has been robbed. I cannot force the thief to hand back what he has taken, but I can force a rich person (not involved in the robbery) to hand over an equivalent amount to the victim. The cost to the rich person, we can assume, is considerably less than the cost that the theft has inflicted on the poor person. In an outcome sense, therefore, a world in which the poor person has lost £1000 is more unjust than a world in which the rich person has lost the same amount. How does this bear on the justice or injustice of the proposed enforcement? It would not be just to force the rich person to hand over his money. If I can persuade him to do so by appealing to his concern for the poor man, that would be good. But given that he is not responsible for the original theft, compulsion would fail to respect him as an agent. This shows what is wrong not only with simple consequentialism, but also with what we might call 'justice consequentialism' which instructs us to act so as to bring about the outcome with least injustice regardless of the means we use.

Let's then find a different label for this obligation – 'a humanitarian obligation' would be my preferred description. Why call it an obligation at all if it is not enforceable? First, to distinguish it from cases of supererogation.<sup>16</sup> There is a moral difference between the person who refuses to go back into shallow water to pull out further victims having already done his share, and the person who declines to leap into a raging torrent for the same purpose. The first person can be blamed for his refusal while the second cannot. Second, to underline that the humanitarian duty in question is a weighty moral reason that can override others. Thus, if the person who is taking up the slack has to disregard other duties for the time being, she could say, rightly, that in the circumstances she was obliged to do what she did. The language of obligation conveys the motivating force that the reason to take up the slack should have for the agent, while at the same time defeating the less urgent demands of others – people to whom promises have been made, or who have legitimate expectations of other kinds, for instance.<sup>17</sup> Third, to indicate that the victims have a legitimate complaint against the agent if she fails to discharge her obligation. Of course their main complaint will be against the non-compliers who have failed in their duty of justice. If restitution comes into question after the event, it is the original non-compliers who will be required to pay, not those who have merely failed to take up the slack. Nevertheless, because those in the latter group have failed to act to safeguard the rights of the victims in circumstances where they could do so without incurring excessive cost, the victims do have a secondary complaint

<sup>16</sup> Here I depart from Cohen's position in 'Who is starving whom?'. Cohen argues that doing more than one's fair share, even in cases where human lives are at stake, is supererogatory. I believe this fails to capture the strength of the reason one has to take up the slack in cases where this is necessary to avoid injustice – hence in place of a twofold distinction between the morally obligatory and the supererogatory I prefer a threefold distinction between obligations of justice, obligations of humanity and supererogation.

<sup>17</sup> I don't mean to imply here that one obligation can only ever be overridden by another obligation. Frances Kamm has described a case in which performing a supererogatory act justifiably permits a person to breach an existing duty: donating one of your kidneys to save a life can justifiably take precedence over keeping a lunch appointment. See F. Kamm, *Morality, Mortality: Volume II* (New York: Oxford University Press, 1996), ch. 12. However, acquiring a contrary *obligation* in such cases will give the person in question an even stronger overriding reason.



against them as well. By saying that they had a humanitarian obligation to act, we help to make sense of this complaint.

Does this also mean that compliers who decline to take up the slack are *responsible* for the harm that they fail to avert, in more than a merely causal sense? Do they *share* responsibility with the non-compliers? We need to take great care in our use of the language of responsibility here. Consider the following case. Daniel is searching for Edward with the intention of killing him. Frances knows of Daniel's intention, but can hide Edward in a place where Daniel will not find him. However, she decides not to do so and Edward is killed. In what sense, if any, is Frances responsible for Edward's death? If we were to say that she shares the responsibility with Daniel, this would be quite misleading, because it would assimilate the case to one in which Daniel and Frances have cooperated to kill Edward.<sup>18</sup> It is clear that the primary responsibility for Edward's death rests entirely with Daniel. Frances bears only a secondary responsibility, namely the remedial responsibility to avert harm that will otherwise be caused by another agent.<sup>19</sup> She is blameable for not discharging it in the absence of excusing or justifying factors. So she *is* responsible for Edward's death in a sense that is more than merely causal. However, her responsibility is of a categorically different kind from Daniel's, which is why any talk of shared responsibility is out of place. My suggestion is that this distinction applies also in the cases of partial compliance we have been considering. If the harm is not averted, primary responsibility for this lies with the non-compliers, and with them alone. If the compliers have a humanitarian obligation to take up the slack but fail to do so, they become responsible in a secondary sense. But it is incorrect to say that responsibility for the harm is *shared* by the two groups, for this neglects the categorical distinction between primary and secondary responsibility.

<sup>18</sup> Note that in cases where two or more people collaborate to produce an outcome, responsibility can be shared unequally: there can, for example, be a primary instigator who carries most of the responsibility, and others who are merely his accomplices. So if we were to describe the original Daniel/Frances case as one in which Daniel bears more responsibility for Edward's death than Frances, this would still be fundamentally misleading because it would suggest that they were acting as unequal collaborators.

<sup>19</sup> The idea of remedial responsibility is explained and contrasted with outcome responsibility in my *National Responsibility and Global Justice*, ch. 4.

## VII

There is one final implication that I wish to draw out of this discussion. For reasons of simplicity I have been using examples in which it is individual people who have to decide whether to comply in situations of collective responsibility, or whether to go further by taking up the slack as well. But I said that the analysis should apply too to collective agents such as states, and it seems clear that problems such as resource conservation and climate change are more important than individual rescues if we are thinking about their effects on human rights and human welfare. So what does our discussion tell us about collective agents specifically? Notice here that compliance problems will often emerge at two levels: first, the collective has to decide whether to discharge its fair share of responsibility, and then the individual members have to decide whether to do what they are asked to do by the collective. Thus Britain, say, has to decide whether to sign a treaty that sets limits to the overall level of greenhouse gas emissions that its population generates in any year, and then individual citizens have to decide whether to make the behavioural changes that are required of them by cutting down on the use of fossil fuels and so forth. Now I take it that where an obligation of justice is involved, the collective is justified in enforcing its decision if necessary. So if we believe that runaway climate change threatens the basic rights of people worldwide, the UK government will be justified in compelling citizens to comply with measures that are necessary to keep gas emissions below the level agreed in the treaty, such as using only low-emission vehicles for transport. On the other hand, where the harm that we are trying to avert by collective action is not one that involves injustice, or where what we are doing collectively is actually taking up the slack left by others, then internal compulsion becomes more problematic. And this raises difficult questions of political philosophy. Suppose, for example, a nation sets itself more ambitious targets in relation to climate change because of an awareness that other countries are not going to fulfil their obligations: can it be right to force citizens to change their behaviour so as to meet those targets, or must the state at this point rely upon encouraging voluntary compliance? Or to take a different case, what obligations can be compulsorily imposed on citizens in response to humanitarian disasters such as famines or civil wars occurring abroad where primary responsibility lies with the

governments of those states?<sup>20</sup> Although there is no algorithm for answering these questions, I hope that what I have said here provides at least a partial framework for thinking about them.

<sup>20</sup> For a fuller discussion of this issue, see my chapter 'The Responsibility to Protect Human Rights' in L. Meyer (ed.), *Legitimacy, Justice and Public International Law* (Cambridge University Press, 2009).

# 10

## *A tale of two cities; or, political philosophy as lamentation*

### I

In AD 410 the city of Rome was captured by Alaric and the Visigoths, who entered the city after several sieges, ransacked the main buildings and drove tens of thousands of its citizens into the countryside. Such an event had not occurred for nearly 800 years. Three years later, Augustine, Bishop of Hippo, began to write the bulky manuscript that eventually saw light as *The City of God against the Pagans*.<sup>1</sup> Augustine's main purpose in writing this book was to rebut the claim that it was the adoption of Christianity that had led to Rome's downfall; had Romans remained loyal to their ancient gods, his opponents argued, they would also have retained the virtues that had made the city such a formidable power in centuries past. But there were many other sub-themes as well, some of them abstrusely theological. The one on which I wish to focus is Augustine's attempt to bring a kind of consolation

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<sup>1</sup> Augustine, *The City of God against the Pagans*, ed. R.W. Dyson (Cambridge University Press, 1998). I should say at once that I make no claims to be an Augustine scholar, and refer to him only to provide an illustration of a form of political thinking that I believe has important manifestations in our own time. I also refer only to ideas expressed in his late work *The City of God*. Contrasts between this work and Augustine's earlier political philosophy are explored in R.A. Markus, *Saeculum: History and Society in the Theology of St. Augustine*, rev. ed. (Cambridge University Press, 1988).

to those to whom the fall of Rome had come as a devastating blow. No earthly city, Augustine claims, can provide human beings with the goods that really matter to them, even though it can provide for the material needs of the body. What is important above all is to achieve the spiritual state that allows one to participate in the City of God.

This introduces what is perhaps the most famous motif in Augustine's book, the contrast between the earthly and heavenly cities. Belonging to the earthly city is a necessity for fallen mankind, since it discharges essential functions such as providing security and protecting property. But each person also has a chance to become a pilgrim on the road to the heavenly city, though he can only belong to it entirely when he joins the saints and the angels in the hereafter. He does so to the extent to which he achieves true godliness, in which case he belongs for the moment to both cities at once.<sup>2</sup>

Augustine emphasizes the huge gulf that divides the two cities. The laws of the City of God are the laws of true justice and they are eternal and unchanging. The laws of the earthly city vary according to time and place, but even in the best cases they only exhibit 'vestiges' or 'traces' of justice.<sup>3</sup> Augustine emphasizes that the laws of the earthly city must be obeyed, but only because they are necessary constraints given the fallen human condition, not because of any intrinsic quality they display. It might then seem that he must counsel his readers to turn their backs on political life and concern themselves exclusively with preparing to join the City of God. But although the supreme importance of the soul's condition is the major theme of the book, this is not quite the advice that he gives. A virtuous man should be prepared to take up public office – serve as a judge, for example – even though he knows that what he can deliver is not true justice.<sup>4</sup> The earthly city can be better or worse constituted – Rome in particular was better constituted in the old days of the republic than in the latter days of the empire.<sup>5</sup>

<sup>2</sup> There is a debate about the relationship between the Christian Church and the City of God on earth that I shall not enter here. For a discussion see R. Martin, 'The Two Cities in Augustine's Political Philosophy', *Journal of the History of Ideas*, 33 (1972), 195–216.

<sup>3</sup> See H.A. Deane, *The Political and Social Ideas of St Augustine* (New York and London: Columbia University Press, 1963), pp. 97–8.

<sup>4</sup> Augustine, *City of God*, pp. 925–6.

<sup>5</sup> Though not much better: 'those who praise it [the Roman commonwealth] should consider whether true justice flourished in it even in the ancient days of men and

But now it seems that Augustine faces a dilemma. The more stress he lays on the moral inferiority of the earthly city to the heavenly city, the less it seems to matter that any of us should work to improve the condition of the earthly city, or indeed to defend it when the Goths or the Vandals arrive (as the latter did at Hippo shortly after Augustine's death). If we know in advance that the very best we can achieve are merely 'vestiges' or 'traces' of justice, why strive even for that? Since Augustine did not wish to defend quietism in politics (even though he did advocate passive obedience to political authority), he had to find some other way of comparing different instances of the earthly city. This he did by suggesting that cities are distinguished by the different things that their citizens care about, which can be more or less worthy. The old Romans, he thought, cared about honour above all. Despite its lack of justice, Rome constituted 'a commonwealth of a sort' which 'was certainly better administered by the Romans of more ancient times than by those who have come after them'. Nevertheless – returning to the main theme – 'true justice, however, does not exist other than in the commonwealth whose Founder and Ruler is Christ'.<sup>6</sup>

## II

The idea that I want to draw out of Augustine is the disabling character of a political philosophy that places justice so far out of the reach of human beings that nothing we can practically achieve will bring us significantly closer to the cherished goal. I want to suggest that a similar pathology can be found in some strands of recent political philosophy that seem radical on the surface while at the same time being unable to achieve any significant practical impact. In one way the predicament of the neo-Augustinians (as I shall call them) is worse than Augustine's own, because these recent philosophies are secular and therefore cannot promise the huge consolation that Augustine provides in the form of the City of God.<sup>7</sup> If justice cannot be achieved

morals, or whether perhaps even then it was not rather a coloured picture than a moral reality' (Augustine, *City of God*, p. 79).

<sup>6</sup> Augustine, *City of God*, p. 80.

<sup>7</sup> What do I mean when I describe a political theory as neo-Augustinian? I mean that it elaborates political principles which it freely admits will not be realized in human societies, without displaying any discomfort about that fact; the happier the philosopher is to concede the practical (in the sense of presently

on earth, and there is no afterlife to look forward to, then there is nothing left for political philosophy *but* lamentation over the size of the gap that unavoidably exists between the ideals it defends and the actual conditions of human life.

If we are looking for something in our own situation that corresponds to the sack of Rome, we might light upon the fall of the Berlin Wall in 1989. For with the collapse of Communism in Eastern Europe, the range of political possibilities open to the citizens of liberal democracies seemed sharply to contract. While virtually no one in 1989 still idealized the Soviet Union and its satellites, nevertheless they still somehow kept alive the dream of Marx and other nineteenth century socialists of a society that was egalitarian and communitarian, one that had passed beyond the reach of the market. Without that dream it seemed that all we had to choose between politically were different varieties of capitalism, and indeed even that range of choice appeared to be narrowing at around the same time, as the Scandinavian social democracies, torchbearers for those who had already repudiated Soviet-style Communism but nonetheless clung on to socialist ideals, began to resemble more closely their counterparts elsewhere in Europe.

The response of a number of political philosophers to this collapse was essentially Augustinian in character. They continued to develop theories of justice that were radically egalitarian in character (even if not quite of the same form as earlier socialist theories of equality), freely admitting that by the standards contained in these theories, all

action-guiding) irrelevance of the principles thus elaborated, the closer he or she comes to pure neo-Augustinianism. Andrew Williams tells me about a colleague (who shall remain anonymous) who opens his class by explaining to his students that the point of political philosophy is to discover what we have reason to regret: this is self-conscious neo-Augustinianism. Among published work, G.A. Cohen's, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008) provides the clearest example of the phenomenon, as I shall later illustrate. David Estlund's defence of 'hopeless' political theory in *Democratic Authority: A Philosophical Framework* (Princeton and Oxford: Princeton University Press, 2008), ch. 14 also reveals strong neo-Augustinian tendencies, though these are balanced by some concerns about the possible dangers of such theory (see also his extended discussion in 'Human Nature and the Limits (if any) of Political Philosophy', *Philosophy and Public Affairs*, 39 (2011), 207–37). Adam Swift's 'The Value of Philosophy in Nonideal Circumstances', *Social Theory and Practice*, 34 (2008), 363–87, while not openly siding with the neo-Augustinians, defends them against the charge that they mistake the purpose of political philosophy.

existing societies were extremely unjust. But the size of the gap did not appear to concern them, nor did the fact that there appeared to be no viable way of achieving social justice in the form that the theories required. Confronted with the challenge that the whole point of developing theories of justice was to mark out a road down which we might travel, the reply was that it was wrong to think of justice as being necessarily linked in this way to political practice. As perhaps the most influential of these philosophers has put it:

One may or may not care about practice, but one may also care about justice, as such, one may be interested in what it is, even if one does not care about practice at all . . . I want to know what justice is whatever I or anyone else may think is the right form and amount of the contribution that justice should make to political and social practice.<sup>8</sup>

As the ‘whatever’ in this sentence indicates, such a person would, in the extreme case, be willing to admit that justice should play *no part at all* in the design of actual laws or institutions. The development of a theory of justice is a purely speculative activity. We want to know ‘what justice is’, that is, we want to establish the truth about justice, regardless of whether the truth, once established, has any bearing on the question of how we should conduct our earthly lives. At some later point we can ask the question how far justice, as we have come to define it, might be able to guide our political practice. This will presumably depend on broad empirical facts about the shape of the world we confront and the tools that are available to change it. But these empirical considerations should have no bearing on our enquiry into the nature of justice itself. To allow them to have such a bearing would be to contaminate that enquiry – to allow constraints that are unavoidably present in the earthly city to distort our understanding of the celestial one.

The first question that arises here is *why* we should be interested in what justice is, if we have no expectation that it is going to be an important guide to our political practice. If *fiat justitia ruat caelum* is true, then it matters hugely to understand what the justice is in whose name we will allow the heavens to fall. But if we are leaving it an entirely open question how far we should pursue justice in practice

<sup>8</sup> Cohen, *Rescuing Justice and Equality*, pp. 306–7.



once we know what it is, then it might seem that the significance of our enquiry is to that extent diminished. Wouldn't it be more important to investigate the values and principles, whatever they are, that can guide our common life? Now one answer that might be given here is that we have an interest in *judgement* that is independent of our interest in guiding practice. If our societies are radically unjust, according to the correct theory of justice, then that is something that we have an interest in knowing. One way of putting this is that we have an interest in not being deceived about the character of the societies we are living in, and that is what the theory of justice will give us. Now I do not want to deny that we have such an interest, but I am not sure what weight such an interest should be given once we no longer expect such truth to guide practice to any significant extent. Here the neo-Augustinians are in a different position from Augustine himself. Augustine's claim that 'true justice . . . does not exist other than in the commonwealth whose Founder and Ruler is Christ' *was* action-guiding in one significant respect. It played an important part in his argument that one had far less reason to care about the condition of the earthly city than to become a pilgrim member of the City of God. Because so little could be expected of the earthly commonwealth, a Christian should concentrate his efforts on ensuring that he stood in the right relationship to the Almighty. This was the lesson of consolation that Augustine brought to his readers. But there is no such lesson to be drawn from the writings of the neo-Augustinians. If justice is unobtainable, that is simply something that we must regret. That is why I call this view 'political philosophy as lamentation'.

Is it though unfair to lay so much stress on Cohen's 'whatever'? A more moderate view would be that justice must always play *some* role in guiding practice, even though we cannot say in advance what that role must be.<sup>9</sup> It will depend on the constraints that we are acting under, and also on the presence of competing values that may have to be traded off against justice. This would provide a partial answer to the 'Why be interested in justice?' question that I raised above. But it still leaves us with significant problems, as I shall now try to show.

<sup>9</sup> This appears to be Swift's view in 'The Value of Philosophy in Nonideal Circumstances'.

## III

Suppose, then, that we expect our theory of justice to have some normative force when applied to existing practice. When, on the basis of the theory, we make justice judgements about particular laws, policies or distributive outcomes, we expect these judgements to provide reasons (though not necessarily conclusive reasons) either for confirming or for changing them. Both Augustine and the neo-Augustinians do indeed make such judgements. Augustine, for example, said that Christian emperors were happy insofar as they ruled justly, and went on to explain what ruling justly involved, for example that 'they resort to punishment only when it is necessary to the government and defence of the commonwealth, and never to gratify their own enmity'.<sup>10</sup> And he passes judgement on particular laws, saying for example of Rome's Votanian law which forbade anyone from making a woman his heir, 'I do not know of any law that could be said or thought to be more unjust'.<sup>11</sup> Remarks such as these are obviously intended to have prescriptive force. Equally, Cohen, in his discussion of Rawls's difference principle, makes it clear that he regards the 'morally arbitrary' inequalities that the difference principle permits as unjust, and on that basis criticizes changes in the tax system that would have the effect of increasing those inequalities.<sup>12</sup>

The question, however, is what practical force these judgements actually have, given the size of the gap between what true justice requires and what might be achieved if the specific injustices referred to were removed. How confident could we be that reforming the Votanian law or holding higher rate tax rates at 60 per cent would actually bring us closer to justice proper? This will partly depend on the conception of ideal justice that is being employed. If, for example (and contra Cohen), we were to use Rawls' difference principle as our criterion of distributive justice, then we would judge any proposed change according whether it raised or lowered the economic position of the worst-off group in society, and this would in theory yield a determinate answer to our question. But suppose instead (and with Cohen) we employ a

<sup>10</sup> Augustine, *City of God*, p. 232.      <sup>11</sup> Augustine, *City of God*, p. 130.

<sup>12</sup> Cohen, *Rescuing Justice and Equality*, chs. 1 and 4. Note that the critique of the difference principle itself as unjust does not occur until ch. 4, whereas the tax example occurs in ch. 1.

comparative principle such as luck egalitarianism, which holds that all resources must be distributed equally unless inequalities can be traced to individual choices. It will now be much harder to establish whether a proposed reform is a step forward or a step back from the point of view of justice.

Consider this example. Suppose we discover that professional women are typically paid 20 per cent less than men for doing jobs with equivalent content, and that the only feasible way to remedy this inequality is to increase the pay of professional women to bring it in line with male pay. We apply the luck egalitarian principle, a well-known corollary of which is that inequalities that are traceable to unchosen talent differences are unjust. If we implement the proposed reform, we eliminate the arbitrary inequality between professional men and professional women, but we appear at the same time to increase the arbitrary inequality between professional women and lower-paid working class men and women, on the reasonable assumption that access to professional jobs depends to some extent at least on innate talent and unchosen early life experience. How can we decide whether the change we are contemplating would make the society more just or less just overall?<sup>13</sup>

The problem here is that a theory that contains standards of justice that no human society can reach may give us no guidance when we have to make a comparative judgement between two feasible but imperfect states; so here we have to rely on other principles that are at least partly detached from the pure theory.<sup>14</sup> I return later to the question of whether we should expect our normative principles to form

<sup>13</sup> We could of course discriminate between different sources of injustice, treating some as more significant than others, but this would immediately take us beyond the luck-egalitarian framework. I comment later on the implausibility of treating all unchosen sources of inequality as equally a matter of 'luck'.

<sup>14</sup> It may seem that I am here echoing Amartya Sen's criticism of what he calls the 'transcendental approach' to justice in his book *The Idea of Justice* (London: Penguin, 2010). Sen claims that that we do not need principles that define a fully just society in order to make comparative judgements between feasible social states. I do not agree with Sen. A principle that allows us to make a wide range of comparisons must be such that we can understand what it would mean for the principle to be fully realized. If I claim that there is more equality of opportunity in Sweden than in France, then I must be able to say what full equality of opportunity would mean. My argument here is not about the need for principles that serve to identify a fully just society, but about the effect of having principles that imply that no human society could possibly be just.

a hierarchy, with more specific ones being viewed as derivative from fundamental principles that are more abstract. But first I want to indicate a second problem that may arise in cases where a large gap exists between what ideal justice is said to require and the current state of affairs. We may find that we cannot move directly towards ideal justice. To get to the heavenly city, we would have to take a detour that in the first stages takes us further away from our goal.<sup>15</sup> Two questions then arise, both to do with the passage of time. The first is whether we can be certain, having taken the initial decision, that we or our successors will take the later decisions that would finally bring us closer to justice. If we can't be certain about this, there is an obvious risk that the policy change we are proposing to make will simply produce a worse result from the point of view of justice. We move one step away from justice and then later fail to take the next two steps towards it. The second problem has to do with the distribution of costs between different sets of people. Suppose that the route we would need to take to achieve real justice would take several generations to accomplish. The next generation would bear the brunt of the costs – their society would be significantly less just than ours and some members would have lives that were scarred by that injustice. Even if we were confident that the route we have marked out would be followed, would we be justified in imposing these costs on the generation that follows ours in the name of the justice that later generations would enjoy? What, for example, if it were possible to reach the higher stage of communism as described by Marx, but only by going through a transition period of Stalinist state socialism as a way of getting rid of the bourgeois market mentality of present-day society? Would it be permissible in the name of justice (defined here in Marxist terms as 'to each according to his needs') to make those who live during the transition period bear the added injustice of Stalinism?

<sup>15</sup> This point has been well made by Ingrid Robeyns, using a slightly different metaphor: 'ideal theory guides us by telling us where the *endpoint* of the journey is: it does not necessarily tell us anything about the route to take to get to Paradise Island. In some seas it is dangerous, indeed impossible, to just sail straight in the direction of the destination. For example, in low seas, one needs a precise map of the channels in between the sandbanks – and these channels can make the sailor first head in a very different direction compared to the track that is direct from an aerial view.' I. Robeyns, 'Ideal Theory in Theory and Practice', *Social Theory and Practice*, 34 (2008), 345.

It might be said in reply here is that what such examples show is the need to supplement our theory of justice with other principles – for example principles of prudence – which may need to be traded off against justice when we are considering what should be done, all things considered. This is often the line of retreat followed by Cohen when feasibility objections to his theory are raised. But the point of the examples is that justice itself tells against embarking on a course of action whose outcome is uncertain for the reason given, or which involves the imposition of unacceptably high costs on some people, even if the intended destination is ideal justice. They are meant to suggest that the idea of justice has an inner complexity that is obscured if we attempt to define it prior to any consideration of the obstacles that might stand in the way of realizing the principles we are exploring.

The factors that give rise to political philosophy as lamentation are on the one hand the radicalism of its ideals – the size of the gap between the present condition of society and society as it would have to be if it were perfectly ‘just’ (or ‘free’ or ‘democratic’, etc.) – and on the other the acknowledged limited possibilities for practical change.<sup>16</sup> I have suggested several ways in which this combination of factors may destroy the normative force that ideas such as justice usually carry. As we normally understand these ideas, to characterize a law, or policy, or institution as unjust is to give a strong reason to take steps to change it. The same applies if we say that it is undemocratic or significantly reduces freedom. This is the role that such ideas play in our political discourse: they are action-guiding words. But as interpreted and used by the neo-Augustinians, this role atrophies: the ideas are drained of their practical force. They become instead contemplative in nature. We are invited to judge that the society we inhabit is radically unjust, but at the same time it is implied that such a judgement does not give us any strong reason to attempt to change it. All we are left with is regret

<sup>16</sup> To forestall a possible misunderstanding, I do not claim that a valid theory of justice must be such that we believe its principles can be fully realized in practice. We may for example commit ourselves to a principle of equality of opportunity while recognizing that human frailties (such as excessive partiality towards family members) mean that it will never be implemented in full. But this is consistent with the principle’s serving as a guide both to public policy and to personal behaviour: we can aim to move closer to the ideal. My criticism of neo-Augustinianism is not that its principles demand more than we are likely to achieve on earth, but that it is demanding in a way that deprives it of practical significance.

that we are powerless to achieve true justice. The apparent radicalism of the theory turns in practice into its opposite.<sup>17</sup>

#### IV

But to show that the Augustinian understanding of justice fails to capture the action-guiding quality that the concept has for us is not sufficient, because the Augustinian view is that the normal, everyday understanding of these concepts is inadequate. We may believe that by changing some law or policy we can remove a significant amount of injustice, but that is only because we fail to understand the true meaning of 'justice'. When we make such judgements, we are being guided by an idea that is only a pale shadow of the real thing. How, then, should we discover what true justice is – what 'justice' means in the heavenly city? Let's look back for a moment to Augustine to see how he arrives at the concept which he uses to describe even the best instances of earthly justice as showing mere 'traces' or 'vestiges' of justice proper. He begins with a familiar and conventional definition, drawn from the writings of the Roman jurists: justice means giving every man his due. Whereas for the Roman jurists, however, giving a person his due meant in the first place giving him that to which he was legally entitled, it quickly becomes clear that Augustine has something else in mind: what a person is due is what he morally deserves. Augustine applies this both to rewards and punishments (he has most to say about punishments). And he gives two main reasons why justice so defined cannot be achieved in the earthly city. The first is that because desert depends on motive and intention as well as upon bodily action, neither we as individuals nor the state as a collective body will ever be in a position to know what a person really deserves, either by way of reward or by way of punishment. Augustine's main interpreter puts the point as follows in relation to punishment:

The state deals with its citizens only on the level of outward, external behaviour. It imposes penalties on those who violate its laws, but it and its agents have no way of affecting the hearts and wills of men or even of knowing what men's true characters and motivations are.<sup>18</sup>

<sup>17</sup> See also here the discussion in L. Valentini, 'On the Apparent Paradox of Ideal Theory', *Journal of Political Philosophy*, 17 (2009), 332–55.

<sup>18</sup> Deane, *The Political and Social Ideas of St Augustine*, p. 134.

Augustine's second reason for dismissing the possibility of earthly justice is that just laws, even if we knew what they were, are not sufficient to create a just society; it is also necessary that individual members of that society should be just – for example that no-one should try to take what is not properly his. That in turn requires, in each individual, that his desires should be governed by reason, which Augustine identifies with 'the soul'. The argument then proceeds as follows:

That being so, however, what justice can we suppose there to be in a man who does not serve God? For if the soul does not serve God it cannot by any means govern the body justly, nor can human reason govern the vices. And if there is no justice in such a man, then it is beyond doubt that there is no justice in a collection of men consisting of persons of this kind.<sup>19</sup>

Since, by definition, the earthly city contains many people who do not serve God, as Augustine understands that requirement, it immediately follows that such a city cannot be just.

Let me look more closely at the intellectual manoeuvre that Augustine has performed here. He needs to persuade his readers that what he is talking about is indeed justice when he reaches the conclusion that no earthly city could be just. So the argument has to start by invoking a concept that is recognizably a concept of justice. This he does, as we saw, by using a definition of justice that would be familiar to (Roman) readers from books of jurisprudence, and indeed from everyday life: render to each his due. But while we would normally employ that concept in contexts in which it was relatively easy to establish what a person's due was – it would be unjust, for example, to steal another's property or to fail to provide some service one had agreed to supply – Augustine transfers it to a quite different context, one that requires assessing a person's intentions and motives in order to discover what is due to that person by way of reward and punishment. Now such a transfer is not illegitimate in itself. Indeed, it may seem quite natural because after all we do make judgements about justice in circumstances where what is at issue is the moral character that someone displays in his or her conduct.<sup>20</sup> We say that it is just or fair

<sup>19</sup> Augustine, *City of God*, p. 952.

<sup>20</sup> Moreover, justice as understood in legal contexts does take cognisance of the motives and intentions with which people have acted, insofar as these can be determined, so the transfer I am describing does retain some connection to the original context of use.

that people should get what they deserve, for example that people who are selfish or spiteful should be ‘punished’ by people thinking badly of them, avoiding them socially and so forth. But the question that arises is whether these uses of the concept are actually fundamental and the more mundane uses derivative, which is what the Augustinian position seems to require. That is, the institutions of the earthly city, such as the legal system, are portrayed by Augustine as attempting to realise justice in the sense of giving people what they morally deserve, but failing miserably in the attempt. But this already assumes that ‘real’ justice should be understood in Augustine’s way, so that, for example, ensuring that property is restored to its rightful owner is merely a pale shadow of justice proper – a very imperfect way of bringing it about that people get what they morally deserve.

One might, however, take the opposite view, and say that justice in Augustine’s sense is actually parasitic upon the more mundane concept that we use in our collective social life. Justice is primarily a virtue of social institutions and practices, especially perhaps of the law. Having grasped how the idea is used in these contexts, we are then able, by a process of abstraction, to apply it in other more personal ones. But these extended uses are in a sense metaphorical. To support this, consider how someone might learn what justice means. It belongs to the concept that judgements of justice are not purely subjective – that there are interpersonal criteria for deciding whether a particular outcome is just or not. Someone wanting to acquire the concept would therefore have to be introduced to it in circumstances where the application of these criteria was relatively clear: a person performs an action whose properties are open for all to see and in return is treated in a certain way (perhaps receives a reward) where the character of the treatment is equally visible.<sup>21</sup> Everyone is then in a position to judge whether the treatment is a fitting response to the action and therefore whether justice has been done or not. Someone wanting to learn what justice means could be given a series of examples and be told ‘here, justice has been done; there it has not been’.

Still, it might be said, even if the concept of justice has to be learned in circumstances in which individual judgements are able to converge

<sup>21</sup> These cases would no doubt have to be artificially simplified, since in many real-life situations the requirements of justice may conflict. The problem is not necessarily that the criteria themselves are unclear, but that it may be hard to decide which of them should be applied to rule on a particular case.



in the way described earlier, it does not follow that it cannot be used outside of those contexts. I have already acknowledged that we do use it in situations where the criteria of application are much less certain, especially to pass judgements on individual behaviour in circumstances where intentions and motives are unavoidably opaque. The question, however, is whether we should take such judgements to have the fundamental status that would then justify us in saying that even the best earthly institutions cannot achieve 'real' justice – that the law, say, is fundamentally unjust because legal procedures are unable to reveal the kind of information that would enable us to say that each person has received what they morally deserved when they were punished or acquitted. What licenses the Augustinian to say that divine justice (for only God can have the necessary knowledge of men's souls) is real but earthly justice is not, rather than, as I am suggesting, that we could not even understand what divine justice might mean unless we already understood what justice meant as a feature of human practices and institutions?

## V

I believe that somewhat the same process, whereby the concept of justice is released from its original moorings through a process of abstraction and then used to derogate 'justice' in the everyday sense, can be seen at work in recent work on justice with neo-Augustinian tendencies. Consider the luck-egalitarian claim that what justice fundamentally requires is that no one should be worse off than anyone else unless he or she is responsible for that condition. As the name implies, this means that justice requires us to compensate for all forms of luck that might affect someone's position (the quantity of resources at their disposal, for example) unless they have chosen to allow luck to operate by, for instance, entering a lottery. Now why should we think that justice is fundamentally about rectifying the effects of unchosen chance in human life? It is by no means the most obvious first thought to have. Instead we may get to it by thinking about cases in which justice does seem to require us to combat the effects of certain kinds of luck. For example, we believe that justice requires equality of opportunity in certain contexts, such as access to places in higher education. From that starting point, it follows that it is unjust if one prospective student has had a worse school education than another without having chosen

to do so – for example by virtue of the bad luck of having been raised in a place where the local school is substandard. Justice requires us to combat the effects of the ‘postcode lottery’ either by improving school standards in the areas in question or by compensating in university admissions by requiring lower grades from the unlucky candidates.

The luck egalitarian generalizes the above argument by treating as matters of luck all features of a person’s situation that cannot be traced back to something for which she is responsible; this includes, most notably, her genetically determined talents and preferences. Once this abstracting manoeuvre has been performed, it then follows that what would be significant improvements in justice according to the original conception – for example ensuring that all the children in a particular society had access to schools of substantially the same quality no matter where they lived – would be worth far less according to the new one, since nothing would have been done to compensate for the unequal effects of natural endowments and preferences. The luck of the ‘natural lottery’ would still be allowed to operate, presumably with very significant consequences. I have already remarked on the likely motivational consequences of this manoeuvre. But the question before us now is whether the manoeuvre is conceptually justified. It is after all an assumption that what concerned us in the original situation, with unequal schooling standards, was that people’s fate was being determined by good and bad luck. We could interpret the situation differently. We might think that when social institutions have a major impact on people’s life chances, and we are able to determine the shape of those institutions through public policy, then justice requires us to set them up in such a way as to give people equal opportunities in certain areas (such as access to higher education). If they are not currently doing that, then it becomes a matter of justice to change them. On this reading, justice does not involve any general commitment to combating the effects of chance in human life. It requires removing certain inequalities created by social institutions, which can be described as matters of good and bad luck but need not be.<sup>22</sup>

<sup>22</sup> Indeed, perhaps should not be. Consider three kinds of factors that may create inequalities between people. First, laws or policies that are directly discriminatory; second, laws or policies that have discriminatory effects without those effects being intended; third natural conditions that affect how people’s lives go (the weather, for example). It is rather odd to describe the effects

In reply to my argument about the perils of abstraction, an Augustinian might suggest the following. In order to understand concepts such as justice and freedom, we do indeed have to begin by considering how they are used in the course of everyday life. But this everyday use is not definitive, because it is always distorted by the constraints imposed by existing institutions and practices. These background facts are taken for granted when the concepts are deployed, and this shapes the way they are understood. Moreover, everyday use is not consistent and settled. People will understand these concepts differently, reflecting among other things their assumptions about what is given in social life and what is open to change. The task of the philosopher, therefore, is to bring clarity and consistency to a situation of conceptual *anomie*. What I have described above as abstraction is better understood as a process of purification whereby the political philosopher strips away the distortions introduced by the constraints of everyday life and reveals the conceptual truth about justice or freedom – explains these concepts in a way that still leaves them recognizable as concepts of justice or freedom, but brings out their real core that everyday usage conceals.

This neo-Augustinian view can perhaps best be understood through an example. Take the question of pay differentials. It is a well-established principle of everyday justice that it is unfair if two people are paid differently for doing what is substantially the same work. The principle seems to be that reward should be proportional to work done. But is this really the fundamental idea that is being appealed to here? Consider the case where, although two people are now doing the same work, one had previously much greater opportunities to acquire the skills that the work requires. Is it still so obvious that equal pay for the two employees is what justice requires, or does the disadvantaged worker not deserve more by virtue of the fact that she has had

of the first two types of factors as ‘luck’ (to say, for example, that black people under apartheid were suffering from ‘bad luck’); the term is better reserved for factors of the third type. It is also odd to treat these three kinds of factors as equivalent from the point of view of justice, even if the amount of inequality that they produce is the same. Justice condemns directly discriminatory law or policies most fiercely, indirectly discriminatory ones less so; it is an open question (according to the view I am presenting) whether naturally caused inequalities are condemned at all at the bar of justice. For an illuminating discussion, see T. Nagel, ‘Justice and Nature’, *Oxford Journal of Legal Studies*, 17 (1997), 303–21.

to work much harder in the past to acquire the skills that she is now using? The norm of equal pay for equal work, it now appears, represents a relatively superficial form of justice, reflecting among other things the fact that in practice workers are paid according to the kind of work that they do. But having dug a bit deeper, we see that the norm only captures a small part of what justice requires, namely that people should get what they deserve, where desert has to do with the efforts and choices that a person makes throughout their life. And having taken this step, must we not conclude that natural talents, too, are irrelevant to just distribution, so to establish what a person really deserves to get by way of material reward we have to abstract from all of the ways in which natural talent, or lack of it, might impact on the efforts and choices that a person makes? Such a principle may be impossible to implement (for one thing no one could conceivably obtain the information necessary to put it into practice), but that is what justice really requires. The equal pay for equal work norm now looks like a low-level principle whose role is at best to combat one form of injustice, namely the arbitrary privileging of one category of workers over another (men over women, people working in industry A over people working in industry B, etc.). To think that if we succeed in implementing the norm in our work practices we will have achieved 'justice' is to confuse what is derivative with what is fundamental.

In reply, I do not deny that the political philosopher's task is to approach the everyday use of concepts in a critical spirit, and to try to bring order in the face of inconsistency by establishing what is a fundamental principle of justice, say, and what is merely a practical rule for implementing justice in a particular context. But it is quite wrong to assume that the upshot of this must be some simple overarching principle from which everything else has to be treated as derivative.<sup>23</sup> It may

<sup>23</sup> I don't want to make it a defining feature of Augustinianism that it should take an essentialist view of political concepts such as justice, in the sense that their core meaning can be expressed in terms of one simple principle rather than a plurality of principles. Nevertheless, it is significant that both Augustine and Cohen acknowledge a debt to Plato and his idea that there is a single 'Form' of justice that lies behind and explains the various manifestations of justice found in human societies. There seems therefore to be at least a strong affinity between Augustinianism and the Platonic understanding of concepts as unitary in nature. (Note that one can be a monist about each fundamental value taken by itself, while holding that there are a plurality of fundamental values – this, in fact, is Cohen's position.)

be, for example, that what seem to be relatively low-level principles turn out on closer inspection to have considerable ethical weight. Take the norm of equal pay for equal work discussed in the last paragraph. The neo-Augustinian treats it as a very imperfect instantiation of the fundamental principle that people should be rewarded according to their efforts and choices. But it might instead be regarded as exemplifying a form of non-discrimination that is connected to the idea of equal respect.<sup>24</sup> Allowing employees who do the same work to be treated differently, either deliberately or through negligence, demeans those who get the lesser rewards. They are right to feel indignant about their treatment, and their indignation cannot and should not be deflected by the observation that in current practice nobody gets the rewards that they really deserve (by the choice/effort criterion).

Another way of putting this point is to say that the task of political philosophy is indeed to search for a reflective equilibrium, in Rawls' sense, where our pre-theoretical normative judgements are integrated into a consistent theory which explains at least some of these judgements by revealing the deeper principles from which they are derived, but it is wrong to assume that this must take the hierarchical form that the neo-Augustinians favour, with fundamental principles that abstract from the contingencies of human life being contrasted with derivative 'rules of regulation'.<sup>25</sup> It may turn out that the basic principles themselves operate at different levels of abstraction, with some of them being closely tied to existing practice, so that if the practice were to disappear or to change very radically the principles would disappear as well – they would no longer have any context of application.<sup>26</sup> This applies, for example, to principles of legal justice such as *audi alteram partem*. This makes sense only if we assume a background context in which two people are in dispute over some matter and a court is being asked to decide which is in the right, in which case it seems deeply unfair to prevent one party from giving her side of the story. If we think

<sup>24</sup> Compare here Andrew Mason's suggestion that the rule of appointing the best-qualified candidate to a job can be justified by appeal to the principle of respect for persons. See A. Mason, *Levelling the Playing Field: The Idea of Equal Opportunity and its Place in Egalitarian Thought* (Oxford University Press, 2006), ch. 2, section 4.

<sup>25</sup> This terminology is Cohen's. See *Rescuing Justice and Equality*, esp. chs. 6–7.

<sup>26</sup> For a fuller defence of this conjecture, see Chapter 2 in this book.

of a society in which such disputes were resolved in some quite different way – for example a council of elders is presented with the facts by third parties who have to swear by oath to give honest testimony, and it then applies customary rules to yield a decision – the principle would become irrelevant. It would simply no longer feature in an account of what justice means in that society.

Here we need to confront the claim that if there are principles that rely in this way on the facts about social practice remaining roughly as they now are, there must be other, more fundamental, principles that do not rely on the same facts in order to *explain* such reliance.<sup>27</sup> But this claim rests on the assumption that the explanation that is being asked for must be an *entailment*, and it is then a matter of simple logic to show that a set of facts can only entail a (normative) principle by being combined with another such principle. Once we reject the assumption that explaining how a principle is supported by certain facts requires us to derive the principle from a set of premises that includes those facts, the claim about the need for fundamental, fact-free principles collapses. In answer to the challenge: ‘if you think that principle P only obtains in light of facts F, what would you say if F ceased to obtain?’ we need not invoke some superprinciple P<sup>1</sup> which together with F entails P and which would continue to apply in case ~F obtains. It is perfectly reasonable to answer either ‘In that event I would invoke this other principle Q completely distinct from P’ or ‘I simply don’t know – I have never had to confront ~F and so I just don’t have any intuitions about what principles we should follow were that to obtain’.<sup>28</sup> The hierarchy of principles that the neo-Augustinian position seeks to impose cannot be established by such an appeal to the logic of explanation.

## VI

Let me now try to summarise the main argument of this chapter. I have been trying to diagnose a pathology to which political philosophy is susceptible in circumstances in which the range of options in real

<sup>27</sup> This is the claim made at considerable length in Cohen, *Rescuing Justice and Equality*, ch. 6, which is based upon his earlier article ‘Facts and Principles’, *Philosophy and Public Affairs*, 31 (2003), 211–45. What I say here is a résumé of the critique developed in Chapter 1 of this book.

<sup>28</sup> See T. Pogge, ‘Cohen to the Rescue’, *Ratio*, 21 (2008), 454–75.

politics appears suddenly to shrink. The examples I used were the sack of Rome by the Visigoths, which for Augustine and those like him who had believed in the ideals of the Roman republic appeared to signify the final collapse of those ideals, and the fall of the Berlin wall, which for left-leaning political philosophers at least seemed to represent the final political defeat of the egalitarianism of the radical socialist tradition exemplified by Marx. Under these circumstances, it may seem overwhelmingly important to preserve the ideals themselves, at the cost of conceding that they are not going to be realized here on earth, at least in any reasonably foreseeable future. This is what gives rise to Two Cities thinking. In order not to compromise our ideals, we need to draw a sharp line between the heavenly and the earthly city, and realize that when we accommodate ourselves to the constraints of the latter, we are not achieving justice proper (or freedom proper, etc.), but at best a pale reflection of these values. For practical purposes we may need to devise principles to govern the earthly city, but we should not dignify these with the names of justice or freedom.

My first claim about this pathology is that it is likely to be practically demotivating. The problem with the Two Cities view is not that it puts forward radical ideals. After all pointing out the depth of justice and oppression in contemporary society might just cause people to redouble their efforts to change it. The problem is rather that the gap between ideal and reality is of such a kind that it becomes very difficult to judge that any proposed reform represents a significant step towards justice. Since we cannot say, for example, that any of the party programmes being offered at election time would bring us significantly closer to 'justice' than any other, why bother to campaign or vote? Why bother to defend Rome when even in its finest hour it represented only the 'coloured picture' and not the 'moral reality' of justice? The upshot is political disengagement and apathy, or in the worst case, a politics of irresponsibility that is willing to consort with the forces of darkness in the hope of provoking the kind of catastrophe that will open up the range of political possibilities once again.<sup>29</sup>

<sup>29</sup> Cohen himself showed that he was aware of this danger in a paper that he wrote shortly after the events of 1989, which I am treating here as the radical left's equivalent to the Sack of Rome. See G.A. Cohen, 'The Future of A Disillusion', *New Left Review*, 190 (1991), 5–20, reprinted as G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge University Press, 1995), ch. 11. He called it

I went on to claim, however, that the failings of Augustinianism are not just practical ones. It also involves the intellectual mistake of subjecting our normative concepts to a process of abstraction whereby central and familiar uses of these concepts are demoted to derivative status, and uses that might be described as metaphorical are treated as basic. I have referred extensively to the idea of justice, so by way of variation consider how the concept of freedom may be understood in such a way that the common idea of freedom as the absence of physical constraints (prison bars, say) is subordinated to the idea of the free will as the will unaffected by contingent desires, etc. – a person is really free only when his thoughts and actions are governed entirely by self-sufficient reason. Once this inversion has taken place, it becomes a matter of comparative indifference whether somebody is physically free in the ordinary sense or not. I argued that it is misleading to treat concepts as embodying this kind of hierarchy whereby the most abstract uses are also the most fundamental. They are typically rooted in social practices and institutions, even while they provide standards by which those practices and institutions can be assessed and if necessary altered. Removed from these contexts of application, they may lose any semblance of objectivity, because there are no longer any interpersonally valid criteria for deciding whether a distribution is ‘just’, or a person is ‘free’, etc.

Political philosophy as lamentation invites us to contemplate political life *sub specie aeternitatis* and to observe that the earthly city, even at its best, falls far short of achieving true justice or freedom. In its original Augustinian mode, it draws the conclusion that we should turn our attention inwards and concentrate on the condition of the soul, in the hope of joining the march towards the heavenly city. Neo-Augustinians can help themselves to no such consoling thought, so their claim is first that we should be honest in regretting what cannot be achieved and undeceived about the status of the rules that we may adopt to govern our common life. Clear-sighted resignation is the proper attitude to take. I have tried to show why this stance is both practically and theoretically misguided. It is not wrong to allow the

there the ‘Vanity of Vanities’ response to the collapse of one’s political hopes. In a forthcoming paper, I have argued that in his later writing he nonetheless succumbed, to some degree, to this temptation. See D. Miller, ‘Our Unfinished Debate about Market Socialism’, *Politics, Philosophy and Economics* (forthcoming).



unavoidable limitations of the earthly city to shape our thinking about justice and other political concepts, or as Rawls puts it, ‘conceptions of justice must be justified by the conditions of our life as we know it or not at all’.<sup>30</sup> Even when so shaped, our principles can be both demanding and inspiring, as they should be.

<sup>30</sup> J. Rawls, *A Theory of Justice*, rev. edn (Cambridge, MA: Harvard University Press, 1999), p. 398. This of course raises the question of how we should understand these ‘unavoidable limitations’, or what is often now referred to as the ‘feasibility question’ in political theory. I have addressed this question briefly towards the end of Chapter 1 in this book. See also the following: T. Nagel, ‘What Makes a Political Theory Utopian?’, *Social Research*, 56 (1989), 903–20; J. Raikka, ‘The Feasibility Condition in Political Theory’, *Journal of Political Philosophy*, 6 (1998), 27–40; A. Mason, ‘Just Constraints’, *British Journal of Political Science*, 34 (2004), 251–68; A. Swift and S. White, ‘Political Theory, Social Science and Real Politics’ in D. Leopold and M. Stears (eds.), *Political Theory: Methods and Approaches* (Oxford University Press, 2008).

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